



Appeal Decision

Site visit made on 22 March 2022

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2022

Appeal Ref: APP/K1128/W/21/3287618

Old Cotmore Farm, Cotmore, Kingsbridge TQ7 2LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Needham against South Hams District Council.
 - The application Ref 1978/21/VAR is dated 26 May 2021.
 - The application sought planning permission for a development described as resubmission of planning ref 53/1976/09/F for redevelopment of caravan and camping park to include 8 holiday lodges and landscaping without complying with a condition attached to planning permission Ref 53/2876/11/F, dated 9 May 2012.
 - The condition in dispute is No.2 which states that: The development hereby approved shall in all respects accord strictly with drawing numbers 5949/09C, 5949/10C, 5949/18B, 5949/27E & 5949/28A received by the Local Planning Authority on 2nd November 2011, and drawing no 5949/29B received by the Local Planning Authority on 27th February 2012 [*sic.*].
 - The reason given for the condition is: To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.
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Decision

1. The appeal is allowed and planning permission is granted for resubmission of planning ref 53/1976/09/F for redevelopment of caravan and camping park to include 8 holiday lodges and landscaping at Old Cotmore Farm, Kingsbridge, TQ7 2LR without complying with a condition attached to planning permission ref 53/2876/11/F in accordance with the terms of the application, Ref 1978/21/VAR, dated 16 June 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal relates to an application under S73 of the Town and Country Planning Act 1990. It seeks to vary the list of approved plans, commonly termed a 'minor material amendment'. The Planning Practice Guidance clarifies that there is no statutory definition of a minor material amendment, but that it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.
3. Four of the 8 permitted lodges have been built. This proposal would result in 4 lodges for holiday accommodation on a site where the 4, as yet unbuilt, lodges had been previously approved for that use. While they would be semi-

detached, rather than detached, the scale and nature of the development would, therefore, not be substantially different. As such, I am satisfied that the minor material amendment process is appropriate and I have considered the appeal accordingly.

4. The description of development on the original planning permission refers to the resubmission of an earlier application. It is not within my remit in respect of this appeal relating to conditions on that permission to change the description of development. Therefore, I have repeated these words in my formal Decision.
5. I note concerns about the occupation of the existing lodges. However, this is not a matter before me in the context of this appeal that relates to whether a change to the design and layout of the development should be permitted. Furthermore, Planning Practice Guidance indicates that I should only consider the disputed condition, that is which plans the development should be carried out in accordance with. Whether or not the appellant owns all of the land proposed for development in the extant permission, I have determined the appeal on that basis of the drawings, with regard to the planning merits of the case.

Main Issue

6. The main issue is the effect on the landscape and scenic beauty of the Area of Outstanding Natural Beauty (AONB).

Reasons

7. The site is within the AONB. It is on rising land and is visible from roads on the opposite side of the valley. Four single storey lodges have been constructed and the extant permission would allow 4 more two storey buildings to be constructed on the appeal site, which is at a slightly higher level. The lodges that could be built under the extant permission would be relatively narrow, with angled front gabled elevations facing across the valley. Those now proposed would be arranged as two pairs of semi-detached units, each pair having single and two-storey components.
8. The arrangement proposed would result in buildings with a greater width than those that have previously been permitted. However, the two-storey element would still have a relatively narrow gable facing across the valley. The single storey section would be set back, articulating the elevations and timber (or similar) cladding to the gable ends would be recessive in appearance.
9. The whole site would be seen in the context of other buildings at and around Old Cotmore Farm. Although some trees may have been removed from the site in recent years, and less new planting is now proposed, there would still be a backdrop of trees on the hillside, which would assist in assimilating the lodges into the landscape. The lodges would be closer to some existing trees, but further away from some others, so there would be little change in the overall relationship with the established landscaping. There would be no change to the previously imposed tree protection condition.
10. I, therefore, find that the proposed design and layout would have no significantly different effect on the character and appearance of the area to that already permitted, so the landscape and scenic beauty of the AONB would be conserved. There would be no conflict with those aims of Policy DEV25 of the

Plymouth and South West Devon Joint Local Plan 2019 (LP) that seek to ensure that the AONB is protected from inappropriate development.

11. Representations to the application suggest that the site is in an area designated as undeveloped coast. For the same reasons, and as there would be no overall increase in the number of units at the site, there would be no conflict with those aims of LP Policy DEV24 that seek to avoid detriment to the undeveloped and unspoiled character of the undeveloped coast.

Other Matters

12. There is suggestion that the proposed semi-detached units could be linked to provide one larger unit. However, there is no compelling reason that the proposal, for this or any other reason, would lead to properties that would be more likely to result in a breach of occupancy conditions, even if they would make attractive homes. Importantly, I have no substantive evidence that the conditions would not be effective in controlling occupancy in any case. There would be an adequate access to the site provided via the existing driveway and there is no reason to conclude that an additional access would need to be created.

Conditions

13. As my decision will result in the creation of a new planning permission for the whole development, and it may be problematic if conditions relating to those already built were altered, I have imposed all conditions listed on the previous Decision Notice. In the event that some have already been complied with, that will be a matter for the parties to resolve. I have, however, removed reference to specific parts of the Town and Country Planning (General Permitted Development) Order as this is not required for the condition to be enforceable and the legislation no longer exists in the form described in the Council's condition.
14. The Council has suggested some additional conditions beyond those on the original permission. However, as I am concerned only with the disputed condition, and with regard to my reasoning in that respect, I have not imposed the additional conditions as that would result in a more onerous permission to that already available to the appellant.

Conclusion

15. For the reasons given, the appeal is allowed.

M Bale

INSPECTOR

Schedule

- 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: 4052 01 B; 4052 15C; 4052 20; 4052 30B; 4052 40B; 4052 41B; 4052 42A.
 - 3) The 8 holiday lodges hereby approved shall only be occupied as holiday accommodation by their respective owners/operators and also made available for sub-letting on a short-term holiday basis, and shall not be occupied as a person's sole, or main, place of residence. The owners/operators shall maintain an up-to-date register of all owners/occupiers of each of the 8 individual holiday lodges on the site, and of their main home addresses, and shall make this information available at all reasonable times to the Local Planning Authority.
 - 4) Notwithstanding the details indicated on the submitted drawings and within the submitted document "Design Statement & Landscaping Proposals", prior to commencement of the development hereby permitted, or alternatively in accordance with a previously approved timetable for submission of the details set out below, a schedule of materials and (colour) finishes and samples of materials to be used in the construction of the external surfaces of the development shall be submitted to and approved in writing by the Local Planning Authority. Such a schedule shall include:
 - (a) the type and sizes of natural slates to be used on the roofs of the buildings, together with the type, colour and profile of ridge tiles to be used. The natural slates shall be fixed in the traditional manner with nails rather than slate hooks, unless otherwise previously approved in writing by the Local Planning Authority;
 - (b) the type, finish and colour of all timber cladding to be used on the walls;
 - (c) design, appearance, materials, finish and colour of all doors and windows, and details/types and locations of non-reflective glass to be installed within some or all of said windows and doors;
 - (d) the locations, heights, sizes, materials of construction and colour finishes of all ducts, flues, rainwater goods, vents, meters and other external attachments;
 - (e) the exact type, size, siting, and method of fixing of all rooflights/patent glazing/solar panels. All rooflights/patent glazing/solar panels shall be fitted so as to be flush to the roof plane, unless otherwise approved in writing by the Local Planning Authority;
 - (f) heights, materials, design, appearance and (colour) finish of all balustrading, railings and associated attachments.
- Thereafter the development shall be carried out in accordance with the approved details and shall be retained and maintained in that form, unless the Local Planning Authority gives prior written consent to any subsequent variation.
- 5) No development shall take place, or any equipment, machinery or materials be brought onto the site for the purpose of development until:

(a) the erection of fencing to delineate Root Protection Areas, creating construction exclusion zones (CEZs), to protect retained trees has been constructed in accordance with location and construction details shown on the approved plans, the submitted document entitled "Updated Tree Survey and Revised Arboricultural Implications Assessment" dated 7th October 2011 (ref: 09.032.2.AIA) and the "Design Statement & Landscaping Proposals" document (Appendix D "Planting & Maintenance Proposals. Within the Protection Zones nothing shall be stored or placed, nor any works take place, nor shall any change in ground levels or excavations take place unless they are shown on the approved plans and particulars or they are approved in writing in advance by the Local Planning Authority.

(b) Protection Zone signs are fixed to the protective fence at no more than 20 metre intervals. The fence and signs shall be retained and maintained until all equipment, machinery and surplus materials have been removed from the site. All tree felling or tree surgery works as detailed on the approved plans and within the submitted "Updated Tree Survey and Revised Arboricultural Implications Assessment" document (ref: 09.032.2.AIA), or as otherwise approved in writing by the Local Planning Authority have been completed. All tree works shall be undertaken in accordance with British Standard 3998 (Tree Work).

- 6) No existing tree which is to be retained in accordance with the approved plans and submitted documents shall be cut down, uprooted or destroyed, nor shall any retained tree be pruned in any manner, be it branches, stems or roots, other than in accordance with the approved plans and particulars, without the prior written approval of the Local Planning Authority. All tree works shall be carried out in accordance with BS3998 Recommendations for Tree Work. If any retained tree is cut down, uprooted, destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.
- 7) No development shall take place until full details of the proposed landscape and drainage proposals, including the sewage treatment reed bed, have been submitted to and approved in writing by the Local Planning Authority. The details shall be prepared by an appropriately qualified professional and shall include:
- details of earthworks associated with the reed bed including volumes of cut and fill and arrangements for disposal of any excess excavated material or importation of material;
 - details, including design, materials and planting of the reed bed;
 - details of land drainage to avoid waterlogging of areas enclosed by hedgebanks;
 - materials, heights and details of fencing and other boundary treatments;
 - materials, heights, levels and extent of hard landscape treatment, including access points, tracks, roads and any hardstanding areas;
 - the location, number, species, density, form and size of proposed tree, hedge and shrub planting;
 - the method of planting, establishment and protection of tree, hedge and shrub planting;
 - a timetable for the implementation of all hard and soft landscape treatment.

- 8) All elements of the approved landscape scheme required in accordance with condition 7 shall be implemented and maintained in accordance with the approved details and the Design and Landscape Statement (Section 4.0 and Appendix D), unless otherwise approved in writing by the Local Planning Authority. All work shall be completed in accordance with the timetable to be approved in writing by the Local Planning Authority.
- 9) The details contained within the submitted documents "Protected Species Survey of Buildings, Bat Emergence & Bat Activity Survey" (October 2011) and "Reptile Survey" shall be fully adhered to with particular reference to paragraphs 6.2, 6.3 and 6.4 of the former document.
- 10) No development shall take place until full details of the location and architectural and construction details of bat roosts to be incorporated in the new buildings have been submitted to and approved in writing by the Local Planning Authority. Such details shall be in accordance with the recommendations contained in the approved document "Protected Species Survey of Buildings, Bat Emergence & Bat Activity Survey" (October 2011) and/or current best practice, and shall include detailed scaled drawings including elevations and cross sections.
- 11) There shall be no floodlighting or other external lighting at the site (including security lighting) unless otherwise previously approved in writing by the Local Planning Authority. Details of positions, heights, type, luminance/light intensity, direction and cowling (if any) of any floodlighting or other external lighting (including security lighting), to be erected, placed or operated on any part of the application site shall be submitted to and approved in writing by the Local Planning Authority prior to its erection or installation. Such lighting shall thereafter be carried out in accordance with the approved details and under no circumstances shall it cause light pollution nor shall external illumination be operated on the site other than in accordance with the approved scheme.
- 12) Prior to commencement of development, soakaway tests shall be carried out in accordance with BRE Digest 365, and the results of such tests and recommendations shall be submitted to the Local Planning Authority for prior written approval. Should the soakaway tests show that soakaways will not work due to poor ground conditions, further details for an alternative means of surface water disposal shall be submitted to and approved in writing by the Local Planning Authority. The final approved details shall have been fully implemented and completed prior to any occupation of the development, or in accordance with a timetable previously submitted to and approved in writing with the Local Planning Authority.
- 13) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (and any Order revoking and re-enacting this Order), no development of the following types shall be undertaken:- extensions and alterations; roof addition or alteration; formation/erection of swimming pools and buildings incidental to the enjoyment of the dwellinghouse; installation of any container used for domestic heating purposes/oil or liquid petroleum gas; installation of Domestic Microgeneration Equipment; erection of any means of enclosure; or painting the exterior of a building.

End of conditions