



## Appeal Decision

Site visit made on 8 June 2021

**by Mrs H Nicholls FdA MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021

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**Appeal Ref: APP/X1118/W/21/3268939**

**4 Buckingham Close, South Molton EX36 4ER**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr & Mrs Everitt against the decision of North Devon Council.
  - The application Ref 71401, dated 2 April 2020, was refused by notice dated 17 August 2020.
  - The development proposed is demolition of existing bungalow and single garage, with construction of replacement, split level dwelling and double garage.
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### Decision

1. The appeal is dismissed.

### Application for Costs

2. An application for costs was made by Mr & Mrs Everitt against North Devon Council. This application is the subject of a separate Decision.

### Main Issues

3. The main issues are the effects of the proposal on:
  - the character and appearance of the area; and
  - the living conditions of neighbouring occupiers at 'Crossland' and No 14 Tower Park, with particular regard to outlook and privacy.

### Reasons

#### *Character and appearance*

4. The appeal dwelling is a single storey bungalow dating from around the 1960s/70s which is situated within an area of mainly bungalows but with a degree of mixed character. To the front and western side of the dwelling is a detached single storey garage. The dwelling is angled within its plot, as are the neighbouring dwellings, Crossland and 'Lyncroft'; the latter of which has a more spacious plot and is more distant from the appeal dwelling.
5. Crossland and the appeal dwelling are very similar to one another and their angled widths occupy most of their respective plots. The front gardens, whilst modest in size and occupied by garages that project forward of the front elevations, have a generally open feel and the dwellings and garages are discreet in scale. The appeal dwelling benefits from a generously-sized rear garden which is well enclosed by existing fencing, hedgerows and some trees, particularly on the eastern side towards Lyncroft.

6. Two doors down from the appeal site is the dwelling, 'Bylah', which was a bungalow extended to accommodate rooms in the roof. Its rear gable projections are visible from the garden of the appeal dwelling. From the roadside, Bylah retains its overall modest proportions and appearance as a bungalow, with space around it and to the front of the dwelling and with its garage set well back in the plot.
7. The appeal proposal involves the demolition of the existing bungalow, which despite its similarities with the adjoining dwelling, Crossland, and with other dwellings in the wider surroundings, is of limited specific architectural merit. The replacement dwelling would be reorientated to be square within the plot and would appear as a sizeable bungalow from the front. It would, however, be split internally to provide two floors of accommodation which would be apparent from the rear. There would be two large gable projections either side of the rear elevation, accommodating recessed first floor balconies, and the rear elevation would be predominantly glazed. To the front, a new double garage would be built against the western boundary, extending almost to the roadside. It would also include a room above with the roof linking with that of the dwelling, albeit hipped to the front.
8. Though the overall ridge height may have been reduced to be lower than that originally proposed, the overall scale and massing of the new dwelling would appear unduly bulky and of a form and siting that would exacerbate the effects of appearing cramped within a constrained part of the site. Furthermore, unlike the completed scheme at Bylah, the gabled projections would extend to both side walls of the dwelling at the rear and would also have a small degree of roof overhang from these sides, eroding any degree of subtlety or subservience to the roof form.
9. The features which have a presence in the Buckingham Close streetscene, including the substation, parts of the elevated dwellings within Howards Close and the single storey garages at Crossland and Lyncroft, do not sufficiently affect the otherwise pleasant streetscene in which the buildings on the northern side are unobtrusive in scale and siting. The new garage with large roof mass would interrupt this streetscene and appear as a bulky addition from the roadside, almost filling half of the front garden, and would be far more dominant than that which presently exists. This presence would not be diminished by the roof hip and lowered eaves. The appeal proposal would therefore tip the balance towards the buildings having a dominant presence in the streetscene which would not be mitigated by the dark colour of the slate roof or the existence of vegetation.
10. In view of the above, the appeal proposal would harm the character and appearance of the area, contrary to Policies ST04 and DM04 of the North Devon and Torridge Local Plan (adopted 2018) (NDTLP). These Policies seek to ensure that new development achieves high quality design and is appropriate to setting in terms of scale, density, massing, height, layout, appearance, fenestration, materials and relationship to buildings and landscape features.

*Effect on living conditions of neighbouring occupiers*

11. No 14 Tower Park is a two storey dwelling situated to the rear of the appeal site. There is an intervening hedge between the garden of the current host dwelling and No 14 which is of around sufficient height to substantially filter views from first floor level towards the opposite dwelling.

12. The appeal proposal would introduce a replacement dwelling with substantially glazed rear elevation onto the site and would alter the internal layout to provide reverse level accommodation. The closest point of the new rear elevation to the boundary hedge would be approximately 30 metres. The distance between the two rear elevations would be approximately 46 metres. Both of these distances are sufficient to prevent direct overlooking between windows. Even though the introduction of accommodation on the first floor, including balconies, would increase the instances of the occupants looking in a northerly direction towards No 14 Tower Park, with the benefit of the intervening distances and retained hedge, I do not consider that there would be material harm in terms of overlooking of the occupiers thereof.
13. In terms of the effects on the neighbouring occupiers of Crossland, the replacement dwelling would be reorientated on the site to face north-south. Crossland is positioned at an angle within its plot so it faces in a south-easterly direction, towards the flank walls of the existing dwelling and garage and boundary treatment enclosing the front garden.
14. Views from the side elevation of Crossland, including from a living room window and hallway door and window, would permit views of the increased mass of the replacement dwelling and up towards its first floor balconies, enclosed by the overhanging gable side walls. From the front of Crossland, including in views from the kitchen, a bedroom and the front garden, there would be an increased visible mass of flank wall and expanse of roof of the dwelling and its linked garage with room above.
15. Whilst the orientation of the replacement dwelling, positioning of glazed openings and the restricted view from the balconies would avoid any directly harmful overlooking, the degree to which the replacement dwelling would 'box in' views from Crossland would be more harmful to its occupiers. Even relative to the views of the flank walls of the house and garage that currently exist, due to the scale, bulk, massing and siting of the proposal directly adjoining the boundary, the number of windows from which there would be a loss of outlook and view towards an increased mass of building would result in harm to the occupiers of Crossland and a harmful additional degree of enclosure of its front garden.
16. Though the vertical facing plane of the garage wall would be minimised through the reduction in eaves level, the wall would project further forwards and the roof massing would still appear bulky relative to the openness apparent above the existing flat roof garage. That the degree of shading would be less than 'significant' in the context of the BRE guidance<sup>1</sup> does not alter my view.
17. For the above reasons, the proposal would be harmful to the living conditions of neighbouring occupiers, contrary to Policies DM01 and DM04 of the NDTLP which collectively seek to ensure new development avoids significant harm to the amenities of neighbouring occupiers.

### **Other Matters**

18. I note that the proposal would include more energy efficiency and sustainable building measures than the current dwelling which is a positive aspect of the

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<sup>1</sup> Building Research Establishment (BRE): Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice

scheme. However, I cannot attribute more than limited weight to this consideration in the absence of details of any specific measures to be included.

19. I also note the appellant's reference to a permission given for extensions to a dwelling in Braunton, under permission Ref 66863, of which I have limited details. From the plan provided it would appear that the urban context in that case was different to the appeal site, in terms of the more conventional and uniform orientation of dwellings and existence of numerous garages directly adjoining the road. Given that the matters of effects on character and appearance are very specific to each individual site context, I do not consider that the Council has been inconsistent in its decision making. In relation to the effects on the outlook from the neighbour's dwelling towards the garage extension permitted in that case, I do not consider that where harm has been allowed to occur elsewhere that it justifies further harm.

### **Planning balance and conclusion**

20. The appeal proposal would be harmful to both the character and appearance of the area and to the living conditions of neighbouring occupiers, which bring it into conflict with not only the aforementioned Policies, but with the development plan, considered as a whole.
21. The appeal proposal would generate a degree of economic benefit from the construction phase and would generate benefit, albeit not of a wider public nature, to the appellants through the enhanced enjoyment of the replacement dwelling. These benefits attract minor weight in the overall balance.
22. Consequently, the minor benefits do not outweigh the identified harms and do not dictate that a decision should be made other than in accordance with the development plan.
23. For the above reasons, the appeal is dismissed.

*Hollie Nicholls*

INSPECTOR



## Costs Decision

Site visit made on 8 June 2021

**by Mrs H Nicholls FdA MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 13 July 2021**

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### **Costs application in relation to Appeal Ref: APP/X1118/W/21/3268939 4 Buckingham Close, South Molton EX36 4ER**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
  - The application is made by Mr & Mrs Everitt for a full award of costs against North Devon Council.
  - The appeal was against the refusal of planning permission for demolition of existing bungalow and single garage, with construction of replacement, split level dwelling and double garage.
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### **Decision**

1. The application for an award of costs is refused.

### **Reasons**

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. An award of costs can be based on unreasonable behaviour relating to the procedural aspects of the appeal, or the substantive issues, relating to the planning merits. Examples of unreasonable substantive behaviour include preventing or delaying development which should have clearly been permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failing to produce evidence to substantiate each reason for refusal on appeal and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. The appellant alleges that in respect of both reasons for refusal, but particularly in respect of the effects on the living conditions of neighbouring occupiers, the Council has produced vague, unsubstantiated reasons for refusal which are not supported by objective analyses. It is alleged that the Council made suggestions about what would make the application acceptable which were acted upon, and that subsequently, following a visit to the neighbouring dwellings, further claims that the scheme was unacceptable were made without objective evidence to support the Council's position. Evidence of this alleged unreasonableness relates to the Council's lack of counter evidence on the effects of shading and sight lines.
5. The Council's response indicates that the onus is on the appellant to demonstrate that the scheme is acceptable, and that the decision was reached through numerous site visits to both the appeal site and neighbouring

dwellings. The Council indicate that the opportunity to engage through pre-application discussions was not instigated in this instance and that discussions on the need for amendments to the scheme were ongoing throughout consideration of the application.

6. There is limited documented evidence of the exchanges between the parties during the course of the application process, but it is evident from the changes made to the plans that the parties were in discussion about possible amendments that could overcome concerns raised. Whilst ultimately, such changes were not felt to have made the scheme acceptable to the Council, it is clear that the Council did not refuse to engage and took account of the views of all affected parties. Whilst photographs may have been useful to demonstrate overshadowing or overlooking, the Council should not be expected to produce reams of counter evidence to justify all areas of concern about each proposal. I do not consider that the lack of such is an indication that the Council's views are vague, inaccurate or unsubstantiated.
7. I have considered the cases of both parties in detail. The officer's report issued to substantiate the Council's decision on the scheme is detailed and clearly explains the rationale for the decision reached. Similarly, the Council's Statement of Case further expands on the rigour applied to the assessment and why it was felt that those reasons stood up to scrutiny. Whilst I have not agreed with all aspects of the Council's case, none of the claims about the impacts of the proposal are illogical, unfounded or based on inaccurate information.
8. Whilst the outcome of the application process will have come as a disappointment to the appellant, I cannot find evidence that the Council has behaved unreasonably in reaching its decision or through the handling of the appeal. Nor could the appeal have been avoided. The Council's reasons for refusal are complete, precise, specific, relevant, and the evidence produced in defence of the case is not vague, generalised or inaccurate.

### **Conclusion**

9. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated and neither a full, nor partial award of costs is justified.

*Hollie Nicholls*

INSPECTOR