



Appeal Decision

Site visit made on 6 November 2018

by K Taylor BSc (Hons) PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th December 2018

Appeal Ref: APP/P1133/W/18/3207470

Land to the north of Indio House, Newton Road, Bovey Tracey TQ13 9BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Kach Developments against the decision of Teignbridge District Council.
- The application Ref 17/02118/MAJ, dated 18 August 2017, was refused by notice dated 18 May 2018.
- The development proposed is described as "outline planning application for up to 30 dwellings and associated works (means of access to be determined only)".

Decision

1. The appeal is allowed and planning permission is granted for up to 30 dwellings and associated works at land to the north of Indio House, Newton Road, Bovey Tracey TQ13 9BG in accordance with the terms of application Ref 17/02118/MAJ, dated 18 August 2017, subject to the conditions in the attached schedule.

Procedural matters

2. The application was made in outline with all matters reserved for future consideration except for access. The proposed site access plan shows the access arrangements from the site to the private drive. Plans showing a site layout and drainage strategy have also been submitted and I have treated this information as indicative. In addition, plans showing potential alterations to the junction of the private drive with Newton Road have also been provided; I have also treated these as indicative.
3. In my formal decision I have simplified the description as express reference to the outline nature of the application or the matter under consideration is not necessary.

Main issues

4. The main issues are the effect of the development on highway safety in terms of the junction of the private drive with Newton Road, the adequacy of the private drive to serve the development and whether there would be any associated effects on the setting of Indio House, a Grade II Listed Building.

Reasons

Junction with Newton Road

5. The development would be accessed from the private drive that provides access to Indio House and a small number of other residential properties. There is a vehicular and pedestrian gate with brick piers containing stone detailing set

back from the carriageway edge where the drive meets Newton Road. The appellant acknowledges that, in its current arrangement, the visibility at this junction is substandard and would need to be improved.

6. The private drive and the highway land at the junction with Newton Road are not within the application site. However, indicative plans have been submitted to show possible options for altering the junction to provide improved visibility. This would involve extending the existing junction out into Newton Road with new footways and/or a verge to either side of the access. The overall effect would result in a narrowing of the road. The proposals show visibility splays could be achieved of 2.4m x 43m in either direction or 2.4m x 46m to the north and 2.4m x 40m to the south.
7. The junction with Newton Road is located in a 30mph speed limit area. The recommendation in Manual for Streets is that splays of 43m are provided in such locations. The appellant's undertook a speed survey. This shows that the 85th percentile results (adjusted for wet weather) were 31.5mph for traffic heading into Bovey Tracey and 33.85mph for vehicles travelling out. This would suggest that a splay in excess of that recommended for a 30mph road ought to be provided. However, the indicative alterations to the junction show that the road would be narrowed by about 2m. There is a correlation between reduced road widths and vehicle speeds. Taking this into account I am content that the indicative visibility splays suggested by the appellant would be adequate.
8. The evidence provided shows that alterations to the junction would involve works on highway land and that no other third party land would be required. In view of this I am satisfied that this is not a situation where there is no prospect at all of the necessary works being provided. In fact the evidence shows that there is a reasonable likelihood that alterations to the junction to allow for adequate visibility could be achieved. Therefore a negatively worded condition, to require that the details of this be approved before any other works commence, would deal with this matter. So that there is certainty it is essential that a final scheme be approved by the Council before any development takes place and so necessarily it would need to be a pre-commencement condition.
9. Evidence from third parties has included details of an Automated Traffic Count survey which took place over a period of 26 days. This shows 85th percentile speeds considerably higher than the appellant's survey results at 38.9 and 39.1mph. The evidence shows that this survey was undertaken a considerable distance to the south of the junction at the end of the private drive. My observations confirmed that the environment in the two locations is different. The location where the Automated Traffic Count Survey took place is less built up. Closer to the private drive, there are a greater number of buildings and accesses and I observed a number of parked cars. All these factors emphasise that the area is likely to be used by pedestrians and most drivers would adjust their behaviour accordingly. Therefore, I consider that the results of the Automated Traffic Count are not likely to be indicative of vehicle speeds close to the junction with the private drive.
10. There has been other criticism of the appellant's speed survey, however I have no evidence that it was undertaken other than in accordance with the relevant guidance. I also note that the local highway authority, which acts as expert advisors to the Council on such matters, did not raised concerns in respect of the methodology utilised.

