

Appeal Decision

Site visit made on 6 January 2021

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2021

Appeal Ref: APP/Y1110/W/20/3260314

Quay Gardens, Monmouth Hill, Topsham, Exeter EX3 0AF

- 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 Wyn Davies against the decision of Exeter City Council.
 - The application Ref 20/0873/FUL, dated 7 July 2020, was refused by notice dated 14 September 2020.
 - The development proposed is the construction of a detached 3-bedroom house with an integral garage.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The site is within influence of the Exe Estuary Special Protection Area and the East Devon Pebblebed Special Protection Area and Special Area of Conservation (the European Sites). These are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not an issue raised by the Council, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the European Sites. As such, it is necessary to consider this matter as a main issue.

Main Issues

3. The main issues are therefore the effect of the proposal on:
 - the integrity of the European Sites; and,
 - the character and appearance of the area, with reference to the Topsham Conservation Area (the CA) and the settings of the Grade II listed buildings Quay Gardens and Barn at Quay Gardens.

Reasons

Special Protection Areas

4. The Habitats Regulations require that permission may only be granted after having ascertained that the development will not affect the integrity of the European Sites. The European Sites are respectively designated for their waterbird assemblage and heathland habitat and southern damselfly.
5. There is no dispute between the main parties, nor Natural England, that it cannot be ruled out that the proposal, when considered alone or cumulatively with other schemes, would have significant effects on the features of interest of

the European Sites due to increased recreational use. I have no reason to disagree with this conclusion.

6. It is also agreed that this could be mitigated by a financial contribution made pursuant to the South-east Devon European Site Mitigation Strategy (ESMS). However, whilst I have been directed to a long list of mitigation schemes within Table 26 of the ESMS, I have not been directed to specific projects which it is explained would provide relevant mitigation in this case.
7. Moreover, whilst it is suggested that the contributions could be secured via the Community Infrastructure Levy (CIL), a number of the projects within Table 26 appear to be non-infrastructure related. The Council has also identified that the scheme could become exempt from CIL, in which case an agreement under Section 111¹ would be pursued. The appellant's evidence on this matter suggests that such a situation is likely. However, no such agreement is before me, as the competent authority, in the here and now.
8. As such, taking the precautionary principal, I conclude my Appropriate Assessment that the proposal would have adverse effects on the integrity of the European Sites without clear or certain mitigation. The scheme would conflict with the biodiversity aims of Policy CP16 of the Core Strategy (adopted 2012) (CS) and the National Planning Policy Framework (the Framework).

Character and appearance

9. The site is within the CA and forms part of the grounds of the Grade II listed building Quay Gardens and the adjacent Grade II listed building Barn at Quay Gardens (the Listed Buildings). I therefore have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA and a duty to consider the impact of the proposal on the special architectural and historic interest of the listed buildings. The site has extant permission for a similar scheme to that now proposed².
10. The generous open space around the Listed Buildings is well enclosed from the public realm, behind dense greenery and rows of buildings, with inward public views limited. Nonetheless, the Listed Buildings and the CA do draw a degree of significance from this space, which echoes the relative openness of their historic setting, and allows for full appreciation of their facades, particularly the historically and aesthetically significant facade of Quay Gardens.
11. That said, the main approach to the Listed Buildings is a little unceremoniously down a narrow drive flanked garaging and timber fencing. There are glimpsed views of Quay Gardens, but only its nearest gable end, which is observed within its wider urbanised setting. Whilst the proposed dwelling would be similarly visible on this approach, its presence would do little to alter this established situation.
12. When the gateway to the Listed Buildings is entered, one's eye is drawn to the Listed Buildings and the space immediately before them, not in the direction of the site, which is also separated from the Listed Buildings by trees and planting. The appeal site therefore has a negligible role within their settings and the proposed dwelling would maintain adequate visual separation from the Listed Buildings, reinforced by the intervening landscaping.

¹ Pursuant to the Local Government Act 1972

² Ref 19/1767/FUL

13. Its height and scale would be proportionate to other buildings which enclose the space. Whilst it would adopt a contemporary appearance, this would allow it to read as a clearly modern addition to the site and the wider CA, the latter of which has a narrative of evolving design. The CA, the primacy of the Listed Buildings, and the significance they derive from their settings, would therefore be unharmed.
14. Consequently, I conclude on this issue that the proposal would have an acceptable effect on the character and appearance of the area, with reference to the CA and the settings of the Listed Buildings. It would accord with the design and heritage aims of Policy CP17 of the CS, Policies C1, C2, and DG1 of the Exeter Local Plan First Review (adopted 2005) and the Framework.

Planning Balance

15. The dwelling would contribute to housing delivery in the area. However, considering the protection afforded to the integrity of the European Sites, and my responsibilities as competent authority in this regard, the benefits of the scheme do not outweigh the harm that I have identified.
16. Consequently, I find that the proposal would conflict with the development plan when read as a whole and that there are no other considerations, including the Framework, that outweigh the conflict.

Conclusion

17. For the reasons given above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

Matthew Jones

INSPECTOR