



Appeal Decision

Site visit made on 28 March 2023

by J J Evans BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2023

Appeal Ref: APP/W3330/W/22/3295972

Land at Beacon Road, Minehead, Somerset TA24 5SE

- 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 J Way against the decision of Somerset West and Taunton Council.
 - The application Ref 3/21/21/025, dated 24 February 2021, was refused by notice dated 26 November 2021.
 - The development proposed is the erection of up to 12 new houses on land south of Beacon Road, Minehead.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted as an outline, with all matters reserved for future consideration. However, the drawings submitted with the application show details of access and layout. The Council have considered these matters as being illustrative, albeit no such annotation was indicated on the drawings. The appellant has confirmed that all matters are reserved, with access details shown to demonstrate that they could be provided.
3. Clevelands and St Michael's Church are listed buildings (grade II and II* respectively), within the Higher Town Conservation Area. As required by Sections 66 and 72 of 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, and of preserving or enhancing the character or appearance of the conservation area.
4. The listing description for Clevelands refers to the property name as Cleveland, and this is the property name given on the ordnance survey plans that have been provided by the parties for the appeal. However, within the evidence of the parties the property is known as Clevelands, and this was consistent with what I saw at my site visit. I am satisfied that the two properties are the same, and have referred to the name Clevelands in the appeal decision.

5. The appeal site is within 0.5km of the Exmoor Heaths Special Area of Conservation. The Conservation of Habitats and Species Regulations (2017)(the Regulations) require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects, both directly and indirectly, from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority. I shall return to this matter below.

Main Issues

6. The main issues in this case are:
- firstly, the effect of the proposal upon the character and appearance of the area, having particular regard to the effect upon the settings of nearby listed buildings, upon the Higher Town Conservation Area, and upon protected trees;
 - secondly, the impact of the proposal upon protected species within the area;
 - thirdly, whether the proposal would make adequate provision for surface water drainage; and
 - fourthly, whether the proposal would make adequate provision for securing any additional need arising from the development, having particular regard to affordable housing.

Reasons

Character and Appearance

7. The appeal site comprises an area of land upon a steeply sloping hillside. Beacon Road bounds the northern edge of the site, beyond which is a loose-knit row of detached houses positioned within generous gardens. The site is within the Higher Town Conservation Area, a designation which acknowledges the importance of the relationship between the town and the surrounding landscape. North Hill forms an impressive green backdrop to the town, and given its steep sides and proximity to the coast, it forms an imposing landscape feature that can be seen from many miles away. The presence of numerous tall trees, many of which are evergreen, creates a green top to the hill. Tree cover extends down the hillside, including within residential gardens. As such the verdant nature of the hill is a distinct feature of the conservation area, particularly as it makes a striking contrast with the dense urban grain found upon the lower slopes of the hill.
8. There are a variety of tall trees in the appeal site, as well as young trees and saplings, including self-seeded specimens. The long row of mostly evergreen trees that delineates Beacon Road, are a distinctive linear group within the landscape. Not only do they contribute to the verdant appearance of the hill, but they also serve to screen the houses to the northern side of the road. The variety of species and the wide age

ranges of trees within the site is an integral element of the green continuity of the hillside, and they make a positive contribution to the conservation area.

9. Large, detached houses are another feature of the area, many of which derive from the extension of the town during the Victorian and Edwardian periods. The high quality forms of the houses with their rich period detailing reflects the historic development of the town as a coastal resort. As many of these houses are positioned within generous plots, there are mature trees growing amongst them, thereby maintaining the verdant nature of the upper section of the hillside. These features are all part of the significance of the conservation area.
10. Clevelands is one of the large houses that positively contributes towards the character and appearance of the conservation area. Positioned within generous gardens, this villa has an attractive decorative domestic revival style, which is part of the special interest of this listed building. This, and its large size, hipped roofs and mock timber framing make it a distinctive building, and one that can be seen from long distances away. The generous gardens to the property set it apart from the other buildings, and as it is just below the treed hilltop, given its size and position this listed building is a landmark within the town. Not only does the house reflect the historic development of the town over time, but its dominating prominence is part of the significance of this listed building.
11. In addition to Clevelands, another focal point on the hillside is the church. This parish church has a commanding presence within the town, reflecting its social and historic importance. The elevated position of the church, and its large size makes it visible throughout the town, including from the A39 and from along the Esplanade. This, when combined with the imposing height of the tower makes it the focal building within the area, and this is part of the special interest of this listed building. The prominence of the church is enhanced by it being experienced against the treed hilltop. Given its position and its social importance within the town, the church is a landmark building, and this importance is part of the significance of this listed building.
12. Although the proposed houses would be higher up the hill than either Clevelands or the church, they would nevertheless be a harmfully intrusive group within the settings of these listed buildings, and the dwellings would draw the eye. Part of the prominence of the listed buildings is that they are set against a largely uninterrupted verdant backdrop. Whilst acknowledging that all matters are reserved, the provision of twelve dwellings in such a location would be conspicuously noticeable given their position high up the hillside.
13. It might be the case that the houses could be arranged in groups and be designed to minimise their visual impact, such as being two storey, having green roofs, and timber walling. From some views lower down the hillside and from the old harbour area the houses would not be

visible. Notwithstanding this, the site is plainly visible from a number of other views within and beyond the town, and the hill is such a prominent feature in the area that such measures would not mitigate the essential change in the appearance of the site. The undeveloped verdant nature of the appeal site and the contribution it makes to the continuous green appearance of the hillside would be lost through the provision of not only the dwellings, but through the associated ancillary domestic uses, such as garages, multiple gardens, service roads and accesses.

14. The steep nature of the hillside and the narrow linear shape of the site would constrain any development. Even if the houses were grouped together to reduce their footprints, a characteristic of the area is the individual, detached nature of most of the dwellings, and any grouping of similar styled and sized houses in such a prominent location would be an incongruous addition in such a context. The provision of up to twelve homes on such a steep hillside in an elevated position would be a conspicuous and distracting addition that would erode the landmark dominance of the listed buildings. Furthermore, the houses would harmfully interrupt the verdant continuity and dominance of the hillside and the contribution it makes to the conservation area.
15. The intrusive nature of the development would be exaggerated by the need to undertake ground and levelling works. Even if the dwellings could be designed to accommodate the steep slope, the provision of service roads and multiple accesses would result in ground works that would necessitate the removal of both trees and understorey vegetation. It is the size of the trees and their abundance that gives a sylvan, cohesive identity to the hilltop. The trees within the appeal site as well as those on the site boundaries are integral to the character and appearance of the conservation area, as well as maintaining the green backdrop that sets off the importance of the church and Cleveland's.
16. The National Planning Policy Framework (the Framework) emphasises the importance of trees and the contribution they make to an area, and BS5837 – Trees in Relation to Design, Demolition and Construction makes some allowance for disturbance to the roots and crowns of trees during construction works. Trees self-optimize with regard to their location, and in this instance the proposed protection measures have been tightly drawn around the trees. The Monterey Pines and Holm Oaks along Beacon Road are imposing trees with broad canopies. The provision of vehicular accesses would impact both upon the roots and crowns of these trees, but little information has been provided to demonstrate that such works would not be detrimental to their health and wellbeing. The size and age of these trees is such that they would have extensive root spreads, and neither this nor the impact of the slope upon these trees has been assessed with regard to root protection areas.
17. The presence of protected trees, including those protected through being within a conservation area, should inform development. This would be

particularly pertinent in this case due to the number of trees, and the positive contribution they make to the conservation area, and to the biodiversity value of the locality. Even self-seeded trees and those of less than perfect form contribute. A survey of the trees along Beacon Road has been provided, but the tree protection plan does not accurately portray the position of the trees nor their canopy spreads, and little detail has been provided regarding the impact of the development upon either the surveyed trees or any of the others within or near the site. Whilst acknowledging that all matters are reserved, the lack of information before me relating to the direct and indirect impact of the development upon the trees is such that I am not convinced conditions would be sufficient to protect the trees during construction, nor that the development would ensure their long-term health and vitality, and thereby the contribution they make to biodiversity and the character and appearance of the conservation area. Additional planting is proposed to compensate for those trees that would be felled, but the impact of any replacement trees would take many years to make a similar contribution to the area, if ever.

18. Those trees that would be retained would impact on the living conditions of future occupiers, as they would dominate the homes and their gardens, particularly so as several are evergreens. It may be the case that some people would wish to live in a woodland setting, but this cannot be guaranteed for the lifetime of the development. The trees would impact on outlook and light levels, as well as create a sense of enclosure. The close proximity of the trees to any homes, gardens and access roads would require regular and ongoing management and maintenance, and in the case of the Monterey Pines this would include regular cone removal. Having regard to this and the attractive panoramic views that would be available to future occupiers, there would be pressure to remove trees, with the consequential harm to the conservation area.
19. The appellant has drawn my attention to the permission for two dwellings at Beacon Road that are within the conservation area, pointing out that the development was considered acceptable in terms of policy issues. However, these houses are set well back from the road behind generous front gardens, and are away from the steep slope of the hillside on a levelled area. This separation retains the verdant nature of the hillside, and thereby significantly reduces the impact these houses have. Given these differences, these houses do not form a binding precedent for allowing the appeal.
20. 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. In this case the proposal would lead to less than substantial harm given the size of the development when compared to that of the conservation area and that of the settings of the listed buildings. Nevertheless, these harms carry

considerable weight, and the Framework requires that these harms must be weighed against the public benefits of the proposal.

21. The provision of five affordable homes would be a significant public benefit, and such housing would assist in meeting the needs of the local community. Future occupiers would make a small contribution to the local economy, including supporting local services, and there would be a time-limited economic benefit arising from the construction of the housing. Balanced against this is that the affordable housing has not been secured and this significantly tempers the weight attributable to this public benefit. Given this, the public benefit arising from the scheme would not outweigh the significant harm that would arise to the conservation area and to the settings of the listed buildings.
22. For these reasons the proposal would have a significant and unacceptable impact upon the character and appearance of the area, and the suggested conditions would not mitigate this harm. The harms to the conservation area and to the settings of nearby listed buildings would not be outweighed by public benefits, and consequently the scheme would fail to accord with the Framework and the Act. The proposal would be contrary to Policies NH1, NH2 and NH6, of the West Somerset Local Plan (2016) (LP). These policies require, amongst other things, that development should sustain and/or enhance historic heritage, particularly those elements that contribute to an area's distinctive character and sense of place, that development in a conservation area should preserve or enhance its character and appearance, and that biodiversity and ecological networks are protected and enhanced.

Protected Species and Habitats

23. The site is approximately 0.5km away from the Exmoor Heaths Special Area of Conservation (SAC), and the appellant's Preliminary Ecological Survey and Protected Species Survey Report (dated September 2021) (PEA), refers to the ecological potential of the site for a variety of species, including breeding and feeding opportunities for birds and mammals. Local residents and the Council have referred to the presence of protected species in the area, including bats. In addition, the proximity of the appeal site to the SAC is such that future occupiers would be likely to impact upon the site, both directly and indirectly, including through increased recreational pressures. Having regard to this, an assessment of the impact of the development upon the integrity of the SAC and upon any protected species in the area would be necessary. I shall return to the matter of the impact of the proposal upon the integrity of the SAC later.
24. The impact of the proposal on protected species and habitats has not been assessed in any detail. The scheme would require the felling of trees and the removal of understorey vegetation, all of which could impact upon any protected species living within, near or using the site

for breeding and foraging, including bats. The survey for the PEA was restricted to the accessible parts of the site, and consequently it could be the case that protected species are on the site or use it. A bat survey has been undertaken, but it occurred in February, which is a time of year when bat activity would be very limited. Having regard to these limitations, including that the PEA recommends a further bat survey, the impact of the proposal on protected species cannot be assessed with any certainty.

25. The presence, use or absence of protected species is a matter that should be assessed so as to inform the nature of any scheme. Circular 06/2005 – Biodiversity and Geological Conservation (the Circular) makes it clear that the presence of a protected species is a material consideration when development is being considered. Consequently, it is essential that the presence or otherwise of protected species and the extent that they may be affected by the development is established before planning permission is granted so as to ensure that all relevant material considerations have been addressed. The Circular requires that surveys should only be conditioned in exceptional circumstances. Having regard to the evidence before me, including the proximity of the appeal site to protected habitat sites, a condition requiring a survey would not be acceptable. Furthermore, any measures to increase the biodiversity value of the site would also need to be informed by an up-to-date ecology survey.
26. I have noted the comments of the previous Inspector (appeal ref: APP/W3330/W/20/3257876) and the precautionary actions and work recommendations within the PEA. However, the requirements of the Framework are that the planning system should contribute to and enhance the natural environment, and minimise impacts upon biodiversity. This should be integral to informing the nature of any proposal. In this case the scheme has failed to demonstrate whether the development would have an impact upon protected species and habitats, nor has it been demonstrated that any impacts could be minimised and successfully mitigated. The proposal would be contrary to the requirements of LP Policy NH6, which requires amongst other things, that development should not generate an adverse impact on biodiversity, with measures being taken to protect or mitigate adverse impacts, and to ensure a gain in biodiversity where possible, thereby reflecting objectives of the Framework.

Drainage

27. The scheme proposes a variety of drainage measures, including keeping hard surfaces to a minimum, green roofs, and rainwater harvesting. The appellant considers that suitable sustainable water drainage systems can be provided within the site, including through a proposed infiltration basin.

28. Wessex Water have referred to surface water drainage being rectified as the site progresses. However, the circumstances of this case are such that the matter of drainage would need to be addressed rather than left as a conditional requirement so as to ensure that development could take place without water discharging from the site into other land. This would be particularly necessary given the steep nature of the hillside, and I note that local residents have referred to there already being an existing runoff problem into adjoining land. The removal of trees and vegetation within the site would impact upon infiltration levels, and the concern in this situation would be flooding and ground instability. This is an issue identified in the appellant's Sustainable Drainage Assessment (June 2021) as it is recommended that infiltration capacity needs to be investigated, as well as advising that discharging to a nearby water feature would require the relevant owner(s) consent. In the absence of such detail, and having regard to the nature of the site and the consequential risk to people and property, requiring such detail through conditions provides no certainty that these matters could be satisfactorily resolved.
29. In addition, the Council have also identified other outstanding issues regarding the capacity to accommodate event-specific discharge rates, and that the alterations to the climate change allowances need to be considered. Furthermore, the response of Wessex Water to the appellant refers to a requirement for connection to sewers to occur where infiltration is not possible and that any alternatives have the agreement of all the relevant stakeholders.
30. There are a number of infiltration and drainage uncertainties arising from the proposal and it remains unclear as to whether they could be satisfactorily addressed. In light of these unresolved issues, conditions would not be reasonable. Nor would this uncertainty accord with the requirements of LP Policy CC6, which requires amongst other things, that development will only be permitted if adequate and environmentally acceptable measures are incorporated that provide suitable protection and mitigation both on-site and through displacement to adjoining land.

Affordable Housing

31. Minehead is an area of high demand for affordable housing. The provision of five affordable homes would help to meet some of this need, and would accord with the objectives of LP Policy SC4, which requires on-site provision for affordable housing on all sites of eleven or more dwellings. The appellant has agreed to enter into a legal agreement and would accept a condition in relation to this.
32. The appeal has not been supported by any completed and agreed legal agreement. Consequently, there is no mechanism to ensure that the affordable housing could be provided and maintained as such, including to ensure that occupancy criteria is defined and enforced, and that it remains affordable to first and subsequent occupiers.

33. As regards a condition, the Planning Practice Guidance advises that a negatively worded condition limiting the development that can occur until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. No exceptional circumstances have been put before me explaining why an obligation has not been provided, nor for the necessity of imposing such a condition.
34. As it stands, the scheme would not secure the required on-site affordable housing provision, and would fail to accord with the requirements of the above referenced LP Policy. It follows that any benefits accruing from the provision of these affordable homes is significantly tempered.

Other Matters

35. The Exmoor Heaths SAC are an extensive network of upland heaths, maritime cliffs and slopes that are nationally and internationally recognised and protected. These host priority habitats and species, including trees, plants, grasses, birds, and butterflies as well as other typical species of heaths, and sea cliffs. The close proximity of the site to protected habitat sites is such that the development and future occupiers would be likely to impact upon the SAC having a significant effect upon its integrity, both directly and indirectly. The Regulations require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority. Had I reached a different conclusion on the main issues, it would have been necessary for me to undertake an Appropriate Assessment and give further consideration to the likely effectiveness of mitigation and avoidance measures. However, as I am dismissing the appeal for other reasons this has not been necessary.
36. The appellant has referred to the Council's identification of the site within the Strategic Housing Land Availability Assessment (SHLAA) for ten dwellings, and that pre-application advice encouraged the appellant to submit an application. Whilst noting the identification of the site within the SHLAA, I am obliged to consider the scheme on the basis of the issues that it raises. Given the harms raised by the proposal, including the significant harms arising to designated heritage assets, the identification of the site within the SHLAA would not override these.
37. The appellant's concerns regarding the Council's handling of the application and pre-application, are procedural matters that fall to be pursued by other means separate from the appeal process and are not for me to consider.
38. Local residents have raised a number of matters, including loss of privacy, highway safety and construction traffic concerns, use of the site as a public space, the creation of a precedent, and that there have been numerous applications for development on the site. As regards the

latter points, each application and appeal has to be considered on its merits, and the future or any alternative use of the site is not a matter for consideration at the appeal. Of the planning considerations raised, following my findings on the main issues, I have no need to consider them further.

Conclusion

39. For the above reasons the adverse impacts arising from the proposal would significantly and demonstrably outweigh the aforementioned benefits, and the suggested conditions would not overcome these substantial harms. The proposal would conflict with the development plan and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR