
Appeal Decision

Site visit made on 19 August 2019

by Andrew Bremford BSc (Hons) MRICS

an Inspector appointed by the Secretary of State

Decision date: 06 September 2019

Appeal Ref: APP/K1128/W/19/3230899

Millbay Cottage, East Portlemouth TQ8 8PU

- 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 Mr Tim Brettell against the decision of South Hams District Council.
 - The application Ref 2107/18/OPA, dated 22 June 2018, was refused by notice dated 3 January 2019.
 - The development proposed is demolition of existing building and construction of new replacement dwelling with associated parking relocated on the site at Millbay Cottage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application is submitted in outline with all detailed matters reserved. I have taken into account the location plan (drawing No. 1706-01A), the site plan (drawing No. 1706-03B) and the elevations plan (drawing No. 1706-04) but have regarded all detailed elements of these drawings as indicative only.
3. Since the Council refused planning permission the Council has adopted the Plymouth and South West Devon Joint Local Plan 2014-2034 (JLP). The JLP has replaced the South Hams Development Policies Development Plan Document (DPD) and the South Hams Core Strategy (CS). Hence, Policies DP4, DP15 and DP17 from the DPD and Policies CS9 and CS11 from the CS quoted in the Council's refusal notice are no longer relevant to this appeal. Furthermore, the policy numbers from the emerging JLP referenced by the Council in the refusal notice at the time it was issued (3 January 2019) were changed upon adoption of the JLP in March 2019. However, the form and wording of Policies TTV26, TTV29, DEV23, DEV25 and DEV35 in the adopted plan have not materially changed. The main parties had sight of these emerging policies at planning application stage: the change in the status of the JLP has not made any significant difference to the way that this appeal is determined in respect of planning policy considerations.

Preliminary Matter and Main Issues

4. The proposal would demolish the existing building adjacent to Millbay Cottage and erect a replacement dwelling on the site. The lawfulness of the existing building is a matter of dispute between the main parties. However, it is not for me, under a section 78 appeal, to determine the lawfulness of the existing

building. The appellant asserts that the existing building is a dwelling and that as such a lawful use as it has a separate address, is separately rated for council tax and claims that it was accepted as a separate dwelling in past applications and appeal decisions. However, the correct mechanism for determining whether a use is lawful is to apply for a certificate of lawful development (LDC). A LDC is not before me and I am unable to definitively conclude that the existing building has a lawful use for permanent residential use. I have therefore determined the appeal on this basis.

5. Therefore, I consider the main issues are (i) whether the proposal is acceptable in principle in terms of its location having regard to local policy; (ii) whether the proposal would conserve or enhance the landscape and scenic beauty of the South Devon Area of Outstanding Natural Beauty; and (iii) whether or not the proposal would be capable of providing surface and foul water drainage.

Reasons

Location of development

6. The appeal site lies outside a settlement boundary and within the countryside. Policy TTV26 of the JLP provides a framework for guiding development within the countryside in order to protect the special characteristics and role of the countryside. It states that isolated development in the countryside will be avoided and only permitted in exceptional circumstances. The appellant accepts that the site is not a location where new residential development is permitted other than for the reasons set out in the policy.
7. However, the appellant claims that the proposal seeks to replace an existing dwelling therefore adheres with Policy TTV29 of the JLP which deals with replacement dwellings in the countryside. Policy TTV29 of the JLP states, amongst other things, that proposals to replace dwellings in the countryside will be permitted provided, amongst other things, that the existing dwelling has a lawful use for permanent residential use and has not been abandoned. I saw on my site visit that the existing building to be demolished has clearly not been abandoned. However, as outlined above, I am unable to definitively conclude that the existing building has a lawful use for permanent residential use.
8. For the above reasons, I conclude that as a new dwelling located in the countryside the proposal would conflict with the locational requirements of Policy TTV26 of the JLP. Furthermore, as I have been unable to conclude that the existing building has a lawful use for permanent residential use, the proposal would also conflict with Policy TTV29 of the JLP in so far that I cannot be certain that a replacement dwelling is proposed.

South Devon Area of Outstanding Natural Beauty (AONB)

9. The site is a large plot of predominately wooded land set back on elevated ground east of Millbay Road within the South Devon AONB.
10. The existing building that would be demolished is positioned immediately adjacent to Millbay Cottage close to the southern boundary of the site. The buildings are in general well screened from local views by trees, although they are partially visible from some public vantage points, notably from the beach.
11. Whilst the application is outline with all detailed matters reserved, it is evident from the description of development, the site plan showing the indicative

location of the proposed dwelling and the appellant's statement, that it is the appellant's intention to position the proposed dwelling approximately 80 metres away from the existing building, close to the northern boundary of the site. There is no suggestion that it is intended to position the dwelling on any other part of the site. If this were the case, then I would have required more information (indicative or detailed) in order to consider in principle whether such development would be acceptable in planning policy terms.

12. The indicative dwelling would be sited in an elevated position on a prominent slope above the access track on land covered in scrub close to the northern boundary of the site. In local views from the west, including from the beach, the estuary and the South West Coast Path which runs along the road, the proposed dwelling would be readily visible. Furthermore, the elevated position of the site is such that the development would be visible in long views from the opposite side of the estuary.
13. Whilst the building proposed to be demolished is visible from some public vantage points it is seen in context with Millbay Cottage. This would not be the case for the indicative dwelling which would be viewed as a separate isolated building positioned on higher ground than the existing building and would appear as an unacceptable visual intrusion into the predominately wooded landscape. The site plan shows some indicative screen planting below and wrapping around the position of the proposed dwelling. Whilst this would help reduce the visibility of the development, any such planting would take some time to reach maturity. Furthermore, I consider that even with such planting in place, it is very likely that the dwelling would still be visible from local views and long views from the opposite side of the estuary.
14. The proposed development, as a result of its indicative position and elevation within the site, would result in an adverse visual effect on the otherwise relatively undeveloped character of the wooded landscape. As such the proposal would be contrary to the aims of the National Planning Policy Framework¹ (the Framework) which places great weight on conserving and enhancing the landscape and scenic beauty of AONBs.
15. For the reasons outlined above, I conclude that the indicative dwelling would cause significant harm to the landscape character and scenic beauty of the South Devon AONB. Consequently, it would conflict with Policies DEV23 and DEV25 of the JLP and the Framework which, amongst other things, seek to ensure development proposals conserve or enhance the protected landscape character and the scenic beauty of the South Devon AONB. In the absence of any additional and detailed information from the appellant, it has not been possible for me to determine whether, in principle, it would be possible to erect a dwelling elsewhere on the appeal site without the same harm being caused to the AONB taking into account the aforementioned policies.

Surface and Foul Water Drainage

16. The Council's delegated officer report refers to insufficient evidence to determine whether provision for surface and foul water drainage could be provided for on the site. The site plan showing the indicative location of the proposed dwelling indicates that there would be space within the site to

¹ Paragraph 172 of the National Planning Policy Framework

accommodate local drainage solutions, subject to appropriate assessments to demonstrate the feasibility of a surface and foul water drainage scheme.

17. However, should a future detailed assessment demonstrate that local ground conditions are not conducive to the delivery of a localised drainage solution, the appellant states that surface water and foul water from the proposed dwelling could be pumped to the drainage system serving the existing dwelling, albeit that this would be expensive to deliver.
18. For the above reasons, I conclude that the development would be capable of providing surface and foul water drainage. Consequently, the proposal would in principle be capable of according with Policy DEV35 of the JLP and the Framework which, amongst other things, seeks to ensure development proposals incorporate adequate drainage facilities.

Other Matters

19. In terms of the impact of the development on the South Devon AONB the appellant has drawn my attention to other development in the surrounding area. However, I am not aware of the full circumstances which led to these developments being granted planning permission nor whether they are directly comparable with the case before me. In any event, I have determined the appeal proposal based on the circumstances of the site, on the evidence before me and on its individual planning merits. None of the other matters raised alter or outweigh my overall conclusion on the main issues.

Conclusion

20. While I find no conflict with policy in relation to the provision of surface and foul water drainage, this would not overcome the conflict with policy in relation to the location of the development and the significant harm that I have found as a result of the conflict with AONB policies. These are matters of overriding concern and I therefore conclude that the appeal should be dismissed.

Andrew Bremford

INSPECTOR