



Appeal Decision

Site Visit made on 29 November 2021

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/Y1138/W/21/3274183

2 The Avenue, Tiverton, EX16 4HR

- 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 RW Estates (Trading Ltd) against Mid Devon District Council.
 - The application Ref 20/02027/OUT, is dated 27 November 2020.
 - The development proposed is an outline application (all matters reserved) for the redevelopment of derelict former police station to construct 5 no detached dwellings, with associated parking and landscaping (to include removal of trees T4, T11 and T20).
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Decision

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

Preliminary Matters

2. The application has been made in outline with all matters reserved for future consideration. Illustrative plans have been submitted which show the possible layout of the development with vehicular access points and I have had regard to these plans as to what the appellant has in mind for the development.
3. A signed and dated Unilateral Undertaking (UU) has been submitted which would provide education contributions. I will return to this matter later.
4. The appeal is made against the non-determination of the application by the Council. There is agreement between the Council and the appellant that the original building on the site should be considered as a non-designated heritage asset and I will consider this matter in more detail below.
5. The Council in its appeal statement has indicated that were it to have determined the application it would have been refused, firstly, in summary, because of the loss of the non-designated heritage asset, namely 2 The Avenue (the former Tiverton Police Station), the resulting effect on the street scene and to the significance of Alexandra Lodge, a Grade II Listed building. Secondly, the other putative reason for refusal refers to the considered adverse effect of the proposal on the trees on the site.

Main Issues

6. In the light of the above matters, the main issues are:
 - whether or not the proposal involving the loss of 2 The Avenue, a non-designated heritage asset, and the resulting effect on the character and appearance of the area would be justified,

- the effect of the proposal on the significance of Alexandra Lodge, a Grade II Listed Building, and any other heritage assets beyond the site, and
- the effect of the development on the character and appearance of the area in relation to the trees on the site, including in respect of root protection areas, the living conditions of future occupants and the proposed removal of three trees.

Reasons

Whether or not the proposal involving the loss of 2 The Avenue, a non-designated heritage asset, and the resulting effect on the character and appearance of the area would be justified.

7. The original part of 2 The Avenue is a three storey, plus basement, building that was constructed in the 1880s. The evidence indicates that it was one of the first to be built and constructed as a single dwelling in The Avenue. It is understood to have been used as a dwelling until about the 1950s and was subsequently extended and used for other uses mainly as the Tiverton Police Station. For the last few years it has stood empty.
8. The original Victorian part of the building is fairly prominent within this part of The Avenue and the front façade has an attractive and distinctive character. This elevation has two double height bays, a reasonably grand central stone porch topped by a stone balustrade and adjoining stone mullioned windows, above which is a frieze. There are areas of decorative tiling and the three gables to the roof together with well-articulated detailing, such as the metal rain water goods and timber window frames. All these elements combine to form a well-proportioned building which has some prominence and elegance within the street scene. Other elevations of the building are also generally of a similar high quality which include natural stone, a triple height bay, a sizeable side window with arched head, and bath stone to the window surrounds. These components all demonstrate the high quality materials and craftsmanship with which the original building was constructed.
9. The building has, over the past decades, undergone fairly substantial changes. These include the flat roofed extension to the east elevation, which was used as the cell block, and on the western side, the substantial three storey flat roofed addition which is attached to the main building by a double height link, when viewed from the front. While these and other additions are significant, they are still fairly subservient to the principal façade when viewed from The Avenue and have resulted in fairly limited interventions to the external fabric of the original building as a whole.
10. Internally, the historic civic use of the building seems to have led to the removal and alterations of some of the domestic features. Since the building has been empty, the evidence indicates that the building as a whole has been gradually deteriorating. For instance, the glazed lantern room has been removed from the roof of the building and internally the fittings have been removed, some walls demolished and the fabric stripped back to its shell exposing the ceiling beams, timber floor boards, plywood and brickwork. The main staircase is no longer in place. Taken together, these changes mean that the internal fabric retains very little of its original character.

