
Appeal Decision

Site visit made on 9 January 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 January 2023

Appeal Ref: APP/K1128/W/22/3294930

Land off Cole Lane, Ivybridge, Devon

- 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 Adam Steward against the decision of South Hams District Council.
 - The application Ref 3855/20/FUL, dated 14 October 2020, was refused by notice dated 20 September 2021.
 - The development proposed is a dwelling, off road parking and new vehicle access.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the development on protected trees;
 - whether the development would provide appropriate site drainage; and
 - whether the development would incorporate measures to minimise carbon emissions.

Reasons

Trees

3. The site is a roughly triangular piece of severed garden land. Its southern boundary immediately adjoins the rest of the garden to which it was previously attached. A green public open space forming part of a modern housing development lies to the east, and an overgrown space containing an old mill pond lies to the west.
4. The site contains a number of trees which are collectively included within a Tree Preservation Order (TPO). These include a number of large mature ornamental specimens whose canopies link above the site, amongst which 2 copper beeches and a turkey oak are particularly notable. These trees make a collectively attractive, strongly positive contribution to local character, complementing planting in the public open space to the east and in the garden to the south. They are also viewed in relation to a linear band of trees which exist on land towards the north and west. The trees are prominent within their immediate setting, and whilst they can be readily viewed from adjacent public

open space and rights of way, their canopies are also visible across a reasonably long distance.

5. The proposed dwelling would be tightly fitted within the narrowing boundaries of the plot, with the access provided between the trunks of 2 of the large trees on site. Though the proposed foundation design would minimise adverse effects on roots, the canopies of the trees would continue to dominate the plot, overhanging the dwelling, its parking space and most of the outdoor amenity space. Some gaps would exist in the canopy towards the south. However, given that some of these gaps appear to be the product of recent pruning they could easily be closed by regrowth, and/or by future growth of trees outside the plot. Resultant shading and obstruction would cause adverse effects in relation to restricted access to daylight and sunlight, even in relation to the south facing elevation of the proposed dwelling. These adverse effects would be accentuated by the very limited space provided between windows on the east and west sides of the dwelling and boundary vegetation.
6. To the above would be added the general nuisance of falling branches, leaves and fruits/nuts, as too perceived risk. Whilst it may be possible to reinforce the construction of the roof of the dwelling and to strap the boughs of the overhanging trees, this would not wholly address the matter, particularly in relation to parked vehicles.
7. The above issues would be likely to generate pressure to heavily prune if not fell the trees on site. In each regard the effects on the trees would be negative, greatly reducing or resulting in loss of their amenity value. The fact that the trees are covered by a TPO would not in itself ensure that such pressure could be resisted by the Council. Indeed, if the trees were shown to adversely affect the living conditions of the occupants, as seems likely to be the case, the Council would find such pressure hard to resist.
8. Though incoming occupants would obviously be aware of the trees when moving into the dwelling, the long-term implications of living with them would only become apparent over time. Simple awareness of the trees would not therefore offer any certainty of their long-term retention free from pressure to prune or fell them.
9. Policy DEV28 of the Plymouth and South West Devon Joint Local Plan 2014-2034 (the JLP) states that development that would result in the loss or deterioration of the quality of high amenity trees, including protected trees, will not be permitted unless the need for, and benefits of the development in that location clearly outweigh the loss. In this regard there is no necessity to develop the site for housing, and the development itself would service no more than a general need for housing. The development would otherwise provide only one additional unit. As the social and economic benefits generated by its provision would thus be limited, the harm caused by the development would not be outweighed.
10. For the reasons set out above I conclude that the development would be likely to have an adverse long-term effect on protected trees. It would therefore conflict with Policy DEV28 of the JLP as outlined above.

Drainage

11. Though the site is located on land within Flood Zone 1, it also falls within a Critical Drainage Area (CDA) designated by the Environment Agency (the EA) in relation to the River Erme. As rainwater runoff from within the CDA contributes to downstream flooding the EA advises that all new development will have to play a part in reducing rainfall runoff rates. A range of measures are outlined including following the SuDs hierarchy, providing on-site water storage, and mimicking greenfield performance in off-site runoff to a maximum of 1 in 10 year discharge rates.
12. Construction of the dwelling to avoid adverse effects on tree roots would allow rainwater to continue to percolate into the ground. However, this would not represent the provision of drainage infrastructure, nor would it obviously achieve an improvement in reducing rainfall runoff rates. Though it is also stated that the dwelling design would 'implement rainwater harvesting principles', few details of what this means have been provided, and it is unclear how this would be compatible with maintaining the water supply to tree roots. Given that tree roots are thought to extend across almost the whole of the site it is otherwise apparent that installing any additional subsurface drainage infrastructure would itself be likely to entail adverse effects.
13. In the absence of any detailed drainage scheme, or consideration of how the welfare of trees on site could be appropriately balanced against the need to achieve a reduction in rainfall runoff, it is not possible to conclude that the scheme would satisfactorily address either matter. In such circumstances the imposition of a condition allowing these matters to be resolved at a later stage would not be appropriate.
14. For the reasons set out above I conclude that the appellant has failed to demonstrate that the development would provide appropriate on-site drainage. The scheme would therefore conflict with Policy DEV35 of the JLP which amongst other things states that development should minimise surface water run-off and ensure that it does not increase flood risks elsewhere.

