



Appeal Decision

Site visit made on 18 July 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2023

Appeal Ref: APP/D1265/W/23/3315379

Edzell, Somers Road, Lyme Regis, Dorset DT7 3EX

- 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 Leo Markham against the decision of Dorset Council.
 - The application Ref P/FUL/2022/02872, dated 5 May 2022, was refused by notice dated 19 August 2022.
 - The development proposed is construction of dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the decision of the Council, the appellant has submitted additional information in the form of illustrative 3D rendered drawings and revised plans. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application.
3. I have had regard to the Wheatcroft Principles, the degree of engagement of all parties and the interests of fairness. Noting that the plans do not fundamentally amend the proposal but seek to add clarity and provide ground and finished floor levels, and the opportunity for the Council to fully respond, I do not consider that any party will be prejudiced if I take the information into account. I have subsequently referred to them in reaching my decision.

Main Issues

4. The main issues are:
 - The effect of the proposal on the character and appearance of the area; and
 - The effect of the proposal upon the living conditions of the occupiers of 'Pennard', with particular regard to outlook.

Reasons

Character and appearance

5. The appeal site forms part of an existing driveway and garden of the dwelling known as 'Edzell', located within a suburban residential area of Lyme Regis and within the Dorset Area of Outstanding Natural Beauty (AONB). The area surrounding the appeal site features dwellings set often in generous garden

areas, notable spacing between built form, and a prevalence of boundary planting. The steep topography of the surrounding area, as well as a mix of architectural styles and building scale, also results in some diversity of appearance. Overall, the area has a spacious and verdant character.

6. The appeal site is constrained due to its narrow width and boundary planting, of which the eastern mature boundary hedge and trees are subject to a Tree Protection Order¹ (the TPO). However, the site in general contributes to visual separation of built form and thus the spacious character of the area.
7. The proposal utilises a contemporary flat roof design approach which whilst two storey, would be set within the hillside minimising the height of the proposal. Nevertheless, the proposal would extend across a large proportion of the width of the site leaving limited space between the proposal, the site boundaries and the adjacent property beyond. Furthermore, the proposal, notwithstanding the proposed floor levels, would be clearly visible from the access onto Somers Road and from the northwest along Somers Fields over the garden of the neighbouring property Pennard.
8. The Council have raised concerns that the proposal would result in the loss of a section of hedging, including that subject to the TPO, and potentially impact the sustainability of the existing hedge. Although I note some disagreement between the parties as to if the TPO is relevant and enforceable, the existing access would be utilised and therefore the evidence before me does not indicate that any sections of hedging would be lost. Moreover, whilst in close proximity to the established boundary hedging, I see no reason why planning conditions could not be imposed in order to protect the planting during the construction phase or thereafter.
9. I also observed that the appeal site is currently prominent through a gap in the boundary hedge along Portland Heights and have noted the correspondence between parties in relation to the creation of this gap and also the recent grant of a planning permission for parking and access at the host dwelling. Notwithstanding, even if re-planting became established within the existing gap, and existing boundary planting retained, the proposal would still be clearly noticeable through gaps in foliage within the existing boundary hedge.
10. I acknowledge that the design and external materials of the proposed dwelling has been carefully considered in an attempt to minimise its impact on the appearance of the area. However, even though there is a variety of architectural design in the area, the contemporary appearance in this location, in close proximity to a neighbouring dwelling, is likely to draw the eye from available viewpoints, further emphasising the restricted width of the appeal site.
11. In combination, notwithstanding the screening afforded by established and any future proposed landscaping, these factors contribute to my finding that the appeal scheme would appear as a cramped form of development, at odds with the character and appearance of the surrounding residential area.

¹ TPO324

12. Another appeal decision² and other planning permissions³ granted by the Council that are cited by the appellant differ from the current proposal in several ways. While full details of the other cases are not before me, I observed that even if it is the case that other developments may have larger floor areas, be within smaller plots, or have a dwelling to plot size ratio similar to the current proposal (such as at Glen Tor), due to their spatial relationship with surrounding built form and their siting within their respective plots, these maintain the spacious character of the area. Moreover, the current appeal proposal and its respective site has its own circumstances and I therefore will determine it on its own merits.
13. For the above reasons, in conclusion on this first main issue, I find that the proposal would harm the character and appearance of the area. It would result in a cramped development within a restricted plot and would not actively improve legibility or reinforce the sense of place. Accordingly, the proposed development would be contrary to Policies ENV10 and ENV12 of the West Dorset Weymouth and Portland Local Plan 2015 (LP). These policies, amongst other things, seek for development to be informed by, and compliment and respect the character of the site and its surrounding area. Furthermore, for the same reasons, the proposal would also be contrary with paragraph 130 of the National Planning Policy Framework (Framework) which seeks to enhance the built environment and achieve well designed places.

Living conditions

14. The appellant states that the proposal would be setback by approximately 2.5m from the boundary, and 11.5m from the gable of the neighbouring property 'Pennard'. Furthermore, the proposal would be set into the hillside therefore reducing the overall height within the steeply sloping site.
15. Notwithstanding, the north west elevation would, despite the use of timber cladding, be largely blank above the ground floor windows, and combined with the length of the proposal, result in significant visual massing. Having noted the proposed site levels, I find that despite the roof height being below that of Pennard, and boundary hedge planting, the proposal would nonetheless appear as an overbearing feature when viewed from Pennard given the visual massing of the north west elevation and proximity from the boundary.
16. From my observations, I agree with the Council that the proposal would not result in additional significant overlooking of surrounding neighbouring properties due to window positions and separation distances. However, it would nevertheless appear overbearing and oppressive when viewed from the garden of Pennard.
17. Consequently, the proposal would have a harmful effect on the living conditions of the occupiers of Pennard. The proposal would therefore conflict with LP Policy ENV16 which requires, amongst other things, development to be designed to minimise the impact on the amenity of existing residents. The proposal would also conflict with paragraph 130 of the Framework where it seeks to ensure developments provide a high standard of amenity for existing users.

² APP/F1230/W/15/3133292

³ 1/W/98/000153, 1/W/99/000731, WD/16/002279, WD/D/17/001997, WD/D/17/002895, WD/D/19/000667, WD/D/20/000203

Other Matters

18. Interested parties have raised matters including rights of way and restrictive covenants that could prevent the development from taking place. However, these are civil matters that fall outside of the planning regime and are therefore not within the remit of this appeal.
19. I acknowledge that the development is within the development boundary of Lyme Regis and is within easy reach of nearby services and facilities and public transport connections. Furthermore, the proposal would provide appropriate access and parking arrangements, appropriate surface water management, retain hedging, and the Council have not raised any objection in relation to land stability or the effect of the proposal on the AONB and I see no reason to disagree. However, these matters represent an absence of harm rather than a positive benefit that weighs in favour of the proposal.

Conclusion

20. For the reasons given above, I find that the proposal would conflict with the development plan, read as a whole. No material considerations have been shown to have sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

S Harrington MA MRTPI

INSPECTOR