



Appeal Decision

Site Visit made on 3 August 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th October 2021

Appeal Ref: APP/X1118/W/21/3274689

Land to the front of Green Valleys, Lower Park Road, Braunton EX33 2LF

- 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 P & J Reid against the decision of North Devon District Council.
 - The application Ref 72399, dated 30 October 2020, was refused by notice dated 22 December 2020.
 - The development proposed is erection of one dwelling.
-

Decision

1. The appeal is allowed and planning permission is granted for erection of one dwelling at Land to the front of Green Valleys, Lower Park Road, Braunton EX33 2LF in accordance with the terms of the application, Ref 72399, dated 30 October 2020, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. During the appeal, on 20 July 2021, the Government published its revised National Planning Policy Framework (the Framework). The Framework represents the Government's up-to-date planning policies for England and how they should be applied. The Council's reason for refusal refers to paragraph 127, which has been re-numbered 130 in the revised version. Both parties have been given the opportunity to make comments relating to the updated Framework.
3. The site is within the Zone of Influence of the Braunton Burrows Special Area of Conservation (the SAC). This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not an issue raised by the Council, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the European Site. As such, it is necessary to consider this matter as a main issue.

Main Issues

4. The main issues are:
 - a) The effect of the development on the character and appearance of the area; and,
 - b) The effect of the development on the integrity of the European Site.

Reasons

Character and appearance

5. The appeal site lies behind residential properties that front Higher and Lower Park Road to the north and south respectively. Together with the adjacent strips of land to either side, it forms an undeveloped enclave that is enclosed on all four sides by housing. It is accessed via a driveway that slopes up to the site between two houses that front Lower Park Road. The wider area comprises of relatively low density, largely detached housing, of a variety of designs. To the east of the site, beyond Longfield Close, the housing has a distinctive, verdant character, with buildings often set well back from the road behind linear front gardens, or mature planting. This character is less evident in the block of land between Longfield Close and Franklyn Avenue, which encompasses the appeal site.
6. When considering an appeal¹ relating to the strip of land to the west in 2000, the Inspector commented that it was part of a larger area of backland open space, comprising substantial and well-maintained back gardens containing mature planting, giving the area an Arcadian character and a significant visual amenity that could also be seen from public viewpoints on the highway. However, there have been significant changes since then. Three houses now occupy the site of Combe Lodge, to the east, which previously had long front and rear gardens. As a result, the extent of the open space has been significantly eroded. Furthermore, any mature planting that was present on the appeal site no longer exists, and neither it, nor the land to the west, could be described as well-maintained. Consequently, whilst the long gardens in front of Elm Cottage and Maythorne are still intact, the area, as a whole, is diminished in its extent and its visual amenity.
7. As the land is surrounded by houses, the appeal site is not easily visible from many public viewpoints. The undeveloped area behind the buildings may have been apparent from Lower Park Road prior to the development at Combe Lodge, but any views across the previous front garden are no longer available due to the new house on the frontage. The relative lack of mature planting on the remaining open land means there is generally no appreciation of the space behind the buildings when viewed from the surrounding area. It is, therefore, only readily evident when seen through the access, from a short stretch of Lower Park Road, although the appeal site is partly concealed by the frontage property, Steyning, and its high boundary hedge. Whilst the space behind the buildings can be appreciated from here, the somewhat derelict condition of the appeal site, and the unkempt nature of the land to the west, means it does not contribute positively to the character and appearance of the area.
8. The proposed dwelling would be single storey (with dormer windows), and would be encircled by two-storey housing. It would not, therefore, be prominent in the street scene. Even when viewed from directly in front of the access, it would be partly obscured, and seen against the backdrop of the much more substantial buildings at a higher level to the rear. The room in the roof design would be a departure from the generally two-storey housing around the site, but there is wide variety in the scale and design of the surrounding buildings, so it would not be incongruous. Furthermore, the houses to the rear have dormer windows overlooking the site, so the rooms in the roof would not