Carbon emissions

15. In support of a target to halve carbon emissions by 2034, and insofar as it relates to non-major development, Policy DEV32 of the JLP states that developments should identify opportunities to minimise the use of natural resources over their lifetimes, and that proposals will be considered in relation to the 'energy hierarchy' that it sets out. Relevant parts of the policy are not prescriptive of the measures that should be taken, but clearly an assessment can only be made if details are provided. In this regard, though the Council states that a 'compliance statement' is a local validation requirement, the application appears to have been validated without one.
16. At appeal the appellant has stated that 3 trees will be planted on Council owned land, presumably as an off-site carbon reduction measure. This lies at the bottom of the energy hierarchy set out within Policy DEV32. Whilst the Council has not confirmed that it accepts the planting of trees on its land, even if both this and long term management could be secured, it would not fully address the matters set out within Policy DEV32. Nor do the plans.

17. Details of how the use of natural resources could be minimised over the lifetime in the development, including how the energy load of the development could be reduced, the energy efficiency of the fabric could be maximised, and how renewable energy could be generated on site, could all nonetheless be appropriately secured by condition.
18. For the reasons set out above I conclude that, subject to imposition of a suitably worded condition, the development would incorporate measures to minimise carbon emissions. It would therefore comply with Policy DEV32 of the JLP as outlined above.

Other Matters

Listed building

19. As noted above, the site is former garden land. This was severed from the plot upon which stands Stowford Manor, a Grade II listed building (the listed building). Severance took place in the recent past, long after Stowford Manor was listed. In accordance with Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 I am required to have special regard to the desirability of preserving the setting of the listed building.
20. Insofar as it is relevant to this appeal the special interest and significance of the listed building resides its mid C19th date and design as a large Italianate Villa which was historically home to the owner of Stowford Mill to the west.
21. The immediate physical and visual setting of the listed building both is and was historically provided by its garden. This was of sufficient size to support the planting of large ornamental trees, both emphasising the status of the dwelling and providing attractive surroundings. As identified by the Council, the mature trees within the site derive from a historic ornamental scheme, and other large mature trees remain within the retained part of the garden. Indeed, the TPO was evidently designated to cover the whole of the garden as it existed prior to plot severance. The relationship between the site and the garden remains appreciable given their relative shapes, layout and intervisibility, and notwithstanding the hedge planted along the current boundary between. A direct relationship as such exists between the historic ornamental planting on the site, that within the garden, and the listed building. In this regard planting within the site contributes towards appreciation of the historic significance of the listed building, and thus forms a positive component of its setting.
22. Given the above, and given that I have elsewhere found that the mature trees on site would be placed at risk by the development, I can only logically conclude that the development would fail to conserve the positive contribution that they make to appreciation of the significance of the listed building. It follows that the setting of the listed building would not be preserved.
23. The harm caused to the significance of the listed building would be less than substantial, with the adverse effects of modest nature. Such harm attracts considerable importance and weight. In accordance with paragraph 202 of the National Planning Policy Framework, it is necessary to balance this harm against the public benefits of the scheme. As I have already considered the scheme's benefits in relation to trees above, it is clear that public benefits would not outweigh the harm caused.

24. The scheme's failure to preserve the setting of the listed building was not identified by the Council, and it was not therefore a reason for refusal of planning permission. Indeed, it appears that despite reaching similar general conclusions in relation to trees, the Council did not go on to consider their broader implications in terms of the listed building. However, whilst my findings therefore provide an additional indication that the appeal should be dismissed, they are not determinative of its outcome. This is because my conclusions in relation to trees and drainage above already provide sufficient, and in the case of trees, overlapping grounds for dismissal. Had this not been so I would have sought further comment from the parties. As matters stand, I am satisfied that my findings do not prejudice the interests of either party.

Habitats sites

25. Planning permission was partly refused on the basis that the scheme would fail to mitigate its likely significant effect on the integrity of the Plymouth Sound and Estuaries Special Area of Conservation, and the Tamar Estuaries Complex Special Protection Area. This would arise due to increased recreational pressure derived from the growth in population that the development would support. In accordance with local strategy, mitigation is provided for through payment of a financial contribution secured by a planning obligation. Though the appellant has indicated willingness to enter into such an obligation, none has been submitted. Had I been minded to allow the appeal it would have been necessary for me to consider this matter in further detail, undertaking an appropriate assessment of the scheme. However, as I am dismissing the appeal for other reasons no further consideration is required.

Protected species

26. A brief ecological report was submitted with the application outlining constraints and opportunities. The report is explicit in stating that further survey work in relation to bats and reptiles is required. Based on the evidence before me it does not appear that these surveys were undertaken, and thus, notwithstanding the Council's conclusion that the effects on protected species would be acceptable, the likely impacts of the scheme on reptiles and bats are unknown. Again, had I not resolved to dismiss the appeal for other reasons I would have considered this matter in further detail, seeking further comment from the parties. However, as matters stand, no further consideration is required.

Conclusion

27. For the reasons set out above the effects of the development in relation to trees and drainage would be unacceptable, giving rise to conflict with the development plan. There are no other considerations which alter or outweigh these findings. I therefore conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR