
Appeal Decision

Site visit made on 21 March 2022

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th April 2022

Appeal Ref: APP/N1160/W/12/3269385

Land at Cann Lodge accessed off Cheshire Drive, Tamerton Foliot, Plymouth, Devon, PL6 6SQ.

- 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 The P D Tuckett Will Trust against the decision of Plymouth City Council.
 - The application Ref. 20/00704/OUT, dated 13 May 2020, was refused by notice dated 21 August 2020.
 - The development proposed is 14 dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Other than the means of access, all matters of detail have been reserved for subsequent consideration.
3. As part of the appeal the appellant has submitted a Unilateral Undertaking (UU) under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended). This UU includes financial contributions towards the cost of allotments, greenspace, playing pitch facilities and play space.

Main Issue

4. The main issue is whether any adverse impacts of the proposals upon the significance of the Tamerton Foliot Conservation Area (CA), the Grade II* listed Church of St. Mary or the non-designated heritage assets known as Cann House and Cann Lodge would be outweighed by the public benefits¹.

Reasons

Planning Policy

5. The development plan includes the Plymouth and South West Devon Joint Local Plan 2014-2034 (LP), which was adopted in 2019. My attention has been drawn to numerous policies. The most important ones to the determination of this appeal are SPT11 and DEV21 (historic environment), DEV23 (landscape character), DEV26 (biodiversity), DEV27 (green and play spaces), DEV28 (trees and woodlands) and DEV29 (transport).

¹ In the case of Cann House and Cann Lodge, I shall apply the provisions of paragraph 203 of the National Planning Policy Framework (the Framework).

6. I have also had regard to the Plymouth and South West Devon Supplementary Planning Document 2020 (SPD) and the National Design Guide² (NDG).

First Main Issue - Heritage Assets

7. This 1.63 ha site lies within the CA³. It forms part of the setting to the Parish Church of St. Mary⁴. The site also forms part of the historic parkland⁵ and settings to the Gothic villa known as Cann House⁶ and Cann Lodge⁷.
8. The CA is a sizeable area that includes the historic core of the village of Tamerton Foliot, the Church of St. Mary, the remains of the Cann Estate (including Cann House and Cann Lodge), and parts of the surrounding countryside. It also includes a section of Cheshire Drive⁸, which abuts the south eastern side of the appeal site.
9. The heritage interest (significance) of the CA is primarily derived from its special architectural and historic qualities. These include the contribution made by various listed buildings (including the Church of St. Mary), non-designated heritage assets (such as Cann House and Cann Lodge) and many of the fields, open spaces, trees and woodlands. Notwithstanding the settlement's proximity to the main urban areas of Plymouth these fields, open spaces, trees and woodlands assist in providing a very pleasant rural village character.
10. Although now in separate ownership to Cann House, the appeal site's unspoilt green open qualities, remaining specimen trees and close proximity to this former country house and its lodge, retain a parkland character. This assists in affording an appreciation and understanding of the layout⁹, role and grandeur of Cann House¹⁰ as a 19th century country retreat for a wealthy Plymouth businessman. I concur with the finding in the appellant's Heritage Statement that the surviving elements of the parkland combine to provide a setting which better enhances and reveals the significance of Cann House and the lodge as non-designated heritage assets of local value.
11. From the end of Cheshire Drive, the unspoilt open qualities of the site also provide an attractive rural vista along the wooded valley and towards the historic core of the village with the tower of St. Mary's Church a prominent feature. This view affords an appreciation of some of the architectural attributes of this important ecclesiastical building and helps to maintain the visual standing of the church within the local landscape.
12. The appeal site makes a positive contribution to the significance of the CA.
13. The significance of the Church of St. Mary, which dates from the 12th century¹¹, is primarily derived from its special architectural and historic qualities. These include its aisles, nave, chancel, tall west tower (with rubble walls and

² Amongst other things, the NDG identifies the importance of context and C2 relates to the value of heritage.

³ The provisions of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are engaged.

⁴ The provisions of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are engaged.

⁵ The trees growing within the appeal site are the subject of a Tree Preservation Order.

⁶ This circa 1863 country house, built for the Grigg family, is now in use as a residential care home. It is in separate ownership (since about 1960) with separate access from Tamerton Foliot Road (B3373).

⁷ This property abuts part of the appeal site and is on land within the appellant's ownership/control.

⁸ Built in about 2001.

