



Appeal Decision

Site visit made on 24 April 2024

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2024

Appeal Ref: APP/U1105/W/23/3321677

**Land to the south east of Tytherleigh Bathrooms and Farm Shop,
Tytherleigh EX13 7BE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Penelope Jane Cook on behalf of Tytherleigh Bathrooms and Farm Shop against the decision of East Devon District Council.
 - The application Ref is 22/0074/FUL.
 - The development proposed is the construction of 5 no. dwellings, means of access and associated works.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Topographical Survey and Arboricultural Impact Assessment¹ were submitted as part of the appeal. The Council has had the opportunity to comment on the additional information through the appeal process, and I do not consider that any other party would be prejudiced by my acceptance of it, therefore no injustice would occur. For the avoidance of doubt, I have therefore determined the appeal on the basis of the additional information.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the area with specific regard to trees;
 - whether the development would be in a suitable location, with particular regard to development plan policies and accessibility to services and facilities;
 - whether the proposal would include appropriate measures for surface water drainage; and
 - the effect of the development on the integrity of the River Axe Special Area of Conservation.

¹ Arboricultural Impact Assessment by Advanced Arboriculture Ltd. Dated 25 February 2022

Reasons

Character and appearance

4. An Arboricultural Impact Assessment (AIA) including a Tree Protection Statement, Tree Protection Plan, and Arboricultural Method Statement was submitted as part of the appeal. There are a number of mature trees to the perimeter of the site, the majority of which are located within the site itself, with the exception of those to the rear of the neighbouring property, Furlands, which are on the adjoining land. Whilst the trees are identified as being category C, and despite their somewhat unmanaged condition, they nevertheless make a positive contribution to the verdant character and appearance of the area and also provide a degree of screening of the site from the nearby residential properties.
5. The AIA shows that most of the trees are to be retained, with the exception of the southern limb of the group annotated as A1, which comprise low quality regenerated stems. The layout of the scheme allows for the retention of the remaining trees, subject to the provision of the tree protection measures detailed within the Tree Protection Plans and all works being undertaken in accordance with the Arboricultural Method Statement, which could be secured by a planning condition.
6. The proposed dwellings themselves are positioned beyond the Root Protection Areas of the trees (RPAs) and no dig surfacing is proposed for the section of the access drive within the RPA of the trees in group G1. Whilst I note the Council's concern regarding the potential implications of the no-dig surfacing in this area, there is no substantive evidence that the site levels would mean that this could not be achieved without a threat to the wellbeing of the trees. The AIA also sets out that all services must be routed outside of the RPAs of all retained trees and where this is not possible, alternative installation methods must be investigated, including among other ways, manual digging.
7. By reason of the site layout, the proposed development would feature windows in proximity to some of the mature trees, which would also give rise to overshadowing of the garden areas. There are a considerable number of openings in the rear elevation of the dwelling to plot 1 which are a short distance from and directly face the trees in group A1. While in most cases the rooms served by the openings are dual aspect and have additional windows in the side elevation of the dwelling, the first-floor bedroom has only a single window in the rear elevation. Consequently, the presence of the trees along the rear boundary of plot 1 would be likely to affect the living conditions of future occupiers with regards to the light and outlook to this room.
8. The trees in group A2 extend along the side boundary of plot 5, the AIA indicates that pruning of a Monterey Cypress within the group, the branches of which overhang the site, will be required. Group A3 are located to the rear of the dwellings on plots 4 and 5 and extend along the entire rear boundary of plot 4 and a significant part of the rear boundary to plot 5. In light of this and given the height and general proximity of the trees to the proposed dwellings, as well as the overall garden sizes, they would be visually dominating features and would create a significant enclosing effect upon the rear gardens of the properties. This would also reduce light and outlook to the rear gardens and windows in the rear elevations of these properties.

