



Appeal Decision

Site visit made on 16 January 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/U1105/W/23/3326573

Land adjoining 12, The Copse, Exmouth, Devon EX8 4EY

- 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 & Mrs J Taylor-Bashford against the decision of East Devon District Council.
 - The application Ref 22/2353/FUL, dated 19 October 2022, was refused by notice dated 21 February 2023.
 - The development proposed is erection of a dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 and is a material consideration in planning decisions. Having regard to the matters that are most relevant to this appeal, none of the revisions to the Framework would be material to it, albeit that paragraph numbers have altered. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context.

Main Issues

3. The main issues are the effect of the proposed development on (i) the character and appearance of the area; (ii) the living conditions of nearby neighbours, with particular regard to privacy; and (iii) parking provision.

Reasons

Character and appearance

4. The appeal site comprises an undeveloped corner plot within a built up urban area. It is surrounded by properties. The proposed property would be of a similar design and scale to those nearby. The development would bring built form close to a public footpath. Additionally, it would be on raised ground, which would add to its sense of prominence when viewed from the nearby public vantage points. Whilst slightly more prominent than some lower level properties, the development would however include a generous set back from the footpath and the site boundary. This, together with the sympathetic design, would mean that the property would relate well to its context. Consequently, it would not appear unduly prominent within the established street pattern.
5. There is a semi-mature oak tree (01) within the appeal site and a larger, mature oak (02) close to its southern boundary. These trees both make a significant and positive contribution towards the visual amenity of the area,

meaning the land they sit within is not under-utilised. This is 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 for many years.

6. It is not necessary to remove any trees to facilitate the proposed development. The AIA notes that due to built structures to the south, 02's roots are likely to extend into the softer ground of the appeal site. The root protection area (RPA) has been extended to reflect this. The property would encroach onto this RPA. The AIA concludes that it is unlikely this degree of incursion would have an adverse impact on 02, though no site investigations have been carried out.
7. In that context, Policy D3 of the East Devon Local Plan 2013-2031, January 2016 (LP) requires development to accord with the principles of BS 5837. The submitted extract from this document says the *default position should be that structures are located outside the RPAs of trees to be retained*. In the absence of any detailed site investigations, I cannot be certain how foundations and the construction of the property could be achieved without harmfully encroaching onto the RPA of 02. In that context, the use of conditions would not be reasonable as a logical and agreed methodology would be necessary to ensure that 02 would be protected in the immediate and longer term.
8. Parts of the proposed garden would avoid harmful shadowing from the two trees as they mature. However, the AIA identifies that there would be significant shade over part of the proposed garden from 02 and over the property. The outlook from the proposed first floor windows to the rear would be likely to be affected by such shadowing. Additionally, it is submitted that as 01 matures, it will grow to dominate the proposed property, shedding debris on it. Guards for rainwater goods could be introduced to reduce maintenance. However, given the close proximity of both trees to the proposed property, regular maintenance would nevertheless be a likelihood.
9. Regardless of any TPO status or regulatory processes, it would be difficult for the Council to resist applications to prune or fell trees in circumstances where safety or damage through root spread for example, is at issue. Therefore, for the above reasons, the inharmonious positioning of the development would be likely to significantly exacerbate pressures from potential future occupiers, particularly in relation to pruning. This would, in turn, be likely to harmfully affect the quality of the trees. Consequently, their longevity would be likely to be put under considerable pressure through the lifetime of the development as proposed.
10. Drawing these matters together, the proposal would be of a sympathetic design and would not be unduly prominent. However, any such benefits would not be outweighed by the harm I have identified in respect of the quality and longevity of protected trees. I therefore conclude on this main issue that the proposal would harmfully affect the character and appearance of the area.
11. As such, it would conflict with policies D1 and D3 of the LP and Policy EB2 of the Exmouth Neighbourhood Development Plan 2018-2031, which, together in this respect, seek to ensure developments provide a high level of design, do not adversely affect trees worthy of retention and deliver harmonious and sustainable relationships between structures and trees, avoiding a net loss in their quality. There would also be conflict with paragraph 136 of the Framework

which says decisions should ensure that appropriate measures are in place to secure the long-term maintenance of newly-planted trees, and that existing trees are retained wherever possible.

Living conditions

12. The proposal would include obscure glazing on its side elevation. This would avoid any harmful overlooking towards No.12 The Copse. No.11 The Copse includes garaged areas that would provide some screening. However, the proposed first floor windows would allow for some untypically close range and direct overlooking towards its private garden space. Consequently, the existing levels of privacy at No.11 would be harmfully compromised.
13. The branches and leaves of 02 oak tree would be likely to provide some screening from proposed first floor windows facing at least one of a small row of properties at a lower level. This would be likely to be greater at times of the year when the tree is in leaf. Additionally, I acknowledge that there are properties nearby with similar rear elevation arrangements. I did however observe that the first floor windows of No.12 The Copse overlook an access lane rather than rear gardens.
14. Whilst the appeal site is in an urban area where some degree of overlooking would not be unexpected, the orientation and siting of the proposal is such that it would introduce close range views and look directly down towards the majority of the private garden space of properties below it. This would harmfully erode existing levels of privacy provided there.
15. For the above reasons, the proposal would result in unacceptable harm to the living conditions of nearby neighbours. As such, it would be in conflict with Policy D1 of the LP which, in this respect, seeks to protect the amenity of occupiers of adjoining residential properties. There would also be conflict with paragraph 135 of the Framework which, amongst other things, says that decisions should create places with a high standard of amenity for existing and future users.

Parking

16. The appellant's reference to a lack of incidents from the crashmap website is noted. I have been provided with no substantive evidence to the contrary. In that context, whilst the concerns of residents are acknowledged, it has not been shown that the proposal would generate unacceptable levels of congestion, leading to highway safety conflict.
17. Notwithstanding the above, Policy TC9 of the LP sets out exceptional circumstances where no car parking spaces may be acceptable. These include town centre locations where there is either access to public car parks or on-street parking and where there are very good public transport links. The appellant asserts that there are 10 bus stops within 400m of the appeal site and I find no reason to disagree. There are also a range of services and facilities within approximately 800m of the appeal site. As such, future occupiers could conceivably reduce the amount of travel required by private car.
18. The appeal site is however on the periphery of the settlement, and not in its town centre. As such, future occupiers would be more likely to choose the use of a private vehicle to supplement available pedestrian or public transport to access day to day services and facilities. Policy TC9 does not define what is

meant by 'very good public transport links', though my observations are that the appeal site has good public transport links.

19. At the time of my late morning visit, I observed there to be numerous on-street car parking spaces within the wider surrounding area. However, there were limited available spaces on the cul-de-sac closest to the appeal site. Although my observations only represent a snapshot in time, recognising there may be quieter periods, it is unlikely that future occupiers would be inclined to seek out on-street parking at more distant locations. This would particularly be the case during times of inclement weather conditions, especially for families with young children, the elderly or those with reduced mobility. Access to on-street parking is therefore sub-optimal.
20. For the above reasons, proposal fails to make adequate parking provision. As such, there would be conflict with Policy TC9 of the LP. There would also be conflict with paragraph 108 of the Framework, which says, amongst other things, that parking and other transport considerations contribute to making high quality places.

Other Matters

21. The appellant provides information regarding the planning history at the appeal site. This includes an appeal in 1993. That scheme was materially different to this appeal in that off-street parking was proposed and the Inspector had concerns with the access arrangement and highway safety.
22. Additionally, a planning application from 2011 is referred to for 2 properties at this appeal site. The application did not include parking and the Council did not refuse that scheme on highway safety grounds. However, I have been provided with very limited detail in respect of this previous application. Additionally, the refusal of the Council was made at a time prior to the current LP, where the circumstances surrounding an assessment against the development plan may have been materially different. Furthermore, I have found that the appeal scheme would fail to make adequate parking provision, rather than it causing any highway safety conflict. In any case, I have assessed this appeal on its merits, based on my own observations and the evidence before me.
23. The appellant's comments in respect of the arboricultural planning history are acknowledged. However, I have assessed the appeal on the basis of what currently exists on the appeal site. This matter has therefore not been determinative to the outcome of this appeal.

Planning Balance and Conclusion

24. It is common ground that the Council is unable to demonstrate a 5 year supply of deliverable housing sites. Paragraph 11 (d) of the Framework indicates that in such circumstances, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
25. The proposal would provide a single dwelling within the urban area, in a location which has good access to services and facilities. The property would be of an acceptable design within the established street pattern. It would also bring some limited economic benefits to the construction industry and thereafter through additional consumer spending in the local economy. The

social benefits of housing delivery carry significant weight, although these are tempered by the fact that a single dwelling would make a very modest contribution to addressing the housing shortfall.

26. The proposal would however cause material harm to the character and appearance of the area, the living conditions of nearby neighbours and it would fail to make adequate parking provision. This would be contrary to the Framework's objectives to retain existing trees, create places with a high standard of amenity and high quality places. These adverse impacts would significantly and demonstrably outweigh the benefits of granting planning permission. As such, the proposal would not benefit from the presumption in favour of sustainable development set out within the Framework.
27. 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