
Appeal Decision

Site visit made on 5 January 2021

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 29 January 2021

Appeal Ref: APP/Q1153/W/20/3259929

Bickham Barton Bungalow, Roborough PL6 7BJ

- 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 Joseph Hess against the decision of West Devon Borough Council.
 - The application Ref 1223/20/FUL, dated 23 April 2020, was refused by notice dated 10 July 2020.
 - The development proposed is a proposed new detached dwelling to replace existing bungalow.
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Decision

1. The appeal is allowed and planning permission is granted for the proposed new detached dwelling to replace existing bungalow at Bickham Barton Bungalow, Roborough PL6 7BJ in accordance with the terms of the application, Ref 1223/20/FUL, dated 23 April 2020, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Joseph Hess against West Devon Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. In the interests of accuracy and consistency, I have used the location of development and the description of the proposed development to reflect the details as provided on the Council's decision notice.

Main Issues

4. The main issues are;
 - Whether the proposed development would be in a suitable location, having regard to local planning policy and with particular regard to the location of the site within the Tamar Valley Area of Outstanding Natural Beauty (the AONB); and,
 - Whether the proposed development makes adequate provision for ensuring that there would no net gain in the number of dwellings.

Reasons

The AONB

5. Bickham Barton Bungalow is situated at the edge of a cluster of buildings which comprise Bickham Farm. The appeal site for the replacement dwelling is located a short distance east of the farm buildings and comprises a corner of an agricultural field which is bounded to the south by a belt of woodland. The site is accessed from an unmade trackway which serves the dwelling at Dashed. The site is located within the AONB but is situated outside of the Dartmoor National Park.
6. The appeal proposal seeks to replace the existing bungalow with a new detached two storey dwelling at the site. The existing bungalow is accessed through the farm complex, past store and machinery buildings and livestock enclosures and appeared as a somewhat run down dwelling with areas laid out for garden space and hardstanding for parking. The evidence before me indicates that the bungalow is in poor condition with structural issues and asbestos deterioration. While located at the edge of the farm complex, the bungalow is not subject to an Agricultural Occupancy Condition.
7. By reason of the predominately open agricultural land north of the site, the scatter of residential and agricultural buildings, patches of woodland and nearby moorland, the site is located within the countryside for planning purposes. Whilst the Appellant's submissions are acknowledged and that I shall return to consider Policy TTV29 of the Plymouth and South West Devon Joint Local Plan (the JLP) below, Policy TTV26 of the JLP concerns 'Development in the countryside' and is of direct relevance to the appeal proposal.
8. Policy TTV26 of the JLP seeks to protect the special characteristics and role of the countryside. The policy is in two sections. The first section seeks to restrict isolated development within the countryside unless there are exceptional circumstances, such as provision of a dwelling for a rural worker, securing the future of a significant heritage asset or be of a truly outstanding or innovative sustainability and design. Given the proposed replacement dwelling would be located adjacent to an existing dwelling at Dashed, it would not strictly be isolated and, therefore, does not require assessment against the first part of Policy TTV26 of the JLP.
9. However, the second part of Policy TTV26 of the JLP concerns all development in the countryside as defined by the development plan and is applicable to the appeal scheme. In this regard, the appeal scheme does not propose the reuse of a traditional building nor, as an unrestricted open market dwelling, would respond to a proven agricultural, forestry or other occupational need that requires a countryside location. The proposed development is not advanced as being for the improvement or protection of public rights of way and, whilst it is understood would not prejudice the agricultural operations of the farm, the proposal would not be complementary to agricultural operations. In these respects, the proposal would not comply with the requirements of the second part of Policy TTV26 of the JLP.
10. Policy TTV29 of the JLP considers residential extensions and replacement dwellings in the countryside against a set of criteria. In respect of this policy, the evidence before me indicates that the existing bungalow has a lawful permanent residential use and, whilst not being a direct replacement in terms

of scale, it is agreed between the main parties that the replacement would not be significantly larger than that which is being replaced. Furthermore, and subject to matters to which I will return to in the below main issue, there would be no net gain in numbers of dwellings.