11. The evidence indicates that the building is not of listable quality and it is not identified by the Council on their Register of Heritage Assets (August 2020) or the County Historic Environment Record or within the emerging Tiverton Neighbourhood Plan. Nevertheless, despite its present state, both the appellant's Heritage Consultant and the Council's Conservation Officer accept that it has some heritage significance such that it should be considered as a non-designated heritage asset. I agree and the significance of the original Victorian building includes its historic, architectural and artistic interest centred around the materials, form and original use as a purpose designed Victorian villa together with the appearance of the building as a whole and, in particular, the prominence of the principal façade.
12. I have very carefully considered the Heritage Statement from the appellant's Heritage Consultant and the further submissions in response to the Conservation Officer's comments. I consider that this detailed Statement merits fairly substantial weight and it concludes that, in summary, while the building retains some significance, it survives in a relatively poor condition, much altered and currently vacant and neglected. The report explains that the combined effects of disuse, vandalism, damp, rot and mould, are such that the integrity of the building internally has been severely compromised and the scope to refurbish and repurpose is considered unrealistic in economic and practical terms. The proportionate response it is argued, therefore, would be to allow the removal of the building, whilst recording the existing structure and that the public benefits of regeneration would outweigh the loss of the building.
13. I have also carefully considered the representations which have been received and, in particular, the detailed and additional background that is set out in some of the comments which seek the retention of the building¹. It seems to me that this information complements the existing information and enables a wider appreciation of the historic interest of the building and its relationship to the social history and expansion of Tiverton. This information adds further context to the understanding of the importance of the heritage value of the building and increases the weight that should be attributed to the significance of the building as a non-designated heritage asset. Accordingly, I consider that the significance of the building is greater than that expressed in the appellant's heritage evidence.
14. The outline proposal would result in the demolition of the building and therefore the total loss of the non-designated heritage asset. I have visited the site and seen the building both internally and externally. The building internally is stripped but the physical form of the main structure appears to have elements that are reasonably sound and the extent of commentary and analysis in the Heritage Statement and other submissions does not persuade me otherwise.
15. Furthermore, the external fabric, while some elements are in poor condition, did not appear to me to be beyond repair. I have taken into account the local representations in support of the removal of the building because of its condition and also those against demolition. While I have carefully considered all this information, including the reports and assessment in regard of the condition of the building, I am not persuaded that the evidence conclusively

¹ Including from The Victorian Society, the Tiverton Civic Society, the Devon Buildings Group, the Tiverton Neighbourhood Plan Working Group and Professor Oliver Nicholson.

shows that it has deteriorated to such an extent that there is little alternative but to demolish the building.

16. The Planning Practice Guidance explains that disrepair and damage and their impact on viability can be a material consideration in deciding an application. The appellant's evidence is that alternative uses of the building are considered unrealistic in economic and practical terms, such that they are not viable. However, while there is disrepair and damage to the building as explained above, I have little detailed and clearly documented evidence of the practical implications of the various works that would be required to reuse the main part of the building and therefore the related costs of conversion to help understand whether an alternative use of the building would or would not be viable either alone or in conjunction with a wider development scheme². In these circumstances, the absence of clear and detailed viability evidence reduces the weight that I can attach to the case in favour of the demolition of this non-designated heritage asset.
17. In terms of the replacement scheme for five dwellings, at this outline stage with the limited information on the final development, there is not the detailed information available to convincingly show that the quality of the final scheme would provide a clear betterment to the character and appearance of the area, compared with the present situation. While further details would be supplied at the reserved matters stage, the illustrative layout, for instance, showing one way that the site could be developed, appears to be fairly standard and not persuasive that a scheme would, even with further details, necessarily provide adequate compensation for the loss of the building, even if some of the existing materials were reused. Consequently, the case made in respect of any visual benefits that would arise from the proposal adds only limited weight in favour of the removal of the non-designated heritage asset.
18. I have noted the comments from the appellant that it would be possible to make a separate prior notification application to demolish the building. However, no such application has been submitted and therefore I consider that this matter affords limited weight in my considerations.
19. I will examine the overall heritage balanced judgement taking into account all the planning considerations in my final conclusions. However, at this stage, I consider that the original Victorian building is an attractive and locally distinct building and that based on the information before me the significance of this non-designated heritage asset should be considered to be of medium importance. Visually it makes a valuable contribution to the character and appearance of the area. The evidence does not clearly demonstrate, in my view, that the retention of the building in an alternative use would not be practical or viable and therefore I conclude that the scheme to demolish this non-designated heritage asset and replace it with five dwellings would not be justified. As a consequence, the proposal would be contrary, in this respect, to Policies S1, S9, DM1 and DM25 of the Mid Devon Local Plan 2013-2033 (the Local Plan) which seeks, amongst other things, to conserve and enhance the historic environment through the identification and protection of designated and non-designated heritage assets.

² I have noted the discussions that the appellant has undertaken with the Council concerning alternative development schemes for the site.

