



Appeal Decision

Site visit made on 2 February 2022

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05th May 2022

Appeal A Ref: APP/K1128/C/21/3282927

Villa Sharpitor, South Sands, Salcombe, Devon TQ8 8LW

Appeal B Ref: APP/K1128/C/21/3282928

Villa Sharpitor, South Sands, Salcombe, Devon TQ8 8LW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
 - Appeal A is made by Mr Stephen Wootton against an enforcement notice issued by South Hams District Council (the 'Notice').
 - Appeal A is made by Ms Pauline Westgate against an enforcement notice issued by South Hams District Council (the 'Notice').
 - The notice, numbered 014978, was issued on 17 August 2021.
 - The breach of planning control as alleged in the notice is: Operational development without planning permission; namely, the erection of a dwelling on the Land.
 - The requirements of the notice are: (i) Demolish the dwelling and remove all materials resulting from the demolition from the land.
 - The period for compliance with the requirements is 12 months.
 - Appeal A is proceeding on the ground set out in section 174(2)(a) (b) and (f) of the Town and Country Planning Act 1990 as amended. Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is proceeding on the ground set out in section 174(2) (b) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a dwelling at Villa Sharpitor, South Sands, Salcombe, Devon, TQ8 8LW as shown on the plan attached to the notice [and subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the approved plans listed below

Site Location Plan 1:1250; Floor Plan 3215.02; and Elevations 3215.03. These were received by the Local Planning Authority on 11 July 2019
2. Appeal B is dismissed.

Applications for costs

3. An application for costs has been made by Mr S Wootton against South Hams District Council. This is the subject of a separate decision.

Preliminary Matters

4. I had arranged to view the site from Firwood Cottage, but did not do so. Its owners later confirmed that they were happy for the decision to be made on the basis of the evidence before me.

Site Description

5. I have not been definitively told whether the site lies within the development boundary of Salcombe.

However, as the Council does not refer to the principle of a dwelling in this location in its reasons for issuing the notice, this is not definitive in my decision. The site is located on the hillside to the south of South Sands beach, to which it is linked by a narrow road that runs on above the estuary to the town centre. There is no overriding architectural form hereabouts, with development ranging from very large properties converted into flats, through large detached dwellings with extensive grounds and smaller detached dwellings to a hotel and a caravan site. Notwithstanding that the road from South Sands to the site is narrow and often enclosed by walls and buildings the area has a spacious quality.

6. To the south of the site, the rising land has a quite distinct verdant character and appearance and appears to be open countryside.
7. The dwelling that forms the subject of the Notice is atypical of the built form of the area. It is markedly smaller than any other property that I saw there. It was the only single-storey dwelling I saw and has a smaller outside space than others in the area, some of which were very large. A high stone wall separates the site from the private lane which serves it and other nearby properties. A mono-pitched roof runs from this wall, covering the core of the dwelling. A single storey element, with pitched and mono-pitched roofs is on one side of this core, with a flat-roofed garage on the other.
8. The area, including the appeal site, lies within the South Devon Area of Outstanding Natural Beauty ('AONB') and is a Coastal Preservation Area.

Relevant Planning History

9. The Council's attention was drawn to people living in a building on the land in May 2017. However, it found that the use of the building for residential purposes was immune from enforcement action. Building works were undertaken at the property that led, in November 2018, to the submission of a planning application. This was "made void" and another application was made in July 2019, Council reference number 2259/19/HHO. The description of development is "Householder application for extension to living area, creation of en-suite bedroom wing, attached garage and courtyard garden (re-submission of 3978/18/HHO) Part retrospective". This was recommended for approval by Officers, but refused by the Planning Committee. The reasons for refusal mirror those reasons for issuing the Notice.

Ground (b)

10. An appeal made under ground (b) is that those matters alleged in the Notice have not occurred. In this case, the appeal turns on whether what has occurred

are extensions and alterations to an existing dwelling or the erection of a new dwelling.

11. Although the Notice does not set out whether there is a lawful dwelling on the site, this is not a fundamental requirement. Its terms are nonetheless quite clear; the Council's position is that the works that have been undertaken amount to the erection of a new dwelling on the land.
12. The Council does not rely on an argument that there was no lawful dwelling on the site prior to the work being undertaken. Whilst there is no certificate of lawfulness for a dwelling on the land, the Officer's report to the Planning Committee for application 2259/19/HHO states, under 'Principle of Development', "The site hosts a single residential dwelling; the principle of development is therefore established". The report is written on this basis and there is nothing in the subsequent Committee minute, the Council's decision on that application, nor the Notice, to suggest that the Council's formal position is different or that it should be limited to holiday use.
13. The Appellants state that throughout the process of building the dwelling, they only ever followed the Officer's advice, which was that this was not the construction of a replacement dwelling. They say that the Council's position has since changed fundamentally.
14. From the evidence before me, including what I saw at my site visit, there is little left of the original dwelling that was on the land. This is acknowledged in the Appellant's statement of case where he says "The redevelopment has been extensive with only a couple of core elements of the original home remaining, so the appellants understand why it might be considered a replacement dwelling".
15. There is a threshold where works to extend and alter a dwelling become works for the erection of a new dwelling. Establishing where that threshold lies is a matter of judgement and differs from case to case. Very little of the original dwelling remains as a result of the works, this is limited to some walls and the slab of the core of the building. The raising of the boundary wall, the provision of a higher roof, and the erection of significant portions of additional built elements lead me to find that, as a matter of fact and degree, the development amounts to the erection of a new dwelling, albeit a replacement one. Notwithstanding the advice that may have been given by Officers, the matters alleged in the Notice have occurred.
16. Accordingly, the appeal on ground (b) is dismissed.

Ground (a)

17. The appeal under Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. That is to say that it is an appeal on the 'planning merits' of the case.
18. The main issues in the appeal are: the effect of the development on the living conditions of occupants of the dwelling, with particular regard to outlook and parking layout; and its effect on the character and appearance of the area.

Living conditions

19. Whilst the Officers recommended approval of the planning application, Members of the Council's Planning Committee were not bound by this. They were entitled to reach a different conclusion. The reasoning given in the Committee Minute for finding that there would be harm to the living conditions of the occupants of the dwelling was limited to "The Members noted from the site inspection that the parking facilities were cramped and the proposal had no outlook and the residential amenity was poor".
20. Reference is made to LP Policy DEV1(1) in the decision and Notice. Outlook is amongst the list of matters specifically referred to in the policy; whilst.
21. The property's hillside position means that it sits above most of the development lower down the hill, even though some of that development is set over a number of floors. As such, it looks out across that development to South Sands, the opposite side of the valley and the land beyond. Whilst the dwelling has a single aspect, the principal living rooms are served by large windows looking this way. Overall, the building's occupants enjoy a good outlook, and this is not constrained to any harmful degree by the property's garage. Similarly, although the garden is smaller than others nearby, there is an open outlook from there. As such, the occupants of the dwelling enjoy a satisfactory outlook in accordance with the terms of Policy DEV1 of the Plymouth & South West Devon Joint Local Plan 2014-2034 ('JLP').
22. Parking layout is not referred to in Policy DEV1. However, the Council argues that parking two cars on the property at the same time would not allow its occupants to access the property, nor would they be able to close the garage door. This is illustrated in Drawing Number 3215.04, and would be harmful to the occupants' living conditions.
23. The Council's submissions refer to Highways Standing Advice and the Highways Design Guide (2001). I have not been supplied with either document, so I am guided by those submissions. The Council says that the latter document "advises" that two spaces would be required for the dwelling. However, the Council goes on to say that as the proposal does not seek to increase the number of bedrooms one space is considered acceptable to serve the development. Therefore, parking at the site need not affect access to the dwelling and thus not have an adverse effect on the living conditions of its occupants.
24. For the reasons, above, I do not find that the development has unacceptable effects on living conditions by reasons of outlook or parking layout. I therefore find that the development accords with the terms of JLP Policy DEV1(1).

Character and Appearance

25. The Government's National Planning Policy Framework (the Framework) sets out that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs. This approach is reflected in JLP Policy DEV25 and the Policy SALC Env1 of the Salcombe Neighbourhood Plan (SNP). Policies from these plans also aim to protect and enhance the landscape and townscape more generally and achieve good design appropriate to its location.

26. Both main parties have referred to the dwelling that was on the site prior to the works being undertaken. I have some details of this, and I can see that what has been built is considerably larger and higher than that building.
27. Its increased height results from the work to the stone boundary wall. This resulted in the loss of the wall's coping of vertically aligned stones, which I saw were present on other properties in the immediate area. However, there are a variety of boundary types along the lane that runs up from South Sands and the loss of the coping stones and the heightening of the wall does not have a harmful effect on the area.
28. My attention was not drawn to any other mono-pitched roofs in the area of the form that is on the dwelling, nor did I see any. However, one cannot find harm just because the design of a dwelling or the materials used on it differ from others in the area. Whilst the majority of the buildings in the area have a traditional form, many had contemporary detailing and I saw that a large development underway between the beach and the caravan park had a contemporary design. Furthermore, the mono-pitch roof form reflects what was on the site previously.
29. A photograph of the earlier dwelling from around 2015 was submitted in the Appellant's Statement of Case. Not only does this show the mono-pitch roof, but it shows that it had a prominent flat roofed element. In that photo the dwelling had a disjointed appearance and, from what I can see, would have contributed very little to the character and appearance of the area. Indeed, it has been described as being derelict by third parties. When seen from the lane, the replacement dwelling has a coherent design that is appropriate to its location. I am unsure as to whether the public can walk along the lane, but those accessing neighbouring properties would pass this way, so it is important that this elevation was appropriately designed. I viewed the dwelling from raised steps to flats in one of those properties, Estuary House; from there I found that the dwelling sat comfortably on its plot and within its setting.
30. The only public vantage point of the dwelling that my attention was drawn to was on Moul Hill, some distance away to the north, across the valley. From here, the dwelling is seen but could not be described as being prominent in the landscape, notwithstanding that the levels on the site appear to have been raised. Its effect on the landscape is mitigated by its small scale, single-storey form and that it sits amongst very large buildings with the land rising behind it. When viewed from close-by or from Moul Hill, the scale and design of the dwelling are appropriate to its location. It is, of course, far smaller than neighbouring dwellings but this is not harmful, and in this regard I have to take into account that an even smaller dwelling once sat on the land.
31. In the light of the above reasoning, I find that the design of the dwelling is of an appropriate standard that respects its environs. As such, it accords with the terms of JLP Policy DEV20 and SNP Policy SALC B1; in this regard, I note that the latter policy does not rule out contemporary design where, as here, it is appropriate. I further find that the dwelling does not cause harm to the landscape and townscape in which it lies, in accordance with JLP Policies DEV23, DEV24 and DEV 25 and SNP Policy SALC Env1.
32. The Appellant states that the scheme also accords with JLP Policies TTV26 and TTV29, and that the Council did not take their terms into account. I have not

been provided with a copy of the former policy, so cannot be sure of its relevance.

33. The text of Policy TTV29 is given in submissions; however, I have not been given a copy of its supporting text. If the site is outside the settlement boundary, then this provides some support for the development. However, as I have said, I do not have definitive evidence of this. In any event, the development plan has to be read as a whole and the Council has used a number of other policies to substantiate its case. From what I have read, I do not find that a different decision would have been reached had the Council used Policy TTV29.
34. Notwithstanding the above, given my findings on the main issues, the Council's lack of use of the policies has not affected my decision.

Other Matters

35. I am in possession of a number of objections from residents of the area, as well as Salcombe Town Council and the South Hams Society (the SHS). They unanimously support South Hams District Council's (SHDC) stance. Many of the points they raise were also made by the Council and have been covered, above. However, they also raise a number of matters over and above those made by the Council.
36. It is suggested that the works have overdeveloped the site. Whilst the dwelling only has a small garden area, I find that this is sufficient for its occupants and does not cause harm to the character and appearance of the area.
37. It is claimed that parts of the dwelling have been built on land outside the Appellants' ownership, and that the dwelling's occupants use the lane for parking and placing bins on which they have no right to do. The National Trust supports the contention regarding use of the lane. These questions of land ownership are a civil matter between the parties and are not matters for me.
38. Whilst the dwelling, which was largely complete at the time of my visit, was built without planning permission, this is not illegal. The 1990 Act allows either for applications to be made after the event or, where a Notice is served, a Ground (a) appeal to be lodged. Judgement on both has to be made on the merits of the case in accordance with s38(6) of the Planning and Compulsory Purchase Act 2004.
39. It has been assumed that there was no oversight or checks by Building Control. However, this is not a matter for this planning appeal, but is for the Council to appraise. I find similarly with regards to the alleged illegal trimming of trees.
40. I am told that the BGS, which I assume to be the British Geological Survey, rates the risk of landslip in the area as 'Moderate'. As I have no substantive evidence that the land is unstable, I can make no comment on this.
41. Although I have not been provided with a copy of SNP Policy H3, I am told that this requires new dwellings to have a 'Principal Residence' condition attached to any grant of planning permission. SHDC does not pursue this matter; it made the point that the condition is not required, given that this dwelling replaces one on the site that was not subject to such a restriction. Whilst this is doubted by the SHS, SHDC set out its reasoning clearly and I accept that this is the case.

42. Thus, none of the matters that have been raised lead me to conclude that the Ground (a) should not succeed and that planning permission should not be granted.

Conditions

43. In the event that the Ground (a) is allowed, the Council has requested that the two conditions that were set out in the Officer's report on the application¹ that was put to the Planning Committee. The Appellants had the opportunity to comment on these in their final comments but did not do so. The first of these, the statutory time condition, is unnecessary as the work has already commenced. A condition relating to accordance with the plans is necessary and is included in the interests of good planning. However, given my findings on parking issues, in my comments on 'Living Conditions', there is no need to include Drawing Number 3215.04 in the list of drawings.

Conclusion

44. For the reasons given above, I conclude that Appeal A should succeed on ground (a). I shall grant planning permission for erection of a dwelling on the Land as described in the notice.
45. The appeals on grounds (f) do not therefore fall to be considered.

Roy Curnow

Inspector

¹ 2259/19/HHO