



Appeal Decision

Site visits made on 30 January and 28 February 2024

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 March 2024

Appeal Ref: APP/K1128/W/23/3315017

All Saints Vicarage, Sparkwell, Devon PL7 5DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Exeter Diocesan Board of Finance against the decision of South Hams District Council.
 - The application Ref 1720/22/ARM, dated 14 May 2022, sought approval of details pursuant to condition Nos 3,4,5 and 6 of a planning permission Ref 0004/19/OPA, granted on 31 July 2019.
 - The application was refused by notice dated 25 November 2022.
 - The development proposed is outline application with all matters reserved for proposed new dwelling.
 - The details for which approval is sought are:
Condition 3: Access, appearance, landscaping, layout and scale
Condition 4: Approved plans
Condition 5: Surface water drainage
Condition 6: Biodiversity net gain.
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Decision

1. The appeal is allowed and the reserved matters are approved, namely access, appearance, landscaping, layout and scale details submitted in pursuance of condition No 3 attached to outline planning permission Ref 0004/19/OPA dated 31 July 2019 subject to the conditions in the attached Schedule.
2. The appeal is also allowed insofar as it relates to details, namely surface water drainage and biodiversity net gain submitted pursuant to condition Nos. 5 and 6 of the aforementioned outline planning permission in accordance with the terms of the application Ref 1720/22/ARM, dated 14 May 2022.

Applications for costs

3. An application for costs was made by Exeter Diocesan Board of Finance against South Hams District Council. This application is the subject of a separate Decision.

Preliminary Matters

4. The appellant's appeal submissions included a revised landscaping plan¹ and landscaping notes². The *Procedural Guide – Planning Appeals – England* makes clear that the appeal process should not be used to evolve a scheme and it is important that what is considered is essentially the same as that on which the

¹ Drawing Number PL5 Rev F

² Drawing Number PL6 Rev F

local planning authority took their decision and on which the views of interested parties were sought. I have had regard to the 'Wheatcroft' principles including whether the amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changed development would be deprived of that opportunity. Given that the alterations made do not fundamentally alter the proposal and the parties have had an opportunity to comment on the revisions made by the appellant during the appeal stage, no parties would be prejudiced by my consideration of them. I have therefore proceeded on this basis.

5. Outline planning permission³ for a dwelling with all matters reserved was granted in 2019 ('the outline'). The principle of residential development on the site has therefore been established and is not a matter before me. Condition 4 of the outline refers to approved plans identifying the location of the site and does not require the submission of further details for approval. I have proceeded on that basis.
6. Condition 3 of the outline requires the submission of reserved matters relating to access, appearance, landscaping, layout and scale. From the submissions, I understand that the Council have determined that access, appearance and scale are acceptable with landscaping and layout being the matters in dispute. In addition, the Officer's Report confirms that the details submitted in respect of conditions 5 (drainage) and 6 (biodiversity) were sufficient for those conditions to be discharged and nothing I have seen or read would lead me to form a differing view. Consequently, I have had regard to this in my decision and the identification of the main issues below.

Main Issues

7. The main issues in this appeal are:
 - Whether the proposed layout would provide a satisfactory development in terms of its effect on existing trees; and
 - Whether the landscaping proposals for the site would provide a satisfactory development in terms of its effect on the character and appearance of the surrounding area.

Reasons

Trees

8. The appeal site is set well back from the public highway and accessed via a private drive which leads to an existing dwelling. The driveway is lined with trees and this gives the area a very distinctive sylvan character with the predominance of mature trees being a key feature of that distinctive character.
9. From the evidence before me, I understand that the Council's principal concern relates to the effect of the proposed siting of the dwelling on the longevity of T1, a Category A⁴ mature Yew tree located outwith the appeal site. Its Root Protection Area (RPA) extends into the appeal site and the Tree Impact

³ LPA Ref 0004/19/OPA

⁴ Trees of high quality with an estimated remaining life expectancy of at least 40 years as set out in *British Standard 5837:2012 Trees in relation to design, demolition and construction – Recommendations*.

Assessment Plan⁵ (TIAP) indicates that part of the proposed dwelling would be sited therein.

10. The appellant submits that the Yew tree would be free rooting in other directions, well beyond the minimum RPA and as such could tolerate a small incursion into the RPA without it having any significant effect on the condition of the tree. I saw on site that the area of land surrounding the Yew tree is largely unconstrained and as such it is not unreasonable to expect that free routing in these areas would occur. I therefore find the appellants argument to be a compelling one and the Council have not provided any substantive evidence to the contrary.
11. The submission of an Arboricultural Method Statement for works within the RPA of the Yew tree would ensure that operations on site would be undertaken with minimal risk of adverse impact on the tree and this could be secured by condition. The risk to other on-site trees can be minimised by conditions requiring compliance with the submitted Arboricultural Impact Assessment and Tree Protection Plan which specifies detail in respect of tree protection fencing, construction exclusion zones and areas requiring specialist construction techniques such as no-dig and a condition requiring the submission of details relating to service runs for new utility apparatus.
12. Given the presence of a number of other trees, the Yew tree is not distinct or discernible from public vantage points. Therefore, even if the health of the tree deteriorated in the long term, there would be no harmful impact to sylvan features of significant amenity benefit.
13. The appeal proposal would also result in the loss of three trees, identified as Category C trees⁶, located roughly in the centre of the site. The appeal submission includes the planting of replacement trees which the Council has not commented on. Given my observations above regarding the presence of a number of mature trees in the vicinity of the appeal site, I find no harm would be caused by the removal and replacement of the three trees.
14. For these reasons, I conclude that the details in respect of layout provide a satisfactory development in terms of its effect on existing trees. As such, approval of the details under Condition 3 would comply with Policy DEV28 of the Plymouth and South West Devon Joint Local Plan 2014-2034 adopted March 2019 (JLP) which seeks to ensure that developments are designed so as to avoid the loss or deterioration of trees.