9. Moreover, the Tree Constraints Plan indicates that plots 3, 4 and a significant part of plot 5 would fall within the shade path of the trees in groups A2 and A3. Even if this was dappled in nature and time limited by virtue of the life expectancy of the Ash trees and necessary management of the lower parts of the Hazel, given the extent of shading, the trees would nonetheless harm the living conditions of future occupiers.
10. Therefore, the layout of the development would increase the likelihood of the future occupiers of these dwellings to seek to prune or remove the trees due to overshadowing and other effects including their visually dominant appearance. Such works have potential to adversely affect the health of the trees, and lead to their premature loss. Consequently, this would lead to harm to the character and appearance of the surrounding area given the prominence of the trees, and the contribution they make to the setting of the edge of the settlement, despite their position set back from the road.
11. In light of the above considerations, there is no compelling evidence that the proposal would adequately safeguard the long-term health of the trees within the site, and close to the site boundaries, the loss of which would harm the character and appearance of the area.
12. In that regard the proposal would fail to accord with Policy D1 of the LP which seeks high quality and locally distinctive design, that among other things, respects the key characteristics and special qualities of the area and does not adversely affect trees worthy of retention, Policy D2 of the LP which requires existing features of landscape value to be incorporated into the landscaping proposals and Policy D3 of the LP which sets out that permission will only be granted for development, where appropriate tree retention and/or planting is proposed. It would also conflict with Policy CPNP 04 of the CNP which seeks to protect and enhance the natural environment, and the advice in the Framework with regards to achieving well designed and beautiful places, including ensuring that existing trees are retained wherever possible.

Suitability of location

13. The appeal site lies to the rear of the residential and commercial properties fronting Chard Road and comprises a storage yard. It is accessed via a private driveway from the car park to the front of the buildings. The appeal submissions indicate that the site was previously used in connection with Tytherleigh Bathrooms, which operates from the adjoining land, but is no longer required to support the business and so is redundant. The appeal proposal would see the construction of a cul-de-sac of 5 detached dwellings of a contemporary design, in a crescent arrangement.
14. Strategy 7 of the East Devon Local Plan 2013-2031 adopted January 2016 (the LP) sets out that development in the countryside will only be permitted where it accords with policies that explicitly permit such development and where it would not harm the distinctive landscape, amenity and environmental qualities within which it is located. Strategy 7 specifically defines the countryside as all those parts of the plan area that are outside the Built-up Area Boundaries and outside of site specific allocations shown on the Proposals Map. Notwithstanding the current use of the site, or its position adjacent to existing built development, Tytherleigh does not have a built up area boundary, as such the appeal site is therefore in an area of open countryside for planning policy purposes. Accordingly, by virtue of its location, together with the harm I have

identified to the character and appearance of the area, the proposal would conflict with Strategy 7 of the LP.

15. With regards to accessibility to services and facilities, Strategy 5B of the LP relates to sustainable transport, and states that development should, among other things, be at locations where it will encourage and allow for efficient, safe and accessible means of transport. In addition, LP Policy TC2 outlines that new development should be located where it is accessible by pedestrians, cyclists and public transport so as to minimise the need to travel by car.
16. Tytherleigh contains some facilities including a farm shop, antique shop, a bathroom showroom, café/takeaway and pub, all of which are a short walk from the site. as such, occupiers of the dwellings would not necessarily be fully reliant on the use of a private car. Nonetheless, given the limited range of amenities and services within the settlement, it is likely that they would need to travel to larger settlements further afield to access day to day facilities including schools, employment and a broader range of retail facilities.
17. Facilities including a pre-school, primary school, pub, church, community hall and a local store are available in Chardstock, which the appellant indicates is a 12 to 15 minute walk or 4 minute cycle ride from the appeal site. However, the route between the site and Chardstock is along a narrow country lane without streetlights or pavements for the most part. Consequently, notwithstanding the distance, such characteristics are likely to discourage pedestrians and cyclists, particularly those with young children, after dark or during inclement weather. As such, future occupiers of the development would be unlikely to access the facilities in Chardstock by means other than the private car.
18. Bus stops close to the site would provide access to public transport services that operate throughout the day on weekdays and Saturdays between Tytherleigh and Axminster and Taunton via settlements including Chard and Ilminster. This would enable access to services in larger and better served settlements to meet day-to-day needs. Consequently, the proposal would offer some opportunities to minimise the need to travel by car and encourage sustainable modes of travel.
19. The proposal would not be in a suitable location, having regard to the provisions of Strategy 7 of the LP, which seeks to control development in the countryside. However, it would not conflict with the aims of Strategy 5B and Policy TC2 of the LP, which encourage transport choice, as well as the guidance contained in the National Planning Policy Framework (the Framework) which recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and would therefore be in a suitable location in that regard.

Surface water drainage

20. The appeal site lies within Flood Zone 1 and has a low risk of flooding. The planning application form indicates that surface water will be disposed of via a soakaway. Nevertheless, a detailed surface water drainage strategy was not submitted as part of the proposal. Concern is expressed by the Council and interested parties regarding the potential for the development to exacerbate flooding that occurs in the area during heavy rainfall events. This is inflated by the lack of certainty regarding the effective operation of the proposed

soakaways, particularly in the absence of information relating to site levels and ground conditions.

21. However, there is no substantive evidence that an appropriate surface water strategy could not be designed to ensure that surface water runoff from the development could be appropriately managed and disposed of in a way that would not increase flood risk elsewhere, in accordance with the principles of Sustainable Drainage Systems (SuDS). Moreover, there is no compelling evidence that the recent felling of trees on the site has had implications for flooding in the area.
22. I therefore conclude that, subject to the imposition of appropriate planning conditions, the proposal would include suitable measures for surface water drainage so as not to increase the risk of flooding. In that regard it would accord with the aims of Policy EN22 of the LP which requires the surface water run-off implications of the proposal to be fully considered and found to be acceptable, Policy CPNP 01 of the CNP in so far as it requires development to take account of the need to place minimal additional stress on the infrastructure of the parish, in particular roads and drainage, and the aims of the Framework which seek to ensure that development does not increase flood risk elsewhere.

Effect on the River Axe Special Area of Conservation

23. Guidance was issued by Natural England (NE) on 16 March 2022 requiring competent authorities to carefully consider the nutrients impacts of any new plans and projects (including new development proposals) on habitats sites and whether those impacts may have an adverse effect on the integrity of a habitats site that requires mitigation, including through nutrient neutrality.
24. The site falls within the catchment area of the River Axe Special Area of Conservation (SAC). Under Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (as amended) I am required as the competent authority to undertake an Appropriate Assessment of the proposal on the basis of its likely significant effects on the SAC.
25. The LP sets out that the SAC is designated for its habitat provision, particularly for vegetation and fish species. The qualifying features derive from factors including the mixed catchment geology of sandstone and limestone which generate calcareous waters, high bed stability, lack of trees along its banks, and active geomorphology of the river. There is potential for additional wastewater generated by the increase in population from the proposed 5 new dwellings, either alone or in combination with other development, to lead to an increase in nutrient loading from phosphates to the River Axe. This in turn could result in adverse effects on the integrity of the SAC, the conservation status of which is not favourable at the current time.
26. There is no strategic mitigation scheme available through which measures could be secured to avoid any adverse effects on the integrity of the SAC. I recognise the appellant's frustration with the delays in that regard and timing of the publication of the NE advice. However, despite the appellants commitment to the preparation of a Nutrient Neutrality and Mitigation Strategy, there is nothing before me to demonstrate that suitable mitigation measures could be implemented as part of the scheme to avoid any adverse effects on

the SAC that would undermine the conservation objectives associated with specific qualifying features.

