



Appeal Decision

Site visit made on 6 February 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2024

Appeal Ref: APP/U1105/W/23/3327489

11 Mill Lane, Branscombe, Devon EX12 3DS

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Andrew Rennie against the decision of East Devon District Council.
- The application Ref 22/0974/FUL, dated 4 May 2022, was approved on 23 February 2023 and planning permission was granted subject to conditions.
- The development permitted is the installation of one 7KW Air Source Heat Pump (ASHP).
- The conditions in dispute are Nos 3 and 4 which state that:
 3. *An acoustic barrier shall be built to enclose the ASHP on four sides (the back, both sides and roof). The front of the ASHP must face inwards towards the southern boundary. The acoustic barrier shall be built to the minimum specification:
 - A mass of 12kg/m² and be of solid construction with no air gaps. The acoustic barrier shall be fully constructed prior to the first use of the ASHP and thereafter it shall be maintained in a solid construction with no air gaps.*
 4. *A 1.5m wide screen shall be erected from the shared boundary with no. 12 to be sited on the retaining wall adjacent to and between the pump and the front elevation that matches in height, colour and material the existing boundary treatment between nos. 11 and 12. The screen shall be positioned as far as practical so as the pump shall not be visible from public viewpoints. The screening shall remain in situ unless permission is granted in writing from the planning authority.*
- The reasons given for the conditions are:
 3. *To avoid noise being detrimental to local residents and to comply with Policy D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan.*
 4. *To protect the setting and character of the East Devon AONB and to comply with Policy D1 (Design and Local Distinctiveness) of the adopted East Devon Local Plan.*

Decision

1. The appeal is allowed and the planning permission Ref 22/0974/FUL for the installation of one 7KW Air Source Heat Pump (ASHP) at 11 Mill Lane, Seaton, Branscombe, Devon, EX12 3DS granted on 23 February 2023 by East Devon District Council, is varied by deleting conditions 1, 2, 3 and 4 and substituting them with the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Proposed Site Plan; Proposed Block Plan (drawing number 2036-ASHP-03); and Proposed Elevations and Plan (drawing number 2036-ASHP-02).
 - 2) Within three months of the date of this decision, an acoustic assessment shall have been carried out by a suitably qualified professional to assess the acoustic effect of the air source heat pump hereby permitted in its

reverse cycle and the resulting report shall be submitted to the Local Planning Authority for written approval.

Within one month of the acoustic assessment report being approved by the Local Planning Authority, and in the event that an acoustic barrier is recommended to mitigate the acoustic impact of the air source heat pump in its reverse cycle, the details of an acoustic barrier shall be submitted to, and approved in writing by, the Local Planning Authority. The submitted details shall include plans to show the location, dimensions and materials of the type of barrier to be installed.

Within three months of the approval of details of an acoustic barrier by the Local Planning Authority, the acoustic barrier shall be installed in accordance with the approved details and retained thereafter, unless the air source heat pump is removed or by written approval of the Local Planning Authority.

Preliminary Matters

2. Section 79(1) of the Town and Country Planning Act 1990 (the Act) prescribes that *on an appeal under Section 78 the Secretary of State may (a) allow or dismiss the appeal, or (b) reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to him in the first instance*. Consequently, I have the authority to reverse the original decision (i.e. to refuse planning permission), or to amend or delete existing conditions and/or to impose new ones.
3. I have found issues with conditions 1 and 2 of the original planning permission for reasons explained later in this decision. Those conditions are not in dispute. This matter was raised with both of the main parties and they submitted comments in response. I shall take into account the comments made by the parties when determining this appeal.
4. A revised National Planning Policy Framework (the Framework) was published on 19 December and updated on 20 December 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the matters relied on by the main parties are unchanged. Therefore, I did not need to consult with the main parties regarding the revised Framework and in determining this appeal, I have had regard to the most recent version.
5. On 22 November 2023, all designated Areas of Outstanding Natural Beauty (AONB) in England and Wales became 'National Landscapes'. However, the Framework continues to refer to them as AONB's. In this decision I have continued to use the term AONB, consistent with the evidence and the Framework. The legal designation and policy status of such areas is unaffected, whichever term is used.

Background and Main Issues

6. Planning permission for the installation of an air source heat pump (ASHP) was granted by the Council on 23 February 2023¹. The permission included four conditions. The appellant disputes two of those conditions (conditions 3 and 4) as they consider the wording of the conditions to be unclear and unreasonable.

¹ East Devon District Council application reference 22/0974/FUL

7. Disputed condition 3 requires an acoustic barrier to be installed around the ASHP and disputed condition 4 requires a screen fence to be erected. The reason given on the decision notice for condition 3 is to avoid noise being detrimental to local residents and the reason for condition 4 is to protect the setting and character of the East Devon AONB.
8. Taking these points into consideration, the main issues are:
 - whether disputed condition 3 is reasonable and necessary in the interests of the living conditions of the occupiers of neighbouring properties, with particular regard to noise; and
 - whether disputed condition 4 is reasonable and necessary in the interests of the character and appearance of the area, with particular regard to the landscape and scenic beauty of the East Devon AONB.