Landscaping

15. In the Officer's Report, the Council have set out a number of areas where they consider the proposals fall short of the requirements of Policies DEV20 and DEV23 of the JLP for high quality landscape design which has regard to the local context and enhances the proposed development.
16. In response, the landscaping plan⁷ and landscaping notes⁸ ('the landscape scheme') submitted as part of the appeal have been revised to include

⁵ Drawing Number: TC220603-TIAP-P2

⁶ Trees of low quality with an estimated remaining life expectancy of at least 10 years, or young trees with a stem diameter below 150mm as set out in *British Standard 5837:2012 Trees in relation to design, demolition and construction – Recommendations*.

⁷ Drawing Number PL5 Rev F

⁸ Drawing Number PL6 Rev F

construction and cross-section details for the proposed Devon hedgebanks, replacement tree planting, reference to the BS4428:1989 the Code of Practice for general landscape operations, a specification for works and a trigger point for the implementation of the landscaping scheme.

17. The Council have had the opportunity to comment on these revisions within their appeal submissions but have not done so.
18. The landscaping scheme includes construction details of retaining walls; details of hardsurfacing materials; seed bed preparation, sowing and aftercare specification; native hedgebank and tree planting specifications; and a landscape management plan. In my view this amounts to a comprehensive landscaping scheme and I am satisfied that it would respect the local context of the appeal site and enhance the proposed development. Accordingly, no conflict with Policies DEV20 and DEV23 of the JLP would occur.

Other Matters

19. The Council have suggested that moving the dwelling north eastwards would protect future occupiers of the appeal property from the effects of overshadowing throughout the year from the evergreen Yew tree. However, that proposal is not before me. In any event this is not a compelling argument as the appeal dwelling has been designed to include a garage in the area closest to the tree and the principal views from habitable rooms would be to the north and east. The impact on future occupiers from overshadowing would therefore be limited.
20. The Council refer to Policy DEV32 of the JLP and the need for the scheme to include carbon reduction measures such as electric vehicle charging points, solar PV, air source or ground source heat pumps. However, this did not form a substantive reason for refusal and their incorporation at this stage would require alterations to the submitted drawings.
21. The details provided in the 'DEV32 for minor development applications' checklist are not sufficiently precise enough to secure its implementation by condition. However, the appellant has indicated that elements of the overall design such as the layout, orientation and use of large areas of glazing would reduce the energy load of the development and that the proposed construction material will maximise the energy efficiency of its fabric. On this basis, I find no overall conflict with Policy DEV32 of the JLP.
22. The site lies to the north east of the Grade II Listed Church of All Saints⁹. Development of the appeal site, being some distance from the listed building and with intervening mature trees would not affect the setting or significance of the listed building. I conclude that the effect on the listed buildings and their setting would be a neutral one.

Conditions

23. The Council has not provided any suggested conditions. It is necessary to specify the approved plans in the interests of certainty. It is also necessary to impose a pre-commencement condition requiring the submission of an arboricultural method statement to minimise the risk of harm to the Yew tree.

⁹ Section 66(1) of The Act requires that I have special regard to the desirability of preserving the listed buildings, their setting or features of special architectural or historic interest which they possess.

In respect of the pre-commencement condition, the appellant has given consent in writing that this may be imposed.

24. Conditions are also necessary to secure the submission of details of service runs and to ensure the development proceeds in accordance with the submitted Arboricultural Impact Assessment and Tree Protection Plan to minimise the risk to trees.
25. To protect the character and appearance of the area, a condition is required to secure the landscaping of the site. In the interests of maintaining the biodiversity value of the site and area, conditions are necessary to ensure the development proceeds in accordance with the submitted survey and to prevent the installation of external lighting.
26. A condition to ensure that the surface water drainage scheme is provided and operational for the lifetime of the development is not necessary as condition 5 of the outline makes provision for this.

Conclusion

27. The appeal scheme would adhere to the development plan and there are no material considerations which indicate otherwise. Accordingly, for the reasons given above, I conclude that the appeal should succeed.

Alison Fish

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan S1 Rev A
 - Proposed Site Plan PL2 Rev B
 - Proposed Plans PL3
 - Proposed Elevations PL4
 - Landscaping Plan PL5 Rev F
 - Landscaping Notes PL6 Rev F
 - Tree Constraints Plan TC220603-TCP-P1
 - Tree Protection Plan TC220603-TPP-P3
 - Tree Impact Assessment TC220603-TIAP-P2
- 2) No site clearance, preparatory work or development shall take place until a scheme for appropriate working methods (an arboricultural method statement) within the Root Protection Area of the tree identified as T1 on the Tree Protection Plan (Ref: TC220603-TPP-P3) in accordance with paragraph

6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

- 3) Prior to any excavations taking place on site for the installation of external services, details of the location of all external service runs shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) Development shall be carried out in accordance with the details set out within the Arboricultural Impact Assessment (Ref: TC220603-Sparkwell.AIA-09.2022) and the Tree Protection Plan (Ref: TC220603-TPP-P3).
- 5) Development shall be carried out in accordance with the recommendations and biodiversity enhancements set out within the submitted Wildlife Survey (Butler Ecology, May 2022).
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) No external lighting shall be installed at any time at the application site without the written permission of the Local Planning Authority.