



Appeal Decision

Site visit made on 28 August 2024

by K Jones BA (Hons) DipLA CMLI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2024

Appeal Ref: APP/U1105/W/23/3334808

Land at the rear of 9 Tip Hill, Ottery St Mary, Devon EX11 1BE

- 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 Mr Gary Conway against the decision of East Devon District Council.
 - The application Ref is 23/0102/FUL.
 - The development proposed is a new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the address above from the appeal form as this most accurately describes the location of the appeal site. I have also deleted the address from the description of development as this is not an act of development.
3. Although the appellant has made reference to the emerging local plan for East Devon, the evidence indicates that the draft plan has not reached a sufficiently advanced stage in its preparation for its policies to attract weight for the purposes of the determination of this appeal. I have therefore determined this appeal in accordance with the adopted development plan.

Main Issues

4. The main issues are:
 - The effect of the proposal on the living conditions of neighbouring occupiers at 9-15 Tip Hill with regard to privacy and outlook, and whether the proposal would provide adequate living conditions for future occupiers with regard to privacy; and
 - Whether the proposal would conserve or enhance the character or appearance of the Ottery St Mary Conservation Area (CA).

Reasons

Living conditions

5. Existing dwellings at 9-15 Tip Hill lie to the immediate west of the proposed dwelling and its garden. The ground level between neighbouring properties and the appeal site is markedly different, with the small rear courtyard gardens of the existing dwellings sitting noticeably below the adjacent appeal site. Retaining walls with modest walls or fences above provide separation

between the adjoining plots of land, but close-proximity views down into the neighbouring gardens are available from within the appeal site. While small, these garden spaces provide usable outdoor space for occupiers of these dwellings, and are therefore of considerable amenity value.

6. A 1.8m high close boarded fence is proposed to all boundaries of the site, which would restrict overlooking between neighbouring garden spaces. However, for the existing dwellings with small gardens already below the adjacent ground level, the addition of a 1.8m high boundary above the existing retaining walls would create a highly enclosed and oppressive outdoor environment, harming the outlook from these properties.
7. While the proposed boundary fence would prevent close intervisibility at garden level, upper floor rear-facing windows of 11, 13, and 15 Tip Hill would have direct and unobstructed views over the fence into the primary garden space of the proposed dwelling. This degree of overlooking would result in unduly harmful effects on the privacy of future occupiers. Moreover, any sufficiently tall screening to restrict such views would significantly harm the outlook from existing dwellings on Tip Hill, worsening the effect of the proposed fencing.
8. There would also be direct intervisibility between upper floor rear-facing windows of Nos 11, 13, and 15 and the west-facing windows of the appeal dwelling. Given the elevated site levels, this would include the lounge and dining room windows on the ground floor, and a bedroom on the first floor. Even if the bedroom window were to be obscure glazed, there is no indication that the occupiers would be unable to open it, reducing the effectiveness of any glazing treatment. I have not been presented with any formal guidance produced by the Council on acceptable separation distances between facing habitable room windows. However, the appellant identifies that there would be approximately 17m between facing windows. This falls below the often-quoted 21m separation distance required to maintain acceptable levels of privacy in such circumstances. This indicates that there would be harmful effects on the privacy of both existing and future occupiers as a result of direct views between facing windows.
9. To the south, the proposed dwelling would be close to the shared boundary with larger rear gardens associated with dwellings on Tip Hill. The southern elevation of the dwelling does not contain any windows, and no overlooking of these gardens would occur. Moreover, with the proposed gable addressing only a small section of the relatively generous gardens, the physical massing of the proposal would not harmfully affect the outlook from either garden space.
10. The Council has also raised concerns regarding the potential for overlooking of amenity spaces to the east of the appeal site, which appear to be associated with commercial premises on Jesu Street. The evidence is not clear on the use of these spaces, nor was their use apparent at my site visit. If these provide garden space associated with residential properties, the proximity of the proposed dwelling and the clear-glazed bedroom windows on the first floor overlooking the adjacent space would result in a substantial loss of privacy.
11. However, even if the adjoining spaces are commercial and no loss of neighbouring privacy to the east would occur, for my reasons above there would remain harmful effects on the living conditions of neighbouring and

future occupiers as a result of the ground level changes in the area, the proposed boundary treatments, and the siting and orientation of the proposed dwelling. While only a small number of immediately adjoining neighbours and the occupiers of the appeal dwelling would be adversely affected, this would not lessen the harm experienced.

12. I therefore conclude on this main issue that the proposal would result in unacceptable harm to the living conditions of neighbouring occupiers at 9-15 Tip Hill with regard to privacy and outlook. It would also fail to provide adequate living conditions for future occupiers with regard to privacy. It would therefore conflict with Policy D1 of the East Devon Local Plan 2013-2031 (the Local Plan) and Policy NP2 of the Neighbourhood Plan for the Parishes of Ottery St Mary and West Hill (2017-2031) (the Neighbourhood Plan) in so far as they seek development that does not adversely affect the amenity of occupiers of adjoining residential properties and the amenity of occupants of proposed future residential properties.
13. Although not referred to in its reasons for refusal, the Council has also found conflict with Policy NP3 of the Neighbourhood Plan, which relates to Infill, Backland and Residential Garden Development. This includes similar requirements to protect the amenity of neighbours, and sets out that residential development in these locations will be resisted if it adversely affects neighbouring properties by overlooking. For my reasons above I also find conflict with this policy.
14. The appellant asserts that any harm to neighbouring living conditions would be outweighed by the cessation of the existing use of the site as a builder's yard. While the evidence indicates some past storage of materials and parking on the site, there is little before me to demonstrate that this has caused harm to neighbouring living conditions. Moreover, it is not for me, under a section 78 appeal, to determine whether or not a storage or builder's yard use of the land is lawful. In the absence of a lawful development certificate or other confirmation from the Council that such a use of the land is lawful, I can only attribute this matter limited weight, and it does not alter my overall conclusion in respect of this main issue.

Character and appearance

15. The appeal site lies within the Ottery St Mary CA. In accordance with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended), I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
16. The significance of the CA as a whole is derived in part from the historic street network of the town centre reflecting its market town origins, along with a wider collection of later 19th and early 20th century commercial and residential buildings. The area of town centre associated with the site is characterised by long terraces of red brick and render two storey properties, creating a strong building line directly addressing the street.
17. Despite individual variation in the buildings, there is a striking consistency in the scale and form of the terraced properties, the form of the slate roofs, and the proportions of the upper floor window openings. Brick chimneys and traditionally proportioned and detailed dormers are also common features of

the roofscape on Tip Hill. To the rear of the main streets in this part of the CA, long gardens create a sense of space with trees visible in the street scene. While limited, buildings behind the street frontage have a commercial or industrial character, with larger span or traditional brick-built industrial buildings present.

18. The special historic and architectural interest of this part of the CA therefore lies in the uniformity of the alignment, scale, and form of the historic buildings fronting the streets, the coherence and rhythm of their architectural features, and the contrast between the busy, tightly spaced frontages and the looser pattern of long gardens with occasional industrial and commercial development to their rear. At present, while much of the on-site vegetation has been cleared, the open appeal site forms part of the loosely developed open land to the rear of the terraces, making a modestly positive contribution to the pattern of development and the significance of the CA.
19. The proposal would introduce a dwelling with a scale, form, and overall appearance that would be out of keeping with this pattern of development, reflecting neither the terraces fronting the roads, or the looser industrial development to their rear. While the proposed materials have taken cues from the surrounding area, modern details including the wide span of the dwelling, the wide and split nature of its upper floor windows, and the porch feature would each contrast with the distinctive building characteristics of this part of the CA. In addition, the considerable lengths of close boarded fence to the boundaries would introduce visually prominent and uncharacteristic boundaries in an area characterised by traditional brick and stone walls. The proposal would therefore weaken and undermine the strength of character of this part of the CA.
20. While there would be very little public visibility of the proposal, there would be considerable visibility from neighbouring dwellings and commercial premises which enclose the appeal site to the north and west. The proposal would therefore have sufficient prominence to result in harm to the character and appearance of the CA.
21. I therefore conclude that the proposal would not preserve the character or appearance of the CA, and would cause harm to its significance as a designated heritage asset. This would conflict with Policies D1 and EN10 of the Local Plan, and Policy NP22 of the Neighbourhood Plan. Taken together, amongst other matters, these policies seek to conserve or enhance the character and appearance of the area, ensuring that development does not adversely affect the distinctive historic or architectural character of the area, or the urban form in terms of significant street patterns, groups of buildings and open spaces. They also seek to ensure that the scale, massing, and fenestration of buildings relate well to their context.
22. Again, while not part of the Council's reason for refusal, reference has been made to Policy NP3 of the Neighbourhood Plan. In respect of this main issue, it seeks proposals that reflect the character of the surrounding area, including the scale, mass, height and form of neighbouring properties. It also sets out that boundary treatments for new curtilages should reflect that prevailing in the area. For my reasons above, I also find that the proposal would conflict with this policy.

23. The harm which would be caused to the significance of the CA would be less than substantial, but nevertheless of considerable importance and weight. Under these circumstances, paragraph 208 of the National Planning Policy Framework (the Framework) indicates that this harm should be weighed against the public benefits of the proposal. I shall therefore consider these matters further in the overall heritage and planning balance.

Other Matters

24. While I recognise that the scheme has evolved during the application to seek to address the Council's concerns, I have based my determination on the latest plans, which are those on which the Council made its decision. Despite the changes made to the scheme, I have found harm in relation to the main issues as set out above.
25. My attention has been drawn to an appeal at Silver Street¹, which allowed a new dwelling to the rear of a terrace of properties in the CA. I do not have full details of this proposal or the matters before the Inspector when the decision was made, however I note from the Council's evidence that there were different main issues under consideration, and a different policy context at the time of the decision. The scheme at Silver Street does not therefore represent a direct comparison to the scheme before me. I have considered the appeal proposal on its own merits and reached my own conclusions based on the evidence, the current policy context, and my own judgement.
26. The appeal site is within the zone of influence for the East Devon Pebblebed Heaths Special Area of Conservation and Special Protection Area, afforded protection under the Conservation of Habitats and Species Regulations 2017 (the Regulations). The Regulations require the decision maker to undertake an Appropriate Assessment (AA) where there are likely significant effects from the proposal, either alone or in combination with other plans or projects. Although both main parties have provided information in this regard and the appellant has outlined their willingness to pay any necessary contributions to secure appropriate mitigation, regulation 63(1) indicates the requirement for an AA is only necessary where the competent authority is minded to give consent for the proposal. Therefore, in view of my overall conclusions resulting in my decision to dismiss the appeal, it has not been necessary to address this in any further detail.

Heritage and Planning Balance

27. The Framework states that great weight should be given to the conservation of a designated heritage asset, irrespective of whether the harm to its significance is less than substantial. Paragraph 208 of the Framework requires the less than substantial harm to the significance of a designated heritage asset to be weighed against the public benefits of the proposal.
28. The appeal proposal would undoubtedly offer social and economic benefits that are also public benefits. As a self-build property, benefits would arise from the delivery of housing, increasing the choice of homes available, and contributing to the Government's objective to significantly boost the supply of homes. Further benefits would arise from the dwelling's location, as future occupiers would support local services and facilities in the town centre, with good access

¹ Appeal reference APP/U1105/W/16/3156902

to public transport options. There would also be temporary economic benefits relative to the construction phase. Public environmental benefits would be secured through enhanced landscaping of the site, and energy-efficiency measures including building fabric improvements and the installation of renewable energy technologies. However, that there would be no harm in respect of matters including flooding, highways, or bin and cycle storage are neutral considerations that do not carry weight in favour of the appeal.

29. The social, economic, and environmental benefits, which are also public benefits, associated with a single property would be modest. Taken together, the cumulative weight of benefits would be moderate and not sufficient to outweigh the great weight that the conservation of a designated heritage asset carries. The proposal therefore fails to accord with the historic environment protection policies of the Framework.
30. I have found that the proposed development would conflict with Policies D1 and EN10 of the Local Plan, and Policies NP2, NP3, and NP22 of the Neighbourhood Plan. These policies are generally consistent with the Framework where it identifies that heritage assets are an irreplaceable resource which should be conserved in a manner appropriate to their significance, along with its aims to create well-designed and beautiful places with a high standard of amenity for future users. As such, I afford significant weight to the conflict of the proposal with these policies.
31. The evidence indicates that the Council's draft local plan has reached Regulation 18 stage. Paragraph 226 of the Framework sets out that in these circumstances, the local planning authority is only required to demonstrate a minimum of 4 years' supply of deliverable housing sites. I have not been provided with an up-to-date figure for the Council's housing land supply position, though I note that at the time of its decision it was less than 5 years.
32. However, even if the Council is unable to demonstrate the required 4-year supply of housing, I have already found that harm to the significance of the designated heritage asset would not be outweighed by public benefits. This provides a clear reason for refusing the development proposed under the provisions of paragraph 11(d)(i) and footnote 7 of the Framework. As such, even if paragraph 11(d) of the Framework were engaged by The Council's housing land supply position, the balance in favour of granting planning permission given by paragraph 11(d) would not apply.

Conclusion

33. The proposal conflicts with the development plan and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should therefore be dismissed.

K Jones

INSPECTOR