



Appeal Decision

Site visit made on 10 June 2019

by David Wyborn BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal Ref: APP/K1128/W/19/3226094

The Crab Pot, Chestnut Park to Beesands, Beesands TQ7 2EH

- 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 Harris against the decision of South Hams District Council.
 - The application Ref 4323/17/FUL, dated 18 December 2017, was refused by notice dated 2 November 2018.
 - The development proposed is the demolition of existing two bedroom chalet and construction of a two bedroom house.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the application was determined, the Council has adopted the Plymouth and South West Devon Joint Local Plan 2014-2034 (the Local Plan). The reasons for refusal reference the then emerging policies of the Local Plan and the appellant has been able to make an assessment of the scheme against these emerging policies in the appeal statement. The appellant has also had the opportunity in final comments to make further submissions in relation to the now adopted Local Plan and therefore no party has been prejudiced by the consideration of the appeal proposal against the policies of the Local Plan.

Main Issues

3. The main issues are:
 - whether the site would be a suitable location for the proposed development in relation to the risk of flooding with particular regard to the issue of whether the building constitutes a separate residential unit, and
 - the effect of the development on the character and appearance of the area.

Reasons

Location and Flood Risk

4. The building that would be replaced is a single storey, modest structure located to the side of the larger residential building, known as The Lobster Pot and The Crab Pot. It is accessed off the same drive as the Lobster Pot. The appellant does not seek to rely on the case that the proposal is a replacement dwelling, although the Council reason for refusal says that the proposal has not provided

sufficient evidence of the continuous use of the building for separate residential purposes. At the appeal stage, the Parish Council has raised a similar concern that there was not recent history and, in their view, doubtful permission for, residential occupation. A local resident has also raised concern that the chalet had never been a dwelling.

5. I have not been presented with detailed and comprehensive information on this matter, such as in the form of a Certificate of Lawful Use and Development, that would demonstrate that the chalet is a separate unit of accommodation. It may be that the case can be demonstrated that the building is a separate unit of accommodation. However, a section 78 appeal is not the procedure to ascribe a lawful use to a building when the evidence before me is limited and parties have not had the formal opportunity to present information. In these circumstances, a precautionary approach is appropriate, and, in the absence of definitive evidence to demonstrate otherwise, I intend to proceed on the basis that the chalet does not form a separate unit of accommodation. I appreciate that the appellant makes the case that a dwelling is justified on the basis of the Local Plan policies for the delivery of housing in the area, however, in terms of the main issue in this case, the proposal would be an additional, and not a replacement, dwelling.
6. In terms of flood risk, the evidence indicates that the chalet itself, and the replacement building, is within Flood Zone 1. However, a reasonable length of the access drive, within the application red lined site, and the road in front of the site lies within Flood Zone 2. I note from the photographic evidence submitted from a local resident that the general area in front of the property has flooded in the past and, on that occasion, access appears to have been hindered to the drive.
7. The National Planning Policy Framework (the Framework) sets out that in areas that are known to be at risk of flooding, a 'sequential test' should be applied to proposals for development. It states that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Furthermore, the Framework advises that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
8. As the dwelling itself would be in Flood Zone 1 there would be little risk to human life or damage to the property in the event of a flood. However, in an extreme flooding event it is likely that the access to the dwelling and the adjoining road area would be submerged by water.
9. In this case, there would be the potential for flood waters to make access to the property difficult at these times with the resultant disruption to the living conditions of the future residents. Access and egress would be important considerations for occupiers, as well as the ability to provide access to the property for the emergency services during flood conditions. The location of the development, therefore, cannot be described as optimal in terms of flood risk in comparison to residential development that would be located and accessed from land solely within Flood Zone 1.
10. I note the potential for pedestrian access to be provided through the adjoining site, which lies within the appellant's ownership, to the side road (adjoining Higher Terrace) such that the dwelling could be accessed from areas not identified to flood. However, I do not have a detailed specification of the link,

and the indications are that the link would not anticipate the ability to accommodate vehicles, such that vehicles for those seeking to enter or leave the site may have to remain in or near the side road which is narrow and with limited opportunities for off road parking. The side road, at times of flooding along the frontage, would be required to be kept as clear as possible, potentially for the emergency services and other vehicles. I have noted the draft condition which seeks to address the matter of pedestrian access in times of flooding. I am, however, not satisfied, on the information before me, that a link through the site would provide a safe and convenient route for all involved in the event of flooding such that it would be reasonable for these details to be reserved for agreement by condition at a later time.

11. In the light of the site circumstances detailed above, and the advice in the Framework and the Planning Practice Guidance, I consider that the appeal proposal should be subject to the sequential test. With the adoption of the Local Plan, the Council advise that they can demonstrate a Framework compliant 5 year housing land supply. This leads me to conclude that there are very likely to be reasonably available development sites to deliver the housing growth required across the Local Plan area which would have a lower probability of flooding than the appeal site. On this basis, the proposal would not pass the requirements of the sequential test. It, therefore, follows that I do not need to consider the exception test.
12. For the above reasons, I have approached this matter as the provision of an additional dwelling to the site. The appeal site access is subject to flood risk and there are likely to be reasonably available alternative sites with a lower level of flood risk. In these circumstances, I conclude that the site would not be an appropriate location for the additional dwelling and the proposal would, therefore, not accord with Policy DEV35 of the Local Plan and the Framework which seeks, amongst other things, to direct development to areas of least flood risk.

Character and appearance

13. Beesands is located within the South Devon Area of Outstanding Natural Beauty (AONB) where great weight should be given to conserving and enhancing the landscape and scenic beauty of the area. The site adjoins a sizeable building, subdivided into two units, which has been the subject of renovations and which has resulted in an appearance to the building that has a more contemporary feel.
14. In the surrounding area, there are a reasonably wide mix in the bulk, design and materials of the various properties such that there is no dominant or vernacular style. The proposal would replace a chalet which is single storey, of modest proportions and of functional appearance with a more prominent structure. It would be reasonably close to the adjoining building. However, the visual bulk of the proposal would be reduced by the combination of the stone to the ground floor elevations and timber cladding to the first floor.
15. The recessed balcony area on the first floor would further reduce the building mass and would provide variation to the front elevation. The observation room at second floor would be set back on the roof space such that this element would appear as a reasonably modest element in the overall composition of the building.

16. When viewed from the sea frontage area, there would be buildings set behind on the slope which would provide a backdrop to the proposal. While the profile of the building would be different from those around it, the overall height and bulk would not be out of keeping with the mix of buildings in the general area.
17. I have taken into account all the concerns raised with the character and appearance of the building. I acknowledge that the building would have a contemporary appearance, however, given the variety of the built form locally, the design would integrate satisfactorily with the form and layout of the surroundings and in this respect would meet the Framework approach to achieving well-designed places.
18. As the site is located amongst other built development, and is of an appropriate design and bulk, the proposal would conserve the landscape and scenic beauty of the AONB.
19. In the light of the above analysis, I conclude that the proposal would have an acceptable effect on the character and appearance of the area and, therefore, would comply with Policies DEV20 and DEV25 of the Local Plan and the Framework which seek, amongst other things, to protect and improve the quality of the built environment.

Other Matters

20. The provision of the dwelling would be on a site with existing buildings and the Framework advises that great weight should be given to using suitable sites within settlements for homes. However, in this case I attribute limited weight to this benefit because the site would not be suitable because of the flood risk issues.
21. There would also be benefits to the local economy during construction and social and economic benefits in the subsequent occupation, thereby helping to sustain rural services. These benefits, however, would be limited as only a single dwelling would result.
22. I have noted all the submissions regarding policies for the strategy for housing delivery in the Thriving Towns and Villages Area of the Local Plan and their applicability to the scheme. However, given my findings above and the reasons for refusal, it has not been necessary to examine this matter further.

Conclusion

23. I have found that the development would have an acceptable impact on the character and appearance of the area. Even if the new dwelling was considered a visual improvement over the existing chalet, given the modest presence of the chalet, any such benefit would afford limited weight.
24. The scheme would provide a dwelling in a location where the access and egress would be compromised at times of flooding. In all likelihood there are other sites that could be developed with a lower level of flood risk. This is a matter which I attribute substantial weight. The benefits of the scheme afford limited weight and therefore do not outweigh the harm I have identified.
25. Consequently, the proposal does not meet with the terms of the development plan and the Framework when considered as a whole and there are no material considerations that indicate that a departure from the development plan would

be justified. Accordingly, and taking all other matters into account, I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR