
Appeal Decision

Site visit made on 5 March 2024

by S Leonard BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2024

Appeal Ref: APP/Y1138/W/23/3325629

Land at Bary Close, Cheriton Fitzpaine, Devon. Easting:287039.

Northing:106263.

- 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 White and Mrs Roland against the decision of Mid Devon District Council.
 - The application Ref 22/02264/FULL, dated 22 November 2022, was refused by notice dated 31 March 2023.
 - The development proposed is erection of a dwelling and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the refusal of the application, the subject of this appeal, a revised version of the *National Planning Policy Framework* (the Framework) was published in December 2023. The main parties have had the opportunity to comment upon the revised Framework in respect of the appeal, and I have taken it into account where relevant to my decision.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the Cheriton Fitzpaine Conservation Area (the CFCA); and
 - The effect of the proposal on the living conditions of the occupiers of 12 Bary Close, with particular regard to outlook and overshadowing impacts.

Reasons

Character and appearance

4. The appeal site comprises an L-shaped area of garden land between Bary Close and Bary Lane. It lies in a residential area within the settlement policy boundary of Cheriton Fitzpaine village. The host properties known as 'Petronella' and 'Holes', together with the eastern half of the appeal site, lie within the CFCA.
5. The linear conservation area extends along both sides of the main village thoroughfare and along much of the western edge of the village. It largely

comprises frontage development running east-west through the village. This includes the host properties as well as some dwellings on the west side of Bary Close, extending up as far as opposite the appeal site.

6. North of the site, and outside of the CFCA, are modern detached bungalows arranged around the cul-de-sac of Bary Close. These comprise a pleasant low-rise townscape, with open-plan frontages comprising soft-landscaped front gardens. The dwellings are spaciouly arranged with side driveways leading to set-back and low flat-roofed garages. The bungalows are traditionally designed, with simple pitched tiled roofs and predominantly rendered walls over brick plinths. Additional design detailing, such as small front elevation elements of timber boarding and brick chimneys, further complement the generally uniform streetscape.
7. Having regard to the above townscape characteristics, I find that, notwithstanding that the more modern bungalow development in Bary Close has notably changed part of the setting of the historic core of the CFCA, the bungalow development makes a positive contribution to this part of the setting of the CFCA.
8. Neighbouring properties south of the appeal site and on the opposite side of Bary Close tend to be older buildings of more varied design, materials and positioning in relation to the street, than those to the north of the site, and are predominantly 2-storey in height.
9. The appeal site is, for the most part, given over to soft landscaping comprising grass, mature shrubs and hedging and small trees. There is a vehicular access from Bary Close with a grassed on-site access drive which, by its nature, retains the dominant verdant character of the appeal site. This green natural character is reinforced by a maturely landscaped roadside frontage to Bary Lane, in keeping with the rear boundaries of other properties along this side of Bary Close.
10. Whilst the on-site vegetation is currently somewhat overgrown, being garden land within the appellants' ownership, the soft landscaping is capable of being maintained in a good condition. Moreover, as an undeveloped green parcel of land, the appeal site provides a valuable verdant area of open space which acts as a pleasant visual buffer between the aforesaid 2 distinct townscapes of the bungalow development on the elevated land to the north and the 2-storey development at a lower ground level along the central village road to the south. In this respect, the appeal site makes a positive green and spacious contribution to the prevailing townscape and to the setting of part of the historic core of the CFCA to the south.
11. The proposal would significantly erode the existing undeveloped green space through the introduction of a part single, part 2-storey dwelling. The new building, together with the formation of an on-site drive and parking/turning area to the front of the dwelling, would result in a relatively large amount of site coverage with built development in relation to the size of the new plot. It would also necessitate the removal of the majority of the existing mature vegetation in order to facilitate the proposed built development and achieve satisfactory outlook and light to the fenestration of the new dwelling.
12. Moreover, notwithstanding that the proposal would have an L-shaped footprint reflecting the L-shaped nature of the appeal site, the whole of the northern

elevation and most of the southern elevation, that comprise the long edges of the building, would be sited in close proximity to the site boundaries. This, together with the provision of a smaller private rear garden area than is characteristic of the locality, means that the result would be an unduly tight and constricted layout of built development which would be harmful to the more open layout of development characteristic of the site vicinity.

13. Ground levels in Bary Close rise in a northerly direction and across the appeal site in an easterly direction away from the vehicular access point. As such, the site occupies a visually prominent position in public views from Bary Close, both when approaching from the south and the north. Views from the latter are particularly significant, given the elevated position of the northern part of Bary Close in relation to the appeal site, and given that the view looking southwards from the top end of Bary Close comprises a key view towards the conservation area. This is a view within which the appeal site would be apparent.
14. The forwardmost 2-storey element of the building would be viewed in close proximity to both side boundaries and the single storey structures on both adjacent sites. In terms of maximum ridge height, the proposal would represent a step change between the bungalows to the north and full 2-storey houses to the south of the site. However, the proposed tall and narrow form of the new dwelling, with its high first floor eaves and shallow pitched first floor roof form, would be at odds with the aforesaid prevailing bungalow street scene of Bary Close within which the new dwelling would primarily be viewed.
15. Moreover, the new dwelling would also have an incongruously complex roof form, incorporating a mix of different roof pitches, eaves and ridge heights which would be out of keeping with the simple pitched and hipped roof forms of the single and 2-storey properties to each side of the site.
16. Whilst there are sloping slate roofs on the opposite side of Bary Close within the Conservation Area, these are associated with buildings which present wide front walls sited near the road and have simple pitched roof forms. As such, I do not find their existence to be sufficient to justify the appeal proposal, having regard to the circumstances of the appeal site.
17. In addition, the proposed front and rear first floor dormer-style windows would relate poorly and would be of an overly dominant height and width, in relation to the roof slopes within which they sit and the ground floor fenestration below. As such, they would comprise unduly incongruous design features which would not relate well to the remainder of the new building nor surrounding properties. This would be particularly apparent in views from the public realm of Bary Close.
18. Having regard to its juxtaposition in relation to the adjoining property, the north elevation of the new building, which would comprise the longest straight wall of the structure, would have a blank wall and roof slopes, devoid of fenestration and visual interest. The proposed long expanse of unrelieved side wall space on this side of the building would be visually reinforced by first floor horizontal cladding.
19. The result would be a contrived dwelling design which would appear visually discordant in relation to neighbouring buildings, having regard to its architecture and scale. The development would also have a layout that would harmfully erode the established spacious pattern of built development that

characterises Bary Close. As such, the appeal scheme would appear incongruous within the street scene, to the detriment of the visual amenities of the townscape.

20. Having regard to all the above, notwithstanding the proposed use of a variety of materials which are found on other buildings within the locality, I am not persuaded, on the basis of the evidence before me and my site visit, that the proposed building form, scale, architectural detailing and layout would integrate with surrounding built development, both inside the conservation area and within its setting.
21. For the above reasons, I conclude that the proposal would fail to preserve or enhance the character or appearance of the CFCA. It would harm its significance as a heritage asset. In terms of the advice in paragraph 208 of the Framework, the harm to the significance of the conservation area would be "less than substantial". Less than substantial harm does not equate to less than substantial planning objection, and the Framework sets out the need to weigh the "less than substantial harm" against the public benefits of the scheme.
22. Paragraph 60 of the Framework refers to significantly boosting the supply of homes and paragraph 123 advocates an effective use of land in meeting the need for homes. An additional dwelling would make a small contribution towards the District's supply of housing, providing a 3-bedroom family-sized dwelling in an accessible location, close to the community facilities and services and public transport connections in Cheriton Fitzpaine village. Moreover, the development could be built out relatively quickly, having regard to paragraph 70 of the Framework. There would also be economic benefits as a result of the construction of the new dwelling and economic and social benefits as a result of its future occupation.
23. As only one additional dwelling would result, these matters attract modest weight as public benefits. They are outweighed by the harm the proposal would cause to the character and appearance of the CFCA.
24. As such the appeal proposal does not accord with Policies S1 and DM1 of the *Mid Devon Local Plan 2013-2033* (2020) (the Local Plan). These policies, amongst other objectives, aim to ensure that development proposals comprise high quality design which conserves and enhances the historic environment, makes a positive contribution to local character including any heritage assets and the setting of heritage assets, and results in visually attractive places that are well integrated with, inter alia, surrounding buildings and streets, taking account of architecture, siting layout scale and massing, orientation and fenestration, materials, landscaping and green infrastructure.
25. Local Plan Policy DM25, whilst not referred to in the decision notice, is mentioned in the submissions by both main parties. This policy reinforces a presumption in favour of preserving or enhancing all designated heritage assets and their settings and refers to balancing less than substantial harm against public benefits. As such, having regard to the above, I also find conflict with Local Plan Policy DM25.
26. For similar reasons, the proposal would also be contrary to policies of the Framework which seek to achieve well-designed and beautiful places (Chapter 12) and conserve and enhance the historic environment (Chapter 16).

Living conditions

27. The new building would be sited within close proximity of the southern side boundary of the bungalow at 12 Bary Close and near to the side wall of that dwelling. The south side elevation of that property has windows, including a kitchen window, which would face the proposed building. Moreover, the evidence before me, including third party comments from the occupier of No.12 and my site visit, is that the area between that bungalow and the northern boundary of the appeal site, including land under the open carport structure which is attached to the side of No.12, is a well-used outdoor amenity area for the occupiers of that property. This includes for sitting out and undertaking gardening activities, as evidenced by garden furniture and gardening paraphernalia. The southerly orientation of this part of the neighbouring plot and its position close to a door access from the bungalow lends it to being a sunny and convenient outdoor living space for its occupants.
28. The new dwelling would extend for a length of over 18m in a parallel arrangement in relation to the boundary with No.12, resulting in an unrelieved mass of building which would extend directly opposite the length of the whole side wall of No.12 and part of its rear garden beyond that. As such, the proposed structure would significantly impact upon the outlook enjoyed by the neighbouring residents from their side fenestration and area of outdoor living space which would directly face the proposal.
29. Notwithstanding that the submitted cross-section drawing indicates that the appeal scheme would be built on a lower ground level than that of no.12, more than half the length of the new building would rise significantly above the height of the eaves of No.12. Accordingly, the proposed ground level of the development would not sufficiently mitigate against adverse impacts upon outlook from the neighbouring side outdoor living space, due to overbearing and oppressive enclosing impacts arising from the proposal.
30. Moreover, having regard to the combined length and height of the proposed building, its proximity to the side boundary with No.12 and its orientation directly to the south of that property, in the absence of any cogent evidence to the contrary, it is reasonable to conclude that there would be a significant amount of overshadowing and associated reduction in sunlight to this outdoor amenity area at certain times and dates during the year.
31. For the above reasons, based on the evidence before me, I am therefore unable to conclude that the proposed development would not unacceptably harm the living conditions of the occupiers of 12 Bary Close with particular regard to outlook and overshadowing impacts. As such, it has not been satisfactorily demonstrated that the proposal would accord with Local Plan Policy DM1, in so much as this policy seeks to ensure that new development safeguards the amenity of neighbouring properties.
32. This is consistent with the Framework, which seeks to ensure that developments will function well and promote a high standard of amenity, health and well-being for existing and future users (paragraph 135).

Other Matters

33. The appellants refer to the Council's pre-application advice in respect of a scheme for 2 dwellings, in response to which the appellants reduced the

proposal to that of a single dwelling. Notwithstanding this, I am not bound by the advice given by the Council prior to the submission of the planning application, and it does not alter or outweigh my conclusion on the main issues.

34. The Council has raised no objection to the appeal scheme in respect of matters including the principle of residential development, the living conditions of future occupiers of the scheme, highway safety and parking, biodiversity and flood risk. The lack of identified harm is a neutral factor that does not diminish the harm that I have identified in respect of the 2 main issues.

Conclusion

35. The proposed development would conflict with the adopted development plan when considered as a whole, and there are no material considerations, including the Framework, that indicate that the proposal should be determined other than in accordance with the development plan.
36. For the reasons given above, I therefore conclude that the appeal should be dismissed.

S Leonard

INSPECTOR