11. The presence of the gate piers, which are curtilage listed structures, result in a narrowing of the private drive such that vehicles traveling in opposite directions could not pass between these structures at the same time. The space to the front of these piers would allow for one vehicle to wait, clear of the main highway, if there were a vehicle travelling in the opposite direction. The addition of up to 30 dwellings will not result in such large increases of traffic that conflicts at this access are likely to occur regularly. There would not be sufficient space for very long vehicles to wait clear of the highway in front of the gate piers. However, outside of the construction phase, the use of the private drive by large vehicles would be very limited. In these circumstances I am satisfied that the junction could be altered so as to allow for suitable access arrangements to serve the development.
12. On this main issue I conclude that there is a good prospect that suitable alterations to the junction of the private drive with Newton Road could be achieved such that highway safety concerns would not arise. There would be no conflict with Policy S1 of the Teignbridge Local Plan 2013-2033 (the LP) which seeks to ensure development proposals perform well in terms of road safety. Nor would there be conflict with the National Planning Policy Framework (the Framework) which states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety.

Adequacy of the private drive and the effect on the setting of Indio House

13. The private drive between Newton Road and the proposed access to the appeal site is set within a wooded area and contains a gentle curve. There is a quiet and semi-rural character to this area. The provision of up to 30 dwellings would bring about an increase in vehicles on this drive as well as increased numbers of pedestrians and cyclists. The drive is fairly narrow and this, along with the curve in the road and the enclosed feel resulting from the wooded setting would encourage drivers to keep vehicle speeds low. Traffic generation from up to 30 more houses would not bring about vehicle movements in such great numbers to mean that the environment along the private drive would be unpleasant for its use by pedestrians and cyclists.
14. In my view, this route would allow for a pleasant walk or cycle from the appeal site to Newton Road. Pedestrians and cyclists would only be a little further from the town centre than would have been the case if an alternative access were utilised, such as through St John's Close. The development would be located in an area with a semi-rural feel and, in this environment, the lack of street lighting along the private drive would not significantly discourage its use by those not traveling in vehicles.
15. The supporting text to Policy BT2A of the LP states that the site has a number of access options. There is nothing in the text to suggest that there is a single suitable access point, or even a preferred option. This text does require that any road access should have regard to the character of the listed Indio House and driveway. The wording of the policy itself expects measures to be put in place to address the site's sensitive built environment and landscape setting adjoining the listed house and driveway.
16. Alterations or additions to the private drive are not proposed, including any localised widening. I do not have any reason to conclude that such upgrades are essential to allow for the appeal development to proceed. The comments from the local highway authority in respect of the advanced payment code do

not mean that it is necessary that the drive be adopted. Indeed, the expectation is that works would not take place to the driveway.

17. The site is allocated for housing in the development plan and it is reasonable to assume that the effect of housing on the setting of Indio House was part of the balance of considerations through the preparation and ultimately the adoption of the plan. There would not be any impact on the drive or the setting of Indio House in terms of built form as a result of the private drive being utilised for access purposes. The increased use of the drive would bring about a change to its character. However, with only up to 30 additional dwellings being served by it, the drive would still largely have a quiet character. This being the case, the development would not result in harm to the setting of Indio House.
18. Excessive parking of vehicles could have a detrimental effect by reducing the rural feel of the drive. However, I have no evidence that it would not be possible to provide adequate parking within the appeal development. This is largely a matter for the consideration of any reserved matters applications. However, provided adequate parking is secured on site, excessive off-site parking on the private drive should not occur.
19. On this second main issue I therefore conclude that the private drive would be adequate to serve the development and that the setting of Indio House would not be harmed. There would be no conflict with Policies S1, S2, or EN5 of the LP. Together these seek to ensure development is suitably located including in respect of accessibility by walking and cycling and meets the needs of pedestrians and cyclists, maintains the character and historic interest of the area, and takes account of the significance, character and setting of heritage assets. For similar reasons there would also not be conflict with the Framework.

