



Appeal Decision

Site Visit made on 16 November 2021

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2022

Appeal Ref: APP/U1105/W/21/3278789

Sundown, Littlemead Lane, Exmouth EX8 3BU

- 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 Tim Baker against the decision of East Devon District Council.
 - The application Ref 21/0822/VAR, dated 19 March 2021, was refused by notice dated 28 May 2021.
 - The application sought planning permission for a proposed new two-bedroom dwelling with off-road parking and garden without complying with a condition attached to planning permission Ref 20/1963/FUL, dated 25 November 2020.
 - The condition in dispute is No. 2 which states that: The development hereby permitted shall be carried out in accordance with the approved plans listed at the end of this decision notice.
 - The reason given for the condition is: For the avoidance of doubt.
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Decision

1. The appeal is allowed and planning permission is granted for proposed new two-bedroom dwelling with off-road parking and garden at Sundown, Littlemead Lane, Exmouth EX8 3BU in accordance with the terms of the application, Ref 21/0822/VAR, dated 19 March 2021, without compliance with condition number 2 previously imposed on planning permission Ref 20/1963/FUL dated 25 November 2020 and subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. In summary, application Ref 21/0822/VAR seeks to substitute plans approved under permission Ref 20/1963/FUL, the effect of which is to reduce 'the size of the dwelling and the plot size by adjusting the boundary line'¹. The proposed site section drawing numbered 395_L01.05 Revision C denotes the revision to the length of the proposed dwelling but I note that it does not correctly identify the repositioning of the retaining wall between the appeal site and the garden of the host dwelling, 'Sundown', a matter I return to.
3. The National Planning Policy Framework (the Framework) was revised on 20 July 2021. Insofar as it is relevant to this appeal, I have taken the Framework into account in reaching my decision.

Main Issues

4. The main issues are:

¹ Appellant statement of case paragraph 2.03.

- The effect of the proposal on the character and appearance of the area; and
- Whether the proposal would provide adequate living conditions for future occupiers in terms of amenity space.

Reasons

Character and Appearance

5. 'Sundown' is a modern detached property that occupies a corner plot at the junction of Littlemead Lane and Estuary View. The rear garden of the property follows the line of Estuary View and slopes down towards the south west such that the appeal site occupies an area of lower ground at the end of the garden. Immediately to the south of the site is an existing two storey dwelling with its side elevation facing the appeal site. The properties on Estuary View to the west of the site appear to be more recently constructed and consist of a mix of detached and semi-detached two-storey dwellings. The appeal site fronts onto Estuary View. Immediately opposite the site is a small grassed area and vehicular access to two properties, which are set well back.
6. The appeal site has planning permission for the erection of a two storey, two bedroom dwelling with a floorspace of 96 sqm and a site area of 300 sqm. The revised proposal, the subject of this appeal, consists of a dwelling of the same design, albeit reduced in length by 0.6m, resulting in a floorspace of 92sqm which exceeds the nationally described space standards for a two bedroom, four person dwelling. The length of the appeal site would be reduced by 4m by repositioning a retaining wall between the host dwelling and appeal site, which would result in an increased garden area for the host dwelling whilst reducing the appeal site area to 240sqm.
7. Whilst the existing properties on Littlemead Lane are generally located in spacious plots and set well back from the Lane, Estuary View has more of an enclosed feel, with properties being closer together, in smaller plots and positioned close to the back edge of the footway. The reduction in the size of the plot will still result in a plot which is comparable in size to the existing properties on Estuary View (where the principal street frontage of the property would be).
8. The re-positioning of the boundary with the host dwelling would result in the construction of a retaining wall which would be approximately 2.3m from the side elevation of the appeal property. There is already a wall with fencing above, along the length of the side boundary of Sundown and this would obscure views of the retaining wall, such that it would not be seen as a prominent feature in the streetscene. In addition, the reduction in the length of the appeal dwelling by 0.6m would reduce the overall bulk of the building on the site.
9. The proposed dwelling would be inset from Estuary View on the outside of a bend comprising open land on the opposite side. As such, and together with it being set down in the topography, it would not have an adverse effect on the existing sense of openness here. I find that the proposed layout, plot size and relationship with the existing properties on Estuary View is acceptable and would not result in a cramped development nor one that would be out of character with the surrounding area.

10. As such, I conclude that the proposal complies with the relevant provisions of Strategy 6 and Policy D1 of the East Devon Local Plan 2013-2031 adopted 28 January 2016 (LP), Policies EN1 and EB2 of the Exmouth Neighbourhood Plan 2018-2031 made 17 January 2019 (ENP) and paragraphs 130 and 134 of the Framework. In summary, and amongst other things, those provisions seek to ensure that development integrates appropriately with its surrounding context.

Living Conditions

11. The appeal proposal would result in a garden area which is smaller than previously approved. The area closest to the host dwelling, Sundown, would provide limited scope for recreation purposes given the presence of the retaining wall which results in a narrow strip of land at the side of the appeal dwelling which would receive restricted daylight as a result. However, this area is identified on the plans as providing space for refuse, recycling and cycle storage. The plans also indicate on-site provision for the parking of two vehicles.
12. This leaves an area to the rear and south west side of the property, free for recreation purposes. The plans identify that it would be of a sufficient size for a patio and garden area. In my view, this provides sufficient recreation space for future occupiers, particularly given that it is located on the south west side of the property and not overlooked to any great extent. AS reasoned above, the resulting plot size is commensurate with others in Estuary View and individuals would make an informed choice in electing to reside here (noting that there are no minimum standards for outside space provision here).
13. As such I find that the proposal complies with Policy D1 of the LP which requires that proposals do not adversely affect the amenity of future occupiers with respect to access to open space, storage space and other uses and Policy EN1 of the ENP which permits development which does not harm amenity, together with paragraphs 119 and 130 of the Framework which seek healthy living conditions and a high level of amenity for future uses, respectively.

Other Matters

14. The appeal site falls within the 'zone of influence' around the Exe Estuary Special Protection Area (SPA) and Ramsar site and East Devon Pebblebed Heaths SPA and Special Area of Conservation (SAC) as defined in the South East Devon European Site Mitigation Strategy April 2014 ('Mitigation Strategy'). The Exe Estuary supports overwintering populations of regularly occurring migratory bird species and an internationally important assemblage of at least 20,000 wintering waterfowl, whilst the East Devon Pebblebed Heaths contain north Atlantic wet heaths with cross-leaved heath, European dry heaths and populations of southern damselfly. Both are designated pursuant to European directives, via the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations'), in order to safeguard ecology and the habitat upon which these various species are reliant.
15. The Mitigation Strategy identifies that biodiversity in those locations is adversely affected by recreational pressures resulting from new housing in proximity to them. Habitats Regulation 63(1) states that 'a competent authority, before deciding to undertake, or give any consent, permission... must make an appropriate assessment'. I have sought to apply such a requirement

reasonably and proportionately relative to the nature and context of the development proposed.

16. Ecological mitigation is, in general terms, provided by financial contributions towards suitable alternative natural green space via Community Infrastructure Levy receipts and also access management and monitoring arrangements (secured on a case-by-case basis via a planning obligation). In that context, the Council's latest figure for specific contributions here is £354 per new dwelling. Natural England, the appropriate nature conservation body under Regulation 63(3), have been engaged in the formulation of the mitigation strategy and the approach taken.
17. Of significance is that the proposal before me would not lead to a net increase in dwellings; there is already a permission in place for a dwelling on site (and it would only be possible for one permission to be implemented). There is no indication, irrespective of the outcome of this appeal, that the former permission would not be implemented. The proposal would furthermore alter only to a limited extent the nature of the site compared to present, being currently domestic in function and character and maintained as such.
18. The proposal is furthermore supported by a signed unilateral undertaking dated 29 March 2021(UU). That makes provision consistent with the Mitigation Strategy on the basis of the latest figure for specific contributions set out above. In that context, and with regard to the requirements for obligations in paragraph 57 of the Framework and Community Infrastructure Levy Regulations 2010 as amended, I am satisfied that the proposal would suitably safeguard ecology both directly and indirectly. No conflict therefore arises with the relevant provisions of Strategy 47 of the LP which requires the conservation of biodiversity and maximising opportunities for restoration and enhancement of natural habitats or Paragraph 180 of the Framework.

Conditions

19. The guidance in the Planning Practice Guidance (PPG) makes it clear that decisions under section 73 should set out all the conditions imposed on the new permission (in this case a re-worded condition No. 2) and restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I have reimposed them all, with the exception of the time limit which I have restricted to three years from the original permission date. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
20. In this context it is necessary to impose a condition requiring compliance with the relevant drawings supporting the application to which this appeal relates for the avoidance of doubt and clarity. I have not included the proposed site section drawing numbered 395_L01.05 Revision C for the reason I set out in paragraph 2 above. I have re-imposed a condition removing permitted development rights for extensions, alterations and outbuildings. This is in order to protect the living conditions of future occupiers (in terms of retaining sufficient amenity space), neighbouring occupiers (in terms of protecting their privacy) and to protect the character and appearance of the area. This is justified, having regard to the PPG, in terms of the sensitivity of the surrounding context to change. I have amended the wording slightly to ensure it meets the relevant tests, without changing its overall aim.

21. Given the proximity of the neighbouring property to the south, I also consider it necessary to restrict the installation of additional windows in the southern elevation and have re-imposed a condition accordingly. In order to ensure that the development preserves and enhances the character and appearance of the area, I have re-imposed the conditions requiring details of the external materials and landscaping to be agreed.

Conclusion

22. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be allowed.

Alison Fish

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of 25 November 2023.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 395_L01.01 Revision B; 395_L01.04 Revision D; 395_L04.01 Revision C and 395_L02.01 Revision C.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, amending or re-enacting that Order with or without modification) no works within Schedule 2 Part 1 Classes A, B, C or E for the enlargement, improvement or other alterations to the dwelling hereby permitted, or the provision within the curtilage of the dwellinghouse hereby permitted of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, other than works that do not materially affect the external appearance of the building, shall be undertaken.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, amending or re-enacting that Order with or without modification) no windows, doors, rooflights or other openings other than those shown on the plans hereby permitted shall be formed in the southern elevation of the building.
- 5) Before development above foundation level is commenced, a schedule of materials and finishes, and, where so required by the local planning authority, samples of such materials and finishes, to be used for the external walls and roofs of the proposed development shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

- 6) No development above foundation level shall take place until a landscaping scheme has been submitted to and approved in writing by the local planning authority; such a scheme to include the planting of trees, hedges, shrubs, herbaceous plants and areas to be grassed. The scheme shall also give details of any proposed walls, fences and other boundary treatment. The landscaping scheme shall be carried out in the first planting season after commencement of the development unless any alternative phasing of the landscaping is agreed in writing by the local planning authority and the landscaping shall be maintained for a period of 5 years. Any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species unless otherwise agreed in writing by the local planning authority.