

Appeal Decision

Site visit made on 11 September 2020

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2020

Appeal Ref: APP/K1128/W/20/3248551

Land to South of Lochalsh, Lower Court Road, Newton Ferrers PL8 1DG

- 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 Jagoe - Salter against the decision of South Hams District Council.
 - The application Ref 2436/19/FUL, dated 24 July 2019, was refused by notice dated 19 September 2019.
 - The development proposed is described as New Dwelling and associated parking / forecourt as well as hard and soft landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council and interested parties have queried whether the proposed development could accommodate more than two bedrooms. However, the proposed plans show two bedrooms, and although changes in internal layout could in theory create space for a third bedroom, that is not what has been applied for. If the appeal were to be allowed, conditions such as removing permitted development rights and requiring the garage to remain available for its proposed use could also be used. This would ensure that the dwelling could not be changed into a larger property of more than three-bedrooms without the acceptability of such a change being considered as part of a further planning application. Accordingly, I have determined the appeal proposal on the submitted plans, which show the proposed dwelling with two-bedrooms.

Main Issues

3. The main issues are:
 - whether the proposed development would be in an appropriate location, with particular regard to the character and appearance of the surrounding area, the South Devon Area of Outstanding Natural Beauty (AONB) and undeveloped coast;
 - the effect of the proposed development on biodiversity and ecology on the site;
 - whether surface-water drainage provision on the site would be adequate for the proposed development; and
 - whether sufficient on-site parking would be provided.

Reasons

Character and appearance

4. Elevated above an unadopted, non-through highway, the steeply sloping appeal site forms part of a section of undeveloped land on the eastern side of Lower Court Road. It is located within the AONB and the undeveloped coast policy area and is visible in the locality, as shown in the appellant's visual impact assessment. The site contains various flora including extensive undergrowth and a number of trees. Despite it appearing somewhat overgrown following the previous felling of some trees, it therefore has a verdant appearance and provides notable green and undeveloped space between surrounding built form. Such green gaps between properties are a notable characteristic of the locality in this less built-up and more spacious part of Newton Ferrers, and provide the hillside with its semi-rural nature and woodland landscape setting. The site therefore positively contributes to the character and appearance of the surrounding area, including the AONB and undeveloped coast, and does not read as forming garden amenity land within the village.
5. Although it would be located in relatively close proximity to surrounding built form and would therefore not be isolated, the proposed development would in-fill and thus result in the loss of verdant undeveloped space which is an important characteristic of the surrounding area. The development would be visible from the public realm, including from the estuary, opposite hillside and from the publicly accessible Lower Court Road. Increasing density and intensifying the urban form of this part of Newton Ferrers, it would therefore read as a suburbanising feature that would erode the spacious, woodland landscape and semi-rural nature of the locality.
6. Accordingly, it would appear as an incongruous addition that would detract from the character and appearance of the surrounding area, including the landscape and scenic beauty of the AONB and the character of the undeveloped coast. The similar size of the site to other nearby plots and the scale, position, landscaping, materials and design of the development, including its recessed and set-down form, would not mitigate the harm and do not therefore lead me to a different conclusion.
7. The site lies within the area covered by the Newton and Noss Neighbourhood Plan 2017 to 2034 (NNNP). Forming part of the adopted development plan, the NNNP includes a settlement boundary for Newton Ferrers. Policy N3P-1 is clear that development outside of settlement boundaries will only be permitted in exceptional circumstances and where it will meet an 'essential local need' which cannot otherwise be met. Although adjacent to it, the site is outside of the settlement boundary.
8. There is an under-provision of smaller properties in the area and the proposed development, providing a two-bedroom principle-residence dwelling, would help to meet the need for such properties. However, I have little evidence that it would meet an essential local need which cannot be met elsewhere, including through other accessible windfall sites. Furthermore, it seems to me that the presence of existing dwellings and gardens surrounding the site – some inside and some outside the settlement boundary – cannot reasonably be described as equating to exceptional circumstances. In any event, my findings above indicate that the development would not be in keeping with its surroundings, which NNNP Policy N3P-1 also requires.