27. The appellant suggests that a Grampian condition could be imposed to secure mitigation prior to the commencement of development. However, given the absence of a site-specific mitigation strategy and the lack of certainty regarding the timescales for the adoption of a strategic mitigation strategy by the Council, this would not enable me to conclude, beyond all reasonable scientific doubt, that the appeal scheme would not have an adverse effect on the integrity of the SAC, with particular regard to nutrient neutrality.
28. My attention is drawn to an appeal at Land at no.74 Hurn Way and to the rear of nos. 66-72 and 76 Hurn Way, Hurn Way² where the Inspector imposed a condition to secure a scheme of mitigation to offset the impact of the development on the River Avon SAC. However, it differs from the appeal proposal in that an operational mitigation scheme was available in the form of the Bickton Strategic Mitigation Scheme.
29. Therefore, following an appropriate assessment, I conclude that, in the absence of a strategic mitigation scheme for the proposal to contribute to, the proposed development, in combination with other development, would be likely to have an adverse effect on the integrity of the SAC by virtue of the phosphate levels it would generate.
30. In that regard the proposal would conflict with the combined aims of Strategy 3 and 5 of the LP in so far as they seek to deliver sustainable development which minimises harm and enhances biodiversity, ensure conservation and enhancement of natural historic and built environmental assets, and promote ecosystem services and green infrastructure and geodiversity. It would also fail to accord with Strategy 47 of the LP in so far as it requires development proposals to conserve the biodiversity and geodiversity value of land and buildings and minimise fragmentation of habitats, and Policy EN5 of the LP which protects important wildlife habitats or features and prevent the loss of or damage to their nature conservation value, and the aims of the Framework in relation to conserving and enhancing the natural environment, including the protection of sites of biodiversity value.

Other Matters

31. The proposal would accord with the aims of the Framework which recognise the contribution small sites can make to meeting the housing requirement for an area, including the benefits of using suitable brownfield sites within existing settlements for homes, as well as windfall sites, and that housing should be located where it will enhance or maintain the vitality of rural communities. However, given the modest scale of the appeal scheme, such benefits would be small and therefore the weight to be attributed to them is limited.
32. High standards of design and materials, including energy efficiency construction, appropriately sized internal spaces, and the absence of harm with regards to living conditions of the occupiers of neighbouring properties, highway safety, and contaminated land, are normal expectations of new development. As such, they are therefore neutral factors in my assessment rather than benefits to which I attach positive weight.

² APP/V1260/W/21/3280644

33. I note the appellants contention that residential development on the site would be more appropriate to the site context. Nevertheless, I have not been presented with any compelling evidence that the existing site is not suitable for business use. Moreover, from my observations on site it was evident that it is not particularly unsightly. Consequently, any perceived benefits with regards to the use of the land would be of very limited weight.
34. The evidence in this case suggests that the Council is unable to demonstrate an adequate supply of housing land and that being the case, para 11 d) i) of the Framework falls to be considered. However, for the reasons set out above, policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Therefore, under paragraph 11 d) i) of the Framework, the proposal does not benefit from the presumption in favour of sustainable development.
35. Tytherleigh Manor Farmhouse, barn and stables, and boundary wall are Grade II listed and located close to the site on the opposite side of the road. I am required to have special regard to the desirability of preserving the setting of the listed buildings and structures. With respect to the scale and nature of the development and to its position relative to these, including the intervening road and buildings, I am satisfied that the setting and significance of the listed buildings and wall would not be adversely affected.
36. There have been representations about various other matters, including previous tree removal, but, as I am dismissing the appeal, no adverse impacts in that regard would arise from my decision.

Conclusion

37. The proposal would offer benefits in terms of the reuse of brownfield land and the provision of housing in a location which would support the vitality of the rural community. Furthermore, future occupiers of the development would not be wholly reliant on the private motor car to access services and amenities, and subject to a suitable planning condition, the development would not exacerbate flooding in the area. Set against this I have found that there would be harm to the character and appearance of the area. In addition, my findings in respect of the European sites and associated policy conflict results in a conflict with the development plan, read as a whole. Policies of the Framework, referred to above, that protect assets of particular importance also provide a clear reason for refusing the development, such that the proposal would not benefit from the presumption in favour of sustainable development outlined at paragraph 11 of the Framework, and there are no other material considerations, including benefits associated with the supply of additional housing, that indicate that permission should be granted.
38. For the foregoing reasons, I therefore conclude that the appeal should be dismissed.

E Worley

INSPECTOR