



Appeal Decision

Site visit made on 20 May 2025

by R Kent BA (Hons) MTP DipM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th June 2025

Appeal Ref: APP/Q1153/W/24/3353465

Land to rear of Abbeyspring, Down Park Drive, Tavistock, Devon PL19 9AH

- 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 M.Greening and Mr and Mrs Campbell against the decision of West Devon Borough Council.
 - The application Ref is 0522/24/FUL.
 - The development proposed is Construction of two new dwellings.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. A revised National Planning Policy Framework (the Framework) was issued in February 2025. I sought the parties comments on the relevance of the revised version to their respective cases and have taken their responses into account. In its response, the Council confirms that it can currently demonstrate 2.53 years' housing land supply and I return to this later in my decision.
4. Plans were submitted with the appeal which provide additional information about the proposals. Plan J23.012 SK20 shows the position of the proposed dwellings in relation to neighbouring properties. Plans JS23.012 SK21 and SK22 provide written dimensions between the proposed dwellings and between the proposed dwelling on plot 2 and neighbouring dwellings; and plan J23.012 SK25 shows revised tree crowns for trees shown to be retained on the site. The Council has had the opportunity to comment on the plans. As the plans provide additional information rather than fundamentally alter the proposals, I am satisfied that no prejudice would result by taking those plans into account and have determined the appeal on that basis.

Main Issues

5. The main issues are:
 - the effect of the proposals on the living conditions of the occupiers of the adjoining dwellings in Deer Leap with regard to privacy;

- whether the proposal would provide acceptable living conditions for the occupiers of the proposed dwellings with regard to privacy, sunlight and daylight;
- the effect of the development on the character and appearance of the site and its surroundings, including the effect on trees; and
- the effect of the development on the Tamar Estuaries Complex Special Protection Area (SPA) and the Plymouth Sound & Estuaries Special Area of Conservation (SAC).

Reasons

Living conditions of occupants of dwellings in Deer Leap

6. The site lies within a spacious, residential neighbourhood with detached, predominantly two storey dwellings lying between it and Down Park Drive with further two storey detached dwellings beyond its southern boundary in Deer Leap. The trees and hedgerows along the south eastern side of Down Park Drive combine with the trees on and around the site to give the road a pleasant verdant character. The north western side of Down Park Drive and the area to the north beyond Deer Park House has a different character comprising mostly detached bungalows with some chalet bungalows.
7. Plot 2 would have a triangular first floor balcony in its southern elevation. The balcony would be located 7.9 metres from the site boundary at its nearest point. Due to its elevated position, even though the balcony is small, its users would be able to gain views over the boundary fence into the rear gardens of the adjoining dwellings at Nos 7 and 8 Deer Leap immediately to the south of the site.
8. Plymouth & South West Devon Joint Local Plan 2019 (JLP) Policy DEV1 requires development to safeguard the amenity of local communities by, amongst other things, ensuring new development provides for satisfactory privacy for both new and existing residents. Further guidance is given on this in Appendix 1 of the JLP Supplementary Planning Document 2020 (SPD) with reference to residential extensions. Whilst the appeal scheme is for two new dwellings rather than an extension, it is reasonable to have regard to the criteria the SPD uses to assess the effect of development on the privacy of adjoining properties.
9. The SPD indicates that balconies can be unacceptable in higher density areas because of the impact they can have on the privacy of neighbours' gardens or habitable rooms. Although the density of the surrounding development is relatively low and the balcony would be 21m away from the nearest habitable room window, its proximity to the site boundary would nevertheless result in an unacceptable loss of privacy to the users of the adjoining gardens in Nos 7 and 8 Deer Leap. Whilst the most private parts of the gardens are likely to be those areas closest to the rear of the dwellings and thereby furthest from the boundary, users of the balcony would nevertheless still be able to gain views into those areas as well as other parts of the gardens. This would result in a moderate level of harm to the living conditions of the occupants of those dwellings. The distance from the balcony to the boundaries of Nos 6 and 9 Deer Leap coupled with the intervening trees is however sufficient to prevent harm to the living conditions of the occupants of those dwellings.

10. For the reasons given, the development would have an adverse effect on the living conditions of adjoining dwellings in Deer Leap in conflict with JLP Policy DEV1 which seeks to ensure, amongst other things, that development provides satisfactory privacy for existing residents.

Living conditions of future occupiers

11. A significant part of the proposed amenity space for plot 1 would be sited on the southern side of the plot and adjacent to plot 2. Whilst it is proposed to be enclosed by a hedgerow, its proximity to the rear elevation of the proposed dwelling on plot 2 means occupiers of plot 2 would have a direct and intrusive view into the amenity space from the first floor window in bedroom 1 of plot 2. Whilst the view would be angled and, in time, may be partially screened by the proposed boundary hedgerow, there would nevertheless be a lack of privacy for users of the amenity space as a result of overlooking from the first floor window. This would cause a moderate level of harm to the living conditions of the future occupiers of plot 1.
12. The dwelling on plot 1 would have a large, glazed bifold door in its southern elevation serving a combined lounge and dining/kitchen area. Whilst the dwelling on plot 2 would be located forward of the proposed single storey dwelling, the angle of view from the ground floor windows in the west elevation of plot 2 would be sufficiently oblique to limit direct views from the proposed lounge in plot 2 into the proposed lounge of plot 1.
13. Although the scale and position of the proposed two storey dwelling on plot 2 would impede sunlight from the south east reaching the southern elevation of plot 1, the glazed doors in the southern elevation of the proposed single storey dwelling would still receive sunlight and daylight from the south. This would allow sufficient sunlight and daylight into the lounge and dining area in the proposed dwelling on plot 1. This would be supplemented by the high level, clerestory glazing proposed in the western elevation of plot 1 and in southern and eastern elevations of the proposed kitchen of that dwelling which would allow further daylight into that room.
14. The lounge and snug in the proposed dwelling on plot 2 would be served by windows and a glazed door in the western elevation together with an obscure glazed door in the northern elevation of that plot. This would enable sunlight and daylight from the west into the lounge and snug and some limited daylight from the north into the snug.
15. Nevertheless, for the reason given, the proposal would not provide acceptable living conditions for the occupiers of the proposed dwelling on plot 1 with regard to privacy. This would conflict with JLP Policy DEV1 in so far as it seeks to ensure, that development provides satisfactory privacy for new residents.

Character and appearance

16. The proposed single storey dwelling would be on a significantly smaller plot than the dwelling on plot 2 and the dwellings immediately adjoining the site. Together with the juxtaposition of the north eastern corner of the proposed building to the site access and the position of its north western corner close to the boundary with Abbotspring, this tight relationship of the proposed dwelling to the site boundaries would give the development a cramped appearance.

17. The cramped nature of the development is reflected in the proposed position of the amenity space for plot 1 between the south western corner of the proposed building and the north western corner of the proposed dwelling on plot 2. The proximity of the proposed amenity space to the dwelling on plot 2 and its projection beyond the north western corner of the dwelling on plot 2 results in the lack of acceptable living conditions for future occupants of plot 1 identified in the second main issue above.
18. The existing trees on the site, some of which are the subject of a Tree Preservation Order¹(TPO), contribute to the verdant character and appearance of the site and its surroundings. The taller specimens also form part of the back drop of trees in the views towards the site from Down Park Drive and Deer Leap.
19. The Lawson cypress labelled T1 on the 'Tree Survey & Tree Constraints Plan' and protected by the TPO is categorised as diseased and proposed to be removed to accommodate the parking spaces for plot 1. The other trees to be removed comprise two substantial Lawson cypress trees, labelled as T4 and T7 and two smaller cherry and apple trees, labelled T2 and T3.
20. The evidence indicates that T5, a lime, which is protected by the TPO has an asymmetric crown due to having been suppressed by the adjacent trees. Removal of the adjacent trees would expose the crown and increase the chances of the tree failing. Whilst the evidence indicates that substantial pruning would be required as a result, and this would be likely to damage the aesthetic quality of the tree, the evidence does not include full details of the likely pruning works required.
21. Nevertheless, together with the proposed removal of trees T1, T4 and T7, substantial pruning of T5 would harm the verdant character of the site and its contribution to the character and appearance of the surrounding area. The level of harm would however be moderate due to the retention of the group of trees T8, T9 and T10 in the south western part of the site and the smaller cherry tree T11. Whilst the retention of these trees would have a positive effect on the character and appearance of the development, it would not overcome the harm caused by the loss of the other trees.
22. Policy DEV 28 of the JLP requires that development is designed so as to avoid the loss or deterioration of trees. If the loss of trees cannot be avoided, the policy indicates that new native and locally appropriate trees should be secured as mitigation. The SPD, whilst not part of the development plan, provides further guidance on the replacement of trees lost to development.
23. I have considered whether replacement tree planting could be secured by a suitable condition if the appeal were to be allowed. Whilst new tree planting might mitigate the effect of the proposal on its surroundings and secure more healthy specimens with long term amenity value, the evidence does not demonstrate how this might be achieved to a standard which would maintain the verdant character of the site and its surroundings within the space available on the site. Moreover, any replacement tree planting would take some time to become established. This means that the harm to the verdant character of the site would persist in the meantime. As a consequence, I am not convinced from the evidence before me that a suitable level of replacement tree planting could be secured through the use of a planning condition.

¹ The West Devon Borough Council (Down Road North East and Deer Leap Tavistock) Tree Preservation Order 2009

24. Whilst the site was once part of a larger plot which received planning permission in 1989 and 1992 and other residential development may have taken place on sites in the locality, I am not aware of the full details of those schemes, their planning context or the development plan policies which applied at the time. I have considered the appeal proposals on their individual merits.
25. Therefore, for the above reasons, the proposal would cause a moderate level of harm to the character and appearance of the site and its surroundings, including its effect on trees, which conflicts with JLP policies DEV20 and DEV28 in so far as they require development to protect and improve the quality of the built environment and avoid the loss of trees.

Effect on nationally and internationally protected sites

26. The site falls within the 12km Zone of Influence for the SPA and SAC which together form the Plymouth Sound and Estuaries European Marine Site. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) requires me to make an Appropriate Assessment (AA) of the implications of the proposal for the conservation objectives of the SPA and the SAC. Therefore, although the proposal is not Environmental Impact Assessment development under the Town And Country Planning (Environmental Impact Assessment) Regulations 2017, I have carried out an AA as required by the Habitats Regulations.
27. Policies DEV26, SPT12 and SPT14 of the JLP require that sites of European significance are protected and the recreational impacts on those sites from new residential development is mitigated. The outcome of the AA will therefore assist me in concluding whether the proposal complies with those development plan policies.
28. The SAC's qualifying features are large shallow inlets and bays; estuaries; reefs; Atlantic salt meadows; sandbanks which are slightly covered by sea water all the time and mudflats and sandflats not covered by seawater at low tide; and populations of Allis shad and Shore dock. The SPA covers the upper reaches of the river tributaries. The populations of Avocet and Little Egret are its qualifying features.
29. The evidence indicates that the close proximity of the appeal site to the SAC means future occupants of the development could contribute to disturbance of its protected areas through outdoor sports and leisure activities including public access to the foreshore, recreational boat use, anchoring and diving. For the same reasons, recreational activities can also impact on the qualifying features of the SPA by introducing disturbance or damaging the birds' supporting habitats. The potential for adverse effects is likely to increase with the amount of residential development meaning that the combined effects could be significant and affect the integrity of the protected sites.
30. The Council has adopted a 'Plymouth Sound and Estuaries European Marine Sites Recreation Mitigation and Management Scheme' 2019 (the Scheme) which establishes a joint approach with adjoining Councils towards the mitigation of Likely Significant Effects on the SPA and SAC arising from new housing and tourism growth. A financial contribution is sought in accordance with JLP policy DEL1 for new dwellings which is then used to deliver mitigation for the recreational impacts on the protected sites.

31. I have not been provided with a copy of a planning obligation or other appropriate legal mechanism to secure the financial contribution. In the absence of an appropriate legal mechanism to secure the financial contribution, I am not satisfied that the mitigation strategy set out in the Scheme to avoid or mitigate the harm to the SPA and SAC caused by the development would take place.
32. I have given careful consideration as to whether a negatively worded planning condition could be used to ensure that an appropriate planning obligation is entered into before the development is commenced. Planning Practice Guidance (PPG) however advises that such a condition is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. Whilst the PPG does also indicate that such a condition may be appropriate in exceptional circumstances, for example where there is clear evidence that the delivery of the development would otherwise be at serious risk, I have not been provided with any compelling evidence that this would be the case with the appeal proposal.
33. Therefore, adopting a precautionary approach, whilst the harm caused by the development would be likely to be moderate due to its modest scale, I cannot conclude that the development would not have an adverse effect on the integrity of the protected sites. The proposal would therefore conflict with JLP policies SPT12, SPT14, DEV 26 and DEL1 in so far as they seek to protect European Sites and secure planning obligations where they are needed and would also conflict with the Habitats Regulations.

Other Considerations

34. The proposal would provide two additional, energy efficient dwellings to assist with meeting the Council's housing land supply shortfall which would be a moderate benefit of the development. There would also be moderate short term economic benefits arising from the construction of the development.
35. Interested parties have made reference to the presence of more hedgehogs on the site than identified in the 'Ecological Assessment, Reptile Surveys and Bat Activity Surveys' 2023. Given my findings on the main issues it is not necessary for me to consider this matter in further detail. There is however a potential need for further investigation in the event of another application being submitted for the site in the future.

Planning Balance

36. The Council can only demonstrate 2.53 years supply of deliverable housing sites which is well below the minimum level required. Consequently, paragraph 11 d) of the Framework requires that consideration of the presumption in favour of sustainable development is necessary.
37. Against the harm identified above, the moderate benefit of adding two additional energy efficient dwellings to the housing supply and the benefit to the local economy attract moderate weight in favour of the proposal.
38. The JLP forms the development plan for the area in which the appeal site is located. The harm which I have identified would result in conflict with the development plan when read as a whole.

39. The Framework seeks to achieve well designed places and that existing trees are retained wherever possible. It also requires that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, protecting sites of biodiversity value in a manner commensurate with their statutory status. It also states that developments should provide a high standard of amenity for existing and future users. Policies DEV1, DEV20, DEV28, SPT12, SPT14, DEV26 and DEL1 of the JLP are consistent with the Framework in these respects and conflict with them is therefore given substantial weight in this appeal.
40. Moreover, the Framework makes clear that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects) unless an AA has concluded that the plan or project will not adversely affect the integrity of the habitats sites.
41. Even though the Council can only demonstrate 2.53 years' supply of deliverable housing sites, in view of my findings on the fourth main issue and applying footnote 7 to paragraph 11d) i. of the Framework, the Framework provides a strong reason for dismissing the appeal. Therefore paragraph 11 d) ii. is not engaged and the appeal should be determined in accordance with the development plan unless material considerations indicate otherwise.
42. Although the proposal would have the benefits identified above, the benefits are not sufficient to outweigh the harm I have identified. For the reasons given, the presumption in favour of sustainable development in the Framework does not apply in this appeal.

Conclusion

43. 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 be dismissed.

R Kent

INSPECTOR