



Appeal Decision

Site visit made on 14 July 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2021

Appeal Ref: APP/K1128/W/21/3272800

Land adjacent to Lower Westerland Farm, Totnes Road to Westerland Lane, Westerland, Marldon TQ3 1RU

- 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 Aaron Doonan against the decision of South Hams District Council.
 - The application Ref 4148/20/FUL, dated 17 December 2020, was refused by notice dated 12 February 2021.
 - The development proposed is construction of self-build detached dwelling and associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for construction of self-build detached dwelling and associated landscaping at Land adjacent to Lower Westerland Farm, Totnes Road to Westerland Lane, Westerland, Marldon, TQ3 1RU, in accordance with the terms of the application, Ref 4148/20/FUL, dated 17 December 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. Following the refusal of the appeal application, the new National Planning Policy Framework (the Framework) has been published (July 2021) and comments were invited from the main parties on this. As I consider that there have been no fundamental changes to national planning policy relevant to the main issues in this appeal, no injustice has been caused to any of the appeal parties.

Main Issues

3. The main issues are:
 - whether the location of the development accords with local policies in respect of the need to locate dwellings where they have access to a vibrant centre and in order to minimise the need to travel; and
 - the effects of the proposal on highway safety.

Reasons

Location of Development

4. The appeal site is an undeveloped area of overgrown land, with a formalised road access to the front and a high roadside hedge above a low stone wall. There are detached dwellings in reasonable proximity either side of the site, and a dwelling opposite. The rear of the site is adjoined by agricultural land and a post-and-rail fence divides the site from it.

5. The adopted development plan for the area, the Plymouth and South West Devon Joint Local Plan 2014 - 2034 (JLP) (2019), includes Policies SPT1 and SPT2 that provide an overarching strategy for the location of new development. The hierarchy of settlements is set out in Policy TTV1 with the largest settlements to receive the highest proportions of growth, with smaller villages, hamlets and the countryside being where the least development will be permitted subject to other policies in the Plan, including Policy TTV26. Policy TTV2 sets out the objectives for sustainable growth within the 'Thriving Towns and Villages' (TTVA) area.
6. 'Sustainable Villages' as identified in Policy TTV1, and including the village of Marldon, are to receive a proportion of development aimed at meeting locally identified needs and to sustain available services. The Policy preamble explains that settlement boundaries are not defined. If a judgement is made that a site falls outside of the built-up area and is within the countryside, then the proposal should be assessed against Policy TTV26.
7. Marldon has an easily definable built extent for the most part, with the more peripheral areas including Totnes Road and Westerland Lane showing greater gaps and a less robust form. Housing is generally at a lower density in this area, set back further from the road, some sheltered from it with large extents of vegetation and some rural buildings among the dwellings.
8. I regard the site as being in a semi-rural location on the periphery of the settlement. The site seemed to be amongst other dwellings, with Middle Westerland House opposite and Pennystone Farm adjacent forming the edges of the settlement in the area. Despite the sizeable proportions of the site and the existence of the roadside hedge, the site appears to fall within the built form of Marldon and would not extend the settlement beyond its existing limits.
9. In terms of access to facilities, the site is more directly opposite Westerland Lane heading north, which would offer future residents with options to walk or cycle to the nearest services and facilities within the village. Though the lane is absent of streetlighting, the directness of the route would mean it could offer a realistic shortcut to the centre at least during daylight hours and the walking distances would not be prohibitive.
10. Whilst I note the decision made in respect of a dwelling further to the east¹, that particular site was more detached from the built form of the settlement, in between two sporadically sited dwellings. The appeal site appears to be a limited example of a site within a cluster of dwellings and buildings at the edge of the settlement.
11. In view of the above, the location of the development would enable suitable access to the centre of the Sustainable Village and options to minimise the need to travel by private vehicle. Whilst the description refers to a self-build dwelling, there is no Section 106 planning obligation defining the dwelling as such. Given my view that the proposal is within the settlement, there is no specific requirement for it to be anything other than a market dwelling.
12. In view of the above, the proposal therefore complies with, in particular, JLP Policies TTV1, TTV2 and TTV25. Given my findings, I do not consider that the

¹ Appeal Ref: APP/K1128/W/20/3244829

proposal falls within an isolated or countryside location to which JLP Policy TTV26 would apply.

Highway safety

13. The appeal site is accessed via Westerland Lane which has a junction with Totnes Road. Totnes Road is a particularly busy road and in the vicinity of the site is subject of a 30 mph speed restriction.
14. When emerging from Westerland Lane, the junction has restricted visibility, particularly to the right, with the reported visibility splay being in the region of 20 metres. The road markings and signage installed at the junction in connection with a previous scheme have not resulted in drastic improvements to the visibility and users are still required to exercise more caution on the basis of the constrained visibility.
15. In the appeal decision which dismissed a single dwelling, I considered that the modest increase in use of the existing well-used junction would not give rise to a materially harmful increase in the risk of accidents. Since that decision was made, a further dwelling at 'The Linhay' has been permitted to use the junction². Whilst I referred to the potential for cumulative impacts being a greater concern, it was not expressly stated that the capacity was for just a single dwelling, but rather for only modest increases in its use. Again, given the absence of accident data more recent than 2013, I am of the view that the use of the junction by the occupants of one further dwelling would not be materially harmful. I also hold the view that the restrictive policies pertaining to development outside of the built form of the Sustainable Village of Marldon would be less likely to produce greater cumulative impacts to consider beyond this scheme with that at the Linhay.
16. I am also mindful that the limited agricultural use of the junction by slower agricultural vehicles that are lawfully permitted to use the site would cease, which would offset a minor number of instances of its use.
17. In view of this main issue, the proposal would not prejudice highway safety and, thus, would not conflict with JLP Policy DEV29 which seeks to achieve safe and satisfactory vehicular access to, and within sites. For similar reasons, the proposal would not conflict with the revised Framework which also seeks to avoid unacceptable impacts on highway safety.

Other Matters

18. I note the concerns raised in connection with the impact of the proposal on views from the higher northern side of Westerland Lane. As I consider that there would be no overbearing effects, the loss of a view is not a material planning consideration. Similarly, whilst there would be an inevitable change from agricultural land to one with a dwelling and associated domestic paraphernalia, I do not consider that there would be any wider harm to the landscape character or visual amenities of the area. I also note that the Council found the design of the dwelling acceptable and, subject to relevant conditions, I find no reason to reach a different conclusion.

² Appeal Ref: APP/K1128/W/20/3252775

19. Whilst concerns have been raised about the severing of an access to neighbouring agricultural land through the construction of the dwelling, I note from the evidence that an alternative access is available.
20. I have also taken note of the concerns in connection with the increased use of Westerland Lane. Whilst there may be a small number of additional movements, given its narrowness, it is unlikely to be the preferred driving route by future occupants and I do not consider that this would result in harm to highway safety.
21. The concerns in connection with flooding and drainage are also noted. Whilst anecdotal evidence suggests there have been a limited number of instances of localised flooding, I note that the scheme would incorporate both a non-mains drainage system and a surface water drainage system including an attenuation feature. The requirement for further details of such a system to be approved by the Council provides comfort that it would be fit for its intended purpose to improve the current generally unmanaged run-off and prevent any increase in the risk of flooding elsewhere.

Conditions

22. In addition to the statutory time limit condition, a condition is necessary specifying the approved plans in the interests of certainty.
23. In the interests of highway safety and to protect the living conditions of neighbouring occupiers, a condition seeking a construction management plan is necessary. This condition is unavoidably a pre-commencement condition.
24. In order to comply with JLP Policy DEV32 and to ensure the development contributes towards delivering a low carbon future, a condition is required to ensure energy efficiency measures are installed within the building or provided prior to occupation. In the interests of highway safety, a condition requiring the parking spaces to be provided prior to occupation of the dwelling is necessary.
25. In order to ensure the development protects the landscape character and visual amenities of the area, a landscaping condition is necessary. For similar reasons, a condition requiring details of external materials is also necessary.
26. To protect human health, a condition is necessary requiring remediation of unexpected contamination, if found, during the course of building works.
27. Given the number of concerns in relation to local flooding issues and the nearby areas at risk of flooding, a condition is required to ensure the provision of a comprehensive sustainable drainage system.
28. In order to protect the biodiversity interests of the site and surrounding area, a condition is necessary to ensure compliance with the submitted ecological appraisal and a separate condition precluding the installation of external lighting.

Conclusion

29. For the reasons outlined above, the appeal is allowed.

Hollie Nicholls
INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan, dated 19 June 2019
 - Block Plan, dated 7 December 2020
 - Proposed Ground, First Floor & Roof Plan, Ref 1003.06, dated Nov 20
 - Proposed North, East & South Elevations, Ref 1003.07, dated Nov 20
 - Proposed West Elevation & Site Cross Sections, Ref 1003.08, dated Nov 20
 - Tree Constraints & Protection Plan, Ref 05545 TCP.TPP, dated 2.12.20
 - Proposed Site Plan, Ref 1003.09 Rev A, dated 10.12.20
 - Landscaping Plan, Ref 05545 LSP Rev A, dated 5.1.2021
 - Proposed Surface Water and Foul Drainage Plan and Details, Ref 19962/SE/02 Rev A, dated December 2020
- 3) Prior to commencement of any part of the development hereby permitted, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The CMP shall include:
 - (a) the timetable of the works;
 - (b) daily hours of construction;
 - (c) any road closure;
 - (d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays inc.; 9.00am to 1.00pm Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays;
 - (e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
 - (f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
 - (g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County Highway for loading or unloading purposes;
 - (h) the means of enclosure of the site during construction works;
 - (i) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site;
 - (j) details of wheel washing facilities and obligations;

- (k) the proposed route of all construction traffic exceeding 7.5 tonnes;
- (l) details of the amount and location of construction worker parking;
- (m) photographic evidence of the condition of the adjacent public highway prior to commencement of any work.

The development shall not be carried out unless in strict accordance with the approved details.

- 4) The construction of the hereby approved dwelling shall be carried out in accordance with the details contained in the DEV32 Compliance Statement received on 18 January 2021. All measures contained within the approved Statement to limit carbon emissions shall be implemented prior to first occupation of the hereby approved dwelling.
- 5) Parking facilities shall be provided and thereafter permanently retained for the parking of vehicles in accordance with the approved plans prior to occupation of the dwelling hereby approved.
- 6) Notwithstanding details in the approved plans, the dwelling shall not be occupied until full details of hard and soft landscape works, including an implementation and management plan, have been submitted to and approved in writing by the Local Planning Authority.

Details of soft landscape works shall include retention of any existing trees and hedges; finished levels/contours; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.

The hard landscape works shall include means of enclosure; boundary and surface treatments; vehicle and pedestrian/cyclist circulation.

All works shall be carried out in accordance with the approved details and the implementation plan and thereafter maintained in accordance with the approved management plan.

- 7) If, during development, contamination not previously identified is found to be present at the site then no further development 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 contamination shall be dealt with. Development shall not thereafter proceed unless in strict accordance with the measures identified in the approved remediation strategy and verification plan. Prior to occupation of any part of the 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 Local Planning Authority.
- 8) Notwithstanding the submitted details, prior to the installation of any part of the surface water management scheme or before development continues above slab level, whichever is the sooner, full details of the most sustainable drainage option shall be submitted to and approved in writing by the Local Planning Authority. Design steps as below:
 - 1. Soakaway testing to DG 365 to confirm the use of soakaways or to support an alternative option. Three full tests must be carried out and the

depth must be representative of the proposed soakaway. Test results and the infiltration rate to be included in the report.

2. If infiltration is suitable then the soakaway should be designed for a 1:100 year return period plus a 40% allowance for climate change.

3. If infiltration is not suitable then an offsite discharge can be considered. Attenuation should be designed for a 1:100 year return period plus a 40% allowance for climate change. Please note a pumping system for surface water drainage cannot be accepted, therefore the scheme should rely solely on gravity.

4. The offsite discharge will need to be limited to the Greenfield runoff rate. This must be calculated in accordance with CIRIA C753. The discharge must meet each of the critical return periods. Full details of the flow control device will be required.

5. The drainage details of the car park and access will be required. If it is proposed to be permeable then it should be designed in accordance with CIRIA C753. Full design details and sectional drawing showing the specification and make up will be required.

6. A scaled plan showing full drainage scheme, including design dimensions and invert/cover levels of the soakaways/attenuation features, within the private ownership.

The drainage scheme shall be installed in strict accordance with the approved plans, maintained and retained in accordance with the agreed details for the life of the development.

- 9) The recommendations and safeguarding measures given in the Preliminary Ecological Appraisal, Ref 09720/GLE, dated October 2020 shall be followed, including precautions to prevent threat of harm during construction works.
- 10) Prior to the installation of any exterior lighting on the buildings or elsewhere on the site, full details including design, siting and illumination type, shall be submitted to the Local Planning Authority for approval. Only lighting that has been approved in writing by the Local Planning Authority shall be installed.
- 11) Notwithstanding condition 2 above, prior to their first use on the building, samples or details of the materials to be used on the external surfaces shall be submitted to and approved in writing by the Local Planning Authority. The work shall proceed in accordance with the approved materials.