Reasons

Living conditions (disputed condition 3)

9. No. 11 Mill Lane is located in a row of terraced dwellings within Branscombe. The properties are accessed by foot via a shared private path from the public road to the north. On the opposite side of the path to the properties is an area of grass that is not publicly accessible. The ASHP has been installed parallel with the boundary fence between the site and a neighbouring property.
10. The Council's officer report confirms that the Council's Environmental Health Officer (EHO) advised that acceptable mitigation of noise is possible and recommended conditions for robust noise insulation be applied to any approval to mitigate the impact of noise on the residents of neighbouring properties.
11. However, the appellant submits that the requirement of condition 3 to enclose the ASHP in a structure with no air gaps would render it unusable due to the need for a constant air flow. Further, they submit that the condition is unnecessary given the recommendation contained in a letter from the Council's EHO relating to the carrying out of sound tests after permission was granted.
12. The letter from the EHO, dated 1 August 2023, advised that the sound pressure level recorded at first floor height was below the residual daytime level and below the daytime background sound level as well. At ground floor level, the sound pressure level recorded was 3dB higher than the daytime background sound level. This indicates a low level of impact according to the EHO and they concluded that there is no requirement for noise mitigation measures, such as an additional noise barrier.
13. However, the EHO did also comment in the letter that there was no sound data available for the reverse cycle, also known as the defrost cycle, and therefore the sound power level provided for the ASHP would be undervalued.
14. The defrost cycle commences when moisture has frozen on the outside of the heat exchanger part of the ASHP. It involves the compressor running at full power for a short period of time to melt the ice that has formed on the heat exchanger. The EHO advised that that this process creates a different noise signature and as the fan does not come on during this process, there is no masking of noise by the fan taking place. As such, there can be a more

- prominent low frequency noise that has a greater annoying noise characteristic than during the normal operation.
15. The concern is that the defrost cycle can take place during the day and night, and it can be a recurrent process with frequent short bursts of the compressor running at its full power. It is acknowledged that this is likely to only occur during the winter but given the potential for low temperatures during the winter nights, a prominent low frequency noise with annoying noise characteristics would be a detrimental occurrence during anti-social hours.
 16. The EHO was not able to assess the noise created by the defrost cycle as they visited the site during the summer. There is therefore no tangible data to demonstrate that the defrost cycle would create noise levels within the acceptable limits. Without this data, I cannot be convinced that harm to the living conditions of the occupiers of the neighbouring properties would not occur.
 17. I acknowledge that there are other properties located within Branscombe that have ASHP's. However, I have been provided with minimal information on the locational context of those ASHP's and the background to the decisions to allow the installation of those ASHP's. As such, I cannot make a meaningful comparison between those ASHP's and this appeal. In any event, I am determining this appeal on its own individual merits based on the evidence before me.
 18. For these reasons, I find that it has not been sufficiently demonstrated that the removal of disputed condition 3 would not result in harm to the living conditions of the occupiers of neighbouring properties. Consequently, I consider it would be reasonable and necessary to require a further acoustic assessment of the ASHP during its defrost cycle, both to mitigate against potential harm caused by noise and to ensure compliance with Policy D1 of the East Devon Local Plan 2013 – 2031 (LP), insofar as it seeks to prevent development that would adversely affect the occupiers of adjoining residential properties.
 19. On this basis, I have varied the condition (now condition 2) to indicate that the submission of details, and the installation, of an acoustic barrier are required in the event that the aforementioned further acoustic assessment requires it in the interests of living conditions.

Character and appearance (disputed condition 4)

20. The site is within the East Devon AONB. In accordance with Paragraph 182 of the Framework, great weight should be given to conserving and enhancing landscape and scenic beauty in protected landscapes.
21. The Council's officer report comments that the position of the ASHP forward of the principal elevation is "regrettable" when having regard to the context of the street scene and the site's location within the AONB. However, they did acknowledge that there are site constraints that limited the possible locations for the heat pump. The condition has been included to mitigate the visual impact on the AONB.
22. The ASHP is not visible from the public road to the north due to it being installed the other side of the boundary fence. The boundary of the private grassed area with Mill Lane has a hedgerow that screens the development from that lane. There are potential viewpoints from the wider landscape where the

development can be seen. However, the longer distances of those viewpoints from the site, together with the small scale of the development and its close physical and visual relationship with existing residential built form, means that it does not stand out from those viewpoints.

23. The ASHP is visible from the shared private path and private grassed area. However, the presence of other structures in the front gardens of neighbouring properties, such as storage containers, leads to the heat pump being seen in the context of those other domestic structures. It therefore does not appear out of place in its position within the front garden of No. 11.
24. Further, I acknowledge that the ASHP may be visible from the window of a neighbouring property but its small scale and position at an acute angle to the window is such that it does not materially harm the outlook from that neighbouring property. In any event, the positioning of the screen fence required by the condition would appear to not screen the development from the neighbouring property.
25. For these reasons, I find that disputed condition 4 is not reasonable or necessary. Its removal would not lead to harm to the character and appearance of the area, nor would it result in harm to the East Devon AONB. Without the condition, the development would still be compliant with Policy D1 of the LP, insofar as it requires development to respect the key characteristics and special qualities of the area and relate well to its context. Moreover, there would not be a conflict with the Framework, insofar as it seeks to recognise the intrinsic character and beauty of the countryside in order for development to contribute to and enhance the natural and local environment.

Consideration of other conditions

26. Condition 1 attached to the original planning permission sets out that in accordance with Section 63 of the Act, the development shall be deemed to be implemented from the date of the permission. The development has already been carried out and therefore it is not necessary to include this condition. Accordingly, the condition has been removed.
27. Condition 2 attached to the original planning permission requires the development to be retained in accordance with the approved plans. Specifying the approved application drawings is best practice and creates certainty for all parties. As such, a condition ensuring compliance with the approved plans is reasonable and necessary, and the condition (now condition 1) has been varied accordingly.

Conclusion

28. For the reasons given above, the appeal should be allowed, and the planning permission varied in the terms I have explained.

K Reeves

INSPECTOR