11. Criterion 4 of Policy TTV29 of the JLP requires that the replacement dwelling should be positioned on the same footprint as the existing building subject to matters of design, landscape, highway safety, residential amenity, or other environmental grounds. In this regard, the existing bungalow is located adjacent to a busy working farm and residents of that unrestricted dwelling have to travel through the farm complex buildings and past livestock enclosures whilst avoiding farming traffic in order to access that dwelling. Accordingly, there are issues concerning residential amenity with regards to noise and disturbance, as well as significant concerns regarding the safety of residents, farm employees and livestock in respect of accessing the existing bungalow.
12. As noted above, the existing bungalow is not subject of an Agricultural Occupancy Condition and there does not appear to be a policy requirement before me that stipulates that the replacement be subject to such a restriction. The replacement dwelling would be within close proximity of the farm, such that if it were occupied by a person employed at the farm then access to the farm complex would still be convenient. The location of the replacement would be adjacent to an existing dwelling and would avoid concerns regarding the potential impact of a new dwelling on the setting and significance of the Grade II Listed Bickham House. For the above reasons, the appeal scheme would comply with Policy TTV29 of the JLP.
13. I shall now turn to the potential impact of the appeal scheme on the AONB. The Council have put it to me that, whilst it is considered that there would be no overriding design objection for the replacement dwelling subject to certain materials conditions, the location of the proposed replacement would have a harmful impact on the AONB.
14. The National Planning Policy Framework (the Framework) is clear that Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty, and that great weight should be given to conserving and enhancing these qualities. In my view, whilst only being a small component of the AONB as a whole, the appeal site contributes positively to the landscape and scenic beauty of the AONB by reason of its picturesque location.
15. Policy DEV25 of the JLP requires development proposals which are located within the AONB, to conserve and enhance the natural beauty of the protected landscape with particular reference to its special qualities and distinctive characteristics or valued attributes. The policy reflects paragraph 172 of the Framework. Policies DEV20 and DEV23 of the JLP broadly require that proposals have proper regard to the pattern of local development and conserves and enhances landscape character.
16. The appeal scheme proposes the replacement of an existing dwelling which is located within the AONB and I would concur that the potential benefits associated with the removal of the run down bungalow should be considered and be weighed against the potential harm to the AONB arising from the provision of a new replacement dwelling.

17. In terms of harm to the character and appearance of the surrounding area and to the AONB, the proposal would alter the character and appearance of this undeveloped corner of a large agricultural field which, for the reasons given above, makes a limited but positive contribution to the landscape qualities of the AONB. Whilst it is noted that the design and scale of the proposed replacement is acceptable and that landscaping and planting would help mitigate the potential harmful effects of the scheme on the AONB, the proposal would result in the domestication of the site with all the paraphernalia that that would entail. Accordingly, there would be some harm to the landscape and scenic qualities of the AONB, albeit that harm would be limited and localised given the site's location adjacent to an existing dwelling.
18. Weighed against that harm, is the removal of a somewhat untidy and run down bungalow which, given its appearance, character and location, is currently detrimental to the landscape and scenic beauty of the AONB. Whilst I shall return to this matter below, the proposal would allow for the restoration of the land upon which the bungalow is sited, thereby enhancing the appearance of this section of the AONB, and would provide additional benefits to the environmental qualities of the AONB through the removal of harmful and deteriorating asbestos materials. I attach substantial weight to these benefits in the determination of this appeal.
19. In these regards, the appeal proposal would represent an enhancement to the AONB and, on balance of these considerations, in my view the proposed development would protect and enhance the scenic and landscape beauty of the AONB and would conserve and enhance local landscape character. Accordingly, the appeal proposal would comply with Policies DEV20, DEV23 and DEV25 of the JLP and would accord with the aims and provisions of paragraph 172 of the Framework. Furthermore, and for the same reasons, the scheme would accord with the Tamar Valley AONB Management Plan which, amongst other matters, seeks to ensure that development conserves and enhances the landscape character and local distinctiveness of the AONB.
20. In summary of the above, while the appeal proposal conflicts with Policy TTV26 of the JLP, the scheme would comply with Policies TTV29, DEV20, DEV23 and DEV25 of the JLP and would accord with the provisions of the AONB Management Plan and the Framework. Whilst I acknowledge the Appellant's submissions that policies TTV26 and TTV29 of the JLP are separate and mutually exclusive, Policy TTV26 forms part of the development plan. Policies of the development plan will often pull in different directions and, in this respect, I attach more weight to the proposal's compliance with Policy TTV29 than to the conflict with Policy TTV26 of the JLP in this particular instance, given that the appeal scheme specifically concerns a 'replacement dwelling in the countryside'.
21. Consequently, for the reasons identified above, the appeal proposal would be in a suitable location, would conserve and enhance the landscape and scenic qualities of the AONB and would comply with the development plan when taken as a whole.

