

Appeal Decision

Site visit made on 20 August 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2024

Appeal Ref: APP/N1160/W/24/3341020

24 Carew Gardens, City of Plymouth, Plymouth PL5 3PB

- 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 Roy Harris against the decision of Plymouth City Council.
 - The application Ref is 23/01761/FUL.
 - The development proposed is described in the application as “change of use of land from amenity land to residential garden land and the concluded development of outbuilding for incidental residential use”.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of land from amenity land to residential garden land and the concluded development of outbuilding for incidental residential use at 24 Carew Gardens, Plymouth PL5 3PB in accordance with the terms of the application Ref 23/01761/FUL, and the following plans submitted with it: Plans and Elevations 03 received 20/12/23; Site Plan TQRQM23143202810952 received 20/12/23; Location Plan 19122023 received 18/12/23; Garden Building Section 04 received 18/12/23; Garden Building Layout 05 received 18/12/23; and Garden Building Layout 05 received 18/12/23.

Preliminary Matters

2. The application form states that work began in November 2017. At the time of my visit, I saw that the outbuilding and some boundary fencing works had already been carried out. The proposed ‘option 2’ fence, alternative steps location and relocated fence to install a laurel hedge had not been carried out. I note that the application has been dealt with retrospectively. Nevertheless, I have determined the appeal on the basis of the submitted plans.
3. The description of development set out in the Council’s decision notice differs from that in the application form and banner heading above. The description of development in the formal decision above is taken from the application form, which is what has been applied for.
4. It is noted that there are on-going enforcement investigations in respect of the use of the outbuilding within the appeal site. However, I have determined the appeal on what has been proposed.

5. During the course of the appeal, the appellant submitted a certificate of existing lawful development for an outbuilding and boundary fencing at the appeal site. The Council has had an opportunity to comment on this.

Main Issues

6. The main issues are the effect of the development on (i) the character and appearance of the area; and (ii) biodiversity.

Reasons

Character and appearance

7. The appeal site comprises the rear garden of 24 Carew Gardens and an adjoining, undesignated triangular parcel of land, which is on slightly raised ground. Within a corner of this parcel, there is a mono pitched outbuilding that is marginally taller than the dark brown boundary fence it lies next to. Whilst visible from the adjoining residential estate road, the building is by a parking area and does not stand proud as an unusual feature. On this road, there are various boundary features that include similarly scaled timber panelled fencing. Consequently, the boundary fencing does not appear out of place.
8. The evidence shows that the triangular parcel of land once contained trees of some amenity value. However, there is little to demonstrate these were protected or of high amenity as set out in Policy DEV28 of the JLP. It is said to have been a green space that broke up the urban character of the street. Whilst this may have been the case, I have assessed the appeal site in its current day sense. In that context, there is a generous array of young and well-established shrubs, plants, and trees within the small triangular parcel of land. Notably, there is a collection of tall trees around the *wilding* area which I observed to be ripe with surrounding vegetation growth. There was no evidence of fly tipping here.
9. Additionally, trees within the appeal site and nearby provide a significant amount of publicly visible natural vegetation within this part of the estate. Although there may be times of the year when trees are without leaf, these features nevertheless have a softening effect on the surrounding urban built form. As such, in the possible absence of sufficient space for the proposed laurel hedged to mature or grow without overhanging the highway, there remains a generous vista of green space within and near the appeal site. Accordingly, even if not originally intended to be for a residential use, the development does not harmfully erode visual amenity space or the scenic quality of the area. For the reasons given, it is not necessary to secure a planting scheme using an appropriately worded planning condition.
10. I therefore conclude on this main issue that the proposal does not cause harm to the character and appearance of the area. As such, there is no conflict with policies DEV20 and DEV23 of the Plymouth & South West Devon Joint Local Plan (JLP). There is also no conflict with paragraph 135 of the National Planning Policy Framework (the Framework) which says, amongst other things, that decisions should ensure that developments are sympathetic to local character.

Biodiversity

11. Policy DEV26 of the JLP is supportive of proportionate net gains in biodiversity and enhancements for wildlife where appropriate. The Council is concerned that there has been no meaningful increase in biodiversity provision when compared with a previous planning application. However, very little evidence is provided in this regard. Having paid regard to the representations, it is noted that there are no records of the appeal site accommodating vulnerable species. Furthermore, the possible presence of bats or birds has not been substantiated by any professional report. Therefore, a loss of habitat has not been demonstrated.
12. Notwithstanding the Council's comments, the appellant's evidence shows that the cherry laurel has a role as a food source for pollinators and birds, with an ability to adapt to poor soil conditions. In addition to the established wilding corner, I observed that the appeal site contained a well-managed and rich variety of plants, vegetables, trees, and shrubs. Therefore, in the absence of any compelling evidence to the contrary, proportionate biodiversity gains and opportunities for wildlife enhancements are likely.
13. I conclude on this main issue that the proposal does not cause harm to biodiversity. As such, there is no conflict with Policy DEV26 of the JLP. There is also no conflict with paragraph 180 of the Framework which says, in part, that decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.

Other Matters

14. I have paid regard to comments made in respect of the planning history and plans, including the extension to number 24. However, I have assessed this scheme on its planning merits, the evidence before me and my own observations.
15. Representations made in respect of policy DEV29 of the JLP are noted. However, there is little evidence of any conflict with this transport policy.
16. The concerns raised from neighbours in respect of living conditions regarding outlook and privacy are acknowledged. I agree with the Council that the scheme, including a raised fence height does not generate a harmful overbearing effect on the living conditions of the occupants of number 22. Moreover, at my visit, I was not able to view into this neighbouring property's garden or ground floor. This was the case from the raised section of the appeal site, including where the steps would be positioned. Although proposed, the option 2 fencing would not be necessary avoid overlooking. Additionally, any views into first floor windows are at such an angle that privacy is not harmfully compromised. Whilst I take these representations seriously, there is little evidence of any conflict with Policy DEV1 of the JLP.
17. In that context, representations were made to the effect that the rights of the adjoining occupiers under Article 8 as set out in the Human Rights Act 1998 would be violated if the appeal were allowed. I have found that the proposed development would not result in the neighbouring property being overlooked or subjected to harmful overbearing effects so that the occupiers

would suffer unacceptable harm to their living conditions. I am satisfied that a grant of planning permission would not unacceptably interfere with the occupier's right to a private and family life and home. It is proportionate in the circumstances to allow the appeal.

Conditions

18. As the development has already started it is unnecessary for me to attach the commencement of development condition. Furthermore, I have already concluded in the main issues above that the proposal does not require the imposition of a landscaping condition.
19. There is no need to control the use of the outbuilding for incidental or ancillary purposes as there is no other use proposed before me. Furthermore, if following a grant of permission, the outbuilding is not used as proposed, or if there is a future material change of use, then another grant of permission would be required. In such circumstances, the use would be at risk of enforcement action if such permission is not granted.

Conclusion

20. For the reasons given I conclude the appeal should succeed.

J Hills

INSPECTOR