9. The site was located within a previous draft settlement boundary which the Council consulted on when preparing the emerging version of the Plymouth & South West Devon Joint Local Plan 2014 - 2034 (JLP). However, that draft boundary is not included within the now-adopted JLP. The adopted settlement boundary is therefore that defined by the NNNP and how that boundary was finalised is not a matter for my consideration as part of this planning appeal.
10. Given the presence of surrounding built form, the site is not isolated. The first part of JLP Policy TTV26, relating to isolated development in the countryside, is therefore not applicable to the proposed development. However, the policy's second part is more general in nature and requires, amongst other things, proposals to help enhance the immediate setting of the site. Given my findings above, the proposed development cannot be described as achieving this.
11. For the above reasons, I conclude that the proposed development would not be in an appropriate location and would harm the character and appearance of the surrounding area, the South Devon AONB and undeveloped coast. I therefore find that it fails to accord with NNNP Policies N3P-1 and N3P-9 and JLP Policies STP1, STP2, STP12, DEV23, DEV24, DEV25, TTV1, TTV2, TTV25 and TTV26. These set out the Council's approach to growth through a hierarchy of settlements, delivering sustainable development in relation to various principles, including the protection of character and the natural environment, and to development outside of settlement boundaries. They also give great weight to conserving landscape and scenic beauty in protected landscapes and require, amongst other things, development to: meet the identified needs of local communities; help enhance the immediate setting; reinforce local distinctiveness; conserve local features; maintain the unique character and qualities of the undeveloped coast and demonstrate that a coastal location is required; and be located to respect scenic quality and to protect and conserve and enhance the landscape and scenic beauty of the South Devon AONB.
12. The proposal would also be inconsistent with the provisions in the National Planning Policy Framework (Framework) in relation to achieving well-designed places and conserving and enhancing the natural environment. In particular, these set out that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs and that decisions should contribute to maintaining the character of the undeveloped coast.

On-site biodiversity

13. The site previously contained various trees and the submitted Ecological Scoping Assessment & Reptile Survey (ecology report) indicates that it now consists of remaining woodland ground flora. Some trees/woodland remain on the site's eastern and north-western extent, and its boundaries are partially delineated by a bank, trees and hedging.
14. NNNP Policy N3P-2 requires development to conserve the ecology or biodiversity of the area and JLP Policy DEV26 sets out that development should support the protection, conservation, enhancement and restoration of biodiversity. Amongst its various provisions, Policy DEV26 indicates that harmful impacts on protected species and Biodiversity Action Plan (BAP) habitats and species must be avoided wherever possible, subject to the legal tests afforded to them where applicable, and unless the need for, or benefits of the development clearly outweigh the loss.

