



Appeal Decision

Site visit made on 3 September 2021

by Mrs H Nicholls FdA MSc MRTPI

An Inspector appointed by the Secretary of State

Decision date: 21 September 2021

Appeal Ref: APP/P1133/W/21/3276259

**Willow House, Road from Lowerdown Pottery to Fire Station,
Bovey Tracey, TQ13 9AX**

- 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 outline planning permission.
 - The appeal is made by Mr Robert Speht against Teignbridge District Council.
 - The application Ref 20/00793/OUT, is dated 18 May 2020.
 - The development proposed is one in-fill 2-story dwelling with a footprint of 90m² plus double garage. Enabling changes to original property - removal of existing double tandem garage, and construction of an adjoining double garage. Access to highway (Haytor Road), alongside the current access to highway. No trees will be cut down as part of this in-fill development.
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Decision

1. The appeal is dismissed and planning permission is refused for one in-fill 2-story dwelling with a footprint of 90m² plus double garage. Enabling changes to original property - removal of existing double tandem garage, and construction of an adjoining double garage. Access to highway (Haytor Road), alongside the current access to highway. No trees will be cut down as part of this in-fill development.

Preliminary Matters

2. The application was made in outline form with detailed access, layout and scale. The appearance and landscaping were matters reserved for future consideration. In the context of the outline scheme, I have treated aspects in relation to the appearance and landscaping as purely indicative.
3. During the course of the appeal application, the layout of the scheme was altered to show a revised position for the proposed house and garage. I have taken account of the revised plans in reaching my decision.
4. The appeal was submitted against the failure of the Council to determine the application within the prescribed period. Since the appeal was lodged, the Council has indicated that, had it been in a position to determine the application, it would have refused it for three reasons relating to the effects of the proposal on (i) the character and appearance of the area; (ii) protected trees; and (iii) the protected site, the South Hams Special Area of Conservation (SAC), designated for its population of Greater Horseshoe bats.
5. Since the appeal was submitted the Government has published a new National Planning Policy Framework (the Framework). Comments were sought from the Council and the Appellant. As the main parties have had the opportunity to

provide comments no injustice has been caused and I have therefore considered the appeal on the basis of the revised Framework.

Main Issues

6. In light of the Council's putative reasons for refusal, the main issues are the effects of the proposal on:
- the character and appearance of the area;
 - protected trees; and
 - the SAC as a protected site.

Reasons

Character and appearance

7. The appeal site is formed from the elevated side garden of the host dwelling, Willow House, adjoining the B3387 and taking a sloping driveway access from the same. The western boundary of the curtilage separating it from the adjoining agricultural land is supplemented with a line of mature trees. Owing to the prominence of these trees along with others along both sides of the B3387, the area has a sylvan character extending westwards from the appeal site. However, the appeal site garden is seen in context with the adjoining dwellings extending towards the centre of Bovey Tracey, so appears to be part of a transitional area where the urban form ends and the rural landscape begins. It is also relevant that much of this rural landscape is part of Dartmoor National Park (DNP) and that many of the users passing the appeal site will be on the way to valued landscape areas in the DNP.
8. The appeal dwelling is a mature and attractive detached cottage with a thatched roof set in a large curtilage. Though its principal elevation faces at an angle towards the road, it is partially obscured by an existing single storey garage, undermining the contribution that the dwelling makes in the streetscene.
9. The appeal proposal would introduce a detached dwelling and garage onto the site, taking the existing driveway and surrounding space to form the parking, turning and garden areas. A new driveway would be created for the existing host dwelling, its existing garage would be demolished and a new garage built alongside the dwelling with other minor alterations to the principal elevation.
10. The demolition of the existing garage and replacement garage would positively enhance the character and appearance of the host dwelling and its contribution in the streetscene. The existing garage obscures much of the principal elevation whereas the new garage would sit alongside and better reveal the principal elevation and overall form, impressive scale and characterful features of the dwelling. The provision of a driveway to serve the new garage would also be acceptable in this context.
11. In terms of the new dwelling, I have considered the latest version of the layout plan which I am to treat as a detailed matter. As it would sit forward of the front building line of the principal dwelling, awkwardly sited in close proximity thereto, it would fail to maintain the spacious character of the site and sense of primacy of the existing dwelling and the contribution made by the mature treed backdrop. Siting the dwelling so crudely into the space in such a way would

undo the positive intervention of the removal of the existing garage and result in a scheme which would be more harmful to the streetscene and area overall.

12. I have considered the earlier version of the layout plan (Ref 89797-03) and consider that the fanned layout and greater distance between the dwellings would have been preferable to the proposed layout, even with partial views of the dwelling visible from the road. However, the scale of the dwelling and the separate garage still appear too great for the site, and the more recently revised scale of the tree constraints suggest that such a layout is unlikely to be feasible, as addressed separately below. Similar issues of an unacceptable scale arise with the latest revision to the proposed plans.
13. In view of the above, the proposal would be harmful to the character and appearance of the area, contrary to Teignbridge Local Plan (2013) (Local Plan) Policy S1, which, amongst other things, seeks to ensure new development maintains or enhances the character, appearance and historic interest of affected landscapes, settlements, street scenes, buildings, open spaces, trees and other environmental assets.

Protected trees

14. The existing mature trees offer a positive contribution to the streetscene and help to signify the transition from the urban scene to the rural area. The Protection Order¹ on the trees was imposed on the 17 February 2021 in response to anticipated development pressures arising from the submitted appeal application.
15. The revised layout plan detailed the positions of the trees and their crown spreads more accurately than the earlier submission and indicates the extent of the tree constraints affecting the site. However, even taking the revised layout plan into consideration, in the absence of any constraints analysis and method statement, I cannot be sure that the scheme could avoid direct impacts on the trees simply by avoidance of any construction works within the currently detailed canopy spreads. No account has been made for any future growth of the trees or how the development could affect it. Additionally, there would appear to be too much of the outlook and garden that would be affected by and overshadowed by the trees to an extent that could undermine the retention of the trees in the long term, without sufficient evidence to the contrary.
16. In view of the above, in the absence of sufficiently detailed information to the contrary, the proposal would have a harmful effect on protected trees, contrary to Local Plan Policy EN12 which seeks to ensure that development contributes to the protection and enhancement of woodlands, trees and hedgerows.

SAC effects

17. The appeal site, contrary to claims in the submitted Bat Survey², is within the 4km Sustainance Zone of the Haytor and Smallacombe Iron Mine component of the South Hams Special Area of Conservation (SAC); a site designated under the Habitats Regs³. The SAC is designated for its population of greater horseshoe bats (GH bats) which are a more sensitive, light-averse species of

¹ District of Teignbridge (Willow House) Tree Preservation Order 2020 was made and served on 17 December 2020

² Bat Survey of Garage at Willow House, Marlborough Terrace, Bovey Tracey – Crossman Associates (15.12.20)

³ The Conservation of Habitats and Species Regulations 2017 (as amended)

bat which navigate the countryside by following dark, linear features including hedges and tree lines.

18. As the appeal site has features which contribute to the network of habitat used by GH bats, the level of use and potential effects on such should be assessed to ensure that any harm to the integrity of the SAC can be avoided. Whilst the appeal application was submitted with the Bat Survey, this looked more narrowly at the use of the garage which would be demolished and found it of negligible suitability for bats. However, the Bat Survey also notes the site's and wider area's contribution to flight lines used by bats without any indication of their level of use or any necessary mitigation measures, such as lighting restriction conditions. In the absence of information to enable an Appropriate Assessment to be undertaken, a precautionary principle must be adopted that assumes that there would be harm to the integrity of the SAC.
19. Consequently, in the absence of conclusive evidence to the contrary, the proposal would have a harmful effect on a protected site, contrary to the Habitats Regs and Policies EN9, EN10 and EN11 of the Local Plan. Amongst other things, these Policies seek to protect, enhance and restore the biodiversity of the area, taking account of the importance of any affected habitats or features, and the hierarchy of designated sites, including SACs.

Other Matters

20. I note that the demolition of the garage and construction of a replacement would not be harmful when considered in isolation. However, I have not issued a split decision to allow those works to proceed on the basis of the outline nature of the application and because that aspect appears predicated on the rest of the works proceeding, which they would not under this appeal.
21. I note the appellant's claim that there were extensive delays on the part of the Council in considering the appeal application. Whilst the regrettable delays and failure to determine the application have not been explained, I do not consider that the proposal has been considered other than on its specific merits.

Conclusion

22. By reason of its harm to the character and appearance of the area, and absence of sufficient information to eliminate any potential effects on protected trees and the SAC, the proposal is in conflict with the development plan, when considered as a whole.
23. The proposal would result in the delivery of a dwelling to the local housing stock, in a sustainable location, with consequent social and economic benefits; the latter of which would be both short-term, throughout the construction phase, and in the longer term, following occupation of the dwelling by occupiers that would rely, at least in part, on local services and facilities.
24. However, the moderate weight attributed to these benefits does not outweigh the identified conflict with the development plan or indicate that the appeal should be determined other than in accordance therewith.
25. Consequently, the appeal is dismissed and planning permission is refused.

Hollie Nicholls

INSPECTOR