



Appeal Decision

Site visit made on 20 February 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th April 2024

Appeal Ref: APP/U1105/W/23/3327756

The Bungalow, Lane Past Merrydown Cottage, Shorebottom, Stockland, Devon EX14 9DQ

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mrs Joanna Uffendell against East Devon District Council.
 - The application Ref is 23/0064/FUL.
 - The development proposed is a single storey extension across two floors.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey extension across two floors at The Bungalow, Lane Past Merrydown Cottage, Shorebottom, Stockland, Devon, EX14 9DQ in accordance with the terms of the application, Ref 23/0064/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal is made against a failure to give notice within the prescribed period of a decision on an application for planning permission. However, the Council have provided an officer report that confirms that they would have approved the planning application subject to conditions, had the appeal against the non-determination of the planning application not been made.
3. From the evidence before me, there are no substantive grounds of dispute between the appellant and the Council. However, there are concerns from interested parties and I have assessed the appeal on the basis of the apparent issues at hand beyond the mutual position of the main parties. These form the main issues to be considered in this appeal.
4. The appellant has submitted an amended plan during the appeal process, which replaces the doors and Juliet balcony in the south facing gable end with a window. Given that there would still be a glazed opening of some form in that gable, there is no substantive difference from the proposal considered by the Council, and it would not be procedurally unfair for me to accept the amended plan. As such, I have determined the appeal using the amended plan.
5. 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.

6. On 22 November 2023, all areas in England and Wales designated as an Area of Outstanding Natural Beauty (AONB) were retitled National Landscapes. There has been no change to the legal designation and policy status of these areas, but I have replaced reference to the Blackdown Hills AONB with the Blackdown Hills National Landscape (BHNL) in my decision to reflect this change.

Main Issues

7. The main issues are the effect of the proposed development on:
- the character and appearance of the area having regard to the landscape and scenic beauty of the BHNL and the effect on trees; and
 - the living conditions of occupiers of the neighbouring property having regard to privacy.

Reasons

Character and appearance

8. The appeal site consists of a detached bungalow with a couple of outbuildings that are set within a large plot in the countryside. To the south of the site is a detached dwelling known as Brindley Fold, which is accessed via the same track as the appeal site. Brindley Fold adjoins the southern boundary of the appeal site, and the neighbouring dwelling is set down on lower ground.
9. The site has an existing residential character and the erection of an extension of clear domestic appearance would not materially alter that character. Furthermore, the extension would not be out of keeping with the design, form and material finish of the host building, and it would not result in a disproportionate addition in respect of its scale, massing and bulk. As such, the extension itself would not harm the character and appearance of the area.
10. Turning to the effect on trees, the tree survey report carried out by Advanced Arboriculture and dated 19 December 2022 indicates that the extension would slightly encroach into the Root Protection Area (RPA) of a Category A magnolia tree, quoted in the report as being less than 0.5% of the tree's overall root protection area. Additionally, the report indicates that the extension would abut the edge of the RPA of a Category B beech tree. The extension would also be close to the canopy of both trees although the included constraints plan does appear to suggest that the individual crown spreads of those trees are away from the proposed extension. The report confirms that the magnolia and a Category C Japanese maple will require limited pruning to accommodate the extension.
11. The tree survey report contains mitigation measures that are designed to ensure that the trees are protected during the construction process. These measures would involve, in part, supervision by an arboriculturist and the use of protective fencing and ground protection during construction. These mitigation measures can be conditioned accordingly to ensure that damage to the trees, and potential loss of them, is avoided. Moreover, given the extensive existing planting on site that would be retained and the opportunity for new planting on the site, the limited pruning of two trees mentioned above would not, on its own, adversely affect the character and appearance of the area and justify refusing permission.

12. Interested parties have raised concerns about turbary land adjacent to the site being used to access the site with machinery and to store materials. It is asserted that this would impact negatively on the character and appearance of the area. I saw on site that an area of the land has already been churned up by vehicles accessing a gated entrance into the site. However, I also note that this land is outside the ownership of the appellant and the use of that land is therefore not controllable by planning condition. Furthermore, the manner in which the appellant uses this land is a civil matter, and the impacts on the land during construction would be temporary and would be controlled by other legislation.
13. For these reasons, the proposed development would not cause unacceptable harm to the character and appearance of the area and specifically, there would not be harm to the landscape and scenic beauty of the BHNL. Consequently, the proposal complies with Policies D1, D2 and D3 of the East Devon Local Plan 2013 – 2031 (LP), insofar as they seek for development to be of high design, respect local distinctiveness and deliver a harmonious and sustainable relationship between structures and trees. Additionally, the proposal would comply with the Framework, insofar as it seeks for development to be visually attractive as a result of good architecture and layout and sympathetic to local character, including the landscape setting.

