



Appeal Decision

Site visit made on 17 May 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal Ref: APP/Q1153/W/21/3268306
Breckland, Down Road, Tavistock PL19 9AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Gray against the decision of West Devon Borough Council.
 - The application Ref 1919/19/VAR, dated 14 June 2019, was refused by notice dated 7 August 2020.
 - The application sought planning permission for erection of two dwellings without complying with conditions attached to planning permission Ref 2138/18/FUL, dated 12 December 2018.
 - The conditions in dispute are Nos 1 and 3 which state that:
 - Condition 1: The development hereby approved shall in all respects accord strictly with drawing numbers Henning LocPL 2Dwell rev4 SEP18, Henning BLPL 2Dwellrev4 SEP18, Henning PLHo1 Rev4 SEP18, Henning PLHo2 Rev4 SEP18, Henning ELHo1 Rev4 SEP18, Henning ELHo2 Rev4 SEP18, Henning Driveway Ho1 SEC SEP18, Henning Driveway Ho2 SEC SEP18 and Henning SEC 200 SEP18 received by the Local Planning Authority on 04 October 2018 and Tree Survey and Arboricultural Impact Assessment dated May 2018, Tree Protection Plan 04672-TTP-2018 dated June 2018 and Tree Constraints Plan 04672-TCP-2018 RevC dated May 2018 received by the Local Planning Authority on 26 June 2018.
 - Condition 3: The vegetation bordering the access lane shall be permanently kept sufficiently trimmed to allow for the access and passing of motor vehicles in accordance with drawing number Henning BLPL 2Dwellrev4 Sep 18 hereby approved.
 - The reasons given for the conditions are:
 - Reason 1: To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.
 - Reason 3: To minimise the risk of vehicles reversing onto the highway, in the interests of highways safety.
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Decision

1. The appeal is allowed and planning permission is granted for erection of two dwellings at Breckland, Down Road, Tavistock, PL19 9AG, in accordance with the application Ref 1919/19/VAR dated 14 June 2019, without compliance with condition numbers 1 and 3 previously imposed on planning permission Ref 2138/18/FUL dated 12 December 2018 and subject to the conditions in the attached schedule.

Main Issues

2. The main issue is whether the conditions are necessary and reasonable having regard to the effects of the proposal on the living conditions of neighbouring occupiers at Nos 11 and 12 Deer Leap with particular regard to outlook,

overshadowing and loss of privacy; and, the effects of the proposal on the Protected Sites.

Reasons

Effects on neighbouring occupiers

3. The appeal site has an extensive planning history which involves many permissions for either a single dwelling or a pair of detached dwellings. The original permission to which this appeal relates, Ref 2138/18/FUL, involved the construction of two large detached dwellings. Numerous conditions were attached but the conditions in dispute are condition 1, the 'plans' condition, and condition 3, which specifically references an approved plan in association with a requirement to maintain vegetation bordering the access lane.
4. A more recent approval¹ allows numerous variations from the originally approved plans, including making Plot 2 a bungalow and rotating it through approximately 90 degrees to have a south-facing principal elevation and to include numerous windows in the north-western elevation. Whilst this permission incorporates some similarities to the appeal proposal, including an integral garage for Plot 2, there are also many differences, which suggests that my comparison should focus on the current proposal and the 'fallback' position which is that of the original permission, Ref 2138/18/FUL.
5. On the face of the evidence before me, proposed Plot 2 would be approximately 23.5 metres from No 12 Deer Leap, and that this is broadly similar to what it was under the original permission. The main difference is that the position of Plot 2 would be shifted to the north-west by approximately 3 metres, so would be more directly aligned with the rear of No 12, albeit at a higher level.
6. Plot 1 would similarly shift in a north-westerly direction by a similar amount to Plot 2. The effects of shifting the position of Plot 1 are less noticeable for No 11 Deer Leap as there is a greater distance than the 23.5 metres between Plot 2 and No 12.
7. In terms of the overall heights, on the basis of the evidence before me, it appears that the respective height of Plot 1 would be relatively unchanged and Plot 2 would be a small degree higher than the original proposals, i.e. within around 0.5 metres higher to respective eaves and ridge heights. Such a marginal change, even considered in the context of the level differences, is not considered to result in material harm to the living conditions of neighbouring occupiers.
8. In terms of the change in orientation referenced in the reason for refusal, there has been little material change in this regard. Both Plots 1 and 2 were originally due to face broadly north-east/south-west and south-east/north-west respectively. The north-western gable elevations, facing towards Nos 11 and 12 Deer Leap were to be the slimmest elevations with no openings, other than for utility room doors. Whilst the proposal sought to provide a single shared point of access, and consequently required the principal elevation of Plot 1 to be the south-west elevation, this has limited overall consequence in terms of the effects on neighbouring occupiers.

¹ Reference: 3980/20/VAR dated 10 May 2021

9. The modest nature of the amendments proposed would be of limited consequence to the occupiers of other neighbouring dwellings, due to their greater distance from the appeal site.
10. I note that the northern boundary of the site is formed from a Devonbank and a line of Oak trees and that the respective heights of the top of the vegetation and bottom of the crowns is managed by the occupiers of No 12 to optimise the degree of light passing through to their garden and south elevation. A condition could ensure that the landscaping measures within the site are managed in a similar manner.
11. Drawing these matters together, despite an increase in the respective mass of each dwelling and altered position on site, the changes would not result in a materially worse outlook, loss of privacy or degree of overshadowing to Nos 11 or 12 Deer Leap considered relative to the original permission. Thus, the amended proposal accords with Policies DEV1, DEV10 and DEV2 of the Plymouth and South West Devon Local Plan (2019). For similar reasons it would accord with guidelines in the Plymouth and South West Devon Supplementary Design Guide.

Protected Sites

12. The appeal site is within the zone of influence of the Plymouth Sound and Estuaries Special Area of Conservation and the Tamar Estuaries Complex Special Protection Area (the protected sites), which are designated under the Habitats Regs² for their internationally important wildlife and marine habitats, including sandbanks, estuaries, shallow inlets and bays, reefs and saltmarshes.
13. New residential development, considered either alone or in combination with other developments, has the potential to adversely affect the integrity of the features for which the protected sites are designated. This is through the effects of additional recreational pressures on the protected sites from new residents to the area, unless adequately mitigated. As the proposal would introduce new residents to the area through the construction of two new dwellings, potential effects on the protected sites cannot be ruled out.
14. The Council has adopted the 'Recreational Mitigation and Management Scheme for the Plymouth Sound and Estuaries Marine Site' (the Mitigation Scheme) (November 2019) which seeks to secure developer contributions based on a scale relative to the sizes of dwellings to mitigate against the effects of additional recreational pressures. The appellant has submitted a unilateral undertaking (UU) made out as a deed under Section 106 of the Town and Country Planning Act 1990, dated 11 May 2021 (V1), which provides for the necessary contribution in connection with the proposed dwellings based on their sizes. The UU provides for the full payment of the contribution prior to occupation of the dwellings.
15. I am satisfied that the UU is necessary and directly related to the development in order to make it acceptable in planning terms to mitigate against the potential effects on the protected sites. It is also fairly and reasonably related to it in scale and kind. I have also had regard to the UU secured in connection with the more recent approval, which was found by the Council as competent authority in that case to be necessary in relation to that development for the

² The Conservation of Habitats and Species Regulations 2017, as amended

same reasons. There is no prospect of both schemes being implemented, and thus, no additional effects on the protected sites could occur that have not already been considered.

16. Consequently, harm to the integrity of the protected sites would not result from the appeal proposal subject to the mitigation contribution, which is certain to be secured at the appropriate time and used for the intended purposes as detailed in the Mitigation Scheme and associated evidence base.

Other Matters

17. The matter of varying condition 3 relating to vegetation trimming does not appear to be in dispute between the parties. The appellant has agreed to the suggested alternative condition by the Council in this regard and I find no reason to reach an alternative conclusion.

