



Appeal Decision

Site visit made on 4 March 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2021

Appeal Ref: APP/Q1153/W/20/3264435

Lower Tavy, Fore Street, Bere Ferrers PL20 7JL

- 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 & Mrs Musgrave against the decision of West Devon Borough Council.
 - The application Ref 0347/20/OPA, dated 30 January 2020, was refused by notice dated 4 June 2020.
 - The development proposed is outline application new dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the location of the proposal accords with local policies that seek to locate housing in sustainable identified locations unless there is a specifically identified local housing need;
 - whether the proposal would preserve or enhance the Tamar Valley Area of Outstanding Natural Beauty (AONB) and Bere Ferrers Conservation Area;
 - the effects of the proposal on internationally protected sites;
 - the effects of the proposal on the ecological value of the site; and
 - whether adequate foul and surface water drainage would be provided.

Preliminary Matters

3. The appeal application was made in outline form with all matters save for access reserved for future consideration. In this context, the submitted 'Proposed Block Plan' has been treated as illustrative.

Reasons

Location and need for development

4. The development plan for the area includes the Bere Peninsula Neighbourhood Plan (2018) (NP) and the Plymouth and South West Devon Joint Local Plan (adopted 2019) (JLP). JLP Policies SPT1 and SPT2 set the overarching aims to provide sustainable communities, a sustainable economy and environment. Policy SPT2 sets out the desire for all communities to have reasonable access to a vibrant centre, which meets daily community needs for local services and is well served by public transport, walking and cycling opportunities.

5. Policy TTV1 sets the settlement hierarchy and defines the anticipated distribution of growth and development. The defined 'Main Towns' are to receive the greatest proportions of growth, followed by the 'Smaller Towns and Key Villages' then the 'Sustainable Villages'. The latter are intended to receive minor development in order to meet locally identified needs and sustain limited services and amenities. The fourth tier relates to the 'Smaller Villages, Hamlets and the Countryside' where development will only be permitted if it supports the principles of sustainable development and sustainable communities.
6. Policy TTV26.1 relates to isolated development in the countryside which is not relevant to the proposal for an infill dwelling within an undefined settlement. Policy TTV26.2 provides criteria for development in the countryside more generally. Whilst the proposal does not accord with any of the criteria i) to vi), it does not raise any direct conflict with them either. The preamble to Policy TTV26 indicates that even in small rural settlements some limited organic growth may be appropriate and may assist in providing homes and facilities to meet local needs. The provisions to enable such growth are intended to be amplified through a supplementary planning document or neighbourhood plans.
7. JLP Policy DEV8 seeks to deliver a range of housing sizes, tenures and types, but indicates that the most particular needs are for homes that redress an imbalance within the existing housing stock, or that meet a specific need, or homes suited to working families, younger and older people alike.
8. The NP provides locally-specific allocations and policies that focus development almost exclusively towards the larger village of Bere Alston, which has a greater range of everyday facilities. The only NP policies that provide for development in Bere Ferrers are Policies H4 and H4A. The former indicates that proposals for minor developments may be supported provided that they are specifically intended to meet local needs on infill or redevelopment sites. Policy H4A states that support will be given to proposals for infill sites within the settlement boundary of Bere Ferrers, subject to a range of considerations, including, that it is specifically intended to meet an identified local need. It is unclear if any plan within the NP specifically defines said settlement boundary.
9. The preamble to Policies H4 and H4A details that they allow for the development of individual plots and small developments, including for self-build plots, in recognition of specific local needs that will arise over the plan period. It further states that such unallocated proposals must be supported by an objective assessment of need, evidence concerning the consideration of alternatives, as well as evidence of how any detrimental effects of the proposed development can be moderated, in order to reflect guidance in the National Planning Policy Framework (the Framework).
10. The appeal proposal is for a single self-build dwelling on the surplus garden of the host dwelling and is intended for the appellants' daughter. Given the location of the site between the host dwelling and an adjacent neighbouring dwelling, I agree that it could be regarded as a form of infill development to which NP Policies H4 and H4A apply, subject to the stated criteria.
11. In terms of the local need for the dwelling, some evidence of housing need can be drawn from the submitted planning and appeal statements, but it is not packaged as the specific statement of local need required by Policies H4 and H4A. I am not convinced that the evidence presented could be regarded as sufficiently objective and the limited range of alternatives considered are rather

perfunctorily discounted. Whilst I am cognisant of the fact that no particular precedent template for such has been provided to me, the NP's overall direction to strictly control development outside of the allocated sites cannot be lightly set aside. Though I recognise that such a need may exist, the extraction of threads of related evidence does not meet the Policy expectations for justification of this kind to be clear and comprehensive. Furthermore, there is little evidence to suggest how the identification of a local need for a self-build dwelling could result in delivery of a development certain to meet that need or maintain it in perpetuity, thus limiting the weight that can be applied to this aspect.

12. Drawing this main issue together, in the absence of clear and comprehensive evidence of a locally identified housing need for the development in its specific location and lack of a mechanism to secure the development as such, the location does not accord with Policies SPT1, SPT2, TTV1, TTV2, DEV8 or TTV26 of the JLP, or Policies H4 or H4A of the NP. As I do not find the principle of development to fully accord with NP Policies H4 or H4A, I have not addressed the remaining criteria, insofar as applicable to an outline proposal.

Effects on AONB and Conservation Area

13. The appeal site is formed from a part of the large side garden belonging to the two storey, detached, imposing dwelling known as Lower Tavy. It is currently occupied by a garage/workshop and separate storage shed. The host dwelling benefits from another area of garden to the east. The appeal site is within the AONB and, whilst not detailed in the Council's decision notice, also within the Bere Ferrers Conservation Area (CA).
14. The CA draws its significance from the number and range of period buildings centred around its historic core, including the prominent Church of St Andrews and the war memorial but also the more regular characterful cottages and former farmsteads that make up the larger part of the settlement. Under Section 72(1) of the Listed Building and Conservation Areas Act (1990), I am required to pay special regard to the desirability of preserving or enhancing the character or appearance of the CA.
15. Given the sensitivity of the area, highlighted by its landscape and built environment designations, the potential impacts are key considerations. However, as the proposal is made in outline form, there are no details beyond those provided for indicative purposes to fully conclude on such. I can only ascertain with reasonable certainty that the access would not need to be altered or physically changed in any way.
16. The existing low level garage/workshop and separate shed have very limited character and visual effects on the wider area. Their removal could secure some enhancements, but their replacement with a dwelling could not be certain to do so unless appropriately scaled, sited, designed and implemented alongside landscaping measures. Any new dwelling would be seen in context with both Lower Tavy and other adjoining dwellings and any residential use would be compatible with existing and neighbouring uses. This suggests its wider AONB impact on landscape qualities and tranquillity would be relatively limited. Similarly, as the plot relates well to the built form of the settlement, it is likely that a development could be designed to successfully integrate with, and at least preserve the character and the appearance of the CA.

17. I accept that the indicative block plan shows a generously-sized dwelling floor area relative to the size of the plot, but this is by no means a final design or acceptance that such a dwelling would be found to preserve or enhance the CA or AONB designations of the area. Additionally, views back over to the proposal from the footpath to the north-east will be similarly important. However, an automatic assumption of harm would not be reasonable given the position and current appearance of the site and nature of the proposal.
18. In view of this main issue, the outline proposal would not directly conflict with Policies DEV25 of the JLP or E1 of the NP which seek to give great weight to landscape and scenic beauty and locate new development so as to conserve and enhance specific landscapes, biodiversity corridors and areas of tranquillity. Nor would there be any direct conflict with JLP Policy DEV21 which seeks to attribute great weight to the conservation of heritage assets.

Protected sites

19. From the evidence, the site is adjacent to the Plymouth Sound and Estuaries Special Area of Conservation (SAC) and Tamar Estuaries Complex Special Protection Area (SPA) (the protected sites). These protected sites are of international marine conservation importance because of their wide variety of salinity conditions and sedimentary and reef habitats which are of international importance for a large number of waterbirds.
20. Under JLP Policy DEV26, proposals that are found to harm the integrity of the protected sites that cannot be avoided or adequately mitigated will not be permitted, other than in exceptional circumstances. Harm from the introduction of a new dwelling, considered in isolation and cumulatively with other similar schemes, cannot be entirely ruled out. There is insufficient evidence before me to conclude the scale of any harm, the source or reason that such harm would arise or whether it could be avoided or mitigated, though the evidence alludes to financial contributions required by way of S106 planning obligation.
21. As the competent authority, it would be necessary for me to ascertain all relevant details, including the appropriateness of any mitigation measures within an Appropriate Assessment under the requirements of the Habitats Regs¹. The lack of evidence is in itself sufficient to conflict with JLP Policy DEV26 and Policy E1 of the NP. However, as I am dismissing the appeal for other reasons, I have not taken this matter further.

Ecological value

22. The appeal application was not supported by any ecological assessment. Whilst the site is relatively limited in scale and formed from a maintained domestic garden with associated outbuildings, there is some potential for it to have some value for protected species as habitat or foraging ground. The lack of any assessment of such leaves doubt in this regard and suggests that one should be undertaken to eliminate any possibility of harm.
23. Thus, in the absence of such information, the proposal conflicts with JLP Policy DEV26.4 which seeks to ensure, amongst other things, that harmful impacts on species and habitats are avoided wherever possible.

¹ The Conservation of Habitats and Species Regulations (2017)

Drainage infrastructure

24. The appeal application form indicates that the proposed means of foul drainage is unknown and that the surface water would be directed to a soakaway. In the absence of information to specify either way, I cannot determine whether there are mains sewerage facilities in the area.
25. Should there not be any mains sewerage infrastructure, then the availability of land for a non-mains solution and proximity of habitable buildings and other non-mains features can become problematic. Whilst the appellants own the entire site, there is limited detail about the constraints or suitability of the drainage conditions. In this context, it is prudent to understand the capability of the site to accommodate drainage infrastructure so that a condition requiring the implementation of such could be imposed with certainty over its delivery.
26. Consequently, in the absence of evidence to the contrary, the proposal conflicts with JLP Policy DEV35 which seeks confirmation that wastewater treatment facilities can, or will be improved to accommodate any new development.

Other Matters

27. I note that the Council can demonstrate an adequate five year supply of housing land (5YHLS). This fact is not disputed but it is advanced that the 5YHLS figure is not an upper limit or a bar to further housing within the plan area. I agree that this is the case. However, the presence of a 5YHLS and up-to-date status of the development plan means that its policies attract full weight and the Framework's tilted balance is not engaged.
28. Numerous comments were submitted in support of the scheme. Whilst noted, these do not alter my findings on the main issues set out above.
29. I also note the appellants' claims that the Council did not request further information in relation to some of the main issues and exceeded the statutory determination target date. Whilst Councils are encouraged to work proactively with appellants and determine applications efficiently, I am mindful that no pre-application advice was sought to identify any such potential issues either.

Planning balance and conclusion

30. For the reasons set out above, the proposal conflicts with the development plan, when read as a whole.
31. The public benefit of the scheme includes the provision of one dwelling to the local housing stock. However, this draws limited weight as a single dwelling in the context of a sufficient 5YHLS. There would be some social benefit from the provision of a dwelling and some economic support, beyond the short-term construction phase, to the local facilities and amenities. However, the combination of these benefits is not sufficient to outweigh the identified conflict with the development plan.
32. Accordingly, the appeal is dismissed.

Hollie Nicholls

INSPECTOR