15. The ecology report sets out that prior to the clearance of the trees, the site comprised of woodland which is a BAP habitat type. The prior clearance of the woodland is therefore identified by the ecology report as constituting a negative impact of unconfirmed extent. However, the extensive woodland cover on the site is no longer present, the appellant has indicated that the felled trees were in the main diseased and/or at risk of falling down following previous topping, and the submitted Arboricultural Impact Assessment & Method Statement Report indicates that the remaining trees would be retained as part of the proposed development.
16. On this basis, the appeal proposal would therefore not result in the direct loss of BAP woodland habitat. Subject to the prioritised management for wildlife conservation post-development/occupancy of the site being implemented as recommended in the ecology report, the development would therefore also not result in the loss of the bird nesting habitat and the bat flight lines, feeding habitats and potential roosting feature provided by these remaining trees.
17. However, the submitted evidence indicates that the development would involve removal of the site's remaining woodland ground flora, log and brash piles. The ecology report indicates that these features and the site provide feeding habitat for bat and bird species, represent suitable habitat to support dormice, and are likely to provide habitat for the terrestrial life phases for amphibians, including the common frog and newts. Badgers are also identified as being likely to frequent the site when foraging or dispersing, while the reptile survey recorded the presence of a low population of slow worm on the site, including male, female and juvenile slow worms. Some of these species and habitats are identified in the ecology report as protected and/or listed as BAP features.
18. The ecology report recommends a number of mitigation, compensation and enhancement measures. This includes aspects such as protecting the remaining trees on the site, construction-related actions, avoiding/limiting illumination, new planting, creating at least two habitat piles and provisions for bats, bird and bees. Through the implementation of these measures, the ecology report concludes that the proposal would represent a minor negative impact.
19. However, although minor, the overall impact of the proposal on biodiversity is nevertheless identified as negative. On my site visit, I also observed that the site is somewhat more overgrown and its flora is more extensive than that shown in the photos in the ecology report. Accordingly, it seems to me that the site could therefore contain more habitat and/or include more species than that identified in the ecology report, which was produced two years ago. On this basis, the impact of the development on biodiversity would be at least as great if not greater than that assessed by the appellant.
20. The appeal proposal would therefore neither protect and conserve nor enhance and restore biodiversity. The need for the development and its benefits, which would be limited given its scale, would not clearly outweigh the harm. Accordingly, and for the above reasons, I conclude that the proposed development would harm biodiversity and ecology on the site. I therefore find that it conflicts with NNNP Policy N3P-2 and JLP Policy DEV26. The proposal would also be consistent with the provisions in the Framework in relation to conserving and enhancing the natural environment.

Drainage

21. The Council's Decision Notice alleges that insufficient information has been submitted to demonstrate that the proposal is acceptable in terms of surface water drainage. However, the evidence before me indicates that a Drainage and Flood Risk Design Statement (DFRDS) was submitted with the planning application, along with correspondence from South West Water relating to drainage connections. The Officer Report and the Drainage Consultation Response on the planning application also indicate that the submitted drainage details demonstrated that a workable drainage scheme could be accommodated on the site. Accordingly, the Council's drainage specialist indicated their support for the proposal and recommended conditions to secure implementation of the proposed drainage scheme.
22. Having reviewed the DFRDS and noting the position of the Council's specialist, it seems to me that sufficient drainage-related information has been submitted. The details also indicate that the proposed surface-water drainage system for the development – involving discharge of attenuated surface-water at a maximum rate of 1 litre per second from a storage tank into the combined sewer that runs along Lower Court Road – would be acceptable and suitably designed to accommodate critical storm events and avoid flooding downstream and in the surrounding area. I note that the correspondence with South West Water also confirms their acceptance with the proposed surface- and foul-water discharge solutions. Furthermore, with little substantive evidence to indicate otherwise, I am satisfied that other means of surface-water drainage, such as soakaways, would not be feasible in this instance.
23. I note that the Highway Authority raised concerns regarding the prevention of water entering the highway. However, the DFRDS sets out that the proposed driveway/parking area at the front of the site would be constructed out of permeable paving and that percolation testing provides a good indication that this will be a viable option. It also indicates that further testing would be carried out during detailed design stage to confirm this approach. Accordingly, and on the basis of the proposed surface water scheme for the remainder of the site, I am satisfied that surface water would not enter the highway as a result of the proposed development. I note that the proposed conditions of the Council's drainage specialist would also secure this.
24. For the above reasons, I conclude that the drainage provision on the site would be adequate for the proposed development. I therefore find that it accords with NNNP Policy N3P-6 and JLP Policy DEV35. Amongst other aspects, these set out that surface water should not discharge to a public road or footpath and that development should incorporate sustainable water management measures, according to a hierarchy of drainage options, to minimise surface water run-off and ensure that it does not increase flood risks elsewhere. The proposal would also be consistent with the provisions in the Framework in relation to surface water drainage and not hindering highway safety and safe site access.

Parking

25. NNNP Policy N3P-5 sets out, amongst other aspects, that development should provide enough off-road parking spaces to ensure that pressure on existing parking is not increased. For a two-bed property, it stipulates that two parking spaces should be provided and indicates that garages will not normally be counted. Setting out various provisions relating to transport, JLP Policy DEV29

also requires development to, amongst other things, ensure the sufficient provision of car parking in order to protect the amenity of surrounding residential areas and ensure safety of the highway network.

26. The submitted drawings show the proposed two-bed dwelling would have a parking forecourt adjacent to Lower Court Road and a garage. Although the forecourt appears to be relatively small, the submitted drawing 'garage level floor plan' (Ref 1808/PL03 Rev B) shows that it would be sufficient for two cars to be parked off the highway and I have little substantive evidence that indicates otherwise. As I have found above, the proposed permeable paving of the forecourt would also be sufficient with respect to surface-water drainage.
27. I recognise that the Highway Authority recommended that the garage be lengthened to ensure that a large saloon vehicle could practically fit inside. However, NNNP Policy N3P-5 seeks to discount garage parking and I note that the Highway Authority raised no concerns with the forecourt parking. With that area accommodating two parked vehicles off the highway, I am therefore satisfied that sufficient off-road parking would be provided. It also seems to me that the garage, at just over 5 metres long, could accommodate all but the longest cars and would therefore be able to provide some additional off-road parking. The development would therefore not unacceptably increase existing parking pressure in the locality and would therefore neither harm highway safety nor the amenity of surrounding residents.
28. For the above reasons, I conclude that on-site parking would be sufficient for the proposed development. I therefore find that it accords with NNNP Policy N3P-5 and JLP Policy DEV29. The proposal would also be consistent with the provisions in the Framework in relation to highway safety and providing safe and suitable access to the site.

Other matters

29. The site is within the zone of influence for new residents to have a recreational impact on the Tamar European Marine Site (comprising the Plymouth Sound and Estuaries Special Area of Conservation and the Tamar Estuaries Complex Special Protection Area). The addition of a residential unit within this area would therefore be likely to have a significant effect on the internationally important interest features of these areas, in combination with other plans and projects. Mitigation measures are therefore required to make the development acceptable and avoid an adverse effect on the integrity of the designated sites. However, as I am dismissing the appeal for other reasons, I am not pursuing this matter further because it could not lead me to a different decision.
30. A number of other matters have been raised by interested parties, such as concerns about additional traffic and access on Lower Court Road and which have been considered in previous planning appeals, issues relating to construction works and the effect of the development on neighbours' living conditions. However, given the appeal is dismissed in relation to the main issues, there is no need for me to address these in further detail.

Planning Balance

31. Five generations of the appellant's family have lived in Newton Ferrers, the appellant inherited the site, he and his wife grew up in the area and are now looking to move back to the village and invest in the site to create a home for

themselves. It has been put to me that the development, constructed in accordance with Part M of the Building Regulations, would provide a high-quality, contemporary, energy-efficient and sustainably constructed dwelling which would be suitable as a principle residence for modern family life.

32. The site is accessible, with the main services and facilities of Newton Ferrers and its bus stops within walking distance. The development would provide an additional smaller windfall dwelling and occupiers would help maintain the vitality of the rural community by supporting local services and facilities. There is also an under-provision of smaller properties in the Parish and locality. Providing a two-bedroom principle-residence dwelling, the appeal proposal would therefore help to redress the imbalance in housing sizes in the Parish and would therefore accord with JLP Policy DEV8 and NNNP Policy N3P-11 in relation to this matter.
33. However, the Council has a sufficient supply of housing land and the evidence before me indicates that the proposed windfall development is not needed to maintain a sufficient supply of housing in the locality. There is also little evidence before me that demonstrates that the proposal requires a coastal location and that it would meet an essential local need which cannot be met elsewhere, including through other accessible windfall sites. Furthermore, I am satisfied that the benefits of the appeal proposal would be relatively limited given the scale of the development. Consequently, the harm I have identified above, which could not be overcome by the imposition of planning conditions, is not outweighed by these considerations and is sufficient for me to find against the proposal.

Conclusion

34. For the above reasons, the appeal is dismissed.

Tobias Gethin

INSPECTOR