The effect of the proposal on the significance of Alexandra Lodge, a Grade II Listed Building, and any other heritage assets beyond the site

20. Alexandra Lodge lies to the north east of the appeal site. It is a sizeable Victorian building and its significance includes its combination of historic, artistic and architectural interest associated with its history and function from that time. The appeal building and Alexandra Lodge now have little relationship to each other, being separated by a reasonable distance, partially screened by vegetation and fronting different roads.
21. The appeal scheme, if permitted, would involve the erection of five dwellings following the demolition of the existing buildings. While the heights and overall appearance of the new dwellings would be agreed at the reserved matters stage, given the relationship between the sites and the likely position and form of the proposed dwellings, the proposed development would not adversely affect the setting or significance of Alexandra Lodge.
22. For completeness in terms of other heritage assets, I also consider that the appeal scheme would not adversely affect the setting or significance of the Grand Western Canal Conservation Area because of the location of the Conservation Area and the extent and nature of its setting.
23. The Council's Conservation Officer considers that The Glades should be considered as a non-designated heritage asset that could be affected by the proposal. The Glades is a fairly modern housing estate broadly north of the appeal site. While the estate has been configured so that there are views from the new housing through to the rear elevation of 2 The Avenue, and this is a positive feature of the layout, the housing itself is not of any heritage significance and would be largely unaffected by the appeal proposal. No material level of harm would result in such a case.
24. It follows that I conclude that the proposal would not adversely affect the setting and significance of Alexandra Lodge or any other heritage assets beyond the site, and thereby, in this respect, would comply with Policies S1, S9, DM1 and DM25 of the Local Plan which requires development proposals to consider the effect on the significance and setting of heritage assets.

The effect of the proposal on trees

25. The trees on the site are subject to Tree Preservation Orders. Three protected trees are sought to be removed as part of the proposal, T4 and T11 are both beech trees and T20 is a western red cedar.
26. The site is prominent from sections of The Avenue and Canal Hill. In particular, the trees that bound the site are a feature that contributes very positively to the character of the area. The trees that make the most important visual contribution are the beech trees around the boundaries of the site, predominantly adjoining the car parking area. Tree T4 is located along the front boundary with The Avenue and is one of the largest trees on the site. The Arboricultural Constraints Report (June 2020) (the ACR) identifies this tree as a C category tree and having a potentially weak fork. I agree with the Council's Tree Consultant that the visual importance of this tree is higher than categorised in the ACR because of its valuable contribution to the street scene.
27. I understand that this tree (T4) is also the subject of a recently submitted and separate application to fell on the basis that it has fungus and therefore is a

risk adjoining the highway. A decayed fungal fruiting body was also identified by the Council's Tree Consultant in his report. However, I do not have any more detailed and up-to-date information before me to determine the extent of risk from this issue as part of this appeal. Given the visual importance of this tree and, based on the extent of information before me on the level of risk posed, I consider that the case has not been satisfactorily shown that it should be felled as part of the present scheme.

28. In terms of tree T11, this is another substantial beech tree. It is located along the back boundary of the site and it is reasonably prominent when viewed through the access from Canal Hill and adds to the tree cover in this area. Again I consider that the ACR underplays the visual importance of this tree, and although it is said there is a potentially weak fork, I am not satisfied that the level of up-to-date information adequately shows that it is necessary to remove this tree.
29. Tree T20 is a western red cedar. It is located to the rear corner of the original Victorian building and set down in the site. Having viewed the tree from a variety of locations around the site, and from more distant views, I consider that it has a reasonably limited influence on the verdant appearance of the surroundings. Other trees on the site and in the vicinity are more important in terms of their contribution to the character of the area. T20 is close to the corner of the main building and blocks light to some of the adjoining windows. In my judgement the position of the tree and its size and spread does not sit comfortably with the building.
30. The proposed redevelopment of the site would likely have dwellings in this area and the layout would be severely compromised by the retention of T20. This tree makes a limited contribution to the character and appearance of the area and the benefits of a uncompromised layout, with replacement planting, would outweigh any harm from its felling. Consequently, I consider that the circumstances would justify the removal of this tree.
31. Where the existing main building with its extensions is located is sufficiently separated from the trees such that a layout of dwellings could be accommodated on that part of the site without particular harm to the trees and their root protection areas. The land to the broadly western part of the site has the car park and this already extends reasonably close to the stems of the main trees along the boundary with The Avenue. There appears to be sufficient space in this area to accommodate some built development and with an orientation of windows and position of gardens that would not be unduly affected by shading. Overall, as the layout is only illustrative and the site is of sufficient size to accommodate five dwellings, I am satisfied that a layout could be designed at the reserved matters stage to meet the requirements of tree protection and ensure that the living conditions of future occupants would not be unduly affected.
32. It follows from the above analysis, that I conclude that the development of five dwellings, subject to appropriate details at the reserved matters stage, should be able to be accommodated on the site without material harm to the retained trees whilst providing satisfactory living conditions for future occupants. I have found that the removal of T20 would be justified with the redevelopment scheme. However, for the reasons explained the removal of T4 and T11 would cause harm and the case has not been made sufficiently to justify their felling.

Although the appellant explains that the consideration of these trees could be deferred to the reserved matters stage they form part of the development proposal for determination and are explicitly detailed in the description of the development. On this basis, in respect of the proposed removal of T4 and T11, I conclude that the scheme would cause harm to the character and appearance of the area and thereby conflict with Policies S1, S9 and DM1 of the Local Plan which, amongst other things, requires development to sustain the distinctive quality, character and diversity of Mid Devon's environmental assets.

Other Matters

33. I have considered all the matters raised by local residents and organisations, including representations both in support and objection to the scheme. In addition to the main issues considered elsewhere in this decision, other issues such as highway concerns have been highlighted. However, in relation to highway safety, the past uses of the site are likely to have generated more traffic movements than the proposed five dwellings and therefore the highway safety situation, subject to consideration of the details at the reserved matters stage, would be acceptable.
34. Other issues raised, such as the need for flats rather than detached houses, are not matters which the Council raise objection and are not of such significance that they should influence the main issues in this case.
35. I note the comments and frustration which have been expressed by the appellant regarding the planning process and its dealings with the Council, however, they are not matters for my consideration as part of the appeal which I have considered on its merits.

Unilateral Undertaking

36. A signed and dated UU has been submitted which would provide education contributions to help accommodate the likely additional pupils attending local schools which would result from the proposed housing. This accords with the advice of the County Council as Education Authority. I am satisfied by the evidence that the obligations are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development. The UU would therefore meet with the requirements of the Community Infrastructure Levy Regulations 2010 and I attach it full weight.

Planning Balance and Conclusion

37. In terms of considering the main issues in this case, I am conscious that the National Planning Policy Framework (the Framework) explains that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. The Framework policy is that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
38. The proposal would provide a boost to housing supply on a windfall and a brownfield site within the settlement area. The development would make an effective use of the land and could be delivered by a small builder adding to the overall mix and offer of housing in the area. There would be economic and social benefits to the area during construction and in subsequent occupation.

The site would be located in an accessible location with reasonably good access to local services and facilities. These benefits would all be in compliance with the policy approach to development in the Local Plan and the Framework. However, as only five dwellings would be provided I attribute the cumulative benefits of the proposal limited weight.

39. There would be no adverse impact on wider heritage assets, neighbouring amenity, transport, flood risk or ecology. The UU would essentially mitigate the effects of the development in relation to education infrastructure. These matters are all acknowledged but they would not be substantive benefits of the scheme.
40. I appreciate that the building is deteriorating and some local residents would wish to see the site redeveloped to address this matter. However, I have found that the scheme would involve the loss of a non-designated heritage asset which has significance, to a medium level of importance, in terms of its heritage value. The loss of significance would be substantial and the recording of the building, while best practice, would not weigh materially in favour of its loss. The original Victorian building makes a valuable contribution to the character and appearance of the area. The proposal would cause harm by reason of the demolition of this non-designated heritage asset which would not be adequately compensated, based on the information available and likely details at the reserved matters stage, by the proposed scheme. Because the building is a non-designated heritage asset, I afford this harm resulting from the loss of the Victorian building moderate weight against the scheme. There are policies in the Local Plan and Framework that seek to protect such assets and the scheme would be contrary to the policy approach in these respects.
41. The proposed loss of trees T4 and T11 has not been sufficiently justified on the evidence presented and this also weighs against the scheme. These trees are attractive, some of the largest on the site, and their loss would result in harm to the character and appearance of the area. I attribute this harm moderate weight.
42. Drawing all these matters together, I consider that the cumulative harm from the proposal should be attributed moderate weight and the benefits of the scheme limited weight. It follows that the benefits would not outweigh the identified harm.
43. For the reasons given above, I conclude that 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