Living conditions

14. The extension would have an upper floor within the roof space. The accommodation within the roof would be served by rooflights and windows in the gable ends. One of those gable ends faces towards Brindley Fold. As mentioned above, this opening has been altered from doors and Juliet balcony to a window.
15. The neighbour has explained that an area of planting along the boundary between the two properties has been removed and this has exposed their dwelling and garden to intrusive views from the appeal site. I saw when on site that there is a gap in the boundary planting, and I was able to see into the neighbouring property from an area of the appeal property's garden.
16. However, the extension would be sited considerably further from Brindley Fold and despite its elevated position in relation to that property, there still remains planting within the site that would prevent harmfully intrusive views from the upper floor window. As such, I do not foresee the proposed extension resulting in materially harmful overlooking of the neighbouring property.
17. However, the removal of the remaining trees and hedges could give rise to an increase in overlooking and additional planting would assist in bolstering the natural screening in the long term. The retention of trees and hedges and the planting of new flora can be secured through a planning condition.
18. For these reasons, the proposed development would not cause unacceptable harm to the living conditions of occupiers of the neighbouring property. Consequently, the proposal would not conflict with Policy D1 of the LP, insofar as it seeks to prevent development that would adversely affect the occupiers of adjoining residential properties. Additionally, it would comply with the Framework, insofar as it seeks to ensure that development maintains a high standard of amenity for existing residents.

Other Matters

19. The appellant's rights of access and the potential obstruction of the neighbour's access to their property are not matters before me, as I am determining the appeal on the planning merits of the case.

Conditions

20. The standard time limit condition and a condition listing the approved plans are necessary for the avoidance of doubt and in the interests of proper planning.
21. A condition requiring compliance with arboricultural protection measures is reasonable and necessary to prevent harm to trees during construction works that in turn could be detrimental to the character and appearance of the area. A further condition is also reasonable and necessary to ensure that there is suitable oversight of these works in the interests of protecting the trees.
22. A landscaping condition would be reasonable and necessary to protect the living conditions of occupiers of the neighbouring property by ensuring that existing natural screening is retained and securing the screening in the long term through additional planting.
23. The Council have suggested a condition requiring the approval and implementation of a Construction and Environmental Management Plan. The scale of the proposed development means that the condition is not necessary. Furthermore, the condition has arisen as a means to protect the adjacent turbary land, potentially through the use of ground protection, but as that land is outside the ownership of the appellant, the condition would not be enforceable.

Conclusion

24. For the reasons given above, the proposed development complies with the adopted development plan, when taken as a whole. Accordingly, I conclude that the appeal should be allowed.

K Reeves

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Existing and Proposed Block Plan, and Proposed Plans and Elevations Revision C.
- 3) No works or development shall take place until a scheme of supervision for the arboricultural protection measures required by condition 4 has been submitted to, and approved in writing by, the Local Planning Authority. This scheme shall be appropriate to the scale and duration of the works and shall include details of:
 - i) induction of staff in awareness of arboricultural matters;
 - ii) identification of individuals and their responsibilities;
 - iii) statement of delegated powers;
 - iv) timing and methods of site visiting and record keeping, including updates;
 - v) procedures for dealing with variations and incidents;
 - vi) the scheme of supervision will be administered by a qualified arboriculturist instructed by the applicant and approved in writing by the Local Planning Authority.

The scheme of supervision shall be implemented as approved.

- 4) Before any equipment, machinery or materials are brought onto the site for the purposes of the development hereby permitted, the trees shown on the Tree Location Plan (by Advanced Arboriculture and dated 19 December 2022) shall be protected by the installation of braced Heras fencing and ground protection in accordance with the details on the Arboricultural Method Statement Plan (by Advanced Arboriculture and dated 19 December 2022). The Heras fencing and ground protection shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within the construction exclusion zones shown on the Arboricultural Method Statement, and the ground levels within those zones shall not be altered, nor shall any excavation be made, without the prior written consent of the Local Planning Authority.
- 5) Prior to construction of the development hereby permitted above damp-proof course level, a landscaping scheme shall be submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include indications of all existing trees and hedges and details of new tree and hedge planting in the area within 5 metres of the southern boundary of the site. The new tree and hedge planting details shall include planting plans and schedules of plants noting species, plant supply sizes and proposed numbers/densities. The approved planting shall be carried out in the first planting season following the occupation or completion of the development, whichever is the sooner. The indicated existing trees and hedges and approved new trees and hedges shall be retained for a minimum period of 20 years from the completion of the development and any that die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.