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## Appeal Decision

Site visit made on 22 March 2021

**by Neil Pope BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 March 2021**

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**Appeal Ref: APP/K1128/W/20/3262724**

**Woodville, Pillory Hill, Noss Mayo, Devon, PL8 1ED.**

- 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 Mrs Beryl Booth against the decision of South Hams District Council (the LPA).
  - The application Ref. 1624/20/FUL, dated 5/6/20, was refused by notice dated 21/8/20.
  - The development proposed is a revised scheme to replace bungalow with three-bedroom house incorporating double garage and associated landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for a three-bedroom house incorporating double garage and associated landscaping at Woodville, Pillory Hill, Noss Mayo, Devon, PL8 1ED. The permission is granted in accordance with the terms of the application Ref. 1624/20/FUL, dated 5/6/20 and subject to the conditions in the attached Schedule.

### Preliminary Matters

2. The LPA has informed me that there is some text missing from its fifth reason for reason. This reason should read as follows:

*The proposed dwelling lies within close proximity to the Noss Mayo conservation area, which also contains St Peters Church which is a listed building. The impact of the intrusion would serve to harm the setting of the listed building and as such be contrary to Policy DEV21 of the Plymouth and South West Devon Joint Local Plan; N3P-8 of the Newton and Noss Neighbourhood Plan and para 190 and 192 of the National Planning Policy Framework 2019.*

3. The LPA has also informed me that the appeal site lies within the Heritage Coast (HC), does not form part of the Undeveloped Coast and that the proposed development would not affect the setting of either the Noss Mayo Conservation Area or the Newton Ferrers Conservation Area.
4. The site has a lengthy planning history. This includes a previous appeal that was dismissed in 2014 for a replacement dwelling of a very different design to the one now proposed (ref. APP/K1128/A/13/2206911) and an approval in February 2018, for a replacement four bedroom detached house (Ref. 4062/17/FUL). The three bedroom bungalow that formerly occupied part of the site has since been demolished and the LPA has issued a lawful development certificate for the commencement of the 2018 permission (ref. 3476/20/CLE).

5. An application for costs was made by the appellant against the LPA. This application is the subject of a separate Decision.

### **Main Issues**

6. The five main issues are: the effect upon the character and appearance of the area, which forms part of the South Devon Area of Outstanding Natural Beauty<sup>1</sup> (AONB) and HC; the effect upon the setting of the Grade II\* listed Church of St. Peter<sup>2</sup>; the effect upon the living conditions of neighbouring residents, having particular regard to the outlook of the occupiers of 'Nymet'; whether the proposal would include adequate off road car parking and; whether, having regard to local housing needs policies and the fallback position, the proposal would undermine the objective of achieving mixed and balanced communities.

### **Reasons**

#### *Planning Policy*

7. The development plan includes the Plymouth and South West Devon Joint Local Plan 2014-2034 (LP) and the Newton and Noss Neighbourhood Plan 2017-2034 (NP). My attention has been drawn to numerous policies. The most important policies to the determination of this appeal are: LP policies DEV1 (amenity), DEV8 (local housing need), DEV10 (high quality housing), DEV21 (historic environment), DEV23 (landscape character), DEV24 (Heritage Coast), DEV25 (AONB) and; NP policies N3P-4 (development and construction), N3P-5 (movement and parking), N3P-8 (heritage), N3P-9 (landscape protection) and N3P-11 (new housing).

#### *The Fallback Position*

8. The 2018 permission for a dwelling on the appeal site is a fallback position available to the appellant. If this appeal was to fail there is a real prospect that the approved replacement dwelling on the site would be completed. The fallback position has significant weight in the determination of this appeal.

#### *Character and Appearance*

9. This 0.04 hectare appeal site forms part of the steeply sloping hillside on the southern side of Newton Creek. It lies within the built-up area of Noss Mayo and overlooks the settlement of Newton Ferrers on the opposite side of the estuary. As I saw during my visit, there is considerable variation in the size and design of dwellings within Noss Mayo and many properties take advantage of the very attractive views along Newton Creek. To the west of the site is a sizeable new dwelling known as The Old Workshop, whilst to the east is Lyndayne. To the south of the site is the dwelling known as Nymet.
10. Noss Mayo is an attractive village. As with most, if not all, settlements some of the buildings are interspersed with trees. However, the appeal site does not lie within a part of Noss Mayo that could reasonably be described as having a sylvan character as argued by the LPA. Furthermore, the proposal does not entail the removal of any trees or any works to neighbouring trees.
11. The proposed dwelling would be considerably larger and of a very different design to the former bungalow on the site. It would extend further down this

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<sup>1</sup> The provisions of section 85 of the Countryside and Rights of Way Act 2000 are engaged.

