



Appeal Decision

Site visit made on 24 October 2023

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31.10.2023

Appeal Ref: APP/Q1153/W/23/3321991

Land at Exbourne, Land to the north of Town Living Cross, Exbourne

- 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 against the decision of West Devon Borough Council.
 - The application Ref 3844/22/FUL, dated 3 November 2022, was refused by notice dated 17 January 2023.
 - The development proposed is erection of three dwellings (revised scheme).
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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, including the retention of the protected tree; and (ii) biodiversity.

Reasons

Character and appearance

3. The appeal site is within the corner of a wider open field on the periphery of the settlement of Exbourne. Views into the built form of the settlement are limited given the presence of characterful tall hedges, winding narrow lanes and changing topography; and it is these features that add to the overall quality of the area. Additionally, the site is set behind a well-established roadside hedge with visibility into it and the adjacent modest scaled property available from the approach road from the north.
4. The scheme would deliver 2 bed properties where there is currently an under provision, though the proposed office rooms could conceivably be used as 3rd bedrooms and consequently, I give limited weight in favour of the development in respect of the demonstrable need for smaller properties. The proposed materials would reflect those used in the local area and the building's orientation would maximise natural sunlight. Furthermore, the properties would meet space standards, would have suitable gardens and would retain some boundary features.
5. Notwithstanding any aforementioned benefits, although the proposed dwellings would be 2 storeys in height with suitable hipped roofing, the terrace of 3 units of accommodation would introduce a very wide single block of built form spanning much of the site's width, positioned in close proximity to the adjacent

lane. In that context, visibility of this building into the site would be amplified by the introduction of the proposed site access.

6. Consequently, the bulk and massing of the development would introduce an untypical and prominent feature into the landscape which would draw the eye of drivers of passing vehicles or pedestrians. As such, the proposed development would appear incongruous against the backdrop of the more modest scaled adjacent property that forms an entrance to the village.
7. *Protected Tree* - Towards the eastern corner of the appeal site lies a well-established oak tree that makes a significant and positive contribution towards the visual amenity of the area. This is recognised by its inclusion in the Tree Preservation Order. The submitted Arboricultural Impact Assessment (AIA) shows that the tree has a good degree of life expectancy and there is therefore no reason that it would be unlikely to survive on site for many years.
8. The appellant has provided a plan showing a comparison between the proposed development and an extant planning permission¹ for 2 properties. Although there are similarities in the orientation of the two schemes and their parking arrangements, they are materially different from one another as a corner of the proposed building would encroach into the root protection area (RPA). The AIA says that the construction of additional structures within the identified RPA is not currently applicable. However, from the evidence before me, even if the proposed orientation of the building would be likely to result in a similar pressure to carry out works to the tree when compared with the extant planning permission, I cannot be certain how foundations and the construction of the properties could be achieved without harmfully encroaching onto the RPA. In that context, the use of conditions would not be reasonable as a logical and agreed methodology would be necessary to ensure the tree would be protected.
9. I therefore conclude on this main issue that the proposal would harmfully affect the character and appearance of the area and the protected tree. It would conflict with policies DEV20 and DEV23 of the Plymouth & South West Devon Joint Local Plan 2019 (JLP) which, together in this respect, seek to protect and improve the quality of the built environment through having regard to scale, massing and local distinctiveness; and achieve a good quality sense of place and character through the use of existing assets such as trees. 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.

Biodiversity

10. Although the appellant's ecology report would have been valid at the time the Council made its decision, the evidence shows that it is unlikely to still be valid. Furthermore, the report is based on a different proposal over a different site area. The Planning Practice Guidance indicates that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate. Without an up to date or accurate survey of the relevant features, it is simply not known whether protected species are present and, if there are, whether mitigation measures would be

¹ Planning Ref: 0322/21/FUL

appropriate. There is a further question concerning the implementation of any such measures. Given this degree of uncertainty, the use of conditions would not be reasonable in this case.

11. The absence of sufficient information means I cannot rule out potentially significant harm to biodiversity. As such, the proposed development would be contrary to policies DEV26 and DEV28 of the JLP which, amongst other things, seek to achieve net gains in biodiversity.

Other Matters

12. My attention has been drawn to a previous dismissed appeal² at this site for a terrace of 3 properties. The previous scheme is materially different to this appeal in that it was of a different orientation. Nevertheless, although it included rooms in its loft space and limited additional massing due to smaller hipped roofing, I have already concluded that the overall scale and massing of this scheme would have an unacceptable effect on the character and appearance of the area.
13. The aforementioned extant planning permission has a real prospect of implementation. However, although it would have a higher ridgeline than the proposed scheme it is materially different to the appeal proposal as it includes fewer units of accommodation over a substantially narrower and further set back footprint. For these reasons, it would be less harmful than the proposed development.
14. 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.
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

² APP/Q1153/W/22/3308601