



Appeal Decision

Site visit made on 10 June 2020

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/K1128/W/20/3245187

Tamarinda, 11 Yealm View Road, Newton Ferrers PL8 1AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Simon Pratten against South Hams District Council.
 - The application Ref 3041/18/HHO, is dated 12 September 2018.
 - The development proposed is to build a new boat house.
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Decision

1. The appeal is allowed and planning permission is granted to build a new boat house at Tamarinda, 11 Yealm View Road, Newton Ferrers PL8 1AN in accordance with the terms of the application, Ref 3041/18/HHO, dated 12 September 2018, and the plans submitted with it, subject to the conditions in the attached schedule.

Procedural Matters

2. The appeal proposal differs to that which comprised the original planning application. An amended plan, numbered 161201.1 Revision A 'Scheme 7', was submitted to the Council during the course of the application. The Environment Agency and the South Devon Area of Outstanding Natural Beauty Unit were consulted on this drawing, but it had not been the subject of public consultation prior to the submission of the appeal. The amended drawing shows a smaller building, located further away from the existing boathouse to the east, and on a cantilevered slab above the foreshore. All interested parties who commented on the original application have been notified of the appeal. The notification letter advised that the appeal documents could be viewed at the Council offices or on its website. All parties have therefore had the opportunity to comment on the amended scheme, so nobody would be prejudiced by my consideration of it. Accordingly, I have determined the appeal on the basis of Plan no. 161201.1 Revision A 'Scheme 7'.

Main Issues

3. The appeal arises from the Council's failure to make a decision on the application. As part of the appeal process, the Council has submitted a statement setting out that Officers would have recommended the application for approval, subject to conditions. Based on this statement, the representations from interested parties, my site visit, and all the other evidence before me, I consider that the main issue is whether the proposal would be an acceptable form of development in the countryside, bearing in

mind its effect on the character and appearance of the Area of Outstanding Natural Beauty and Undeveloped Coast.

Reasons

4. 11 Yealm View Road is a detached dwelling at the lower end of a short cul de sac in a residential area of Newton Ferrers. It overlooks Newton Creek to the south, and the village of Noss Mayo on the opposite bank. The appeal site is separated from the curtilage of the dwelling by the turning head of the cul de sac. It comprises part of a steep slope down to the shore of the creek below. Access to the top part of the site can be gained from a footpath that leads off the turning head towards the village centre. The bottom of the site can currently only be reached via the foreshore.
5. The Council states that the boathouse would be outside the settlement boundary for Newton Ferrers, so would be in the countryside. The Village Settlement Boundary (VSB) is defined on the Proposals Map in the Newton and Noss Neighbourhood Plan 2017 to 2034 (made in 2018) (the Neighbourhood Plan). The map is at a very small scale, consequently the VSB is a broad line on the plan. It is contiguous with the boundary of the Undeveloped Coast, which is a similarly broad line on the plan. The two boundaries together obscure much of the base map. It is therefore difficult to conclude, with certainty, precisely where the building would be in relation to these boundaries. However, based on the evidence before me, part of the boathouse would be outside the VSB.
6. Policy N3P-1 of the Neighbourhood Plan states that outside the VSB development will only be permitted in exceptional circumstances, and where it will meet an essential local need which cannot otherwise be met. Therefore, on a straightforward reading of the Policy alone, the boathouse would conflict with it.
7. However, the Policy is included under the heading "Housing" at paragraph 3.3, and its stated objective is that the scale and amount of housing is in keeping with the size of the settlement and locality. Paragraphs 4.2 to 4.5 of the supporting text for the Policy refer to how housing requirements can be met whilst retaining the VSB, with no mention of other forms of development. Therefore, on consideration of the Neighbourhood Plan as a whole, the aim of the Policy seems to be to restrict housing development outside the VSB, rather than to place a blanket prohibition on all forms of development in the countryside.
8. Policy TTV26 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (adopted 2019) (the Local Plan) also addresses the issue of development in the countryside. In seeking to protect the special characteristics and role of the countryside it has a two-pronged approach. Firstly, isolated development in the countryside will be avoided, and only permitted in exceptional circumstances. Secondly, there is a set of criteria that apply to all development proposals. The presumption against development in the countryside is therefore limited to isolated proposals, which is different to the blanket prohibition on development outside the VSB in Policy N3P-1 of the Neighbourhood Plan.
9. The Local Plan has become part of the development plan more recently than the Neighbourhood Plan. Therefore, in accordance with Section 38(5) of the Planning and Compulsory Purchase Act 2004 (as amended), I conclude that the approach to development in the countryside, under Policy TTV26, should take

precedence over the approach in Policy N3P-1 of the Neighbourhood Plan. The boathouse would be very closely related to the built form of the settlement of Newton Ferrers, and it would be near to a similar boathouse on the foreshore. On the evidence before me, part of the boathouse would be within the VSB. It would not, therefore, be isolated development, so the first part of Policy TTV26 would not apply. Therefore, based on the particular circumstances of this case, I conclude that development plan policies relating to the countryside, taken as a whole, do not result in the proposal being unacceptable in principle.

10. Policy DEV24 of the Local Plan places a presumption against development in the Undeveloped Coast, unless it requires a coastal location and cannot reasonably be located elsewhere. Part of the building would be within the Undeveloped Coast, however, as it is a boathouse, it self-evidently requires a waterside location. The steep creek embankment means that a building located outside the Undeveloped Coast would be at a much higher level than the water, so would not be fit for its intended purpose. The development would not, therefore, be prohibited in principle by Policy DEV24.
11. As I have concluded that the principle of the development in the countryside and Undeveloped Coast would be acceptable, it is necessary to consider the impact of the boathouse on the landscape qualities of the area. As well as being partly in the countryside and Undeveloped Coast, the entire site lies within the South Devon Area of Outstanding Natural Beauty (the AONB). Paragraph 172 of the National Planning Policy Framework (the Framework) says great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues.
12. This part of the AONB comprises a steep-sided creek, with dense housing development on both valley sides taking advantage of the spectacular views. The waterside is well-used for recreational purposes, with public access from slipways. The landscape character of this area is not, therefore, derived from a lack of development, but more from the balance between the natural beauty of the topography, and the human response to it.
13. The site is part of the steep creek embankment, which acts as a buffer between the natural, muddy foreshore, and the closely spaced buildings on the upper slopes. Although it is a vegetated rocky slope right down to the shore, the wider embankment is made up of a range of retaining structures, including stone, gabion baskets, and render. Both banks of the creek are also punctuated by a range of small buildings and slipways that are cut into the slope. There is, therefore, no uniformity to the appearance of the embankment along its length. Its existing character comprises a mix of natural landform, with regular built interventions relating to the functional interaction of residents with the waterside. However, these interventions are generally low level and small-scale, so the natural landform remains visually dominant.
14. The boathouse would be modest in scale, and would be sited at the bottom of the slope, raised over the natural foreshore above a new stone creek wall. From the opposite bank, it would be seen against the remaining steep embankment and trees behind, which would separate it from the denser residential development beyond. It would be sufficiently distant from the existing boathouse to the east, that the intervening natural vegetation would prevent a visual coalescence of the buildings. The stone creek wall would be at

a low level, would tie in with that of the existing boathouse, and would be in character with the various other retaining structures along this length of foreshore. When viewed from the opposite side of the creek, therefore, the boathouse would not result in a concentration of development that would upset the existing balance between buildings and natural landform within the wider landscape.

15. When viewed from the foreshore in front of the appeal site, the boathouse would not be appreciated in such a wide landscape setting. From here, it would be seen in the context of the adjacent boathouse to the east and boats moored on the foreshore, enclosed by the steeply rising embankment behind. In this setting it would not appear incongruous or intrusive in the landscape.
16. As the boathouse would be set at the foot of the steep bank, it would not be readily visible from vantage points above the foreshore on the same side of the creek. The roof would be partly visible from the footpath where it joins Yealm View Road, and from parts of the cul de sac. From here it would be seen alongside the roof of the existing boathouse, and it would be at a much lower level than the observer. It would also be at least partly screened by foreground vegetation, and would not, therefore, be intrusive in views of the wider landscape beyond.
17. For these reasons, I conclude that the development would not harm the landscape and scenic beauty of the AONB, the unspoilt character of the Undeveloped Coast, or the appearance of the countryside. The proposal would therefore comply with Policies DEV23, DEV24 and DEV25 of the Local Plan and Policies N3P-2 and N3P-9 of the Neighbourhood Plan. These policies, taken together, seek to conserve and enhance the landscape character of the AONB, Undeveloped Coast and Heritage Coast, the Newton Creek waterfront, and the countryside in general. The development would also meet the Framework's aims of conserving and enhancing the natural environment.

Other Matters

18. Concerns have been raised in representations regarding parking in Yealm View Road, and the possibility that the footpath would have to be closed during construction works. However, the building would not give rise to any additional need for car-parking, as its use would be linked to the existing dwelling. Furthermore, there is no evidence to indicate that closure of the footpath is an inevitable consequence of the works. However, Policy N3P-4 of the Neighbourhood Plan requires safeguards during construction to protect against environmental damage or local nuisance, particularly from deliveries and parking. I have therefore imposed a condition requiring a Construction Management Plan to be submitted for approval, so that any temporary impacts of the construction works can be minimised.
19. The revised scheme increased the proposed distance between the building and the existing boathouse to the east. Whilst there is a side-facing window in the existing boathouse, there would be a considerable distance between the buildings, so there would be no harmful loss of privacy or light for the occupants.
20. I have considered the potential for the proposal to lead to instability of the bank. However, there is limited evidence before me on this matter, but I see no reason to disagree with the view that a new retaining wall at the foot of the

bank would be likely required in the future to improve slope stability in any event.

21. An ecological appraisal was submitted with the application, which concludes that, with appropriate mitigation measures and timings, there would be no impact on protected species. Whilst I note that the survey work was carried out over two years ago, there is no evidence to suggest that the ecological characteristics of the site are likely to have changed in the 9 months since the expiry date of the appraisal. I have imposed a condition to ensure mitigating measures are incorporated and to minimise impacts on, and provide net gains for, biodiversity as required by the Framework.
22. I accept that there were previously some trees on the upper part of the site, but they were not protected, so their removal is not material to my consideration of the appeal.
23. The eastern edge of the Newton Ferrers Conservation Area lies about 60 metres away from the appeal site. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. In view of the distance involved, and the siting of the building at the foot of a steep bank, I saw that the development would not harm the special interest of the Conservation Area.

Conditions

24. 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. 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.
25. In order to protect the landscape quality of the AONB, I have imposed a condition requiring approval of external materials. To ensure that the building is used for the purposes that justify its location in the Undeveloped Coast, I have imposed a condition limiting its future use. As there will be some limited views down onto the roof of the building from Yealm View Road, I agree that a condition preventing the use of the roof for amenity or storage purposes is justified in the interests of protecting the landscape quality of the AONB.

Conclusion

26. For the reasons given above, 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: Site Location Plan; Drawing No 0948/0001 - Topographical Survey; Drawing No 161201.1 Rev A – Scheme 7.
- 3) No development shall take place until a Construction Management Plan (CMP) has been submitted to, and approved in writing by, the local planning authority. The CMP shall include details of:
 - (a) the timetable of the works;
 - (b) any road closure or diversion;
 - (c) any public footpath closure or diversion;
 - (d) delivery and construction working hours, which shall be restricted to between 08:00 and 18:00 Mondays to Fridays; 09:00 to 13:00 Saturdays, and not at all on Sundays and Bank/Public Holidays;
 - (e) the compound/location where all building materials and waste will be stored during construction;
 - (f) areas where delivery vehicles and construction traffic will load or unload building materials and waste;
 - (g) the means of enclosure of the site during construction works;
 - (h) the proposed route for all construction traffic exceeding 7.5 tonnes; and,
 - (i) the location of construction worker parking.

The approved CMP shall be adhered to throughout the construction period for the development.

- 4) Prior to their installation, details / samples of the materials to be used in the construction of the external surfaces of the building hereby permitted shall have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 5) Development shall proceed in accordance with the recommendations for mitigation on page 13 of the Preliminary Ecological Appraisal by Ecology Services dated 23 September 2017. Further details of the enhancement measures suggested on page 14 of the same report, together with a timetable for their implementation, shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the building. The enhancements shall be carried out in accordance with the approved details and timetable.
- 6) The roof area of the building hereby permitted shall not be used as a sitting out area, terrace or other similar form of amenity area, nor for the outside storage of any items.
- 7) The building hereby permitted shall not be used at any time other than as a boathouse for purposes ancillary to the residential use of the dwelling known as Tamarinda, 11 Yealm View Road, Newton Ferrers PL8 1AN.