⁹ The formal gardens remain within the same ownership as Cann House.

¹⁰ Despite substantial modern additions, the Gothic southern elevation remains clearly discernible.

¹¹ Parts of the building were rebuilt in the 19th century and restoration works undertaken following a fire in 1981.

limestone dressings), porch, windows, perpendicular tracery, internal fittings and historic associations with some notable local families.

14. The Church of St. Mary has an extensive setting. Over time, there have been many changes within this setting. These include some 20th century housing, Cheshire Drive and the car park to Cann House. Nevertheless, the vista across the appeal site and its value in revealing part of the church tower, as well as in maintaining the historic rural landscape setting of the church and its prominence within the local landscape, makes a positive contribution to the significance of a building which is of more than special interest.
15. Although layout is a reserved matter, the illustrative plan, submitted on behalf of the appellant, shows the proposed dwellings in a cul-de-sac arrangement with access from Cheshire Drive. An existing specimen trees (an over mature oak¹²) at the south eastern end of the site is shown as retained with the new estate road under part of its crown spread. This new road would run near to the boundary with Cann Lodge with a "*framed view*" towards the tower of St. Mary's Church. The north western end of the site would be amenity space and there would be public access/links through the site¹³. Some new landscape planting would be undertaken and wrought iron fencing would be reinstated along some of the boundaries.
16. The proposed dwellings could be designed to a high standard and much of the north eastern and south western parts of the site would remain as woodland. However, the proposed new buildings, hard standings, domestic paraphernalia, estate road and external lighting, including street lights, would markedly change the character and appearance of the site. The proposal would considerably erode the green unspoilt open qualities of the site and would detract from the very pleasant rural character of this part of the CA.
17. Notwithstanding the proposed tree mitigation works¹⁴, it is unclear to me whether branches that are important to both the health and form of the tall oak tree near to the entrance to the site, as well as important roots, would not be lost or harmfully disturbed in accommodating the new access road. There are doubts in my mind whether this specimen tree would survive the rigours of the construction phase of the development. Its loss or the foreshortening of its life expectancy would further erode the parkland character of the site and its contribution to the heritage interest of the CA. The proposed works to a sweet chestnut tree¹⁵ along the south western boundary of the site could also harm the form of this tree and reduce its contribution to the appearance of the CA.
18. The proposed development would comprise a suburban intrusion into the remaining parkland setting of Cann House and Cann Lodge and would seriously erode the historic landscape setting of these non-designated heritage assets. It would diminish an appreciation and understanding of the historic role and grandeur of Cann House and detract from the significance of the CA.
19. In addition to the above, the proposed "*framed view*" through the site would be an unsuitable change to the existing vista of the Church of St. Mary. Instead of seeing the church tower in a rural/parkland setting, in future, the viewer's

¹² Identified as a 'Category B' tree (moderate quality) within the appellant's Tree Survey.

¹³ I note that the proposed access road would not be adopted and the remarks in the appellant's Transport appeal statement that it is intended that this new residential estate would remain private.

¹⁴ These include a ramped load platform over the root protection area of the over mature specimen oak tree.

¹⁵ Identified as a 'Category A' tree (high quality) within the appellant's Tree Survey.

attention would be distracted by the likely mass of new buildings/row of houses and length of estate road in the foreground. This would detract from an appreciation and understanding of the architectural interest of this listed building and harmfully erode its historic landscape setting. The proposed development would fail to preserve the setting of this Grade II* listed building and would diminish the contribution it makes to the special qualities of the CA.

20. In the context of the Framework, the proposed development would result in less than substantial harm to the significance of the CA and the Church of St. Mary. The scale of harm to the significance of the non-designated heritage assets at Cann House and Cann Lodge would be considerable.
21. If there is a sliding scale of harm within the category of 'less than substantial' the proposal would be somewhere near the middle for both the CA and the listed church. Less than substantial harm to designated heritage assets does not amount to a less than substantial planning objection. Great weight should be given to an asset's conservation and the more important the asset, the greater the weight should be. The harm that I have identified above to the CA and setting of the listed church weighs heavily against an approval.
22. I am required to weigh the less than substantial harm to the designated heritage assets with the public benefits of the proposal. These benefits include increasing the choice and supply of housing within Plymouth, support for the construction industry, an increase in Council Tax receipts, public access through part of the site, the reinstatement of some wrought iron boundary fencing, some new landscape planting, a management regime for the existing trees/woodland and the potential for some biodiversity enhancement¹⁶. The totality of these benefits carries moderate weight in the 'heritage balance'.
23. When the public benefits are weighed with the harm to the significance of the CA and Grade II* listed church, the balance tips firmly against an approval. The benefits of the proposal are also insufficient to outweigh the scale of harm to the significance of the non-designated Cann House and Cann Lodge. Whilst, on behalf of the appellant, it has been argued that the proposal would secure the site's optimum viable use there is no cogent evidence to substantiate this.
24. I conclude on the first main issue that the adverse impacts of the proposals upon the significance of the CA and the Grade II* listed Church of St. Mary would not be outweighed by the public benefits of the proposal. Furthermore, when undertaking a balanced judgement in respect of Cann House and Cann Lodge, the proposal would not outweigh the scale of harm that I have identified to these non-designated heritage assets. The proposal conflicts with LP policies SPT11 and DEV21 and is at odds with the objective of C2 of the NDG.

Other Matters

25. The LPA, within its decision notice, identified six reasons for refusal (RfR). Given my conclusion in respect of the main issue above, even if I was to find in the appellant's favour in respect of the other RfR this would not outweigh or overcome the harm to the significance of the relevant heritage assets. The appeal should not therefore succeed. However, for completeness, I briefly set out my findings in respect of these other matters below.

¹⁶ My findings in respect of biodiversity are set out within the 'Other Matters' below.

Other Matters - Character and Appearance

26. The proposed development would not create any functional or visual links between Whitleigh and Southway. Significant areas of trees/woodland on either side of the new houses and estate road would also be retained. There would be no harmful loss of space between these two areas of the city or any risk of settlement coalescence. However, the erosion of the green unspoilt open qualities of the site that I have identified above and the potential adverse impacts upon two trees growing within the site would detract from the naturalistic qualities of the Cann and Whitleigh Woods Character Area¹⁷.
27. Some road traffic and other noise sources can be heard within this Character Area. Nevertheless, as I noted during my visit, there is a sense of tranquillity (including visual tranquillity) within the appeal site. This adds to the pleasing qualities of this wooded valley. The proposed buildings, estate road and increase in movement and activity in and around the site would diminish the tranquil qualities of this Area.
28. The proposal would detract from the character and appearance of the area and conflict with LP policies DEV23 and DEV28. This further weakens the case for granting planning permission.

29. Other Matters - Biodiversity

30. The appeal site is adjacent to Cann Woods Local Nature Reserve (LNR) and, in effect, provides a biodiversity 'stepping stone' into this area of local importance for nature conservation. The development proposed on the appeal site, including the works to important trees, would reduce its biodiversity value. However, a suitable ecological management regime, including management of the woodland belt along the southern boundary of the site could avoid any serious erosion of the site's 'stepping stone' function. The appellant has also proposed off-site ecological mitigation¹⁸ on other land nearby and within its ownership/control. This could deliver an overall 10% biodiversity net gain.
31. Suitably worded planning conditions could be attached to a permission in respect of biodiversity. The proposal would therefore be unlikely to harm the LNR or nature conservation interests. It would accord with LP policy DEV26.

Other Matters - Open Space and Recreation Provision

32. The appeal site forms part of an area of designated Neighbourhood Greenspace (NG). As noted above, it lies outside the LNR and the development would allow for public access into the site where none currently exists. I also note the appellant's arguments that the developed area of the appeal site would comprise a loss of 1.5% of the overall NG and, if permission was forthcoming, part of the site would comprise amenity space with potential for natural play.
33. However, I also note that the Plymouth Policy Area Open Space Assessment took account of the appeal site's exclusion from the LNR when including it as an integral part of the designated NG. It would also have been evident to those undertaking this Assessment that there was no public access through the site. Notwithstanding this, it was deemed suitable for the appeal site to be included

¹⁷ As set out within the Plymouth and Plymouth Urban Fringe Landscape and Seascape Assessment (2016).

¹⁸ This would include planting up hedgerow gaps and enhanced neutral grassland and scrub areas.

as an integral part of this NG. Moreover, this was not found to be inappropriate or unsound as part of the development plan process.

34. The appellant has not demonstrated that the appeal site is surplus to requirements or that the proposed development would provide equivalent or better provision. In this regard, the proposal, including the new amenity space, would have a very different character and function to the historic parkland that it would replace. Greenspace is multi-functional and the proposal would not clearly outweigh the loss of an area of NG that is important to the significance of various heritage assets, as well as to the character and appearance of the area and to the quality of open space provision. The development would involve an unacceptable loss of green infrastructure in this part of Plymouth. It would conflict with the provisions of LP policy DEV27.

35. *Other Matters – Highways*

36. The proposed development would increase traffic flows along Cheshire Drive and other parts of the local highway network. As I saw during my visit, sections of Cheshire Drive are narrow and I note the concerns of some local residents regarding the likelihood of vehicles meeting at 'pinch points' and inconveniencing existing highway users. Whilst local residents are likely to be very familiar with existing traffic conditions, the proposed increase in traffic would not be so great as to seriously inconvenience existing road users or compromise highway safety interests along Cheshire Drive¹⁹.
37. As part of the appeal, the appellant has submitted two options for the proposed secondary pedestrian access onto the B3373. I note from the appellant's transport statement that this section of the highway has a good road safety record. I also saw the upgraded bus stop on the opposite side of the road to where the proposed pedestrian access would be provided. One option would be a 'Do Minimum' approach, with vegetation reduced in height for visibility and 'Slow' markings and warning signs on the highway. The alternative 'Do Something' option proposes a footway build-out to complement that which already exists on the opposite side of the street. This would, in effect, create a give-way priority along this section of the highway.
38. Having considered both options, the LPA maintains its concerns that the proposal would compromise highway safety interests and/or inconvenience existing highway users. There are no footways along this section²⁰ of the B3373 and as I saw during my visit, it would be hazardous to attempt to walk along this part of the highway and where some vehicles are moving at speed. I agree with the LPA that the appellant's proposed 'Do Minimum' approach would provide inadequate safety for pedestrians, some of whom are likely to be vulnerable members of society, such as children, exiting onto the B3373.
39. In contrast, the appellant's alternative 'Do Something' approach would provide adequate safety for pedestrians. However, I concur with the LPA that the extent of the proposed works, comparative to the benefit of this pedestrian link to the surroundings, would be disproportionate with much interference to the free flow of traffic along this Local Distributor Road. Whilst the Framework gives priority first to pedestrians and cyclists, regard must also be had to any

¹⁹ This is subject to a 20 mph speed limit.

²⁰ There is a raised footway on the opposite side of the street and set well away from the edge of the carriageway.

ensuing impact upon other highway users and then weighing the benefit with any adverse impact.

40. I note the LPA's suggestion that, on balance, it would be preferable to omit the proposed secondary pedestrian link from the proposed development. In response, the appellant's agent has suggested that there could be a "*further refinement of the proposals*" and a planning condition could be attached to a permission which requires that the secondary pedestrian access is not facilitated until the approval of further details.
41. However, access is not a reserved matter and two alternative options have already been submitted at appeal for my consideration. I am required to determine the appeal on the basis of what is before me. I therefore find on this matter that the proposal would result in an unacceptable risk to pedestrian safety along the B3373 ('Do Nothing' option) or would be likely to result in congestion and inconvenience for existing users of the B3373 ('Do Something' option). There would be conflict with the provisions of LP policy DEV29.

Other Matters – Housing Land Supply (HLS)

42. There is no dispute between the main parties that the LPA is able to demonstrate five years' worth of HLS. This does not represent a ceiling to further housing growth. I also note the appellant's comment that the direction of travel for HLS within cities and major urban areas is for a 35% uplift. This uplift is a matter that would be more appropriately addressed through the development plan process. Nevertheless, given my findings in respect of the main issue above, even if such an uplift was to be applied in this instance it is very unlikely that it would tip the balance in favour of an approval.

Other Matters – The UU

43. Given my findings in respect of the main issue above, it is not necessary for me to assess the UU against the provisions of paragraph 57 of the Framework. The obligations within the UU are intended to offer mitigation against aspects of the development and would not provide any significant public benefit to weigh in the heritage or the overall planning balance.

Overall Conclusion

44. My decision does not turn on the other matters that I have considered above. Nevertheless, the conflict that I have found with some other development plan policies does not support the appellant's argument for granting planning permission. The harm that I have identified is not outweighed by the benefits of the scheme, including my findings in respect of biodiversity. Overall, I therefore conclude that the appeal should be dismissed.

Neil Pope

Inspector