
Appeal Decision

Site visit made on 22 November 2022

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th December 2022

Appeal Ref: APP/U1105/W/22/3301884

Oak Tree House, Old Ebford Lane, Ebford, Devon EX3 0QR

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Andrew Vickery against the decision of East Devon District Council.
 - The application Ref 22/0318/FUL, dated 18 February 2022, was refused by notice dated 18 May 2022.
 - The development proposed is a replacement dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During the appeal the appellant pointed out that the retaining wall was not described by the Council as forming part of the application nor was it mentioned in the description of the proposal on the formal decision. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details that the development comprises a replacement dwelling and garage, and also the erection of a retaining wall to the western edge of Old Ebford Lane. The Council dealt with the proposal on this basis and so shall I.
3. Mount Ebford is a grade II listed building. As required by the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) I have paid special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.

Main Issues

4. The main issues in this case are: firstly, the effect of the dwelling on the character and appearance of the area, having particular regard to the impact upon the setting of a nearby listed building; and secondly, the effect of the proposal upon protected species within the area.

Reasons

Character and Appearance

5. Oak Tree House is a detached house positioned within a generous garden that is close to the top of a ridge of high land. Set back from Old Ebford Lane behind a parking and turning area, this two storey house and its detached garage are near to one end of the line of houses and bungalows that are to either side of the lane. Most of these properties are detached, being set within large plots, and several have managed hedgerows which create a verdant enclosure of the highway.
6. To the south of the appeal property is Mount Ebford, and this detached house has a domineering presence within the locality due to its large size, its elegantly mannered classical style, and its deliberate positioning upon the hilltop. Its form and positioning are such that its occupiers would benefit from the attractive, panoramic views over the Exe Estuary, and it is an imposing landmark within the area being visible from long distances away in both public and private views. These are all important elements of the special interest and significance of this listed building, reflecting its historic and social importance within the area.
7. The replacement dwelling would have a striking appearance deriving from its contemporary style and form, and because it would be constructed from a variety of materials. Its many differences to the nearby properties would make it prominently eye-catching. Although there are a variety of ages and styles of dwellings nearby, as that proposed would be so very different to any of the nearby buildings it would be a discordant addition to the area.
8. The house would be positioned at a similar level to the existing dwelling, and it would be set back from the highway behind the drive and turning area. Despite this and the generous size of the plot, the house would be intrusively prominent. Although it would be set back from the side boundaries of the site, it would have a footprint that would extend across much of the width of the garden. This, when combined with the height of the house, would make it a prominent building within the streetscene, and as it would be close to the hilltop, this prominence would be exaggerated.
9. The form of the house would serve to break up the mass of the building. However, apart from the high-status historic buildings along the lane, it would be in an area where most of the nearby buildings are one or two storeys with pitched roofs. Even with the presence of the flat roofs, the proposed dwelling would be much larger and taller than most of the surrounding houses and bungalows. The variety of materials present would create a vibrant visual impact, but again this would be harmfully different compared to the limited palettes found within nearby buildings.
10. The impact of the house within the area would be such that it would unacceptably intrude into the setting of Mount Ebford. This house

makes an imposing statement within the area, and like Ebford Manor, the elegant grandeur of these buildings reflects the high social status of their former occupiers. These houses dominate the area, and this is particularly so in the case of Mount Ebford, which is a house that has been designed to impose. The striking form and the variety of materials of the proposed building along with its size and height would be such that it would compete with Mount Ebford's dominance, rather than be subservient to it. Such an intrusion would fail to enhance the significance of the listed building.

11. The appellant has sought to emphasise the contrast between the listed building and not have a pastiche of village vernacular. However, the circumstances of this case are such that even with the variety of houses and bungalows nearby, their conventional forms and appearance, as well as their more modest sizes, have retained the dominance of Mount Ebford. The appeal site borders the remaining grounds of the listed building, and the new dwelling would be seen against the flank wall of the house rather than either of its elegant principal facades. The house would be set back from the boundary, at a similar ground level to the existing buildings, and as such it would not obliterate views of the side of the listed building. It would be smaller in size than Mount Ebford, but notwithstanding this, it would be larger and higher than the existing house and thereby more prominent. This, along with the close proximity of the house to Mount Ebford, the proposed height, size and distinctive appearance, would all combine to harmfully detract from the imposing dominance within the area that is part of the significance of this listed building.
12. The retaining wall has been proposed so as to stabilise the ground in the triangle of land opposite the appeal property. There may well be a functional need for a wall of the proposed height and length, but a long and tall rendered wall that has no obvious relationship to a domestic property would have a curiously intrusive urbanising impact upon this part of the lane. There are other walls to nearby properties, but those bounding Mount Ebford and Ebford Manor reflect the high status of the houses they serve, as well as deliberately delineating the public and private realms. Even though staggered in height, the wall would harmfully compete with this historic hierarchy of form and function, as well as appearing unacceptably urban in an area where most domestic and field boundaries are delineated by hedges.
13. In addition to these walls, there are others nearby, including retaining walls, but they are constructed of brick and stone rather than render, and in most cases are much lower in height than that proposed. Furthermore, part of the bank surrounding the trees contains a short section of a coursed rubble stone retaining wall. Whilst there is some local support for the wall, this would not ameliorate the harm that would arise.

14. The National Planning Policy Framework (the Framework) requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The scheme would unacceptably intrude into the setting of the listed building, and this would be less than substantial harm, given the size of the setting of Mount Ebford as a whole. Such harm would be of considerable importance and weight and has to be weighed against the public benefits of the proposal. As the appellant considers there would be a neutral impact upon the listed building, no assessment of the public benefits of the scheme has been undertaken, albeit the size of the house is required to accommodate the growing family and lifestyle of the appellant. Nevertheless, these requirements would be private benefits rather than public ones and would not outweigh the harm that I have identified.
15. The proposal would unacceptably harm the character and appearance of the area, and would fail to preserve the setting of a listed building and its features of special interest. This would be contrary to the requirements of the Act and objectives of the Framework, and the conditions suggested, including those seeking to protect nearby trees, would not mitigate these harms. The proposal would also conflict with Policies EN9 and D1 of the East Devon Local Plan (2016) (LP) and Policies CSG8 and CSG9 of the Clyst St George Parish Neighbourhood Plan (2018). These policies seek, amongst other things that development is of a scale, mass and design to be in keeping with local character and context, as well as that which enhances or better reveals the significance of designated heritage assets.

Protected Species

16. Although the appellant considers an ecological survey has not been supported by evidence of need, the proposal includes the demolition of the existing buildings on the site. A distinct characteristic of the village is the presence of generously sized residential gardens close to fields. The appeal property is not part of a designated nature conservation site, but nearby there are paddocks and fields, watercourses, ponds, woodlands, and hedgerows.
17. Having regard to the nature of the proposal and the context of the appeal site in a predominantly rural area where there are a variety of habitats nearby, it cannot be assumed that protected species would neither be present on the site nor in the vicinity. Circular 06/2005 – Biodiversity and Geological Conservation makes it clear that the presence of a protected species is a material consideration when a development is being considered. As the proposal would include demolition such a survey would establish whether any protected species would be impacted by the works. Circular 06/2005 states that it is essential that the presence or otherwise of a protected species, and the extent they may be affected by proposed development, is established before the grant of permission, so as to ensure that all relevant material

considerations have been addressed in making the decision. In the absence of any survey, the impact of the proposal upon any protected species in or near the site cannot be assessed.

18. The Framework requires that the planning system should contribute to and enhance the natural environment, minimising impacts on biodiversity. In this case the proposal has failed to demonstrate whether the development would have an impact upon protected species, nor has it been demonstrated that any impacts could be minimised and mitigated. The requirements of Circular 06/2005 make it clear that in such circumstances conditions would not be appropriate. The proposal would be contrary to the requirements of LP Policy EN5, which seeks amongst other things, to protect nature conservation value, and that the impact of development upon wildlife has been mitigated to its fullest extent.

Other Matters

19. Local residents have raised a number of matters, including the loss of privacy, the provision of accommodation above the garage block, and that works have occurred to de-stabilise the bank. Some of these concerns are not directly connected with the planning considerations of the proposal before me, and of those that are, following my findings on the main issues, I have no need to consider them further.
20. Finally, concerns regarding the Council's handling of the application, including with regard to requests for an ecology survey, relate to procedural matters and have no bearing on my consideration of the planning merits of the case.

Conclusion

21. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR