



Appeal Decision

Site visit made on [Event Date]

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 April 2023

Appeal Ref: APP/Q1153/W/22/3308601

**Land at Exbourne, Land to the north of Town Living Cross,
Exbourne EX20 3SH**

- 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 Ben Blackburn of Fog Developments Ltd against the decision of West Devon Borough Council.
 - The application Ref 0332/22, dated 28 January 2022, was refused by notice dated 13 September 2022.
 - The development proposed is erection of three dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on (i) the character and appearance of the area; and (ii) the retention of the protected tree.

Reasons

Character and appearance

3. The site forms the thin wedge of a larger and expansive agricultural field set behind a well-established roadside hedge and is on the outer periphery of the village. Visibility into the site and the adjoining property is available on the approach road from the north, with this modest scaled property forming a gentle introduction to the village setting. The surrounding area is characterised by low density, single storey and two storey properties that lead to the higher density village core with its attractive, smaller cottages. Road fronted properties are well screened from more distanced views by tall hedges and a winding country lane which adds to the overall quality of the area. Properties within Exbourne are of a varied design with render, slate and thatched roofing being the prominent material base.
4. The proposal would provide a terrace of two bed properties where there is currently an under provision, although I do note that the proposed flexible working office rooms could be used as additional bedrooms. Suitable hipped roof design and sympathetic external materials would be provided on the building that would meet recognised space standards. Furthermore, the proposal would retain boundary trees and hedges and include an orientation that would maximise natural sunlight.

5. Despite the above, the scheme would nevertheless introduce a particularly tall three storey building of a scale and massing that would appear excessive and out of place when viewed from the lane adjacent to the site and when viewed from the north. Consequently, the proposal would not be sympathetic to local character and would harmfully dominate the landscape, rather than being seen against the backdrop of the more modest scale existing dwellings that form the entrance to the village.
6. I therefore conclude on this main issue that the proposal would significantly harm the character and appearance of the area. It would be contrary to Policies DEV20 and DEV23 of the Plymouth & South West Devon Joint Local Plan 2019 (JLP) which amongst other things seek to protect and improve the quality of the built environment through having regard to scale, massing, height and local distinctiveness. The proposal would also conflict with paragraph 130 of the National Planning Policy Framework (the Framework) where decisions should ensure that developments add to the overall quality of the area.

Protected tree

7. The well-established and protected oak tree includes non-damaging ivy growth and is located towards the east corner of the site. It is an attractive specimen that makes a significant and positive contribution to the visual amenity of the area (as recognised by its inclusion in the Tree Preservation Order). It can be seen from the adjacent lane and has branches that overhang part of the site. The submitted Arboricultural Impact Assessment (AIA) indicates that the tree has a good degree of life expectancy, and I have no substantive evidence before me to demonstrate that the tree would be unlikely to survive on site for many years.
8. There is an extant planning permission on this site where side gardens and a smaller parking area would encroach onto the root protection area (RPA) surrounding the protected oak tree. However, the proposed layout is materially different in that it would include two parking spaces and a large area of tarmac close to the front of one property within the RPA. A no dig solution plan covers the proposed RPA, though protective fencing and barriers would need to be erected abutting the proposed front elevation of one of the properties. Additionally, although service runs for the proposed project would be planned outside any RPA, I cannot be certain that the protective fencing shown on the submitted AIA plan demonstrates how foundations and the build could be achieved without harmfully encroaching onto the RPA. Given this degree of uncertainty, the use of conditions would not be reasonable in this case as a logical and agreed methodology would be required to ensure the tree's protection.
9. Furthermore, given the orientation of the proposed properties, future occupiers may wish to prune or fell the tree where root spread may cause damage to hard standings or where frontages are heavily shaded by overhanging and potentially dangerous branches. Even if the no dig cellular solution could be achieved, for the above reasons, the longevity of the tree would nevertheless be likely to be put under significant pressure through the lifetime of the development as proposed.
10. I therefore conclude that the proposal would be likely to introduce significant pressure on the retention of the protected tree. As such, the proposed development would be contrary to Policies DEV20 and DEV23 of the JLP which

in this respect seek to achieve a good quality sense of place and character through the use of existing assets such as trees.

Other Matters

11. Even if the extant planning permission were to be implemented and subsequently extended through permitted development rights, that scheme is materially different to the proposal before me as it includes a smaller development with fewer units over an alternative layout arrangement. Consequently, it would be less harmful than the proposal before me.
12. I am mindful of a separate outline appeal decision at this location where a previous Inspector noted that although urban form would be extended into the countryside, a well-designed and moderately sized development would not undermine the qualities of the street scene. Accordingly, I have determined this appeal on its merits taking into account all the evidence before me and my own observations.
13. I note the appellant's comments in relation to the processing of the planning application, however, these do not have any bearing on my decision which is based on the planning merits of the development.
14. Although there may be unrestricted commercial uses nearby, there is no substantive evidence to demonstrate this would justify the development proposed or mitigate against the harm I have identified. Therefore, this has not been determinative to my findings on the main issues.
15. Additionally, it has not been shown that the properties would meet the definitions of affordable housing as set out in the Framework or that there would be a way to secure such accommodation before me.

Conclusion

16. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

J Hills

INSPECTOR