Other matters

20. The development would result in some additional local traffic on Newton Road and other local roads. However, the overall scale of the development would be modest and it would not result in a severe impact on the road network. The road narrowing, as suggested in the indicative information, would affect a very modest area of Newton Road and so any reduction in the availability of on-street parking would be very limited. Local residents have reported some road traffic accidents which have taken place. However, it does not follow that safe and suitable access for the appeal scheme cannot be achieved. I recognise the concerns in respect of the construction phase including, noise and disturbance and the safety of the existing users of the private drive. Some disturbance is an inevitable consequence of development, but it would only be for a time limited period. The nature and width of the drive is not so restrictive that conflict between the users could not be avoided.
21. There has been a general concern that housing development on the site would adversely affect the setting of Indio House. However, as I have indicated above, that would have been a matter considered through the preparation of the LP. This is not something that should be for reconsideration through the determination of a planning application or appeal. The ecological impact of the development can be adequately mitigated through conditions. There is a general concern about the loss of the meadow, however as the site is allocated within the LP, this general loss has already been considered in the local plan process.

22. The development of the site would result in a change of outlook from a number of nearby properties, however the site is large enough to accommodate the amount of development proposed without introducing unacceptable living conditions for the occupiers of these neighbouring houses. The appellant submitted additional information in between the two meetings of the planning committee where the development was considered. This is not an unusual situation and development proposals often evolve during the consideration period. There is no reason to disregard this information, in fact local planning authorities are supposed to be proactive in working with applicants to seek solutions to any issues that arise.

Conditions and planning obligation

23. To support the provision of self/custom build housing I have extended the period for the submission of the reserved matters applications for these buildings to 5 years. It is not necessary to have a condition that specifically requires that each self/custom build house is considered as a separate phase. I have imposed a condition specifying the relevant plans as this provides certainty. However, as all matters are reserved, save for access, it is only necessary to refer to the site plan and the details of the access. The ecology report referred to in the Council's suggested condition does contain important mitigation and so a condition is necessary to ensure that this is adhered to.
24. It is necessary to secure a programme of archaeological work so that such matters are dealt with appropriately. In view of the scale of the development it is necessary to secure a construction management plan, which would also deal with tree protection measures and measures to protect the curtilage listed gate piers at the access with Newton Road. To be effective it is necessary that both these conditions are pre-commencement.
25. A condition is necessary to control lighting to safeguard foraging paths for bats. It is also necessary to ensure any trees to be removed are inspected for the presence of bat roosts and mitigation secured if necessary. To prevent harm to the trees on and near the site it is necessary to prevent works, such as the provision of services, under the private drive and to secure an adequate buffer, with suitable landscaping, between the northern boundary and the proposed houses. It is necessary to secure adequate open space and landscaping within the site and that this incorporates biodiversity enhancements.
26. To ensure that these matters are dealt with adequately a condition is necessary to secure the provision of drainage schemes, including a temporary surface water scheme for the development phase. In view of the scale of the development it is necessary to ensure that site waste is dealt with adequately, but given their small scale it is not necessary that this be extended to the self/custom build plots. Finally, given the increased use of the private drive it is necessary that on-going management and maintenance arrangements are put in place. I have amended some of the wording of the suggested conditions to ensure that they would be effective.
27. A signed planning obligation has been submitted. This would secure 30% of the houses as affordable dwellings and 5% as serviced custom build plots. These obligations are necessary to meet the development plan requirements and are directly related to the appeal development. They would also be reasonably related in scale and kind.

Conclusion

28. I conclude that the appeal proposal would accord with the development plan when it is considered as a whole. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

K Taylor

INSPECTOR

Richborough Estates

Schedule of conditions

1. Details of the appearance, landscaping, layout, and scale, hereinafter called "the reserved matters" for each phase of the development shall be submitted to and approved in writing by the local planning authority before any development on the relevant phase takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters for each phase (excluding any identified self/custom build phase) shall be made to the local planning authority not later than 3 years from the date of this permission.

