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## Appeal Decision

Site visit made on 9 December 2020

by **Adrian Hunter BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 February 2021

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**Appeal Ref: APP/N1160/W/20/3256576**

**Former Broadreach Site, Richmond Walk, Plymouth PL1 4LL**

- 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 Michael Drake against the decision of Plymouth City Council.
  - The application Ref 19/01753/FUL, dated 31 October 2019, was refused by notice dated 13 February 2020.
  - The development proposed is demolition of existing buildings and the construction of 60 residential units comprising one-, two- and three- bedroom apartments with associated infrastructure.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Subsequent to the refusal of the appeal application, the Council adopted the Plymouth and South Devon Joint Local Plan (2014-2034) Supplementary Planning Document (SPD) in July 2020. As a consequence, previous SPDs, including the Sustainable Design SPD, Planning Obligations and Affordable Housing SPD (Second Review) and Development Guidelines SPD (First Review) have been superseded. I have therefore determined the appeal on this basis.

### Main Issues

3. The main issues in this appeal are:
  - The effect of the proposal upon the character and appearance of the area;
  - Whether the proposal makes adequate provision for on-site open space;
  - The effect of the proposal upon the surrounding highway network, in particular with regards to the cumulative effect of the development;
  - Whether the proposal makes adequate provision for pedestrian access to and from the site;
  - Whether the proposal makes adequate provision for local infrastructure, in particular the provision of affordable housing;
  - Whether the proposal makes adequate provision for protection from flooding, in particular regards to the exceptions test;
  - The effect of the proposal upon the living conditions of nearby residents, in particular with regard to overlooking and loss of privacy to 10 Bakers Place; and
  - Whether the proposal makes adequate provision for on-site car parking.

## Reasons

4. The appeal site is currently a vacant area of land, occupied by two former buildings that were previously in employment use. The site is allocated for development under Policy PLY36.5 of the Plymouth and South West Devon Joint Local Plan 2019 (JPL) for the development of up to 60 units. The policy identifies that, along with the relocation of the existing outreach facility, development should deal with the cliff edge constraint and that the design should include flood mitigation measures.

### *Character and appearance*

5. Whilst large parts of the appeal site are currently hidden from view by surrounding development and uses, there are elements of the site, in particular the cliff face and edge, which are visible in both local and longer distance views, from various public viewpoints. The cliff edge forms part of the Devonport Hill Quarry City Green, which is designated for its coastal location, natural habitats and the contribution it makes to the setting and character of the area. The existing buildings on site, which are of little architectural merit, are positioned towards the rear of the site and currently allow views of the verdant backdrop of the cliff face.
6. Surrounding development comprises a mix of uses, including residential development, commercial operations and external yards associated with the water-based activities and businesses. The design of built development is reflective of its coastal location, with the buildings on Richmond Walk being 3-storey cottages. To the rear of the site, on the higher land above the cliff, is a recently constructed flatted residential building, which forms part of the wider Mount Wise redevelopment.
7. The height of the existing cliff line gradually declines across the site. Nevertheless, it represents an important and prominent feature in views towards the appeal site. The verdant appearance of the cliff and the prominent cliff edge are key features within the townscape, which is clearly visible as it extends both through and beyond the appeal site. In this respect, I note the requirements of Policy PLY36.5 with regard to the need for future development on the site to respect the cliff edge constraint.
8. The overall height of the proposed building would vary across the site, with the design including a number of projections to articulate the elevations. There are however a number of instances where the overall height of the building would be seen to be either level with or protrude above the top of the cliff line.
9. Given the allocation, it is highly likely that any future development would be larger and therefore more visible than the existing development on the site. However, these protrusions would interrupt the current, clear and obvious views to such a degree that they would remove the ability to clearly discern the distinct cliff edge in both local and longer distance views. As a consequence, due to the overall size, scale and mass of the development, views of the verdant cliff and the prominent cliff edge would be lost, to such an extent, that this would result in significant harm to the character and appearance of the area.
10. I note the inclusion of green walls and the proposed use of a varied palette of materials to mitigate for the loss of the views of the cliff, however I do not

consider that the benefits they provide, outweigh the harm caused by the loss of the distinct views of the cliff edge.

