

Appeal Decision

Site visit made on 3 September 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th September 2024

Appeal Ref: APP/W1145/W/24/3344771

Breakers View, Park Avenue, Westward Ho!, Devon EX39 1LP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Chris Barritt against the decision of Torridge District Council.
 - The application Ref is 1/0042/2024/OUT.
 - The development proposed is new dwelling on site west of Breakers View.
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Decision

1. The appeal is allowed and planning permission is granted for new dwelling on site west of Breakers View at Breakers View, Park Avenue, Westward Ho!, Devon EX39 1LP in accordance with the terms of the application, Ref 1/0042/2024/OUT, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have taken the address from the Council's decision notice as the relevant part of the application form is incomplete. The address used is similar to that provided in the appellant's appeal form.
3. I note the appeal is made in outline with all matters reserved for later consideration. It is not essential for drawings to be marked as illustrative or indicative if they relate to matters that are reserved. I have therefore taken any indication of reserved matters shown on the submitted drawings to be illustrative. This includes a proposed dwelling shown on the location plan.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - the living conditions of nearby residents, with particular regard to outlook, daylight and privacy; and
 - whether the proposed development would provide acceptable living conditions for future occupants, with regard to external amenity space and privacy.

Reasons

Character and appearance

5. The appeal site comprises a relatively long area of garden space between two properties on a cul-de-sac. Properties along both sides of this street vary greatly in their design, scale, and appearance. They include larger, more imposing two storey properties, and small bungalows on narrow plots; a number of which have dormer extensions on their side elevation roof spaces. Not all properties have front doors facing the street. Whilst views of the coast and built-up area can be appreciated between gaps in properties, most tend to be fairly narrow. Some gaps are very limited, which creates a cheek by jowl arrangement in places. The appeal site forms a gap between properties that is uncharacteristically large.
6. The Council is concerned that the proposed dwelling would not be sympathetically sited, leading to a cramped form of development. However, the illustrative plans show how a modest sized property could be sensitively sited between those either side of it. This would not be an incongruous arrangement or dissimilar to some other properties along the street. Consequently, given the length of the plot, an appropriately designed property here could avoid a harmful relationship to buildings in the local neighbourhood.
7. Additionally, detailed matters of the proposal's layout, access, appearance, scale, and landscaping are not to be determined at this stage. Therefore, whilst the Council's concerns in respect of the submitted plans are noted, there may be alternative ways of developing the site than as shown.
8. For the reasons given, I therefore conclude on this main issue that the proposal would not cause harm to the character and appearance of the area. As such, there would be no conflict with policies ST04 and DM04 of the North Devon and Torridge Local Plan 2011-2031 (LP), which, amongst other things, support developments that are sympathetic in terms of density, relationship to buildings, and that respond to site characteristics. There would also be no conflict with paragraph 135 of the National Planning Policy Framework (the Framework), which says, in part, that decisions should ensure that developments maintain a strong sense of place.

Living conditions of nearby residents

9. Concerns have been raised in respect of the potential for the property to have an overbearing effect on neighbouring residents. Although close to neighbouring properties, the illustrative plans show that it is conceivable a scheme could be designed so that it could avoid excessive massing or bulk. As such, it is likely that the outlook and amount of daylight of nearby neighbours could be maintained to an acceptable level.
10. Fenestration detail and arrangements are reserved for later consideration. Notwithstanding this, the illustrative plans show how harmful overlooking towards neighbouring properties could be avoided. As mentioned above, the plans do not necessarily represent the only way the scheme could be progressed. Neighbouring privacy could consequently be maintained.

11. I therefore conclude on this main issue that the proposal would be unlikely to have an unacceptable effect on the living conditions of nearby residents, with particular regard to outlook, daylight, and privacy. As such, there would be no conflict with policies DM01 and DM04 of the LP, which, in this respect, seek to protect the living conditions of neighbouring occupiers.

Future occupants

12. The Council is concerned that the balcony to the rear of one of the adjacent properties does not have any side screens, which, they say would allow overlooking of the appeal site. The appellant claims that a large part of this balcony is enclosed and that views of the garden would be oblique. Nevertheless, some views towards the private garden space would be likely to result. However, the plot is of sufficient length that it is conceivable a dwelling with adequate provision of private garden space could be provided. The illustrative patio area for example would be likely to remain private from the existing balcony.
13. The property to the west has dormer windows on its side elevation. Occupiers of this property would currently be able to look out on the neighbouring garden space. This situation would not be magnified by the development. Furthermore, the dormers would be more likely to face roofing than the private outdoor space. Additionally, they do not directly face all parts of the appeal site. Consequently, it is likely that usable external amenity space and satisfactory privacy could be achieved for future occupants.
14. I therefore conclude on this main issue that the proposed development would provide acceptable living conditions for future occupants, with regard to external amenity space and privacy. As such, there would be no conflict with policies DM01 and DM04 of the LP, which, in this respect, seek to protect the living conditions of future occupiers.

Other Matters

15. I have paid regard to the site history, including the reduced plot width since a previous outline permission. However, I have assessed the proposal in its present-day sense, based on my own observations and the evidence before me.
16. The Council has referred to conflict with Policy DM02 of the LP in its decision notice. This policy is concerned with environmental protection. However, there is little to show any conflict with this policy.
17. I have paid regard to representations concerning increased traffic, existing parking problems and emergency vehicle access. Access and layout arrangements are however matters reserved for later consideration. Furthermore, I have been provided with no substantive evidence to demonstrate that an additional dwelling would cause highway safety conflict, or that the living conditions of neighbours would be harmfully affected in respect of parking pressures.
18. Whilst I acknowledge comments in respect of the change of views, this is not regarded as a planning consideration.

Conditions

19. I have made some amendments and omissions to the Council's suggested conditions in the interests of clarity and to ensure compliance with the Planning Practice Guidance (PPG) and the Framework.
20. I have imposed standard conditions relating to the submission and timing of reserved matters applications and the commencement of development. It is necessary to require compliance with the submitted plans, but only to define the site area. For the avoidance of doubt, it is also necessary to clarify that the dwelling shown on the location plan is not to be implemented.
21. The PPG says that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. This is reaffirmed in the Framework where it says in paragraph 54 that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. There is no substantive evidence to demonstrate that the removal of freedoms to carry out small scale alterations is reasonable or necessary in this instance. I have therefore not imposed the Council's suggested condition for the removal of certain permitted development rights.
22. I note the appellant's comments in respect of a 2022 permission to extend the adjacent house. However, the Council's Archaeology Section suggest the site lies in an area of archaeological potential. Therefore, it would be reasonable to require a Written Scheme of Investigation and a post excavation works condition in order to ensure appropriate recording.
23. I have not imposed the suggested material compliance condition as this relates to indicative plans that do not form part of the scheme.

Conclusion

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

J Hills

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan; Location Plan 05, dated January 2024 (excluding the proposed dwelling).
- 5) No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the local planning authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the local planning authority.
- 6) The development shall not be occupied until (i) the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation and (ii) that the provision made for analysis, publication and dissemination of results, and archive deposition, has been confirmed in writing to, and approved by, the local planning authority.