



Appeal Decision

Site Visit made on 13 July 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 July 2021

Appeal Ref: APP/X1118/W/20/3264839

Orchard Dene, Western Gardens, Combe Martin EX34 0EY

- 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 Craig Bick against the decision of North Devon District Council.
 - The application Ref 71519, dated 7 May 2020, was refused by notice dated 18 August 2020.
 - The development proposed is to demolish the existing dwelling and replace it with a new dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - a) The effect of the development on the character and appearance of the area, including the North Devon Coast Area of Outstanding Natural Beauty (the AONB);
 - b) The effect of the development on protected species; and,
 - c) Whether the development would be at risk of flooding or would increase flood risk elsewhere.

Reasons

Character and appearance

3. Western Gardens is a narrow road that leads southwards off the main village street. It is lined on its eastern side by a row of dwellings of various designs, but generally of two storeys and moderate scale. Beyond this ribbon of development, the road takes on a more rural character. It narrows, and turns at right angles, to serve a loose scatter of houses set amongst mature trees and hedgerows, which predominate over the buildings. The appeal site is adjacent to the right-angle bend, and conforms with the verdant rural character, beyond the denser urban form of the village. It therefore lies outside the Development Boundary identified on the North Devon and Torridge Local Plan 2011-2031 (Adopted 2018) (the Local Plan).
4. Policy ST07 of the Local Plan limits development outside settlements to that which is enabled to meet local economic and social needs, rural building reuse and development which is necessarily restricted to a countryside location. However, Policy DM26 does make provision for replacement dwellings in the

- countryside. As there is an existing dwelling on the site, albeit in a state of dereliction, the principle of a replacement dwelling is not a matter of dispute.
5. The proposed replacement dwelling and garage would be broadly in the same position as the existing buildings, on the higher, southern side of the site. Both replacement buildings would have a larger footprint. The level of increase is a matter of dispute, but, using the appellant's figures, the house alone would be 23% larger. The drawings show that the garage would have a footprint about twice that of the existing building. They also show that the central portion of the dwelling would be more than 2 metres higher than the ridge of the existing house. A similar comparison is not provided for the proposed garage, but its larger footprint, and the provision of first floor accommodation, dictates that it would be significantly higher than the existing modest single garage. Therefore, although the proposal has been reduced in scale from a previous scheme, the replacement buildings would still represent a considerable increase in the extent and mass of buildings on the site.
 6. As with the existing house, the replacement dwelling would be located close to the road to the south. However, the existing house has roofs that slope up away from the road from a relatively low eaves height, and there are few window openings. The single storey projection to the northwest is below road level, and the complicated configuration of the building, as a whole, means it is visually broken up into smaller elements. As a result, it is relatively well assimilated into the rural character of the road at this point. By contrast, the proposed dwelling would have a 3-storey gable close to the road, and the wings to either side would result in a greater expanse of 2-storey development across the site. There would also be numerous windows and rooflights facing the road. As there would be little scope for any meaningful landscaping on the steep roadside slope, the building would have much greater visual dominance alongside the narrow road, and would significantly diminish its rural character.
 7. Viewed downslope from the northwest, the existing house is largely hidden by roadside vegetation. However, the increased height and width of the dwelling, and its projection further northwards on the plot, would make it a much more prominent feature. Similarly, viewed through the access point to the southeast, the increased height and mass of the dwelling and the garage would give them a greater visual dominance. Although the buildings would still cover a relatively small proportion of the site, their increased height and volume would give them a greater presence, which would be harmful to the current predominance of foliage over buildings, which characterises this rural location.
 8. It has been put to me that the design of the dwelling reflects the existing house, with a raised central section. Furthermore, it is argued that the increased height would allow good views to the north of the site through the second-floor bedroom windows. However, whilst this would undoubtedly be of benefit to the occupants, it does also mean that the dwelling would be more visible in views from the north. The increased prominence from this direction would be exacerbated by the number of rooflights that would emit light and draw attention to the building. The appellant's suggested reduction in the number of rooflights would lessen this impact, but it would not overcome the increase in the size of the house and garage, which would consolidate the ratio of buildings to greenery, harming the character of the rural setting of the village.

9. The appeal site, and the entire village, lies within the AONB. Paragraph 172 of the National Planning Policy Framework (the Framework) says great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues. It is contended that the removal of the dilapidated house would improve the appearance of the AONB. However, the site is largely separated from the wider countryside within the AONB by rising land to the south and east, and the built form of the village to the north. Consequently, the current condition of the buildings does not have a significant impact on the landscape and scenic beauty of the wider AONB. Similarly, the harm that would arise to the rural character and appearance of the immediate surroundings, as a result of the development, would not extend to the wider AONB.
10. The proposed dwelling could incorporate sustainable methods of heating, and would be of modern construction, so would undoubtedly be more energy efficient than the existing building. In this regard, the proposal would accord with criterion b) of Policy DM26. However, the Policy requires compliance with both criterion a) and b). For the reasons given, I conclude that the replacement dwelling would not respect the character of the surrounding area, and would be more visually intrusive than the existing dwelling, so it would conflict with criterion a).
11. In arriving at this conclusion, I have had regard to the appellant's contention that there are other large houses in the vicinity. However, those drawn to my attention lie within the Development Boundary, so are not comparable. I have also considered the recent trend for home offices and gyms, leading to a need for larger houses. However, there is no evidence to indicate that a dwelling of the size proposed is essential to provide all the necessary facilities for modern family life. I am also aware that the increase in the height of the building would not result in harm to the living conditions of occupants of nearby dwellings.
12. None of these considerations, however, outweigh my conclusion that the development would harm the character and appearance of the area. The proposal would, therefore, be contrary to Policies ST04, DM04, DM08A and DM26 of the Local Plan, which seek to ensure that development is sympathetic to its context in design and scale, and that replacement dwellings in the countryside are no more visually intrusive than the existing dwelling.