Planning Obligation

22. The Council have put it to me that to ensure that a further dwelling on the site of the existing bungalow as another 'replacement' could not be justified in the

future, a planning obligation would be required and that a condition attached to any planning permission would not be suitably robust in this regard.

23. While the Council's submissions are noted, in my view a planning obligation would not be required in this instance and that a suitably worded condition would be sufficient to ensure that no further, future replacement dwelling could be justified. A pre-commencement condition could be applied that requires the land on which the existing bungalow is sited to be restored to agricultural land subject to a scheme approved by the Council. With the bungalow demolished and the land restored, future residential use of that site could then not be justified as a 'replacement' under Policy TTV29 of the JLP irrespective of who held title to that land in the future.
24. In light of the above, and subject to the application of conditions as considered further below, the appeal proposal would not conflict with Policy DEL1 of the JLP which, amongst other things, concerns the approach to planning obligations, and would not fail to accord with the provisions of the Framework with regards to the application of planning conditions and obligations.

Other Matters

25. The appeal site lies within the Zone of Influence for the Tamar European Marine Site (comprising the Plymouth Sound and Estuaries SAC and the Tamar Estuaries Complex SPA). I note that Natural England is concerned that development could have impacts by reason of increased number of visitors and the consequent recreational pressure that would bring. However, provided impact avoidance or mitigation measures are proposed, there is unlikely to be the potential for an adverse effect on the SAC or SPA. Such measures can be controlled by condition which is included within the below section of this decision, and this approach has been agreed by Natural England. In this regard, the increased pressure and number of visitors would be likely to arise by reason of the additional bedroom spaces provided within the appeal scheme when taken as a whole.
26. Concerns have been raised by interested parties with regards to ecology, the proposed access for the replacement dwelling and in respect of drainage. These are important matters and I have fully considered the submissions of interested parties in respect of these matters.
27. Whilst the concerns regarding drainage are noted, details of the final scheme can be secured by condition and it is acknowledged that South West Water have advised that they can provide foul drainage services to the site of the replacement dwelling. I am therefore satisfied that the proposal can be adequately controlled via condition in respect of drainage.
28. With regards to the potential impact on ecology, the appeal proposal was accompanied by an Ecological Impact Assessment which the Council found to be robust in terms of its scope and conclusions. While the submissions of interested parties are acknowledged, the proposal provides enhanced boundary treatments in the form of Devon hedge around the site. Based on the evidence and submissions before me, I find that the proposal would not have an adverse impact on ecology in line with the conclusion of the Council's officers.
29. Access to the replacement dwelling would require residents to use a shared trackway which also serves the dwelling at Dashed. Here the final approach to

the site for the replacement dwelling appeared to be unsurfaced. Notwithstanding this, there does not appear to be any objection from Devon County Council Highways regarding the access and I am satisfied that the proposal would not have any adverse impact with regards to the use of the trackway for access subject to the Council's suggested conditions as described further below.

Conditions

30. I have considered the planning conditions suggested by the Council in light of paragraph 55 of the Framework and the advice in the Planning Policy Guidance. In addition to the standard three year period implementation condition, which is a statutory requirement, it is necessary, in the interest of certainty and precision, to define the plans with which the appeal scheme should accord. I further find it reasonable to include conditions requiring details of any landscaping, external finish and materials, be agreed with the Local Planning Authority, in the interests of preserving the character and appearance of the surrounding area.
31. In the interests of residential amenity and the environment, I have included the Council's suggested conditions in respect of percolation tests, sewage disposal, contamination and for a sustainable drainage system to be approved by the Council. For the reasons given above in relation to the Plymouth Sound and Estuaries European Marine Site, it is reasonable and necessary to include a condition which secures the appropriate level of mitigation. Furthermore, I agree with the Council that the suggested exceptional conditions which restrict permitted development rights is proportionate in this case, given the sensitivity of the surrounding landscape within the AONB and its proximity to the boundary with a National Park.
32. I have not included the Council's suggested agricultural occupancy condition in respect of the replacement dwelling, given that the dwelling to be replaced is not subject to such a restriction and there does not appear to be any policy requirement that such a restriction be applied to the replacement dwelling.
33. In light of the conclusions on the second main issue above, I have included a condition that will secure the demolition of the existing bungalow and the restoration of that site to agricultural land subject to a scheme approved in writing by the Council. Whilst I note that the Appellant's contention that the condition should include the flexibility of planting trees rather than solely relating to the restoration of agricultural land, the land to be given up for the siting of the replacement dwelling is agricultural land and therefore it would be proportionate and appropriate that that agricultural land is also replaced at the site of the existing bungalow.
34. Where necessary, and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance. The wording of the pre-commencement conditions have been agreed by the Appellant and are necessary as pre-commencement conditions due to the nature and scope of these conditions.

Conclusions

35. For the reasons given, I conclude that the appeal should succeed.

Mr A Spencer-Peet

INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.
- 2) The development hereby approved shall in all respects accord strictly with drawing numbers: Site Location Plan (drawing number S_01), Proposed and Existing Site Plans (drawing numbers S_02, S_03, S_04), Proposed Elevations (drawing numbers P_03, P_04, P_05, P_06), Proposed Drainage and Floor Plans (drawing numbers D_00, P_00, P_01 and P_02), Planning Submission (drawing numbers DR_01, DR_02, DR_03, DR_04, DR_05, DR_06, DR_07, DR_08, DR_09, DR_10, to DR_11) received by the Local Planning Authority on 7 May 2020.
- 3) Notwithstanding the provisions of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 as amended (or any Order revoking, re-enacting or further amending that Order), no development of the types described in Schedule 2, Part 1, Classes A - F of the Order, including the erection of garages or car ports, the stationing of huts, fences or other structures shall be carried out on the site, other than that hereby permitted, unless the permission in writing of the Local Planning Authority is obtained.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended (or any Order revoking, re-enacting, or further amending that Order), no gate, fence, wall or other means of enclosure shall be erected or constructed unless permission is granted by the Local Planning Authority.
- 5) With the exception of works necessary to excavate trial holes and carry out percolation tests, no development shall commence on the construction of the replacement dwelling until details of all boundary treatment and hard and soft landscaping (including surfacing materials for the internal access road and new tree planting) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken and completed in accordance with the approved details. The landscaping scheme submitted shall be fully implemented in the planting season following the completion of the development and the plants shall be protected, maintained and replaced as necessary for a minimum period of five years following the date of the completion of the planting.
- 6) The development hereby permitted shall not be commenced until a programme of trial holes and percolation tests (DG 365 standard tests) are carried out in accordance with a scheme to be prior agreed in writing with the Local Planning Authority.
- 7) The development hereby permitted shall not be occupied until a Suds scheme to be designed for a 1:100 year event plus 40% for climate change,

based on the result of the trial holes and percolation tests agreed under condition 6 above, has been submitted to and approved in writing by the Local Planning Authority. The approved surface water drainage scheme shall be installed, maintained and retained in accordance with the agreed details for the life of the development.

- 8) The development hereby permitted shall not be occupied until details of the works for the disposal of sewage have been submitted to and approved in writing by the Local Planning Authority.
- 9) Prior to their installation details / samples of facing materials and of roofing materials to be used in the construction of the proposed development, plus surfacing materials of the external areas, shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with those samples as approved.
- 10) No development shall commence on the construction of the replacement dwelling hereby permitted until the dwelling known as Bickham Barton Bungalow, Roborough, PL6 7BJ has been demolished and its curtilage has been restored to agricultural land in accordance with a scheme that has first been approved in writing by the Local Planning Authority.
- 11) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with.
- 12) Prior to first occupation of any residential unit, a scheme to secure mitigation of the additional recreational pressures upon the Plymouth Sound and Estuaries European Marine Site, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in full prior to first occupation.