



Appeal Decision

Hearing held on 24 May 2022

Site visit made on 24 May 2022

by Anne Jordan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2022

Appeal Ref: APP/U1105/W/19/3242773

Land to the East of Goldsmiths Lane, All Saints, Devon, EX13 7LU, 330984, 101507

- 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 and Mrs Robbie Raggio against the decision of East Devon District Council.
 - The application Ref 19/0078/FUL, dated 11 January 2019, was refused by notice dated 12 June 2019.
 - The development proposed is Demolition of former cottage and construction of new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the submission of the appeal Natural England updated the conservation status of the River Axe Special Area of Conservation which had implications in relation to the matter of nutrient neutrality. As a result it became necessary to assess as part of the appeal whether the proposed development would have any Likely Significant Effect or Effects on the integrity of the European Site.
3. Accordingly, I wrote to the parties and Natural England, as the appropriate nature conservation body, seeking views as to the likely effects associated with the proposed development, the assessment approach having regard to the advice from Natural England and any available nutrient neutral mitigation proposals. Both the Council and the appellant made submissions in this regard which I have taken into account in reaching my decision.
4. The appeal site contains the ruins of a former dwelling. Planning permission was granted in 1963 for a replacement dwelling which was later constructed and is now known as Poppins, which lies to the west of the site. More recently planning permission for a dwelling on the site has been refused at appeal in 1992, 2014 and 2015¹. It is accepted by the parties that the application is not for a replacement dwelling, the original dwelling, now considered uninhabitable, having been replaced in 1963.

¹ 91/P1528, 14/0253/FUL and 15/0032/FUL

Main Issues

5. Accordingly, the main issues for the appeal are:

- Whether the proposed development would amount to design of exceptional quality, that would represent an exception from the general presumption in national policy against isolated homes in the countryside, and/or whether it should be given significant weight as an outstanding or innovative design, which promotes high levels of sustainability; and
- Whether the proposal would have a likely significant effect on the integrity of the River Axe Special Area of Conservation.

Reasons

Policy Background

6. The East Devon Local Plan was adopted in 2016. Together policies Strategy 1 (Spatial Strategy for Development in East Devon) and 7 (Development in the Countryside) seek to locate new development within existing towns and villages. New development in the countryside will only be permitted where it would be in accordance with a specific local plan policy that explicitly permits such development and subject to detailed landscape, amenity and environmental considerations. Policy TC2 (Accessibility of New Development) states that new development should be located so as to be accessible by pedestrians, cyclists and public transport and also well related to compatible land uses so as to minimise the need to travel by car.
7. Together these policies reflect the thrust of national policy in the National Planning Policy Framework (the Framework) which seeks to protect the intrinsic character and beauty of the countryside and to locate development where it can enhance or maintain the vitality of rural communities. In general development should be focused on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
8. The Framework sets out some exceptions to the general presumption against isolated new homes in the countryside. These include instances where the design of the dwelling is of exceptional quality and would help to raise standards of design more generally in rural areas set out in Paragraph 80. The Framework also champions good design more widely and in Paragraph 134 advises that significant weight should be given to “outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings”.

Design

9. The Council and the appellant agree that the site is in an isolated location and it is the appellant’s case that the exception set out in Paragraph 80 of the Framework for design of exceptional quality should be applied in this case. The Framework does not define “isolated”, however case law² is clear that “isolated

² Braintree District Council v Secretary of State for Communities and Local Government & Others [2017] EWHC 2743 (Admin) of 15 November 2017, and subsequently in the Court of Appeal judgment of 28 March 2018 and Bramshill v SSHCLG [2021] EWCA Civ 320

dwelling in the countryside” should be construed as meaning remote from a settlement, not remote from other dwellings.

10. The site is an irregularly shaped field which houses the remains of a derelict cottage, known as Lily Cottage. It is around a third of a hectare in size and accessed via an existing drive from Goldsmiths Lane which serves Chestnut Cottage and the adjoining The Chestnuts. The site lies on the edge of All Saints, to the rear of Chestnut Cottage and The Chestnuts. Submitted plans show the distance between these properties and the proposed dwelling to be at or around 28 metres.
11. All Saints, which comprises a loosely knit collection of around 30 dwellings, is centred around Goldsmiths Lane and Knights Lane. The dwellings that line Goldsmiths Lane are also clearly visible from land to the rear of the appeal site. In this regard the site is not remote or removed from other development but sits on the edge of All Saints. A previous Inspector has aptly described the settlement pattern as “small ribbons of low-density residential development, rather than being sporadic development”. Smallridge All Saints Church, All Saints Village Hall, All Saints Primary School and All Saints Pre-School, which all lie on the road between All Saints and Smallridge to the west, are within a short walking distance of the site.
12. I noted during my site visit that the countryside around the appeal site in this part of East Devon is characterised by numerous small villages and smaller hamlets, some of which are no more than a collection of dwellings strung out along the road, with limited or no services. In this regard Smallridge and All Saints are typical of the local settlement pattern and, as such, I find it difficult to reconcile the position of the site, and its proximity to the dwellings and community facilities in All Saints, with a description of it being isolated.
13. The site itself has established landscaping along the boundaries and appears secluded. It is also remote from many day-to-day facilities, other than the primary school and pre-school, and future residents would be required to travel into Axminster for most day-to-day services and facilities, a matter which the parties do not dispute. All Saints is not identified as a village in the Local Plan but the plan also recognises that the countryside in East Devon, which is subject to a policy of development constraint and countryside conservation, has small villages within it which have limited or no services and so cannot meet residents' daily requirements. I therefore see no inconsistency in finding that a site is not isolated but is nonetheless not suitable for development for reasons of accessibility to services and rural character. In such cases Paragraph 134 provides the opportunity for significant weight to be given to outstanding or innovative designs.
14. The proposed dwelling would provide an eye-catching and innovative piece of architecture. The design employs cob and thatch, the pliable nature of which allows the building to take a sinuous form. The resulting “S” shape of the building effectively showcases the potential for the use of these materials in a contemporary way. A range of solar photo-voltaic panels set on copper cladding with a copper ridge would be integrated within the thatched roof, which due to its height and curved shape would be an imposing and uncompromising feature. Nevertheless, the resulting building retains enough of the vernacular form to successfully reference a traditional Devonshire cottage.

15. The appellant states that the building would use local construction techniques and locally sourced materials to provide a carbon neutral building. The materials proposed would all be renewable and recyclable, and the building constructed with the aim of achieving zero-carbon status. The walls would be constructed in straw bale to provide insulation and the cob outer wall with a dressed flint plinth. The roof would be finished in thatch with hemp batts used for additional insulation. The proposal has a SAP rating of 108, meaning that it represents zero energy with the potential to possibly export energy. This would equate to Code for Sustainable Homes level 5³, with the potential to achieve level 6. In this regard the project aims to demonstrate new ways of using traditional materials to provide a highly sustainable dwelling.
16. I acknowledge that the use of cob is not in itself innovative, and that it has constraints which reduce its suitability for widespread use. I also note that straw bales have been employed elsewhere in the country, although the combination of both have not been employed in the region. Nevertheless, the scheme would provide the opportunity to advance the use of these materials and would add to the range of knowledge and practice in an area of construction with emerging regional interest. As such, the proposal comprises an innovative design which promotes high levels of sustainability.
17. However, paragraph 134 of the Framework only permits that significant weight should be given to such proposals, if they fit in with the form and layout of their surroundings. Likewise, design only qualifies as of exception quality under paragraph 80 of the Framework, where it would be sensitive to the surrounding characteristics of the local area. It is when the wider context of the dwelling and its effect on its setting beyond the site boundaries is considered that the scheme presents problems.
18. The building would be a striking piece of architecture. It has been designed to be seen and in views from the public footpath would no doubt be a notable feature in the locality. However, the building would not stand on its own, being located relatively close to its nearest neighbours at Chestnut Cottage and The Chestnuts. It is telling that the initial comments from the Design Review Panel⁴ identified that it was initially unclear how the design concept was linked to the character of the wider setting of the proposal site, as well as its relationship with the nearest settlement. In response the appellant carried out a contextual analysis to justify some of the aspects of the design, including the siting and materials. However, notwithstanding the Council's concerns regarding the "retrofitting" of the analysis, rather than carrying out such work at the start to inform the design, the analysis provided fails to properly take account of the constraints imposed by adjoining dwellings to the south.
19. The countryside around All Saints reaches right up to the domestic boundary as development is generally stretched out along the road frontages. In this regard the settlement is loosely-knit and properties are generally well spaced, notwithstanding the wide range of differing age and appearance of dwellings. The site itself is an enclosed field, which is perceived as countryside, the remains of Lily Cottage forming a "picturesque ruin" within it. The immediate setting of the building is proposed to be largely planted to meadow. This would provide an uncluttered and sparse setting which would complement the contemporary appearance of the dwelling itself. Furthermore, to some extent

³ Now withdrawn

⁴ Design Review Panel Statement 15th November 2018

the colour palette of the materials to be used would blend into the landscape. However, taking account of the scale of the dwelling and the size of the plot on which it would sit, it is unlikely that the meadow planting, which would include the access, parking and turning for the dwelling, would be extensive enough to be perceived as anything other than garden.

20. Moreover and critically, due to its scale the building itself would not assimilate well into its immediate setting. The dwelling would be positioned within the site partly to reflect the historic footprint of the original dwelling, but the much larger footprint and very substantial height of the proposed dwelling would far exceed that of the original modest structure and this would result in an awkward relationship with the dwellings which adjoin the site. The building would measure around 9 metres in height, and the roof detail housing the proposed PV panels would be an imposing detail within it. The existing and proposed buildings would be located only around 28 metres from each other with the PV array forming part of the view from these properties.
21. At the hearing I was supplied with a drawing from the owner of the neighbouring property purporting to demonstrate the likely view from The Chestnuts. This was not to scale and could not in any case take full account of the effect of the receding and twisting roof slope. I therefore give no weight to the submission in coming to a view. Nevertheless, based on my observations on site, both within the site and from the garden to The Chestnuts, I consider the views of the new dwelling would be very prominent from the adjoining dwellings, particularly when within the gardens.
22. Whilst the relationship between the 2 dwellings would not be so close as to lead to unacceptable living conditions, the design would nonetheless be likely to be perceived as imposing, with the outlook from the rear of The Chestnuts dominated by the new roof structure. When viewed in the context of the spacious rural environment currently enjoyed around the site, this would result in an unneighbourly juxtaposition, which would be at odds with the settled and spacious rural character of the area described above. In this regard the proposal would fail to significantly enhance its immediate setting, and insofar as it would be unduly prominent in views from neighbouring property, would not be sensitive to the defining characteristics of the local area.
23. I therefore conclude that, whilst as a standalone piece of architecture the proposal would be an exceptional design which shows innovation and a high level of sustainability, when considered in its context of the constraints imposed by neighbouring dwellings, close to Chestnut Cottage and the adjoining settlement, it fails to appropriately integrate with its wider setting. As I have found that the proposal would not be sensitive to the defining characteristics of the local area, and would have an unacceptable relationship with the adjoining buildings, I cannot conclude that the proposal would meet the full requirements of either paragraph 80 or paragraph 134 of the Framework.
24. In this regard I find no basis for concluding that the design merits of the proposal would outweigh the general strategy of constraining new development within the countryside that are set by policies Strategy 1 and 7 and TC2 of the Local Plan or be consistent with the Framework in this regard.

Effects on the River Axe Special Area of Conservation

25. Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended), I am required as competent authority to undertake an Appropriate Assessment of the proposal on the basis of its likely significant effects on European Sites. The site lies within the catchment of the River Axe Special Area of Conservation (SAC). Recent guidance from Natural England seeks to ensure that the emission of wastewater from new development does not alone or in combination lead to increased levels of nutrients in the River Axe, which would impact upon the integrity of the SAC.
26. Following the release of this advice the appellant provided a revised drainage strategy for the site. This proposes to utilise a cesspit to provide for sewage disposal, which as a sealed unit would not discharge at all on site and would require emptying by a licensed contractor. A dwelling of the size proposed is estimated to require emptying every 51 days, although this period may be able to be extended with the implementation of water saving devices to reduce mains water use. The wastewater removed from the cesspit would have to be discharged into a public wastewater treatment works outside the River Axe catchment. The appellant has advised that this is possible by discharging at the Countess Wear wastewater treatment site, which is located on the River Exe.
27. In order for such a strategy to be successful or effective there would have to be surety that the operator carrying out the wastewater transfer was obligated to discharge outside the River Axe catchment. The appellant has advised that they are happy to provide a unilateral undertaking which obliges the future occupier to dispose of wastewater outside the catchment. However, this is not a matter which is under the appellant's control. Whilst he could make all reasonable provisions to ensure that the third party operator who pumps the cesspit was discharging outside the catchment, he could not be entirely assured that this was the case and it would be difficult for the local authority or any other party to police.
28. I take into account that the Council are currently exploring district wide measures that would enable developers to contribute to provide mitigation. It may be that when such measures are in place the appellant could adopt collective measures as alternative mitigation and that, as such, discharging outside the catchment would only represent an interim solution. Nevertheless, given the absence of any certainty in relation to the effectiveness of an obligation and any indication of the length of time the interim measures may be in place I cannot conclude that the development would not have an adverse effect on the protected site.
29. The Appropriate Assessment to be undertaken as part of the Habitats Regulations sets a very high bar. It requires me to conclude that the level of scientific certainty of the evidence provided is high, and should be "beyond reasonable scientific doubt". Given my reservations expressed above I cannot conclude this to be the case. Therefore, I do not consider it expedient to require the developer to provide a unilateral undertaking as part of the proposal, as it would not, in the event, guarantee appropriate mitigation in any case.
30. On the second matter I therefore conclude that the proposal would not provide appropriate mitigation to ensure no likely significant effect on the integrity of the River Axe SAC. As such, it would fail to comply with paragraph 182 of the

Framework which states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site either alone or in combination.

Conclusion

31. A number of other matters have been brought to my attention, including the impact of the proposal on traffic and local wildlife but these matters do not add to my concerns set out above. I also note the support of some local residents for the scheme. However, for the reasons I have explained the scheme before me would nonetheless fail to comply with local and national policy in relation to development in the countryside. This matter is on its own determinative. The proposal also fails to provide appropriate mitigation to ensure no likely significant effect on the integrity of the River Axe SAC.
32. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Anne Jordan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr and Mrs Raggio	Appellants
Mr Robert Hughes	Director – Hughes Planning
Rachel Collins	NDM Collins Architects

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Digby	Senior Planning Officer, EDDC
Kenji Shermer	Urban Designer, EDDC
Rory Chanter	District Ecologist, EDDC
Councillor Paul Hayward	EDDC and All Saints Parish Council
Tristan Connell on behalf of Mr and Mrs Connell	Local Resident
Mr & Mrs Betterton	Local Residents, Chestnut Cottage

DOCUMENTS

Revised list of conditions

Drawing of the proposal when viewed from Chestnut Cottage submitted by Mrs Betterton