11. It is put to me by the appellant that the proposal would include a number of design features to break up the elevations, to create variety and visual interest. However, I do not agree with these submissions. Instead I consider that the varied appearance and height of the building, would create a development that would appear as both complex and disjointed. This would be in contrast to the nature and appearance of surrounding developments. As such, the proposal would fail to respond positively to the surrounding area and the local context of the site.
12. For the above reasons, I conclude that the proposed development would harm the character and appearance of the area, and in this respect, would be contrary to Policies PLY20, PLY36.5, DEV20, DEV23 and DEV27 of the JPL and Paragraphs 127-130 of the National Planning Policy Framework (the Framework). These policies, amongst other things seek to deliver good standards of design which contribute positively to both townscape and landscape, achieve a good quality sense of place and character through good utilisation of existing assets and, conserves and enhances landscape, townscape and seascape character and scenic and visual quality, avoiding significant and adverse landscape or visual impacts.

#### *Provision of open space*

13. Policy DEV10 of the JLP requires the provision of sufficient external shared and private open space in new developments. Communal spaces are required to be located so as to give a degree of privacy from streets or other public locations, be accessible to all residents, provide a good level of amenity to residents and be located so as to benefit from natural surveillance from the development.
14. The appeal proposal makes provision for private outdoor space in the form of balconies. Further communal space is provided along the eastern side of the building, which includes a footpath that would provide access to the stair cores, as well as the ground floor parking area. The space varies in width and would be landscaped along its western edge. Due to the presence of the undercroft parking and the need to allow for flood alleviation within the design, the area would not be directly fronted onto by active uses. It would, however, be overlooked by the balconies above.
15. Whilst the presence of the building and the wall would create a relatively enclosed space, given the overall width of the footpath and the use of landscaping, both hard and soft, to create visual interest, it is considered that the proposed footpath would represent an attractive, useful and suitable route for local residents.
16. For the above reasons, the proposal makes adequate provision for the living conditions of future residents with regards to the provision of on-site amenity space and, in this respect, would comply with policy DEV10 of the JLP and the Framework.

#### *Highway matters*

17. For a substantial part of its length, Richmond Walk is wide enough to accommodate two-way vehicular movements. However, along a small section, the carriageway width is restricted by the presence of on-street permit parking.

Furthermore, the road also serves the commercial premises and the various water-related functions. As a result, Richmond Walk is relatively busy, with a range of vehicle types using the road to access the various uses.

18. There is a disagreement between the parties with regard to the level of traffic that the existing use on the site could generate. However, regardless of this, from the evidence before me, there is agreement between the parties that the proposed use would generate less vehicular traffic than the lawful use of the site.
19. The Council's concern is, however, that there is a lack of information with regards to the impact of the scheme, in combination with other developments that would use Richmond Walk as a means of access. In this regard, my attention has been drawn to an allocation in the JLP for the development of a further 145 units as part of the Mount Wise proposal. There is clear evidence of detailed and lengthy discussions between the Mount Wise developer and the Highway Authority (HA) with regards to the suitability of Richmond Terrace, with the outline consent including a condition requiring improvement works to take place to widen the carriageway, although the HA's focus now appears to have shifted to secure enhanced pedestrian provision.
20. From the evidence, it is clear that the future development at Mount Wise is well known, with substantial information within the public domain and it is clear from the information before me that, for a number of years, concerns have been raised with regards to the suitability of Richmond Walk. On the face of it therefore, it would appear reasonable to have expected some form of assessment of the cumulative impact of the appeal proposal with the traffic that would be generated from the Mount Wise development.
21. Notwithstanding the reduction in vehicular traffic from the appeal site, Richmond Walk is clearly constrained in part and also carries a wide range and variety of traffic. With the development at Mount Wise, this is likely to increase. Without any information before me to demonstrate how the proposed development would operate in highway terms in conjunction with the increase in traffic generated from surrounding developments, I am unable to conclude that the proposal would not have an unacceptable impact upon the surrounding highway network or the residual cumulative impacts on the road network would not be severe. In this regard the proposal would therefore be contrary to Policy DEV29 of the JLP and Paragraphs 108 and 109 of the Framework.

*Pedestrian access.*

22. Paragraph 108 of the Framework requires developments to promote the use of sustainable modes of transport and ensure that safe and suitable access to a site can be achieved. Paragraph 110 requires priority to be given to pedestrian and cycle movements and to address the needs of people with disabilities and reduced mobility.
23. Policy DEV29 of the JLP refers to the need to provide for high quality, safe and convenient facilities for walking and cycling, and ensuring access and infrastructure is delivered as part of development to meet the need for walking, cycling and public transport connectivity both within the development and in the wider area.