Application for approval of reserved matters for each phase of the development which solely includes self/custom build housing shall be made to the local planning authority before the expiration of 5 years from the date of this permission.

3. The development hereby permitted shall take place not later than 2 years from the approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: S1611 LP Rev B, and 02377E-508 Revision A.
5. No development shall commence until an improvement scheme for the junction with Newton Road has been submitted to and approved in writing by the local planning authority. The scheme shall include a timetable for its implementation, which at the latest shall be prior to the first occupation of any dwelling hereby approved.
6. No development shall commence until the implementation of a programme of archaeological work for the whole site has been secured in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
7. No development shall commence until a construction management plan has been submitted to and approved in writing by the local planning authority. It shall specify the following:
 - details, including plans, of tree protection measures and fencing;
 - loading and unloading of plant and machinery;
 - facilities for the storage of plant, machinery, and construction materials;
 - the erection and maintenance of security hoardings and protection measures for the gates and piers at the junction with Newton Road;
 - wheel washing facilities, and
 - measures to control the emission of dust and dirt during construction.

The development shall be carried out in accordance with the approved details.

8. The development shall be carried out in accordance with the mitigation strategy contained in the Ecology Report, Including Bat Survey And Greater Horseshoe Bat Mitigation Scheme, dated 6 September 2017.
9. Prior to the installation of any exterior lighting on the buildings or elsewhere on site, including street lighting, full details including design, siting and illumination-type shall be submitted to and approved in writing by the local planning authority. Only the approved lighting shall be installed.

10. No trees shall be removed from the site pursuant to this planning permission prior to their inspection by a qualified ecologist to confirm the absence of bat roosts. Should a bat roost be found, details of the proposed mitigation for its loss, along with a timetable for its implementation, shall be submitted to and approved in writing by the local planning authority prior to the removal of the tree/roost. The works shall thereafter be carried out in accordance with the approved details.
11. No works pursuant to this planning permission shall be undertaken to the private drive serving the site, including the provision of service runs.
12. The site layout proposals shall incorporate a buffer to the northern site boundary sufficient to support the maintenance of the tree/hedge line. Details for the landscaping of this section of the site, including boundary treatments, must be included in the landscaping details submitted for the relevant phase of the development.
13. The development hereby approved shall provide open space and landscaping in accordance with Policy WE11 of the Teignbridge Local Plan. Details of the provision to be made on site shall be submitted to and approved in writing by the local planning authority as part of the relevant reserved matters submission relating to the dwellings other than the self/custom build dwellings. These details shall include measures to support biodiversity enhancements including the provision of bat/bird boxes and shall specify the amount, delivery specification, and management specification of the open space, play, and landscape provision as well as a timetable for their implementation. The development shall be carried out in accordance with the approved details and the management specification shall be implemented for the lifetime of the development.
14. Reserved matters applications for the layout of any phase of the development (excluding any phase solely including self/custom build housing), shall include details of the proposed permanent foul and surface water drainage system as well as details of a temporary surface water drainage scheme for the construction phase. The details shall include:
 - the rates, volumes, and quality of the surface water runoff from the construction site;
 - the exceedance pathways and overland flow routes across the site in the event of rainfall in excess of the design standard of the proposed temporary and permanent surface water management systems;
 - details of how the impact of the drainage proposals on trees has been minimised; and
 - details of the adoption and maintenance arrangements for the proposed permanent surface water drainage management system.

The development shall be carried out in accordance with the approved details.

15. Reserved matters applications for any phase of the development (excluding any phase solely including self/custom build housing), shall include a waste audit statement. The development shall be carried out in accordance with the approved details.
16. Prior to the occupation of any dwelling hereby approved details of a scheme for the maintenance and management of the private drive shall be submitted to and approved in writing by the local planning authority. The scheme shall thereafter be implemented as approved for the lifetime of the development.