



Appeal Decision

Site Visit made on 19 January 2021

by Mr A Spencer-Peet BSc.(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 08 February 2021

Appeal Ref: APP/U1105/W/20/3260621

Lloyds TSB Bank Plc, 8 Fore Street, Budleigh Salterton, EX9 6NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr S Thorneywork against the decision of East Devon District Council.
 - The application Ref 20/0846/FUL, dated 17 April 2020, was refused by notice dated 15 September 2020.
 - The development proposed is the construction of new 1 bed cottage to the rear of 8 Fore Street Budleigh Salterton, Devon, EX9 6NQ.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - The effect of the proposed development on the living conditions of nearby residents with particular regard to outlook;
 - Whether the proposed development would be in a suitable location having regard to the risk of flooding; and,
 - Whether the proposed development would preserve or enhance the character or appearance of the Budleigh Salterton Conservation Area (the Conservation Area).

Reasons

Living Conditions

3. The appeal site comprises an area of hardstanding located at the rear of 8 Fore Street, known as Lloyds Bank, and within the Conservation Area. The site is accessed over parking areas which serve nearby development including the substantially sized building at The Rolle.
4. Policy D1 of the East Devon Local Plan 2013 – 2031 (the Local Plan) concerns design and local distinctiveness and, amongst other matters, confirms that development will only be permitted where it does not adversely affect the amenity of occupiers of adjoining residential properties. Policy H3 of the Budleigh Salterton Neighbourhood Plan (the Neighbourhood Plan) concerns infill development and extensions and provides that, amongst other considerations, development must not lead to loss of amenity of neighbouring properties.

5. The evidence before me indicates that a storage shed at the site had previously been demolished, and that a recent planning application¹ for the conversion of part of the rear of the Lloyds Bank building into flats had been approved by the Council. The proposed dwelling would be sited within very close proximity to the south facing ground floor rooms at the recently approved flat, and would be positioned on land elevated above the ground floor level of that recently approved residential unit.
6. The ground floor residential unit at the recently approved flats that form part of the Lloyds Bank building has access to a very small area strip of land which would separate the rear of the bank building from the appeal proposal. It is understood that, as part of the appeal scheme, the outside amenity area for the recently approved flat would be enlarged to provide additional space.
7. Whilst it is acknowledged that the proposal would provide some additional external amenity space for future residents of the recently approved flat and that it is proposed to alter the land levels, in my view and based on the evidence before me and observations made on my site visit, the outlook from the rear of the recently approved flat and from the additional, albeit very modestly sized, external amenity space would be entirely dominated by the proposed dwelling.
8. The proposed dwelling would have an unacceptable overbearing impact on the living conditions of future residents of that recently approved flat to a significant degree, by reason of the mass and bulk of the proposed dwelling in such close proximity to the ground floor rear windows at 8 Fore Street. Those unacceptable living conditions for future residents would not be sufficiently mitigated or overcome by the proposed very modest enlargement of the outdoor amenity space. In this regard, whilst the additional external space to be provided can be considered to be a benefit of the scheme, outlook from that enlarged space would still be dominated by the appeal proposal and would provide a very poor and unacceptable level of outlook for future users of that very restricted space.
9. In light of the above reasons, I conclude that the proposed development would be harmful to the living conditions of future residents of 8 Fore Street with regards to outlook. The proposed very modest enlargement of the external amenity space at that residence would not be sufficient to overcome the unacceptable living conditions that would result from the appeal proposal. Accordingly, the proposed development would conflict with Policy D1 of the Local Plan and would fail to accord with the provisions of Policy H3 of the Neighbourhood Plan.

Flooding

10. It appears from the submissions made that the main parties agree that the appeal site is situated within Flood Zone 1 which represents a low risk of flooding from rivers or the sea. Nonetheless, following consultations with the Environment Agency, the site has been identified as being located where there is a risk from surface water and reservoir flooding. Paragraph 155 of the National Planning Policy Framework (the Framework) advises that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk.

¹ Local Planning Authority Reference: 19/2017/FUL

11. The possibility of surface water and reservoir flooding at the appeal site represents an elevated flood risk and in such circumstances paragraph 158 of the Framework advocates a sequential approach to site selection, in order to steer new development towards the lowest risk of flooding, highlighting that development should not be permitted if there are reasonably available sites in areas with a lower risk of flooding. Planning Practice Guidance (the PPG) provides that dwellinghouses are classified as more vulnerable to flooding than certain other uses².
12. Policy EN21 of the Local Plan sets out how development should be located and designed so as to avoid or minimise potential adverse effects resulting from flooding vulnerability and is consistent with paragraph 155 of the Framework.
13. The Appellant submitted a sequential test which considered alternative sites restricted to the area within Budleigh Salterton town that could potentially accommodate housing. A number of sites were considered, all of which were assessed as being unsuitable and were discounted predominately due to those sites already having been acquired for development or were private garden spaces. In summary, the Appellant considers that there are no reasonably alternative sites available for the proposed development within Budleigh Salterton.
14. Notwithstanding the above, the Council have put it to me that the appeal proposal fails the sequential test by reason of restricting consideration of alternative sites to Budleigh Salterton only and by not considering alternative sites across the District. In this regard, the PPG advises that the area to apply the sequential test across will be defined by local circumstances relating to the catchment area for the type of development proposed³.
15. The Appellant has put it to me that the Budleigh Salterton Neighbourhood Plan (the Neighbourhood Plan) provides that there is a desire for one bedroom housing within the town and consequently, the sequential test need only be applied in relation to sites within Budleigh Salterton. However, whilst noting its relatively small scale, the proposal is for an open market dwelling.
16. In this regard, the Council have indicated that the need for open market housing is District wide not just in relation to Budleigh Salterton. In my view, while the desire for one bedroom housing in Budleigh Salterton is noted, this desire would not represent or equate to a identified need and, consequently, considering that the proposal is for open market housing development, the Council's approach is reasonable given the advice contained in the Guidance, and that the sequential test should have considered alternative sites outside of the town.
17. For the above reasons, I find that the appeal proposal does not pass the requirements of the sequential test. I note the Appellant has provided some details and information to demonstrate that the appeal proposal could be made safe during its lifetime, but having regard to the advice in the PPG and at paragraph 159 of the Framework, I do not consider it necessary to address the Exception Test in this case. I conclude that the site is subject to a flood risk and it has not been demonstrated that there are no other available alternative

² Planning Practice Guidance Reference ID: 7-066-20140306

³ Planning Practice Guidance Reference ID: 7-033-20140306

sites within the area with a lower level of flood risk. The scheme would, therefore, conflict with Policy EN21 of the Local Plan.

Heritage Assets

18. In accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area in reaching this decision.
19. As noted above, the appeal site is located within the Conservation Area. Whilst I have not been provided with a Conservation Area appraisal, I was able to explore the Conservation Area at my site visit and, from the observations made, I consider that the significance of the Conservation Area is predominately derived from the architectural quality of buildings, its location close to the sea and its setting within the East Devon Area of Outstanding Natural Beauty. Whilst there was variety in terms of scale and design of buildings within the Conservation Area, the frontage of buildings close to the appeal site exhibited a widespread use of brick.
20. Notwithstanding the above, the rear of 8 Fore Street does not reflect the predominant character or appearance of the Conservation Area, with regards to scale and design of buildings. The site is a very modestly sized area of hardstanding to the rear of the shop frontages which, in my view, does not make a positive contribution to the character or appearance of the Conservation Area which, at this location, is somewhat dominated by the substantially sized building at The Rolle. The area surrounding the site is characterised by buildings of contemporary design and which exhibits modern features such as substantially sized metal fire escape stairs.
21. The proposed dwelling would be somewhat squeezed into the plot. However, given the densely arranged buildings which surround the site, the proposed dwelling would not, in terms of scale or location, look out of place and would not adversely affect the character or appearance of the Conservation Area.
22. Furthermore, it is acknowledged that some design alterations were made to the proposal during the course of the planning application, and the inclusion of brick for external surfaces would help the proposed development integrate into its surroundings, both in regards to more traditional forms of development within the Conservation Area as well as in respect of the nearby examples of buildings of modern design and contemporary appearance. By reason of the variety of roof forms that surround the appeal site, the proposed design of the roof with the ridge line positioned away from the building at 8 Fore Street would not, in my view, be an incongruous feature that would detract from the significance of the Conservation Area.
23. For the above reasons, I find that the appeal scheme would not result in harm to the setting or significance of the Conservation Area and would preserve the character and appearance of this heritage asset. I therefore conclude that the proposal would not conflict with Strategy 6 or Policies D1 and EN10 of the Local Plan which, amongst other matters, seeks to ensure that development does not adversely affect the distinctive historic or architectural character of the area, nor would fail to accord with the provisions of the Framework with regards to conserving and enhancing the historic environment. Furthermore, and for the same reasons, the appeal scheme would comply with Policy H3 of the

Neighbourhood Plan with regards to local character being respected or enhanced.

Other Matters

24. Interested parties raise additional objections to the proposal on the grounds of archaeology, adequacy of parking arrangements and interference with private rights of way. These are important matters and I have considered all of the evidence before me. However, given my findings in relation to the main issues above, these are not matters that have been critical to my overall decision.

Conclusions

25. For the above reasons, whilst I have found that the appeal scheme would preserve or enhance the character or appearance of the Conservation Area, the proposed development would have an unacceptable adverse impact on the living conditions of nearby residents with regards to outlook and would not accord with requirements in relation to flood risk. Consequently, the appeal proposal would conflict with the development plan when taken as a whole and this weighs significantly against the proposal.
26. Weighed against this conflict, it is acknowledged that the proposal would provide an additional unit towards housing supply and would be located where future occupants would have convenient access to a wide range of services and facilities that are to be found within Budleigh Salterton. Future occupants would provide benefits in terms of additional spend within local businesses thereby supporting the local economy, and the proposal would provide further economic benefits in terms of employment opportunities during the construction phase. Cumulatively, I attach only limited weight to these benefits by reason of the scale of the proposal.
27. In my view, the limited benefits associated with the appeal scheme would not outweigh the harm identified in respect of nearby residents' amenity and with regards to flood risk. Even in the event that concerns regarding flood risk are addressed, given the emphasis placed on living conditions, health and wellbeing of residents within the Framework, the appeal scheme could not be considered to accord with the social dimension of sustainable development.
28. The proposed development would conflict with the development plan when taken as a whole and there are no material considerations that would lead me to reach a determination other than in accordance with the development plan. As such, the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR