



Appeal Decision

Site visit made on 4 January 2022

by Neil Pope BA(HONS) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2022

Appeal Ref: APP/Q1153/W/21/3282968

Land to the rear of Edgcumbe Terrace, Milton Abbot, Tavistock, Devon, PL19 0PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs R & J Cole against the decision of West Devon Borough Council (the LPA).
 - The application Ref. 0016/20/OPA, dated 3/1/20, was refused by notice dated 26/3/21.
 - The development proposed is the erection of 5 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Matters of detail relating to appearance, landscaping and scale have all been reserved for subsequent consideration.
3. Prior to the LPA's determination of the application amended plans were submitted. These included a reduction in the site area and were subject to a process of consultation. The plans show a row of dwellings with south facing gables (a terrace of three houses and a pair of semi-detached dwellings) sited towards the northern end of the plot with a 3.6 metres wide access road off Edgcumbe Lane (plan ref. 2204 (SK-)01E). Site sections were also submitted (plan ref. 2204 (SK-)05) showing two storey houses.
4. As part of the appeal, the appellants have submitted an amended site section plan and typical elevations of the proposed houses (plan ref. 2204 (SK-)05B). As noted above, appearance is a reserved matter and I shall treat the typical elevations as illustrative only. However, the plans to be considered by the Secretary of State on appeal must be essentially the same as those considered by the LPA. The amended site sections include matters upon which interested parties are likely to want to have commented upon, not least residents of Edgcumbe Terrace. The amended site sections also appear to alter the layout, which has not been reserved, by deleting the proposed south facing gables.
5. The appeal process should not be a means to amend a scheme so as to overcome the reasons for refusal. Moreover, having regard to the Wheatcroft principles¹, I consider that if I was to take the amended site section plan (plan ref. 2204 (SK-)05B) into account there is a risk of prejudicing interested parties. I have therefore determined the appeal on the basis of the plans that were considered by the LPA when it determined the application.

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37].

6. The appellants have submitted a Unilateral Undertaking (UU) under the provisions of section 106 of the Town and Country Planning Act 1990. This UU includes financial contributions towards the cost of recreation mitigation and management within the Plymouth Sound and Estuaries Special Area of Conservation (SAC). I have taken the UU into account.
7. The LPA initially informed me, via the Appeal Questionnaire, that the proposal would not affect the setting of any listed building or affect an SSSI, or an internationally designated site. However, the LPA has since informed me that its initial answers to these questions were incorrect.
8. An application for an award of costs has been made by the LPA against the appellants. That application is the subject of a separate decision.

Main Issues

9. The four main issues are: firstly, the likely effect upon settings of the Milton Abbot Conservation Area (CA) and the Grade I listed Church of St. Constantine²; secondly, the likely effect upon the character and appearance of the area; thirdly, the effect upon the living conditions of neighbouring residents in Edgcumbe Terrace, having particular regard to overlooking and privacy and; fourthly, whether the proposal would be likely to increase the risk of flooding.

Reasons

Planning Policy

10. The development plan includes the Plymouth and South West Devon Joint Local Plan 2014-2034 (LP). My attention has been drawn to various policies. The most important ones to the determination of this appeal are LP policies SPT1 (sustainable development), TTV25 (sustainable villages), DEV1 (protecting amenity), DEV20 (place shaping and the quality of the built environment), DEV21 (historic environment) and DEV35 (flood risk).
11. In determining the appeal, I have taken into account the provisions of the Plymouth and South West Devon Supplementary Planning Document 2020 (SPD). This is intended to amplify and guide the implementation of the LP policies. This includes matters relating to flood risk.
12. My attention has also been drawn to the draft Milton Abbot, Chillaton and Kelly Neighbourhood Plan 2021 to 2034 (NP). The NP includes an assessment of potential housing sites at Milton Abbot and identifies a settlement boundary. The appeal site is not identified for housing within the draft NP and is excluded from the settlement boundary. Whilst not yet forming part of the development plan, I understand that an Examiner has been appointed to consider the NP. It can be given moderate weight in determining this appeal.

Settings of the CA and the Church of St. Constantine

13. The CA comprises the historic core of the village and is centred on the Grade I listed parish Church of St. Constantine. The significance (heritage interest) of the CA is derived primarily from its special architectural and historic qualities. These include the contribution made by the various listed buildings, including the parish church, and the estate dwellings that comprise the planned model workers village designed by Sir Edwin Lutyens for the Duke of Bedford in 1909.

² I am mindful of the duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

14. The appeal site lies outside, but is immediately adjacent to part of the northern edge of the CA. A plan submitted by the LPA, shows the site within a 'Buffer Zone'. The LPA has informed me that this is a "*planning layer*" to identify the significance of the CA and holds no statutory weight. It is unclear to me how this 'buffer zone' has been identified and it appears to be only an indication of where development could impact upon the significance of the CA. I attach limited weight to the site's inclusion within the 'buffer zone'.
15. The significance of the parish Church of St. Constantine, which dates from the 14th century and which was substantially restored in the late 19th century, is derived primarily from its special architectural and historic qualities. These architectural qualities include its tall Perpendicular style battlemented west tower³, the nave, chancel, porch, doorways and windows. The special historic interest includes much of its fabric, the role of the church as a centre for worship in this part of the countryside and its associations with former notable residents, including the Bedford family.
16. As I saw during my visit, the appeal site forms part of the countryside that surrounds the village. Its pleasing green, open qualities are apparent when viewing the CA and church in views from the north and south of the settlement, as well as from the western approach. These qualities of the site assist in affording an appreciation and understanding of the significance of the CA and the parish church. In particular, the site assists in maintaining the rural settings of the planned model village and church, including the prominent role of the church tower as a focal point and beacon for worship within this part of West Devon. The appeal site makes a small but positive contribution to the significance of these designated heritage assets.
17. The proposed dwellings would be set back from the edge of the CA and would be approximately 100 metres from the church tower. However, they would be sited on the more elevated part of the sloping appeal site and would appear over the tops of the houses in Edgcumbe Terrace. The new dwellings would be noticeable in views from the north, south and from the western approach.
18. Seeing development does not in itself amount to a harmful impact. However, I share the concerns of Historic England that in the absence of all of the details, including scale and appearance, there is a risk that the proposed development would appear as a distracting feature in views of the CA and church and could compete with the tower for primacy within this part of the landscape. The proposal would also, to a limited extent, erode the rural setting of the model village. These impacts would detract from the ability to appreciate the significance of the CA and the parish church. It is very far from certain that the proposal would preserve the setting of the Church of St. Constantine.
19. In the context of the National Planning Policy Framework, the proposal would, in all likelihood, result in less than substantial harm to the significance of the CA and parish church. If there is a sliding scale within this category of harm the development would be towards the lower end. However, irrespective of whether any potential harm amounts to less than substantial harm, great weight should be given to an asset's conservation. The more important the asset, the greater the weight should be. The harm that I have identified above weighs heavily against granting planning permission.

³Dressed in Hurdwick stone and granite.

20. It is necessary for the less than substantial harm that I have identified to be weighed with any public benefits. In this regard, the proposed development would add to the choice and supply of homes in West Devon. Occupiers of the proposed dwellings would help to support local businesses and services, and there would be increased Council Tax receipts for the LPA. Upon commencement of the development there would be some very modest benefit to the construction industry. The proposal also has the potential to provide some limited enhancement to biodiversity. The public benefits of the proposal have moderate weight but would be insufficient to outweigh the less than substantial harm to the significance of the designated heritage assets.
21. I conclude on the first main issue that in all likelihood, the proposal would harm the settings of the CA and the Grade I listed Church of St. Constantine. There would be conflict with LP policy DEV21.

Character and Appearance

22. This 0.6 ha site forms part of two sloping and adjoining fields on the northern edge of the village. There are public views into the site from sections of the Tamar Valley Discovery Trail that bisects the settlement in a north-south direction. The site can also be seen on the western approach to the village. The unspoilt, green open qualities of the site form part of the attractive rural surrounds to the village. The site makes a pleasing contribution to the character and appearance of the area and to the setting of the settlement.
23. Milton Abbot is identified as a sustainable village within the LP and a settlement that is able to accommodate about 20 new dwellings. LP policy TTV25 envisages such growth being provided through the NP. Where there is no neighbourhood plan, this growth will be supported where it meets identified local needs. As set out in the explanatory text to LP policy TTV25, it is important that such development respects the character of the village.
24. The development pattern of Milton Abbot has historically been along the edges of the roads, although there are some modern deviations such as Lutyens Fold to the west of the appeal site. The proposal would be located to the rear of Edgcumbe Terrace and not at the edge of an existing roadside. Although the development would be close to the centre of the village and would not detract from the natural beauty of the Tamar Valley Area of Outstanding Natural Beauty⁴ to the south of the village, it would further erode the historic development pattern. To a limited extent, this would detract from the character of the settlement and conflict with LP policy DEV20(2).
25. However well designed, the proposed houses and access road would markedly erode the unspoilt, green open qualities of the appeal site. The development would entail the loss of attractive countryside and pasture land from around part of the northern edge of the village and have a small adverse impact upon the appearance of the area, including the setting of the settlement. This would be especially apparent when approaching Milton Abbot from the Tamar Valley Discovery Trail to the south and from the western approach to the village.
26. I conclude on the second main issue that the proposal would detract from the character and appearance of the area.

⁴ I am mindful of the duty under Section 85(1) of the Countryside and Rights of Way Act 2000.

Living Conditions

27. The proposed development would alter the outlook for neighbouring residents in Edgcumbe Terrace. The proposed dwellings would be constructed on the higher part of the appeal site and would be readily visible from existing north facing windows in this neighbouring row of houses. However, it is a well-established planning principle that neighbours are not entitled to a view and the new houses would not be so close or likely to be so tall as to appear overbearing or oppressive for those already living alongside.
28. South facing windows in the proposed houses would overlook facing windows in Edgcumbe Terrace. There would also be potential overlooking from the proposed rear (south facing) gardens. The annotation on the plans considered by the LPA indicate that there would be a separation distance of about 24 metres between these facing windows. Given the gradient of the appeal site, in all likelihood, there would be some loss of privacy for the residents of Nos. 1-5 Edgcumbe Terrace.
29. As already noted, landscaping is a reserved matter. Boundary planting could reduce the extent of overlooking, especially from within the new gardens. Whilst the likely overlooking from facing windows in the new houses would have an adverse effect upon the privacy of some neighbouring residents, it is unlikely to be so great as to result in a harmful loss of privacy or to create unsatisfactory living conditions for those already living alongside.
30. I conclude on the third main issue that, on balance, the proposal would not have a serious adverse effect upon the living conditions of neighbouring residents in Edgcumbe Terrace. It accords with LP policy DEV1.

Flooding

31. Amongst other things, national and local planning policies also recognise the importance of ensuring that new development does not increase the risk of flooding. Whilst the appeal site lies within an area identified by the Environment Agency as being at low risk of flooding (Flood Zone 1), given the gradient⁵ of the site, the soakaways would need to be designed so as to avoid surface water discharging onto neighbouring properties or the public highway.
32. In this regard, the percolation tests undertaken on behalf of the appellants indicated that one of the test sites failed the required infiltration rates. Although layout is not a reserved matter, the level of technical detail required for such drainage matters could be addressed at reserved matters stage. The appellants' drainage report (based on the layout plan considered by the LPA) indicates a potential drainage solution⁶ for the site that would be likely to provide adequate surface water drainage.
33. I conclude on the fourth main issue that the proposal would be unlikely to increase the risk of flooding and would accord with the provision of LP policy DEV35 and the LPA's SPD on drainage matters.

Other Matters

34. The appeal site is located within the Tamar European Marine Site Zone of Influence, comprising the Plymouth Sound and Estuaries Special Area of

⁵ The LPA's drainage officer has calculated that this to be "1:10 or steeper".

⁶ This includes various sized soakaways, formed of modular infiltration units, as well as a system of downpipes and gullies to convey surface water from impermeable areas to soakaways and the use of silt traps.

Conservation (SAC)⁷ and the Tamar Estuaries Special Protection Area (SPA)⁸. The appeal scheme, in combination with other developments, would, through increased recreational pressure, be likely to have a significant impact upon the qualifying features⁹ of these protected areas. The UU that I have noted above would address this matter and ensure that there was no harm to biodiversity.

35. I understand that the draft NP allocates a different site for 20 dwellings and that this other site is currently occupied, in part, by farm buildings. The local community is therefore prepared to accept the level of growth envisaged in the LP for Milton Abbot and, following a process of public consultation, has identified its preferred site for this additional housing. If deliverable, this other site would satisfy the LP housing requirement. It is clear from the level of objections made to the appeal scheme that the local community wishes the appeal site to remain as countryside. This weighs against granting permission.
36. The proposed development would increase traffic along the local road network, including Higher Edgcumbe Lane. Local residents are very familiar with this network and I note the highway concerns of some of those who oppose the appeal scheme. Whilst I do not set these concerns aside lightly, having consulted the Local Highway Authority, the LPA satisfied itself that permission should not be withheld on highway grounds. I agree.
37. It has not been demonstrated that the local road network would be unable to satisfactorily accommodate the limited increase in traffic that would be generated by the development. Most vehicles travelling along the section of Higher Edgcumbe Lane leading to/from the appeal site are likely to be slow moving. Roadworks were taking place on the main road through the village during my visit. However, I have been to Milton Abbot on other occasions, during which I noted drivers of vehicles generally adhering to the speed limit. The proposal would not seriously increase the risk of an accident along the local highway network. Any dispute regarding the ownership of the proposed access/visibility splays would be a separate matter for the respective parties.

Overall Conclusion

38. My findings in respect of the third and fourth main issues above (living conditions and flood risk), together with the 'Other Matters', do not outweigh the harm that I have found in respect of the first and second main issues (impact upon the settings of designated heritage assets and the character and appearance of the area). This in turn leads me to find that the proposal would not comprise sustainable development and would conflict with the provisions of the development plan when read as a whole. Having regard to all other matters raised, I conclude that the appeal should not succeed.

Neil Pope

Inspector

⁷ Approximately 9 km to the south.

⁸ Approximately 13.8 km to the south.

⁹ Such as the estuaries, inlets, bays, mudflats, sandflats, reefs, sandbanks, Avocet and Little egret.