Conditions

18. I have considered the previously imposed conditions and those suggested by the Council in context with paragraph 55 of the National Planning Policy Framework and the Planning Practice Guidance. I have undertaken minor editing where necessary. I have also sought agreement to the imposition of pre-commencement conditions where the use of such is unavoidable.
19. The statutory time limit condition is necessary, albeit that it cannot be amended by way of a Section 73 variation and must maintain the original three year implementation timeframe. In the interests of certainty, a condition is required specifying the approved plans.
20. In the interests of highway safety and efficiency, a condition is needed to ensure that vegetation adjoining the access is kept sufficiently trimmed.
21. In order to minimise disruption associated with the construction phase, a construction method statement is required by condition.
22. In order to avoid the potential for flooding and to ensure appropriate disposal of surface and foul waters, a condition is required in relation to drainage. Due to the limited details provided in this regard and given the need for such details to be agreed prior to any construction works being undertaken, this condition is a pre-commencement condition.
23. In the interests of the visual quality of the area, a condition is necessary specifying the need for tree protection measures. For similar reasons, a condition is necessary precluding certain activities within the root protection areas of retained trees.
24. A condition is necessary to ensure that contamination is adequately remedied in the event that any is found during construction works.
25. In order to provide protection to neighbours, conditions removing permitted development rights are necessary. For similar reasons, and also in the interests of the character and appearance of the area, conditions are required in relation to landscaping.
26. In the interests of biodiversity value, conditions are required to control the timing of vegetation removal and to secure biodiversity enhancements.

27. Lastly, in order to ensure a satisfactory development, a condition is necessary requiring the provision of parking and turning areas prior to occupation of the dwellings.

Conclusion

28. For the reasons set out above, conditions 1 and 3 are not reasonable or necessary having regard to the effects of the proposal on the living conditions of neighbouring occupiers. The proposed amendments would be acceptable, having regard to the development plan, taken as a whole.

29. Consequently, the appeal is allowed.

Hollie Nicholls

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years beginning with the 12/12/2018.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Plan and Infrastructure, Ref 2080-(PL-) 01G, dated Feb 2020
 - Plot 1 Floor Plans, Ref 2080-(PL-) 02C, dated Nov 2019
 - Plot 1 Elevations, Ref 2080-(PL-) 03D, dated Nov 2019
 - Plot 2 Floor Plans, Ref 2080-(PL-) 04C, dated 08.11.2019
 - Plot 2 Elevations, Ref 2080-(PL-) 05B, dated 08.11.2019
- 3) The vegetation bordering the access lane shall be permanently kept sufficiently trimmed to allow for the access and passing of motor vehicles in accordance with the Site Plan, Ref 2080-(PL-) 01G hereby approved.
- 4) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:
 - The parking of vehicles of site operatives and visitors;
 - Loading and unloading of plant and materials;
 - Storage of plant and materials used in constructing the development;
 - Measures to control the emission of dust and dirt during construction.The approved Statement shall be adhered to throughout the construction period.
- 5) Notwithstanding the submitted information, no development shall be commenced until full details of the most sustainable drainage option has been submitted and approved in writing by the Local Planning Authority. Design steps as below:
 1. Soakaway testing to DG 365 to confirm the use of soakaways or to support an alternative option. Three full tests must be carried out and the depth must be representative of the proposed soakaway. Test results and the infiltration rate to be included in the report.
 2. If infiltration is suitable then the soakaway should be designed for a 1:100 year return period plus a 40% allowance for climate change.
 3. If the infiltration rate is good, but due to site constraints a full soakaway can't be accommodated then a split attenuation / soakaway system should be considered to manage the surface water on site.
 4. Only once all the above have been assessed and discounted will an offsite discharge be deemed acceptable. Attenuation should be designed for a 1:100 year return period plus a 40% allowance for climate change.
 5. The offsite discharge will need to be limited to the Greenfield runoff rate. This must be calculated in accordance with CIRIA C753. The discharge must meet each of the critical return periods. Full details of the flow control device will be required.

6. If discharging surface water to the main sewer, then written permission from the relevant drainage body will be required.
 7. The drainage details of the car park and access will be required. If it is proposed to be permeable then it should be designed in accordance with CIRIA C753. Full design details and a sectional drawing showing the specification and make up will be required.
 8. A scaled plan showing full drainage scheme, including design dimensions and invert/cover levels, within the private ownership.
 9. The drainage scheme shall be installed in strict accordance with the approved plans, maintained and retained in accordance with the agreed details for the life of the development.
- 6) No works or development shall take place until a scheme for the protection of the retained trees has been approved in writing with the Local Planning Authority. This scheme shall be in accordance with British Standard 5837:2012 - Trees in relation to design, demolition and construction – Recommendations, and shall include:
- Arboricultural method statement;
 - A plan to a scale and level of accuracy appropriate to the proposal that shows the position, crown spread and Root Protection Area (paragraph 4.6 of BS5837) of every retained tree on site and on neighbouring or nearby ground to the site in relation to the approved plans and particulars. The positions of all trees to be removed shall be indicated on this plan;
 - The details and positions of the Tree Protection Barriers identified separately where required for different phases of construction work (e.g. demolition, construction, hard landscaping). The Tree Protection Barriers must be erected prior to each construction phase commencing and remain in place, and undamaged for the duration of that phase. No works shall take place on the next phase until the Tree Protection Barriers are repositioned for that phase;
 - The details and positions of the underground service runs;
 - The details of the working methods to be employed for the installation of drives and paths within the RPAs of retained trees in accordance with the principles of “No-Dig” construction;
 - The location, number, species, density, form and size of proposed tree, hedge and shrub planting;
 - The method of planting, establishment and protection of tree, hedge and shrub planting; and
 - A timetable for the implementation of all hard and soft landscape treatment.
- The approved scheme shall be adhered to throughout the construction period.
- 7) The following activities must not be carried out under any circumstances:
- No fires shall be lit within 10 metres of the nearest point of the canopy of any retained tree.
 - No works shall proceed until the appropriate Tree Protection Barriers are in place, with the exception of initial tree works;

- No equipment, signage, fencing, tree protection barriers, materials, components, vehicles or structures shall be attached to or supported by a retained tree;
 - No mixing of cement or use of other materials or substances shall take place within an RPA, or close enough to an RPA that seepage or displacement of those materials or substances could cause them to enter an RPA; and
- 8) If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with. Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority.
- 9) Notwithstanding the provisions of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking, re-enacting or further amending that Order), no development of the types described in Schedule 2, Part 1, Classes A-F of the Order, including the erection of extensions, porches, garages, dormers, roof alterations, sheds, other structures, or hard surfaces or the addition of any further windows or doors to the north-west elevations of either property, shall be carried out on the site, other than that hereby permitted.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking, re-enacting, or further amending that Order), no development of the types described in Schedule 2, Part 2, Class A including gates, fences, walls or other means of enclosure shall be erected or constructed and details of the proposed boundary treatment shall be submitted to and approved in writing by the Local Planning Authority and implemented prior to the first occupation of the dwellings hereby permitted. The approved boundary treatment shall thereafter be retained and maintained.
- 11) Notwithstanding the details hereby approved, the dwellings shall not be occupied until full details of both hard and soft landscape works, including boundary planting have been submitted to and approved in writing by the Local Planning Authority.

These details shall include grading and any mounding of land areas including the levels and contours to be formed, showing the relationship of any proposed mounding to existing vegetation and surrounding landform, details of any proposed alterations in existing ground levels, and of the position of any proposed excavation, within the crown spread of any retained tree/ hedgerow or of any tree on land adjacent to the site, equivalent to half the height of that tree and hard surfacing materials or Root Protection Areas, whichever is the greater.

The hard landscaping shall be implemented prior to the first occupation of either dwelling, or the completion of development whichever is the sooner.

The soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities.

The soft landscaping shall be implemented in the first available planting season following the first occupation of either dwelling, or completion of development, whichever is the sooner.

If within a period of five years from the date of the planting of any tree/shrub/plant that tree/shrub/plant, or any tree/shrub/plant planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree/shrub/plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

- 12) The awaited landscape details shall include proposals for the minimum and maximum heights at which all hedge boundaries are to be maintained in perpetuity. Proposed boundary hedges or proposed planting on/ close to the north-west boundary (with Deer Leap) in particular shall be low, not exceeding 1.5m above existing ground level or 1m above the level of the bank and thereafter maintained in perpetuity at a height not exceeding the agreed level.
- 13) Any vegetation removal shall be timed to commence outside of the bird nesting season (generally considered to be March to August inclusive). If vegetation must be removed within the nesting season, the area should be checked immediately prior to works to confirm that no birds are nesting/preparing nests within the vegetation to be removed. If birds are found (or suspected) to be nesting, works should be delayed, and a 5 metre buffer established until all young birds have fledged.
- 14) Prior to the first occupation of either of the dwellings, details of ecological mitigation through the provision of bat roosting and bird nesting boxes either on the buildings, on the land or a combination of both, shall be submitted to and approved in writing by the Local Planning Authority and implemented prior to the first occupation.
- 15) The access, parking and turning areas and the dwarf wall enclosing this, indicated on approved plan Ref 2080-(PL-) 01G, shall be implemented and available for use prior to the first occupation of the dwellings hereby permitted and shall thereafter be permanently retained and maintained.