24. As with the carriageway, the footpath along Richmond Walk is also constrained in several locations, which makes it difficult for users to pass safely, especially if using a wheelchair or pushchair. Furthermore, there is only a footway along the eastern side of the road, which crosses a number of access points to the existing commercial operations. Given these constraints, it is therefore likely that they could potentially discourage the use of alternative modes of transport, resulting in the use of private vehicles to access local facilities.
25. It is likely that, despite a decrease in vehicular traffic, considering the nature of the proposal and the location of the site in relation to local services and facilities, the proposal would result in an increase in the level of pedestrian activity along Richmond Walk. To address this, the appeal application, as part of the Unilateral Undertaking, includes for the provision of a contribution of £50,000 towards improvements to Richmond Walk, to improve the pedestrian and cycling environment through cycleway signing and localised re-surfacing of the footway. To my mind however, whilst these enhancements would deliver environmental benefits, there is a need to improve the overall provision in the area and to address the identified constraints.
26. For the above reasons, the proposal would fail to make adequate provision for suitable pedestrian access to the site and, in this respect, would be contrary to Policy DEV29 of the JLP and Paragraphs 108 and 110 of the Framework.

#### *Affordable housing*

27. Policy DEV7 of the JLP requires at least 30% of the total number of dwellings in new developments to be provided as affordable homes, with these to be delivered on-site. Where on site provision is not possible, the policy requires this to be robustly justified and that in such a case, provision could be met through a commuted sum. Paragraph 62 of the Framework takes a similar approach, identifying that affordable housing requirement should be met on-site unless an appropriate financial contribution can be robustly justified and contributes to the objective of creating mixed and balanced communities.
28. In support of the appeal application a Financial Viability Assessment (FVA) was submitted, which concluded that the development was unable to viably meet the affordable housing and infrastructure requirements identified by Policy DEV7. The FVA outlined that this was due to a number of factors but mainly associated with the costs of mitigating the flood risk and drainage requirements. As a consequence, the appeal application made no provision for affordable housing, either on-site or off-site, although this has now changed as part of the appeal proposal.
29. On the basis of the Council's methodology for calculating commuted sum payments in lieu of on-site affordable housing, the Council considers that a commuted sum of £1,372,500 would be required to deliver a policy compliant level of affordable housing.
30. As part of the appeal proposal, the appellants have now submitted a planning obligation, in the form of a completed Unilateral Undertaking, which proposes a contribution of £100,000 towards the provision of off-site affordable housing. This level is well short of the Council's requirement, with JLP policy DEL1, along with Policy DEV7, requiring robust viability evidence to be submitted where a developer contends that planning obligations sought, including for affordable housing, would make a proposal economically unviable.

31. In this regard, I am aware of Paragraph 57 of the Framework which identifies that the weight to be given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case, including the transparency of assumptions behind evidence submitted as part of the viability assessment. On this basis, due to the change in circumstances between its completion and the submission of the appeal documentation where a contribution is now proposed, albeit well short of a policy compliant level, I have given the FVA limited weight.
32. Notwithstanding the conclusions of the FVA, I share many of the Council's concerns as to how the scheme, that was initially concluded to be unviable without any contributions, is now in a position to deliver contributions. No evidence is before me to justify this change. In this instance, the level of contribution falls well below the level required to satisfy the development plan and given the identified discrepancies between the offered sum and the appellants FVA, there is no evidence before me to justify this reduced level of contribution.
33. Therefore, given the recently adopted plan and the identified need for affordable housing within the City, I consider that, without sufficient evidence to the contrary, the proposal would fail to make adequate provision for affordable housing and associated infrastructure. For these reasons, the proposal fails to satisfy Policy DEV7 of the JLP.

#### *Flooding*

34. Both parties agree that part of the site is located within Flood Zone 3 and that for the type of development proposed, Paragraphs 157 and 158 of the Framework identify that a Sequential Test is necessary to steer new development to locations that are at the lowest risk of flooding. As an allocated site however, it has already been subject to the sequential element of the test, however for the proposed development to be acceptable, it must also meet the exceptions test.
35. The exceptions test requires developments to provide wider sustainability benefits to the community that outweigh the flood risk, and to be safe for their lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, reducing flood risk overall. The Council's concerns relate to the need for the development to be safe for its lifetime and in particular, the provision of safe access and egress from the appeal site in the event of a flood occurrence.
36. Whilst the habitable accommodation would be positioned above the predicted flood level, Paragraph 163 of the Framework, identifies that, where appropriate, safe access and escape routes should be included as part of an agreed emergency plan.
37. The Flood Risk Assessment (FRA) submitted with the appeal application, identifies that a number of potential access/egress routes were explored. However, it concludes that none of these would be deliverable without agreement of 3<sup>rd</sup> parties. There is no evidence before me to suggest that any such agreements are in place.
38. In this regard, I agree with the concerns expressed by the Council and those of the Environment Agency with regard to the lack of a suitable access/egress

provision as part of the development. It is clear from the Framework and the National Planning Practice Guidance (NPPG) that there is a requirement to ensure development is safe from flooding. Therefore, whilst the proposal would meet certain elements of the exceptions test, from the evidence before me, I am unable to conclude that the proposal would provide a development that is safe for its lifetime. On this basis, the proposal fails to meet the exceptions test as set out in the Framework. Consequently, the proposal would also fail to meet Policies DEV10 and PLY36.5 of JLP in relation to addressing flooding issues.

#### *Living conditions*

39. No 10 Bakers Place is located adjacent to the eastern boundary, with its rear and side garden facing towards the appeal site. At first floor level, the property has windows in both the southwest and northwest elevations, along with a balcony and a roof terrace above the existing garage.
40. Due to the relatively open nature of the boundary and the height of the proposed building, there would be a number of windows and balconies that would face towards No 10 Bakers Place.
41. Evidence submitted with the appeal application by the appellants, shows the proposed building, at its closest, would be positioned approximately 15m way from the boundary with No 10. Furthermore, the proposed building would be at an angle to No 10, therefore this distance would increase further into the site.
42. Therefore, whilst the proposal would increase the presence and number of dwellings to the rear of No 10 Bakers Place, considering the orientation of the building, and the distance, this would not result in any adverse overlooking or significant loss of privacy to the residents of No 10 Bakers Place.
43. For the above reasons, the proposal would result in no significant harm to the living conditions of No 10 Bakers Place and, in this respect, is in accordance with Policy DEV1, the SPD and the Framework.

#### *Parking*

44. It is agreed between the parties that the proposed development provides sufficient car parking to meet the Council's standards. The majority of these spaces are provided within the undercroft area. The Council have expressed concerns with regard to the undercroft parking area being of a poor design.
45. With regards to the control of access into the undercroft parking area, whilst no gate is provided within the site, access via the main entrance would be controlled via a gate. This, in my view, would provide sufficient security and ensure that the car parking spaces are only accessible to residents of the proposed development.
46. In terms of security issues, I consider that matters such as CCTV and the provision of adequate lighting can be delivered through a suitably worded planning condition.
47. The Council have drawn my attention to the proposed parking arrangements for spaces 5 and 6. In the event that two cars are parked within these spaces, it is likely that they would protrude to some extent onto the shared surface. In

this regard however, I note that additional surfacing has been provided, which would be sufficient to ensure that adequate space exists for vehicles to safely access and exit the site in the event that both spaces are in use.

48. For the above reasons, I therefore conclude that the proposed development would provide sufficient car parking and is of a suitable design to meet the Council required standards, therefore, in this regard, the proposal accords with Policies DEV10, DEV20 and DEV29 of the JLP, the SPD and the Framework.

### **Planning balance and Conclusion**

49. The proposal would deliver 60 new homes on a brownfield site, in a sustainable location. Considering current national planning policy in relation to the delivery of new homes, this carries considerable weight.
50. The development would remove the existing buildings which are of a limited architectural merit. The proposal would also remove the existing business use, thereby reducing the amount of vehicular traffic that would be generated from the site. These elements weigh in favour of the proposal.
51. However, I have concluded that the proposal would harm the character and appearance of the area and would fail to provide sufficient affordable housing. The proposal would also fail to meet the exceptions test required by the Framework in relation to flooding. These matters weigh substantially against the proposal.
52. Insufficient evidence has also been provided in relation to the cumulative impact of the proposal in relation to surrounding schemes. However, considering the overall reduction in traffic, I have given this matter limited weight.
53. The proposal would also ensure sufficient on-site open space to provide adequate living conditions for future residents. Furthermore, the proposal would also have no significant effect upon the living conditions of surrounding residents. The proposal also makes adequate provision for on-site parking. However, as these are requirements of policy and legislation, the absence of harm in respect of these matters are neutral factors that weigh neither for nor against the development.
54. Overall, whilst the proposal would deliver benefits, principally in the form of new homes, these benefits are not considered to be sufficient to outweigh the substantial harm caused through the identified conflict with the development plan and the Framework.
55. For the above reasons and having considered all matters, I conclude that the appeal should be dismissed.

*Adrian Hunter*

INSPECTOR