



Appeal Decision

Site visit made on 21 February 2023

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 03 March 2023

Appeal Ref: APP/N1160/W/22/3293741

Land adjacent to 28 Petersfield Close, Plymouth PL3 6QP

- 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 Anthony Cassidy against the decision of Plymouth City Council.
 - The application Ref: 21/01071/FUL, dated 9 June 2021, was refused by notice dated 21 December 2021.
 - The development proposed is a detached dwelling with associated car parking, refuse storage and amenity space.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal area:
 - The effect of the proposed development on biodiversity; and,
 - The effect of the proposed development on protected trees.

Reasons

Biodiversity

3. The appeal site comprises sloping land located within a residential area. East of and immediately adjacent to the site is an area of undeveloped land containing woodland.
4. Policy DEV26 of the Plymouth and South West Devon Joint Local Plan (March 2019) (the JLP) concerns protecting and enhancing biodiversity and geological conservation and which, amongst other matters, provides that harmful impacts on protected species must be avoided wherever possible and that the level of biodiversity net gain required will be proportionate to the type, scale and impact of the development.
5. A preliminary ecology report (the PEA) assessed the site as having a low ecological value. The PEA identified an Ash tree on the undeveloped land adjacent to the site and concluded that, given the characteristics of the tree, it "may support roosting bats". The PEA further maintained that additional survey work was deemed unnecessary. However, the PEA recommendation that no further survey work was required was based on the contention that it would provide little additional value or information in relation to the ecology, "on the site".

6. A further subsequent Ecological Impact Assessment was carried out, which again assessed the site as having low ecology value and which also identified the Ash tree adjacent to the site. That assessment concluded that there would be no impact on biodiversity subject to certain mitigation measures including inbuilt invertebrate, bird and bat provisions, the protection of the adjacent identified tree and through provision of a sensitive lighting plan which avoids illuminating the adjacent woodland and identified tree. The Ecological Impact Assessment confirms that no further bat surveys were completed or were required.
7. Since the planning application was refused by the Council, further information in respect of biodiversity has been provided within a "Response to Ecological Reasons for Refusal" document. That document maintains that whilst no bat survey had been conducted, trees would be protected during construction and the previously identified Ash tree has no potential for roosting bats by reason of an upwards facing trunk split that would collect water. The document further contends that light spill from internal and external sources, during construction and occupancy phases of development, could be controlled through the imposition of planning conditions.
8. It appears that the "Response to Ecological Reasons for Refusal" document was constructed from information obtained during the winter months. Given that the details provided in the various ecological reports does differ in terms of whether the identified Ash tree has potential for roosting bats, in my view and due to the location of the site adjacent to the woodland, a full bat survey would be required. It would not be possible to identify the potential impacts on bats using the wider area or confirm what mitigation measures would be appropriate without a full survey.
9. In terms of light spill, whilst it is acknowledged that the Council's submission refers to windows on the west elevation of the proposed dwelling, it is clear that the submissions relate to openings on the east elevation of the proposed dwelling which face the adjacent woodland. In that regard, the plans show a large window extending over three floors of accommodation and which serves the staircase at the dwelling.
10. The Appellant has suggested that lighting could be adequately controlled by planning condition to ensure protection of any potential bat roost or commuting routes along the adjacent woodland edge. The wording of the suggested conditions appears to only apply to the control of external lighting sources and therefore would not mitigate for the effects of light spill from the large window in the east elevation of the proposed dwelling.
11. Whilst I note that the site is within a residential area, given the substantial scale of the abovementioned window and its proximity to the woodland, light spill from the proposed development could have a significant effect on bats. In that respect, the Appellant has further put it to me that a further planning condition regarding "light spill window films" could be used to address the issue of light spill from internal sources. However, I have not been provided with the suggested wording for such a condition and therefore cannot be sure that such a condition would be sufficiently precise so as to be enforceable.
12. The Plymouth and West Devon Supplementary Planning Document (the SPD) acknowledges that Policy DEV26 of the JLP refers to biodiversity net gain in terms of major development. Nonetheless, the SPD provides that biodiversity

net gain will be encouraged for minor development and that developments should deliver proportionate and measurable biodiversity net gain or enhancements.

