



Appeal Decision

Site Visit made on 1 March 2021

by David Wyborn BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2021

Appeal Ref: APP/U1105/W/20/3264008

Woolbrook Reservoir, Balfours, Sidmouth EX10 9EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Robert Lester against East Devon District Council.
 - The application Ref 20/1632/FUL, is dated 31 July 2020.
 - The development proposed is the construction of single storey dwelling.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The appeal is made against the non-determination of the application. The Council has indicated that if it had determined the application it would have been refused. In summary, this is because the elevated and visually prominent location, and the loss of the tree cover to facilitate the construction of the dwelling, would expose the development to views from the surrounding area thereby harming the character and appearance of the area and the land designated as Land of Local Amenity Importance.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area, having regard to the location of the site within land designated as Land of Local Amenity Importance.

Reasons

4. The appeal site forms part of a section of treed hilltop. The site itself consists of a small area of woodland with a mix of tree species although the most prominent are the Scots Pines together with a reasonably large Sycamore. The trees on the site are protected by a Tree Preservation Order (TPO).
5. A housing estate forms the majority of the lower slopes of the hill. However, the woodland on the appeal site, in conjunction with the surrounding trees, makes a valuable and positive contribution to the character of the adjoining area with its verdant and natural appearance. The wooded hilltop is also seen in medium and longer distance views from parts of Sidmouth and is a characteristic feature in the landscape.
6. The site, together with other sections of the hilltop, is identified in the East Devon Local Plan 2013-2031 (adopted January 2016) (the Local Plan) as Land of Local Amenity Importance (LLAI) under Policy EN1. The supporting text explains that the 14 sites identified as LLAIs are open spaces of such particular

quality and value to the character of the settlement and to the local community that they should be recognised and conserved and enhanced.

7. When examining the scheme against the criteria of Policy EN1 of the Local Plan, the provision of a dwelling would not provide a clear community need which has been identified and there is no robust reasoning that demonstrates that an additional dwelling could not be accommodated elsewhere, given that the evidence indicates that the Council is able to demonstrate a National Planning Policy Framework (the Framework) compliant supply of housing land. I am not satisfied that the addition of the built presence of a dwelling on the site would either complement or not undermine the open character of the area. While the appeal site is not available for public access, in the circumstances outlined above, the proposal would not comply with Policy EN1 of the Local Plan.
8. I am conscious that other dwellings have been permitted within the LLA I in the past. However, the information indicates that dwellings at The Water House and Woolbrook Reservoir were associated with existing structures linked to the former reservoir site and therefore the circumstances appear somewhat different to the present case of a new build dwelling located amongst the woodland.
9. I have also carefully considered the background that led to the development of Bellevue House which is also within the LLA I. However, although the information indicates that the site was covered by a similar policy for the LLA I under an earlier development plan, I have not been presented with evidence that this was a key factor for the Inspector when he allowed the appeal on that site. Furthermore, the available information indicates that the Bellevue House site did not appear to have the same treed characteristics as the present appeal site. Overall, therefore, I consider that the presence of other dwellings within the LLA I should be afforded limited weight in terms of the justification for the present proposal and this background planning history does not alter the conclusion that the present scheme is contrary to Policy EN1 of the Local Plan.
10. The proposal has been subject to detailed arboricultural and silvicultural assessments and commentary, including in the final comments made by the appellant. The dwelling has been carefully designed and the building located and raised on a frame which would minimise the impact on the adjoining trees. The scheme proposes the removal of some trees across the site in terms of good practice and management of the woodland and these are shown to generally be the poorer specimens. The canopy is likely to expand to fill the gaps although there would be some visual effect in the shorter term. The longer term ability to ensure the management of the woodland area through a planning condition in any approval and the requirement for the planting of replacement trees, recommended on a 2 to 1 basis of those removed, would be a benefit of the scheme. This could also help to address the visual impact of any future dieback of the ash trees on the site.
11. Nevertheless, I am still concerned with the effect that a residential presence would have within the woodland. There would be a modest area of amenity space in the corner of the site and the woodland as a whole would fall within the curtilage of the dwelling. Planning conditions would not be able to reasonably prevent the residential use of the whole site. The undergrowth would be likely to be cleared, there would be, in all likelihood, the provision of

typical domestic paraphernalia, including the probable need for some form of storage shed or building, together with other impacts, for example from lighting and waste storage areas, that would follow with normal domestic occupation. This would be in addition to the presence of the dwelling itself. Sections of the site are elevated above the surrounding boundary fence and the effects of the residential presence would be visible from parts of the adjoining private drive, some residential properties and glimpsed from some parts of the estate. Even if such impacts were sought to be well managed and anticipated it would be likely to urbanise the character of the site and detract from the natural and verdant qualities when seen in close quarters. I do not consider that these impacts could be adequately addressed by planning conditions. These concerns have some similarities with the issues raised by the previous Inspector in 2016 when he considered a different dwelling proposal on the site.

12. Drawing all these matters together, the benefits of the scheme would be to help to maintain in the longer term the valuable visual presence of the woodland in the wider landscape, including from the replacement planting and management. This benefit of the scheme would be unlikely to materialise unless permission was granted. The Ecological Appraisal indicates that there would be biodiversity benefits from the scheme to the site. More generally, the provision of an additional dwelling within the built up area of Sidmouth would provide a small boost to housing on a windfall site and in a location with good access to services and facilities.
13. On the other hand, the proposed development would be contrary to Policy EN1 of the Local Plan. The visual harm to the character and appearance of the area from the development, when viewed in the vicinity of the site, would undermine the valued contribution that this LLA site makes to the adjoining part of the settlement.
14. The Framework sets out that the planning system should be genuinely plan-led and that where a planning application conflicts with an up-to-date development plan, permission should not normally be granted. In this case, the scheme would conflict with a specific development plan policy for the LLA which sets out the limited criteria which would allow development of the site. On this basis, together with the localised harm to the character and appearance of the area, I consider that the scheme would conflict with the development plan when considered as a whole. While the benefits of the scheme are not without merit and, in particular, the design of the dwelling has sought to carefully address the relationship to the surrounding trees, I consider that the policy conflict and other harm would be of such weight that it would not be outweighed by the benefits of the development.
15. I therefore conclude that when considered overall, the effect of the proposal would be to harm the character and appearance of the area and would not comply with the approach to development within the LLA. In these respects, the scheme would conflict with Policies EN1, Strategy 6 and D1 of the Local Plan and the Framework which seek, amongst other things, to respect the key characteristics and special qualities of the area in which the development is proposed.

Other Matters

16. I have taken into account all the representations from local residents and the Town Council which raise a wide variety of issues and concerns. I have examined the key matters above.
17. The evidence indicates that the scheme may adversely affect the Pebblebed Heaths Special Protection Area although the evidence indicates that this harm would be adequately mitigated by the signed and dated undertaking pursuant to Section 111 of the Local Government Act 1972. However, given my overall conclusions I do not need to consider this matter further.

Conclusion

18. For the reasons given above, the scheme would not comply with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict. I therefore conclude that the appeal should be dismissed and planning permission refused.

David Wyborn

INSPECTOR