<sup>2</sup> The provisions of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are engaged.

- sloping plot of land and would include large glazed areas facing towards Newton Creek and Newton Ferrers. When seen from the northern side of the estuary, including towards the eastern end of the creek, the proposal would be a noticeable addition to the built environment. However, the same would be true for the fallback position, which is for a house of a similar size and design.
12. The tallest part of the proposed dwelling would be below the ridge height of Lyndayne and would not break the skyline. Some existing dwellings would appear above/behind this new house and the proposal would be seen in the context of The Old Workshop alongside. The hipped roof shape would assist in limiting the overall mass of the building and this proposed house would be finished using a palette of materials to match some neighbouring dwellings.
  13. There would be adequate space around the building to avoid any cramped effect and to allow for new landscape planting. The proposed double garage door would be a somewhat unfortunate addition to the street scene of Pillory Hill. However, given the fallback, which includes a garage door designed with a strong horizontal emphasis, on balance, this element of the proposed design would not result in any significant adverse visual impact.
  14. As I noted when viewing the appeal site from Newton Ferrers, there are very many windows (some of which are quite large) in neighbouring properties at Noss Mayo that overlook the estuary. In comparison to the fallback, the proposal before me would include a new guest suite with windows on the lower ground floor. Whilst I did not see the site during the hours of darkness, in all likelihood, the appeal scheme would not result in any harmful increase in light spill along the southern side of Newton Creek or along Pillory Hill.
  15. The proposal would form an integral part of the settlement and over time the new landscape planting would assist in softening the visual impact of the dwelling. There is no cogent evidence to demonstrate that the development would harm the special qualities of the AONB or detract from the landscape or scenic beauty of the area. There is also nothing of substance to demonstrate that the proposal would harm the special character of this part of the coast.
  16. Given the fallback position, I conclude on the first main issue that the proposed development would not harm the character or appearance of the area. There would be no conflict with LP policies DEV10, DEV23, DEV24, DEV25 or NP policy N3P-9. The proposal would conserve the natural beauty of the AONB.

#### *Setting of the Church of St. Peter*

17. On behalf of the appellant, it has been calculated that the parish Church of St. Peter lies approximately 70 metres to the south west of the appeal site. The significance (heritage interest) of this late 19<sup>th</sup> century church by James Piers St. Aubyn is derived from its special architectural and historic qualities. These include its Perpendicular style, three storey west tower, semi-circular conically roofed vestry, windows and buttresses. This designated heritage asset is built on the steep hillside overlooking Newton Creek and is a picturesque landmark.
18. The appeal site lies within the extensive setting to the church. It comprises part of the developed hillside leading up to and around the church. There are intervening dwellings between the eastern flank of the churchyard and the appeal site. The location of the church on the mid slope of the hillside

contributes to an appreciation and understanding of the significance of this building which is of more than special interest.

19. The Church of St. Peter is prominent in views from the northern side of the estuary, including parts of Newton Ferrers. There are also views from the churchyard along the estuary. The appeal site appears in many of these views but it does not contribute to the significance of this important building.
20. The proposed development would be seen in some views to and from the Church of St. Peter. However, by virtue of its height and location to one side of the church, as well as its construction into the valley side, this new dwelling would not harmfully intrude into the setting of this listed building or diminish the ability to appreciate or understand its heritage interest. The church would remain a prominent and picturesque feature in views along the estuary.
21. I conclude on the second main issue that the proposal would preserve the setting of the Grade II\* listed Church of St. Peter and would accord with the provisions of LP policy DEV21 and NP policy N3P-8. The proposal would also preserve the settings and heritage interest of the adjacent conservation areas.

#### *Living Conditions*

22. The proposed development would be built into the hillside on the opposite side of the road to Nymet. It would alter the outlook from the south facing windows and part of the garden on the eastern side of this neighbouring dwelling. However, most of these facing windows are rooflights and as I noted during my site visit, the main outlook from Nymet and its garden is away from the appeal site and across and along Newton Creek.
23. The occupiers of Nymet are unlikely to spend much time gazing up onto the developed hillside behind rather than taking advantage of the very attractive estuary views. Even if occupiers were reliant on views across the appeal site for their outlook, the appeal scheme, when compared to the fallback position, would be unlikely to result in any significant loss of amenity. The proposed guest suite would largely be built into the hillside and the new bedroom and en-suite facilities would be set back from roadside and an adequate distance from this neighbouring dwelling. There would be no overbearing or oppressive impact for the occupiers of Nymet.
24. I also note the LPA's concerns that the proposed development would reduce the "*amenity for users of Pillory Hill*". Given the existing development within this street and the fallback position, it is unclear what amenity would be harmed by the proposal. Those using Pillory Hill would be moving along the street and in so doing would experience filtered views of the estuary, as well as various dwellings above and alongside, including The Old Workshop. The proposal would be very unlikely to have any adverse impact upon an experience or enjoyment of this street.
25. Whilst I note the concerns of some other neighbouring residents regarding the impact of the development upon their living conditions, the proposed dwelling would be sited and designed to avoid any serious loss of outlook, overlooking or loss of light. There would be some inconvenience during the construction phase but this would be for a limited period. I note that the LPA did not identify harm to the living conditions of any other neighbouring residents.

26. I conclude on the third main issue that the proposal would not seriously harm the living conditions of neighbouring residents and would accord with the provisions of LP policy DEV1 and NP policy N3P-4.

#### *Car Parking*

27. The submitted drawings show garaging for two motor cars and off-street parking in front of the garage for two additional cars. In my opinion, this would amount to adequate off street parking provision to meet the likely demand for car parking by occupiers of the proposed dwelling. I note that the Local Highway Authority did not object to the proposal.
28. As suggested by the LPA, a planning condition could be attached to a permission to ensure that the proposed car parking is provided and retained as part of the development. This would limit the risk of congestion along the local road network and avoid inconveniencing existing residents through any increase in demand for scarce on-street parking spaces.
29. Amongst other things, NP policy N3P-5 requires 3 bedroom properties to have two off-road parking spaces and 4 bedroom properties to have 3 spaces. This policy also states that "*Garages will not normally be counted as parking spaces.*" As the proposal is for a 3 bedroom property there would be no conflict with the provisions of this locally adopted policy.
30. If one of the other rooms, such as the proposed office, was subsequently used as an additional bedroom this new house would, discounting the garage spaces, be 'deficient' in 1 off-street parking space. However, that cannot be a sound way to apply NP policy N3P-5. To do so, would require assumptions to be made in all future applications for new housing as to what rooms have the potential to be used as bedrooms in addition to those specified as bedrooms on the submitted plans. This would introduce considerable scope for errors and inconsistencies within the decision-making process. NP policy N3P-5 makes no mention of a need to do this. Moreover, the fallback position is for a four bedroom house which, on the basis of the information before me, would have 2 off-street parking spaces and 1 garage space.
31. I conclude on the fourth main issue that the proposed development would include adequate provision for off-street car parking and would accord with the provisions of NP policy N3P-5.

#### *Local Housing Need*

32. LP policy DEV8 is aimed at meeting local housing need in settlements such as Noss Mayo and achieving mixed communities. Amongst other things, it seeks to meet specialist needs for existing and future residents, including redressing imbalances within the existing housing stock and providing housing suitable for households with specific need. It is broadly consistent with the social objective of the National Planning Policy Framework. NP policy N3P-11, amongst other things, encourages smaller homes and requires evidence of local need for new dwellings that are capable of accommodating more than three bedrooms.
33. I recognise that in desirable areas such as the South Hams there is considerable pressure for housing development and an acute shortage of homes to meet the needs of the local community. I also note that the development plan policies were adopted/made after permission was granted for a replacement dwelling on the appeal site in 2018. Nevertheless, the

- objectives of these policies would have been known to the LPA at that time and given appropriate weight<sup>3</sup> when determining this previous application.
34. The proposed dwelling could not reasonably be described as a "smaller home" and as the appellant currently resides in Torquay there is some tension with elements of these local housing policies. I have already noted that LP policy DEV8 makes an allowance for future residents. The proposal is intended to meet the requirements of the appellant, her husband and one of her daughters who has special needs and requires daily support<sup>4</sup>. The appellant's other daughter is intending to act as carer for her sister and her aging parents<sup>5</sup>.
35. In support of the appeal, my attention has been drawn to the Equality Act 2010<sup>6</sup> and a legal opinion<sup>7</sup> on the LPA's interpretation of this Act. In undertaking the Public Sector Equality Duty (PSED) I am mindful that one of the appellant's daughters has a protected characteristic.
36. In having due regard to the equality principles set out in section 149 of the 2010 Act, withholding permission could have a negative impact on the equality needs of the appellant's daughter with the protected characteristic. However, it is very far from certain that her needs could not be met in other ways, such as adapting her existing home or finding another suitable property, without the appeal scheme proceeding. Whilst I am not unsympathetic to the needs of the appellant and her family, I attach only limited weight to the likely equality impact of the LPA's decision to withhold permission.
37. In considering this matter further, I struggle to see how the proposed development would meet a local housing need and help provide more smaller homes within this part of the district. Circumstances could also change and the proposed dwelling could be occupied by others who do not have any special needs or require daily care/support. When weighed with the negative impact I have identified above, this issue is finely balanced.
38. However, what is clear is that the dwelling which could be completed under the fallback position is a large four bedroom house that would not meet a local housing need and be at odds with LP policy DEV8 and NP policy N3P-11. Withholding permission for the appeal scheme in the hope or expectation that a much smaller dwelling being built on the site is wholly unrealistic and very unlikely to achieve any social objective.
39. Given the above, I conclude on the fifth main issue that the proposal would not undermine the objective of achieving mixed and balanced communities.

### *Planning Conditions*

40. In addition to the 'standard' condition requiring development to commence within three years, in the interests of certainty a condition would be necessary specifying the approved plans. To safeguard the character and appearance of the area conditions would be necessary to: control external lighting; require the submission and approval of details / sample materials to be used on the

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<sup>3</sup> The LP and NP would have been at an advanced stage.

<sup>4</sup> I note the letters of support from the appellant's daughter's GP and the proposed internal lift would support disabled access.

<sup>5</sup> I also note that the appellant's husband suffered a stroke a few years ago.

<sup>6</sup> In particular, sections 19 and 149.

<sup>7</sup> Prepared by the appellant's Solicitor.



external walls and roof of the building; remove certain permitted development rights and; require the submission and approval of a scheme of landscaping.

41. A condition would be necessary to ensure the proposal accords with established planning policies<sup>8</sup> for delivering low carbon development. It would also be necessary to attach a condition to ensure the development secures the ecological benefits identified within the submitted ecological impact assessment. In the interests of public safety, a condition would be necessary to address any unexpected land contamination.
42. To safeguard the amenity of neighbouring residents and to avoid congestion on the local highway network a condition would be necessary requiring the development to be undertaken in accordance with an approved Construction Management Plan. This would be necessary before development commenced and would amount to an exceptional circumstance justifying such a condition. Similarly, a condition requiring drainage details would be necessary from the outset to ensure satisfactory drainage arrangements. To avoid congestion on the local road network a condition would be necessary requiring the proposed parking and garaging arrangements to be provided and retained.
43. I note that some landscaping details have already been submitted and a Construction Management Plan and drainage details appear to have been approved as part of the fallback. However, a landscape condition would need to be attached/worded to ensure all necessary details were provided and was capable of being enforced. The previously approved details also relate to a different permission and would not be enforceable under an approval that followed this appeal. Nevertheless, it would be open to the appellant to resubmit this Plan and drainage details when seeking to discharge the relevant conditions attached to a permission for the appeal scheme.

#### *Overall Conclusion*

44. Given all of the above, I conclude that the appeal should succeed.

*Neil Pope*

Inspector

#### SCHEDULE OF CONDITIONS

1. The development hereby permitted shall commence within a period of three years from the date of this decision.
2. The development hereby permitted shall be undertaken in accordance with the details shown on the following approved drawings:  
  
1:1,250 scale site location plan (drawing ref. 1811-01); 1:200 scale scheme design new house relationship study with neighbours (drawing ref. 1811-20 A); 1:100 scale proposed roof level plan (drawing ref. 1811-23); 1:100 scale proposed Level 1 (garage) (drawing ref. 1811-24); 1:100 scale proposed Level 2 (guest suite) (drawing ref. 1811-25); 1:100 scale proposed Level 3 (lower main floor) (drawing ref. 1811-26); 1:100 scale proposed Level 4 (upper main

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<sup>8</sup> Including LP policy DEV32.

- floor) (drawing ref. 1811-27 A); 1:100 scale proposed site elevation from road (drawing ref. 1811-28 A); 1:100 scale proposed west elevation with site section (drawing ref. 1811-29); 1:100 scale proposed south elevation from patio (drawing ref. 1811-30); 1:100 scale proposed side elevation with site section from east (drawing ref. 1811-31); 1:100 scale proposed site section looking eastwards (drawing ref. 1811-32).
3. There shall be no external lighting, unless otherwise agreed in writing by the Local Planning Authority.
  4. Prior to their installation, details / samples of all facing materials and roofing materials to be used in the construction of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out and retained thereafter in accordance with those details / samples as approved.
  5. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (and any Order revoking and re-enacting this Order), no development of the types described in the following Classes of Schedule 2 shall be undertaken without the express consent in writing of the Local Planning Authority other than those expressly authorised by this permission:-
    - (a) Part 1, Classes A, AA, B, C, D, E, F, G, H;
    - (b) Part 2, Class A.
  6. No development shall proceed above slab level until a detailed landscaping scheme, based upon the sketch layout and sketch elevations in the document Landscape Proposal Rev A, dated May 2020, produced by Red Bay Design has been submitted to and approved in writing by the Local Planning Authority (LPA). This shall include a detailed planting schedule (including species, locations and planted heights), a timetable for planting and details of maintenance. The development shall proceed in accordance with the approved details / timetable and any trees or plants which, within a period of 5 years from the completion of the development, die, are removed or become damaged or diseased, shall be replaced in the next planting season with others of similar size and species as those originally planted, unless the LPA gives written consent to any variation.
  7. No development shall proceed above slab level until details of the means of minimising energy consumption and emissions have been submitted to and approved in writing by the Local Planning Authority. The development shall be completed / operate in accordance with the approved details.
  8. Prior to the occupation of the dwelling hereby permitted, bird and bat boxes shall be affixed / installed to / in the building in accordance with the recommendations contained within the Ecological Impact Assessment by J L Ecology dated April 2020.
  9. 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 (LPA), shall be carried out until the developer has submitted, and obtained written approval from the LPA for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with. Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of



any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the LPA.

10. No development shall commence 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) daily hours of construction, not to occur before 8am and after 6pm Monday to Friday, 8am and 1pm on Saturdays and at no time on Sundays or Bank Holidays; (c) delivery routes and any road closures; (d) number and sizes of vehicles visiting the site and the frequency of their visits; (e) contractor and delivery vehicle parking; (f) areas for storage of materials and waste/skips; (g) the means of enclosure of the site during construction works; (h) measures to minimise dust pollution, surface water run-off and for wheel washing; (i) measures to inform local residents of works and; (j) contact details of the site manager, to include a telephone number. The development shall proceed in accordance with the approved CMP.
11. Prior to commencement, a detailed surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. This shall include: (a) soakaway test results and groundwater monitoring results; (b) a detailed drainage design; (c) detailed proposals for the management of surface water and silt run-off from the site during construction of the development hereby permitted; (d) proposals for the adoption and maintenance of the permanent surface water drainage system and; (e) a plan indicating how exceedance flows would be safely managed at the site. The dwelling shall not be occupied until works required by the approved drainage scheme have undertaken.
12. Vehicle parking shall be laid out in accordance with the approved plans and shall be made available for use before the first occupation of the dwelling. The garage and off street parking shown on drawing ref. 1811-24, shall be used for the parking of vehicles only and for no other purpose.