



Appeal Decision

Hearing held on 30 June 2021

Site visit made on 1 July 2021

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 18 August 2021

Appeal Ref: APP/K1128/W/20/3260083

Lower Rockledge, Devon Road, Salcombe, Devon, TQ8 8HJ

- 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 Peter Williams against the decision of South Hams District Council.
 - The application Ref 4159/19/FUL, dated 20 December 2019, was refused by notice dated 7 May 2020.
 - The development proposed is construction of a new two storey house with ancillary external paths and terraces and renewal of external staircase.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Peter Williams against South Hams District Council. This application is the subject of a separate Decision.

Procedural matter

3. The National Planning Policy Framework (the 'Framework') was revised on the 20 July 2021, during the appeal period. Both parties have had the opportunity to comment on the implications of this for their case.

Main issue

4. The main issue is:
 - whether or not the proposed development would increase the likelihood of significant works to trees subject to a Tree Preservation Order (TPO) and, if so,
 - whether this would cause harm to the landscape and scenic beauty of the South Devon Area of Outstanding Natural Beauty (AONB).

Reasons

Description

5. The appeal site is a narrow plot, cut into the side of a steep hill above the Salcombe and Kingsbridge estuary. Remnants of garden walls, steps and a path can be seen, but the area is now completely overgrown. Part of the site has previously been subject to a woodland TPO, which the Council has confirmed is no longer viable.

6. The plot is within the grounds of adjacent Stonehanger Court, also owned by the appellant, and would be accessed via a shared driveway. It is surrounded by residential development, including by a block of flats below and a large, detached house at 'Rockledge' above.
7. It is proposed to build a 2-storey, stone clad house with a sedum roof. This would be situated towards the back of the plot, behind which is an almost vertical bank reaching several metres up to the landscaped garden associated with Rockledge. The two Black Pine trees¹ at the top of the bank, within the grounds of Rockledge, are protected by a TPO².
8. The Black Pine trees have umbrella shaped crowns and a light canopy structure. The base of the trees would be approximately 5 metres above the proposed house. T1 to the south of the plot is approximately 17 metres high and the crown would be within 2 metres of the boundary between the sites. T2 to the north of the plot is approximately 13 metres high, and a substantial proportion of the crown overhangs the appeal site.
9. The appeal site and pine trees are within the AONB and it is not in dispute that the two protected trees subject of this appeal make a significant, positive contribution to its landscape and scenic beauty.

Risk to protected trees

10. The appellant's arboricultural risk assessment³ has assessed the probability of the tree causing harm to the new building as negligible for the 12 months following the survey. However, the longer term risk to people and property from tree or branch failure is not calculable with any degree of certainty, particularly when allowing for extreme weather events, hence the recommendation to regularly review the risk assessment. I heard that the prevailing winds are southwesterly, which would blow debris away from the house. However, it is possible that winds in a storm would behave more erratically and the fall path of heavy material would be influenced by additional factors, including gravity and the weighting of the tree. I conclude that tree or branch failure could occur, and that debris could fall towards the appeal site.
11. Introduction of domestic 'targets'⁴ would inevitably lead to a higher risk of harm to people and property from falling branches or tree failure than if the site remains undeveloped. In particular, the proposed entrance and a wooden access walkway on stilts, both of which I would expect to be frequently used by the occupants of the house, are both directly below the canopy of T2. I acknowledge that the structure would be strong enough to withstand a tree falling on it, but in the event of this happening, ancillary damage from both trees to the fabric of the building is possible.
12. A consequence of this is that 'fear of harm' from the trees could increase. The extent of this is unknown and, by its nature, largely unquantifiable. However, given the height and proximity of the trees above the house and entrance way, I consider that such fear would be foreseeable, rational and reasonable. I note

¹ There was discussion at the hearing regarding the species of protected trees. The TPO records them both as Corsican Pines, but it was agreed that the most northerly is probably an Austrian Pine. However, both are types of Black Pine, which I consider sufficient description for the purposes of this decision.

² No. 1010 (April 2020)

³ *Arboricultural Survey and Tree Risk Assessment* (July 2020), Aspect Tree Consultancy Limited

⁴ This reflects the wording used in the arboricultural risk assessment

- that the appellant's assessment⁵ also recognises that reasonable concerns arising from proximity of the trees could lead to foreseeable pressure for removal. I conclude that the development would increase the likelihood that an application is made to the Council to prune or fell the trees.
13. I accept that fear of harm is likely to be heightened when the trees are easily visible from inside a property and that the proposed house would look away from the trees. However, T2 is immediately above the walkway and entrance, and to this extent its presence would be felt every time the front door is used. In the unusual circumstances of this case, I consider that the proximity and height of the trees would be a major contributor to fear of harm and, although an inability to see the trees from the house may reduce this, it would not remove it.
 14. I do not doubt that the appellant has no intention of requesting reduction or removal of the trees. However, I cannot be confident that this would continue as the entrance to the house is used, the trees age and the reality of the overhanging tree is experienced. In addition, future owners may be more averse to risk.
 15. The presence of the TPO means that the Council would need evidence of risk to allow work to be undertaken on the trees. For the reasons above, it appears to me that the Council would likely find it hard to resist a request to lop or fell the trees on the basis that there is no evidence of a risk of harm to people or property.
 16. A list of refusals to undertake TPO works has been brought to my attention by the appellant and I entirely accept that the Council is capable of refusing inappropriate works. However, for the reasons above, I have a concern that the Council would find it hard to resist an application in this case. To my mind, the fact that the Council frequently refuses applications reinforces that their apprehension in this case is a matter of considerable weight.
 17. I acknowledge that there are other houses in the area with close relationships to large trees. While I do not know the specific circumstances of these cases, I did observe that many of these properties were older in origin and likely to have been permitted under previous policies, or even pre-date the mature trees. In addition, I consider the proposal unusual because the base of the trees would be immediately above the house. In most of the cases brought to my attention and those I observed, the base of the tree is at approximately the same ground level and therefore has less distance to fall. For these reasons, I do not find that these examples provide a strong form of precedent.
 18. New retaining structures would stabilise the land above the site and it is suggested that these works would increase the stability of the trees. The species has evolved to cope in these difficult conditions and I do not have any evidence that shoring the bank would make a significant difference to their future stability.
 19. An agreement to maintain the trees with the owner of Rockledge is proposed by the appellant that it is suggested would ensure their longevity. This agreement would not alter the fact that introduction of domestic receptors beneath the trees increases the risk to people and property, with the

⁵ *Arboricultural Impact Assessment Report* (July 2020), Aspect Tree Consultancy Limited

consequence that they are more likely to be subject to significant works. In addition, maintenance is likely to result in the removal of more fragile sections of trees and the bar for removal is lowered if sensitive receptors are introduced beneath.

20. I conclude that the proposal would increase the likelihood of significant works to protected trees, which could cause their loss or deterioration, in conflict with Policy DEV28 of the Plymouth and South West Devon Joint Local Plan (the 'JLP') and Policies SALC Env5 and Env7 of the Salcombe Neighbourhood Development Plan (June 2019) ('NDP').
21. Given the positive contribution of the trees to the landscape, loss or reduction of the trees would not conserve or enhance the landscape of the AONB as required by Policies DEV23 and DEV25 of the JDP, and Policy SALC Env1 of the NDP.

Other considerations

22. The extracts before me of the Salcombe Conservation Area ('CA') Appraisal (2010) highlight the structure provided by the trees to the landscape and contribution to the aesthetic value of the area, specifically referencing the greenery along Devon Road. This is consistent with my observations at the site visit. I conclude that the TPO trees make a positive contribution to the setting of the CA, to which I am required to pay special attention under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
23. Given that I have found that the development would lead to an increased likelihood of loss or reduction of the trees, I conclude that the proposal would not preserve or enhance the character and appearance of the CA, as required by Policies DEV20 and DEV21 of the JDP, and Policy SALC B1 of the NDP.
24. The appeal site is within buffer zones for the Cirl Bunting and Salcombe and Kingsbridge Estuary SSSI. No specific concerns in regard to these have been raised and, as I am dismissing the appeal for other reasons, I have not considered it necessary to undertake assessment of any potential impact.

Planning balance and conclusion

25. There would contribution to the housing supply from windfall development and to the local economy from construction and occupation of the house, but given that this is a single dwelling, the benefit from this would be small.
26. In addition to the increased likelihood of loss or reduction in protected trees, the consequent harm to the AONB is a matter of great weight according to paragraph 176 of the Framework. The harm to the setting of the CA from this would be less than substantial, and in this event, paragraph 202 of the Framework states that this harm should be weighed against the public benefits of the proposal. The minor public benefit from the contribution of one house to the local supply and economy would not outweigh the harm to the CA, which is also a matter of great weight according to the Framework.
27. For these reasons, the proposal conflicts with the development plan read as a whole, and there are not material considerations that indicate a determination other than in accordance with this. The appeal must therefore be dismissed.

B Davies INSPECTOR

Appearances:

FOR THE APPELLANT:

P Williams, Appellant
R Pain BA BArch RIBA, Agent
G Woods BSc, Planning Advisor
D Scanlon, MICFor FArborA CEnv, Arboricultural Consultant

FOR THE LOCAL PLANNING AUTHORITY:

A Henderson Smith, BSc (Hons) MA (TRP) PGDip (Cons Arch) MRTPI, Planning Officer
V Clark, MPlan, Planning Officer
L Marshall, FdSc MarborA, Tree Specialist
A Urmson, BSc (Hons) Dip LA CMLI, Landscape Specialist

OTHER INTERESTED PARTIES:

Councillor M Fice, Lead on Planning, Salcombe Town Council
L Pengelly, South Hams Society
S and P Andrews, residents at Rockledge
P Guess, resident of adjacent property