Protected species

13. The application was accompanied by a Preliminary Ecological Appraisal and a Final Ecology Report (Bats and Nesting Birds), prepared by a suitably qualified expert. These concluded that the crevice features on the exterior of the building and roof are used as summer day roosts by low numbers of individual common pipistrelle and brown long-eared bats, and that the interior is used as an occasional night feeding roost by lesser horseshoe bats. A number of other bat species were also recorded in the vicinity of the building. The Reports identified that, in the absence of any mitigation, the development would result in the potential killing or injuring of common pipistrelle and brown long-eared bats; the loss of summer day roost sites for low numbers of common pipistrelle and brown long-eared bats; and the loss of a night feeding roost for lesser horseshoe bats.

14. All species of bat are protected under the Habitat Regulations¹, and are therefore European Protected Species (EPS). In view of the potential impacts resulting from the works the Reports conclude that a European Protected Species Licence (EPSL) would be required for the development to proceed. Decisions about whether an EPSL can be granted are made by Natural England separately from the decision on a planning application or appeal. However, paragraph 116 of Circular 06/2005² requires that when effects on EPS are being considered, decision-makers should have regard to the tests set out in the Habitat Regulations that are used when licences are being determined.
15. In this regard, the parlous state of the building means that the development is necessary for preserving public health or public safety, and there is no satisfactory alternative to the demolition of the building if a residential use is to be reinstated on the site. Therefore, provided adequate compensation could be provided to maintain the favourable conservation status of the population of the EPS, the licensing tests could be met. Paragraph 99 of Circular 06/2005 says that any necessary measures to protect the species should be in place, through conditions and/or planning obligations, before the permission is granted.
16. The Ecological Reports recommend that compensation for the loss of roost sites for crevice dwelling species of bats should be provided in the form of external bat boxes on the replacement dwelling, and that the loss of the night feeding roost for lesser horseshoe bats should be mitigated through the provision of a small replacement structure in the northern section of the garden. However, the drawings showing the proposed locations for the bat boxes relate to a dwelling that differs considerably in design and location to the proposal that is the subject of the appeal. Provision of these compensatory features could not, therefore, be secured through a planning condition.
17. Consequently, I am unable to conclude that adequate compensation could be provided for the loss of habitat, such that the favourable conservation status of the population of the EPS would be maintained. The proposal would, therefore, be contrary to Policies ST14 and DM08 of the Local Plan, which seek to conserve EPS and the habitats on which they depend. The proposal would also conflict with the Framework's aims to conserve and enhance the natural environment.

Flood risk

18. The evidence indicates that most of the appeal site, including the garage and part of the existing house, lies within Flood Zones 2 and 3, and that there is a history of flooding in the area. Paragraph 163 of the Framework advises that applications within Flood Zones 2 and 3 should be supported by a site-specific flood-risk assessment (SFRA), and development should only be allowed in areas at risk of flooding where it can be demonstrated that the risk to the development and its occupants is minimised.
19. A simple Flood Risk Assessment (FRA) was submitted with the application, but it was not produced by a suitably qualified expert. The Environment Agency's consultation reply indicated that it does not comply with the requirements for

¹ The Conservation of Habitats and Species Regulations 2017

² ODPM Circular 06/2005 - Biodiversity And Geological Conservation – Statutory Obligations And Their Impact Within The Planning System - 16 August 2005

SSFRA as set out in the Planning Practice Guidance (the PPG), as it does not provide sufficient information to adequately assess the risk to both people and property for the lifetime of the development. In the absence of a suitably detailed SSFRA, the Environment Agency objects to the development.

20. The appellant contends that the floor level of the new dwelling will be the same as that of the existing house, that flood resilient construction will be employed, and that floor levels could be raised without an overall increase in the height of the building by lowering ceiling heights. Furthermore, it is suggested that a formal SSFRA could be produced if the appeal is allowed.
21. However, Paragraph 163 of the Framework advises that, when determining planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. The proposed dwelling and garage would have a larger footprint, and would extend further northwards into the Flood Zones. The plans indicate the provision of an extensive terrace at ground level. The development would, therefore, raise the level of land and increase the volume of buildings within the Flood Zones. The simple FRA does not indicate what measures would be necessary to avoid increased flood risk off-site and elsewhere as a result of this reduction in flood storage capacity.
22. The PPG also advises that SSFRAs should demonstrate the expected depth and level for the design flood; how flood risk at the site is likely to be affected by climate change; whether there are any opportunities offered by the development to reduce the causes and impacts of flooding; what the existing surface water drainage arrangements for the site are, and the volumes of surface water run-off that are generated; how surface water from the site would be managed; what flood related risks would remain after the flood risk management and mitigation measures have been implemented; and how, and by whom, these risks would be managed over the lifetime of the development. None of these matters are covered in any depth, if at all, in the simple FRA submitted with the application.
23. Without these details to inform my decision I cannot conclude, with any certainty, that the development would be safe from the risk of flooding, and/or would not increase flood risk elsewhere. I also cannot be certain that any harm resulting from the proposal in this regard could be satisfactorily mitigated through the imposition of a condition requiring the submission of a SSFRA after the grant of planning permission. For the above reasons, I conclude that the proposal would not be acceptable having regard to flood risk. The proposal would therefore be contrary to Policies ST03 and DM04 of the Local Plan, which seek to ensure that development is located and designed to minimise flood risk, and responds to the challenges of climate change.

Conclusion

24. The proposal would result in harm to the character and appearance of the area, biodiversity, and flood risk, and would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Hence, for the reasons given, I conclude that the appeal should be dismissed.

Nick Davies

INSPECTOR