¹ Planning Inspectorate reference: T/APP/X1118/A/99/1033853/P2

- be a unique feature in the area. The design of the dwelling would not, therefore, be harmful to the disparate character of the area.
9. The location of the dwelling, behind the frontage buildings, could be described as backland development. Whilst the Council contends that such development should be avoided, I have not been directed to any current policies or design guidance that indicate that it is unacceptable in principle, provided that it maintains or enhances the prevailing character and appearance of the area. My attention has been drawn to an appeal decision² in a nearby village, where the Inspector dismissed a proposal that constituted backland development. I note, however, that the Inspector's reasoning included reference to such development not being part of the prevailing local character, rather than it being objectionable in principle.
 10. By contrast, dwellings located behind frontage development are a feature of the area immediately surrounding the appeal site, including at Heanton Close, to the west, and Combe Lodge to the east. The Combe Lodge development is readily visible from the appeal site across the gardens of Elm Cottage and Maythorne. The location of the proposed dwelling behind Steyning, on the Lower Park Road frontage, would be very similar to the positioning of the central and frontage dwellings on the Combe Lodge site. The proposal would not, therefore, be out of character with the pattern of development in the immediate locality.
 11. Although linear green swathes are a characteristic feature of the wider locality, they are more evident in the area to the east. The appeal site is not green, and its lack of enclosure from the driveway and the land to the west, means that it is not perceived as a linear feature. Whilst the proposed dwelling would occupy some of the space, the overall development would include native hedges to both of its long side boundaries, which would divide the site from the land to either side, thus reinforcing the linearity of all three plots. Together with the proposed tree planting and the reinstatement of a domestic garden, the overall development would result in a dwelling on a long narrow plot, with a significant amount of greenery, which would reinforce the key characteristics and special qualities of the area.
 12. The proposal would, therefore, be sympathetic to local character and the surrounding built environment, whilst optimising the potential of the site to accommodate an appropriate amount of development. Consequently, it would accord with the advice in paragraph 130 of the Framework, which seeks to achieve well-designed places.
 13. For these reasons, I conclude that the development would not be harmful to the character and appearance of the area. The proposal would, therefore, accord with Policies DM04 and ST04 of the North Devon and Torridge Local Plan 2011-2031 (adopted 2018), which seek to ensure that new development is of high-quality design that responds to the characteristics of the site and its surrounding area.

European Site

14. The Court of Justice of the European Union has ruled³ that, when considering the effect that a development proposal may have on a European Site, the

² Planning Inspectorate reference: APP/X1118/W/19/3226560

³ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

decision maker must consider any proposed mitigation through an Appropriate Assessment (AA), rather than at the screening stage. That responsibility now falls to me in determining this appeal.

15. The Habitats Regulations require that permission for development may only be granted after it has been ascertained that it will not affect the integrity of the European Site. Braunton Burrows qualifies as a European Site in recognition of its internationally important wildlife, being one of the largest sand dune systems in the UK. It is designated as a SAC for its complex array of dune habitats, that include mobile and fixed dunes, wet dune slacks, dune grassland and scrub; and also, for Petalwort (*Petalophyllum ralfsii*), a liverwort.
16. It is also a popular destination for beach activities, surfing, walking, dog walking and other recreational activities. In the light of the evidence before me, when considered alone or cumulatively with other schemes, I cannot rule out that the proposal would have significant effects on the features of interest of the SAC, due to the resultant increase in recreational use.
17. In my AA, I may consider any conditions or other restrictions which could secure mitigation of this harm. The Council has adopted a report⁴ that provides a strategy to mitigate the potential in-combination impacts of new housing development on the European Site. To achieve mitigation, the Council collects financial contributions from developments, using an adopted formula, and pools the money to be spent on identified projects which will avoid the cumulative harm resulting from development in the area of influence. In this case, a developer contribution has already been secured via a Section 111 Agreement⁵.
18. The Section 111 Agreement does not bind the land or obligate the Council. However, the wording within it says that the contribution has been paid to the Council for the defined purposes, to be used solely for those purposes upon the development being commenced. The Council has confirmed that it considers that this wording places it under an obligation to spend the money on mitigating the impact of the development on the SAC. Contributions received in this way are, therefore, ring-fenced for this use. Furthermore, the Council is currently preparing a contractual agreement with the landowner to secure the appointment of an Engagement Officer, which is a key component of the mitigation strategy.
19. Consequently, I am satisfied, based on the specific evidence before me, that the Section 111 Agreement is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the Council's adopted strategy. I therefore find within my AA that, with the provided mitigation, the proposal would not result in a significant harmful effect on the integrity of the European Site.

Other Matters

20. Concerns have been raised in representations about the impact of the development on the residential amenity of the occupants of surrounding houses. The dwelling would, however, be sufficiently distant from the house on the frontage to avoid any harmful overlooking, and it has no side-facing windows that would look over the adjacent gardens. Access to the dwelling would be via the driveway between the frontage dwellings, but traffic would not

⁴ Braunton Burrows SAC: Mitigation strategy for future plan-led and non plan-led development (April 2021)

⁵ Pursuant to the Local Government Act 1972

pass very close to windows serving habitable accommodation. In view of the number of properties that already use this access, there would not be a significant increase in disturbance for occupants.

21. Concerns have also been raised regarding the impact of the development on highway safety. However, I saw that the access drive provides good visibility for emerging drivers in both directions along Lower Park Road. As there are double yellow lines on both sides of the access, there were no obstructions to visibility at the time of my visit. The proposal would provide adequate on-site parking and turning facilities. In view of these considerations, there would not be any harm to highway safety.
22. Although concern has been raised about the cumulative impact of development on air quality in the area, there is no evidence that there is a current problem in this regard, or that a single dwelling would result in a material increase.

Conditions

23. In accordance with the legislation, I have imposed a condition limiting the period within which the development must commence. I have also included a condition specifying the relevant plans, as this provides certainty for all parties. The Council has submitted a schedule of suggested conditions to cover other matters. I have considered all the suggested conditions against the advice in the Planning Practice Guidance. Where I have agreed that the conditions are necessary, I have altered some of them, in the interests of clarity and precision, to better reflect the guidance.
24. To minimise impacts on and provide net gains for biodiversity, in accordance with paragraph 174 of the Framework, conditions are reasonable and necessary to secure the recommended mitigation and enhancement measures set out in the submitted Ecological Appraisal. I am mindful that the site is surrounded by housing, however, it does form part of a larger undeveloped area that is not currently lit. The Ecological Appraisal identifies that insensitive external lighting could result in the loss of potential bat foraging habitats. A condition controlling external lighting on the site is, therefore, reasonable and necessary.
25. The site is closely surrounded by the rear gardens of residential properties. There is, therefore, potential for disturbance from construction noise. To protect the living conditions of the occupants of surrounding dwellings during the construction phase, it is reasonable and necessary to impose a condition limiting the hours when work and deliveries can take place.
26. Although there is no evidence of any known sources of contamination, it is reasonable to adopt a precautionary approach on such matters. Consequently, I have attached a condition requiring remedial action should any unexpected contamination be encountered.

Conclusion

27. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be allowed.

Nick Davies

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: R234 20 201D - Location Plan; R234 20 203C – Existing Site Plan; R234 20 214E – Proposed Site Plan; R234 20 215C – Site Landscaping Plan; R234 20 301A – Floor Plans; R234 20 401A – Elevations; R234 20 302A – Garage; R234 20 216C - Long Section.
- 3) All planting, seeding or turfing comprised in the approved details of landscaping (Drawing No R234 20 215C – Site Landscaping Plan) shall be carried out in the first planting and seeding seasons following the occupation of the dwelling or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
- 4) The dwelling shall not be occupied until the three integrated bat boxes, two integrated bird nesting boxes, and two hibernacula have been provided in accordance with the details set out in the submitted Ecological Appraisal and Drawing No R234 20 215C – Site Landscaping Plan. These features shall be permanently retained thereafter.
- 5) No external lighting, other than that shown on the approved plans, shall be installed at the site without the written permission of the local planning authority.
- 6) Site clearance, construction works, and deliveries shall take place only between 08:00 – 18:00 on Monday – Friday; 08:00 – 13:00 on Saturdays; and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 7) Any contamination that is found during the course of construction of the approved development, that was not previously identified, shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended, and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.