



Appeal Decision

Site visit made on 29 August 2023

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09.10.2023

Appeal Ref: APP/U1105/W/23/3315663

Brake View, Rockbeare Hill, Rockbeare EX5 2EZ

- 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 Ms Susan Wakley-Stoyle against the decision of East Devon District Council.
 - The application Ref 22/0173/FUL, dated 24 January 2022, was refused by notice dated 15 December 2022.
 - The development proposed is erection of a replacement two storey 4-bed detached dwelling.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Ms Susan Wakley-Stoyle against East Devon District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The Council submits that due to an administrative error, the reason for refusal set out in their decision notice did not reflect that contained within the Officer's report. The Council does not defend its reason for refusal and there is no dispute between the parties that the development would not be at risk from flooding. Consequently, I shall not consider that matter further. The Council has confirmed that its concerns in this appeal relate to the effect of the development on protected trees. This matter is addressed through the appeal submissions of the main parties and in particular the Council Officer's report. As the appellant has had the opportunity to comment they would not be prejudiced by this forming the main issue.

Main Issue

4. The main issue is the effect of the proposal on the retention of protected trees.

Reasons

5. The appeal site comprises a bungalow with a low ridge height within a generous plot that is surrounded by a variety of trees. The taller and well established trees on the southern boundary of the appeal site form a strong group of attractive specimens. They make a significant and positive contribution to the visual amenity of the area, as recognised by their inclusion in the Tree Preservation Order (TPO). The submitted Arboricultural Impact Assessment (AIA) indicates that the trees have a good degree of life

expectancy, and I have no substantive evidence before me to demonstrate that they would be unlikely to survive on site for many years.

6. Their branches and tall canopies shade and overhang parts of the appeal site near to the existing bungalow, but not to an extent where the existing outlook from the bungalow is dominated by their presence. Below these canopies, where the AIA indicates previous crown lifting has occurred, low level views of the countryside are possible between the large TPO tree trunks. As such, some light can pass underneath these canopies to reach the bungalow's ground floor rooms. Additionally, there are areas within the appeal site that receive full, direct sun.
7. The proposed replacement dwelling would avoid encroaching onto any root protection areas and no pruning would be required during its construction. Additionally, a southern projection was previously removed to bring the development further away from the tree canopies. Although on a similar footprint to the existing bungalow, the development would nevertheless be positioned closer to the TPO trees and their canopies than the existing bungalow. Furthermore, it would be of a far greater height than it, accommodating two storeys where the proposed first floor windows would be located in very close proximity to existing canopies. Despite root protection and pruning avoidance during construction, the outlook from these windows would be likely to worsen over time due to tree growth, thereby giving rise to pressure to undertake works to the trees.
8. Regardless of any TPO status, it would be difficult for the Council to resist applications for works to the trees in circumstances where safety or damage is at issue. In this respect, there may be some pressures associated with the existing bungalow. However, for the above reasons, the inharmonious positioning and height of the development would be likely to significantly exacerbate these pressures from potential future occupiers, particularly in relation to pruning. This would, in turn, be likely to harmfully affect the quality of the group of trees that make a significant and positive contribution to the visual amenity of the area. As such, the longevity of the trees would be likely to be put under significant pressure through the lifetime of the development as proposed.
9. I therefore conclude that the proposal would be likely to introduce significant pressure on the retention of the protected trees. As such, the proposed development would be contrary to Policy D3 of the East Devon Local Plan, adopted January 2016 which, in this respect, seeks to ensure developments deliver harmonious and sustainable relationships between structures and trees and do not result in a net loss in their quality.

Other Matters

10. Whilst the canopy of protected trees along the eastern boundary of the appeal site may be 1 metre or less from an adjacent property, I have assessed the development on its site specific merits, based on the evidence before me and my own observations. In respect of the eastern boundary trees, the appellant asserts that there appear to be adequate controls at the adjacent property. Even if this were to be the case, if circumstances were to alter, it would be difficult for the Council to resist applications to prune or fell trees in circumstances where safety or damage is at issue, as set out above.

11. I note that the appeal relates to a proposed replacement dwelling where the implications of any lack of five year housing land supply set out in the Framework would not apply as there would be no net change in dwelling numbers.
12. The development would be positioned in a more central location within the appeal site than the existing bungalow, which could give rise to improved living conditions overall for potential future occupiers. Furthermore, the property would be of a more energy efficient construction. However, any such benefits would not outweigh the harm I have identified in the main issue above.
13. Additionally, although the proposed design may be informed by similar examples in the wider locality, I have found that the scale, massing and bulk of the development would not deliver a harmonious relationship between structures and trees.

Conclusion

14. 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