13. The proposal is not for major development. The SPD provides that prior to release of the simplified version of the Department for Environment, Food and Rural Affairs biodiversity metric, minor developments will be encouraged to submit an Ecological Opportunities Plan and biodiversity budget. Whilst I acknowledge the Council's submissions in that regard, the development has been supported by a mitigation and opportunities plan and it does not appear that a final version of the simplified version of the metric has been published. However, and notwithstanding the concerns as above regarding bats, the details of mitigation and enhancement measures does not provide information regarding how the measures would be sustained in the longer term.
14. I conclude that the evidence does not satisfactorily demonstrate that the scheme would have an acceptable effect on the biodiversity of the site, and in particular in respect of bats. Accordingly, the proposed development would not accord with Policy DEV26 of the JLP and the National Planning Policy Framework (the Framework) which seek, amongst other things, that development should support the protection, conservation, enhancement and restoration of biodiversity across the area.

Protected Trees

15. Policy DEV28 of the JLP concerns trees, woodlands and hedgerows and provides that development should be designed so as to avoid the loss or deterioration of woodlands, trees and hedgerows.
16. There are three Ash trees adjacent to the site within the abovementioned woodland that are subject of a Tree Preservation Order (TPO) and which would be retained. However, the root protection area (RPA) of two of those Ash trees would be overlapped by a retaining wall and the footprint of the proposed dwelling.
17. The submitted Arboricultural Impact Assessment (the AIA) identifies and categorises the Ash trees which has the RPA being overlapped by the retaining wall and proposed building, as being unremarkable trees of limited merit, which display ash dieback disease. The AIA further maintains that by reason of previous groundworks at the site which included a retaining wall structure, the RPA of one of the identified Ash trees has been removed, leaving a void in the area where the proposed development would overlap. The AIA recommends a tree protection plan which includes provision of tree protection fencing during construction.
18. Whilst I note the submissions with regards to previous works at the site, I have not been provided with any information regarding the extent of those works. As such I cannot be sure that, given the passage of time, even in the event that previous development did create a void space, then tree roots could have grown around or over that previously installed structure. Therefore, I cannot be certain that there are no roots in the area where the proposed retaining wall or proposed dwelling would be positioned.
19. I have noted the AIA's categorisation of the two trees which have RPAs overlapped by the proposed development. However, these trees are preserved

by a TPO, suggesting that they are worthy of protection due to their contribution to the character and appearance of the area. Given that the proposal would occupy a proportion of the RPAs, and that the susceptibility of trees to suffer adverse health when only a relatively small proportion of their roots are damaged, it has not been demonstrated to my satisfaction that the proposal would ensure the long-term health and survival of these protected trees.

20. The Appellant has put it to me that they would accept a pre-commencement planning condition requiring the submission of further details regarding construction of the proposed retaining wall and which confirms that the development would not impact upon the protected trees. However, I am not satisfied that a condition requiring the submission of such details would be appropriate given that no suitable method for constructing the proposal without undermining the tree roots has been demonstrated.
21. In the absence of sufficient information to the contrary, I am unable to conclude that the development could be undertaken without causing irreversible harm to the long term longevity and wellbeing of the protected identified Ash trees. The development therefore conflicts with Policy DEV28 of the JLP.

Other Matters

22. The submissions before me confirm that extant planning permission exists for residential development at the site, and it is acknowledged that that extant permission represents a fall back position. I accept that there is a greater than theoretical possibility that the fall back position could be constructed in the event that this appeal was dismissed.
23. However, whilst the fall back position supports the principle of residential development at the site, I have not been provided with any substantive details of that previous permission including information on layout, any planning conditions that applied or in respect of any measures to protect trees and biodiversity. I therefore cannot be sure what impact that previous permission would have in comparison to the scheme before me with regards to the above main issues. Accordingly, I only attribute limited weight to that consideration in the determination of this appeal.
24. Nonetheless, whilst noting the proposal would assist with the Government's objective to boost the supply of housing and acknowledging that small sites can make an important contribution to meeting the housing requirement of an area and are often built out relatively quickly, the appeal scheme would only make a very limited contribution towards housing supply. The proposal would be located with convenient access to a wide range of services and facilities, with economic benefits arising through employment opportunities during construction and through the future spend of occupants within local businesses. Given the scale of the proposal, I attach only limited weight to those benefits.
25. For the reasons given above, the appeal scheme would unacceptably affect biodiversity and I cannot be sure that the proposal would not have a detrimental impact on the RPA of protected trees. The identified harm and resulting development plan conflict weighs significantly against the proposal and outweighs the benefits of the scheme. Given the harm identified in respect

of the main issues, the environmental dimension of sustainable development would not be achieved.

26. Interested parties also raise concerns on the grounds of highway safety and impact on the living conditions of nearby residents. These are important matters and I have taken into account all of the evidence before me. However, given my findings in relation to the main issues above, these are not matters that have been critical to my decision.

Conclusion

27. For the reasons given above I conclude that the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR