



Appeal Decision

Site visit made on 11 April 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 May 2023

Appeal Ref: APP/K1128/W/22/3303969

Land adjacent to no. 39 Weymouth Park, Hope Cove TQ7 3HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 Mrs Frances Gassor against the decision of South Hams District Council.
 - The application Ref 0387/22/VAR, dated 2 February 2022, was refused by notice dated 1 April 2022.
 - The application sought planning permission for proposed new dwelling in the garden of The Lookout (Resubmission of application 2131/19/FUL) without complying with a condition attached to planning permission Ref 3778/19/FUL, dated 24 February 2021.
 - The condition in dispute is No. 2 which states that: "The development hereby approved shall in all respects accord strictly with drawing number(s) 2348.02 (proposed plans and elevations), 2348.SBP (site block plan), 2348.SLP (site location plan), 2348.01 (proposed site plan) received by the Local Planning Authority on 13.12.19."
 - 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 proposed new dwelling in the garden of The Lookout (Resubmission of application 2131/19/FUL) at Land adjacent to no. 39 Weymouth Park, Hope Cove TQ7 3HD in accordance with the application Ref 0387/22/VAR dated 2 February 2022, without compliance with condition number 2 previously imposed on planning permission 3778/19/FUL dated 24 February 2021, but subject to the conditions in the attached schedule.

Preliminary Matters

2. The appellant has submitted an amended plan with the appeal documentation that did not form part of the Council's decision. This plan introduces additional louvres to the west elevation. Such a change would further alter the appearance of the proposal and restrict outlook and internal light levels. The appeal process should not be used to evolve a scheme.
3. In these circumstances and in accordance with the 'Wheatcroft Principles', I do not consider it appropriate to accept revised plans that may raise new planning issues. Accordingly, I have determined the appeal based on the plans that formed the basis of the Council's decision.

Background and Main Issue

4. The appellant seeks to erect a dwelling on the appeal site of a different design to that approved. At the time of my site visit development had commenced, and the building envelope was evident, although no openings or design details were present.
5. The main issue is the effect of the revised design on the character and appearance of the area, having regard to the location of the site within the South Devon Area of Outstanding Natural Beauty (AONB) and Heritage Coast (HC).

Reasons

6. The appeal site is located to the southwest of Weymouth Park, which is a residential street featuring a number of modest bungalows with a traditional uniform appearance. However, rooflights and windows within gables are evident elsewhere in Weymouth Park. Furthermore, properties to the west of Weymouth Park, and in close proximity to the appeal site, feature a mix of scales and architectural styles. These include two storey buildings, dormer windows, and both balconies and glazing within gables and contribute to the surrounding character of the area.
7. Section 85 of the Countryside and Rights of Way Act 2000 requires that I have regard to the purpose of conserving and enhancing the natural beauty of the AONB and paragraph 176 of the National Planning Policy Framework (Framework) requires that great weight is given to conserving and enhancing the landscape and scenic beauty of the AONB.
8. The dwelling proposed would retain the ridge height and largely the overall building profile of the previously approved dwelling. However, fenestration differs in both location within the building, and the provision of additional glazing facilitating the use of the roof space.
9. Notwithstanding the inclusion of a rooflight, changes in the location of windows and addition of other design features, the road facing north elevation would retain the appearance of a bungalow. The proposed window designs feature a greater height than those previously approved, resulting in a more traditional appearance than that previously approved when viewed from Weymouth Place. Consequently, the proposal, when viewed from Weymouth Place, fits comfortably with the existing character and appearance of the immediately neighbouring bungalows.
10. The proposed additional glazing within the gable of the west and south facing elevations would be more visually prominent, particularly given the hillside location. Clear but more distant views of these elevations are visible from the south-west coast path to the west and opposing valley side to the south.
11. Nevertheless, when viewed from the west, the gable and associated glazing would be seen at a similar height, and in conjunction with first floor windows of two storey and room in roof properties along Grand View Road, as opposed to the bungalows of Weymouth Park.
12. Furthermore, when viewed from the southern side of the valley, the glazing within the southern gable, due to bungalows to the north of Weymouth Park being set above the appeal site, would appear at a similar level to the windows

of these bungalows. The proposal would therefore not appear out of context with the surrounding residential development or protrude above the established ridge line of existing development.

13. As the proposed revised design retains the previously approved ridge height, general siting and general building profile, the proposal would not affect the established pattern of development or appear any more dominant from nearby views including the adjacent public footpath. Moreover, although I note third party comments regarding the accuracy of previously submitted plans, the proposal would not appear as an out of place two storey building as is a concern of the Council, but a single storey room-in-the-roof dwelling. Such a design provides transition between the more modest bungalows at Weymouth Place, and larger dwellings on Grand View Road. Therefore, given the proposed design reflects traditional elements of nearby buildings, the proposal would retain the sense of place and local distinctiveness of the area.
14. Policy SH Env 8 of the South Huish Neighbourhood Plan (2019 – 2034) (NP) requires that development should not detract from the unlit environment of the Parish. Furthermore, it states that the use of a high proportion of glass in walls and roof, without consideration of the impact on the environment when internally lit, should be discouraged.
15. Although the proposal results in additional glazing, this is not a high proportion within the context of the building as a whole. Given the appeal site is surrounded by existing residential dwellings, some with roof lights and large expanses of glazing, any light pollution emanating from the proposal would be seen in context with that of surrounding buildings.
16. Furthermore, there is no substantive evidence before me that the proposal would result in significantly greater light pollution than that previously approved or that the light associated with the proposal would protrude into the unlit environment of the surrounding area. Noting the appeal site location within a residential area, and the lack of evidence of any impact on the unlit environment, I find that the proposal would have a neutral impact on the surrounding landscape and therefore conserve the landscape and scenic beauty of the AONB and HC.
17. Consequently, I conclude that the proposed revised design would not adversely affect the character and appearance of the area, having regard to the location of the site within AONB and HC. As such, it would accord with Policies DEV20, DEV23, DEV24 and DEV25 of the Plymouth and South West Devon Joint Local Plan (2014 – 2034) and NP policies SH HBE 3 and SH Env 8. These policies, amongst other things, seek development to meet good standards of design; conserve and enhance landscape and townscape character and scenic beauty of the AONB and undeveloped and unspoilt character and appearance of the HC; and not detract from the unlit environment of the Parish. There would also be no conflict with the overarching aims of the Framework which requires, amongst other things good design that does not compromise the special qualities and characteristics of the AONB as well as the protection and enhancement of the natural and built environment.

Other Matters

18. While I note representations made by third parties including those regarding the accuracy of previously submitted plans and positioning of hedging, the

principle of a dwelling at the appeal site has previously been established by the granting of planning permission and the subsequent approval of a landscaping scheme by the Council. The Council have not raised any concerns in relation to the proposed revised design impacting on the occupiers of neighbouring properties living conditions. Given the spatial relationship with neighbouring properties (including those at 35, 36, 37 and 38 Weymouth Park) and position of proposed windows, I see no reason to disagree.

19. It has also been stated that Weymouth Park was designed so every property could have a sea view, and that the proposal would affect views from certain properties. Even if this is the case, a change of view from private property is not in itself a planning consideration.
20. This appeal has been dealt with on its own merits and has been found to be acceptable for the reasons given above. There is no clear reason why this appeal decision would set a precedent for the area, as each proposal must be assessed on its own merits and the particular circumstances of the site.

Conditions

21. A number of conditions have been suggested by the Council in the event of the appeal being allowed, which I have assessed and where required amended with regard to the advice provided in the Planning Practice Guidance (PPG).
22. Decision notices for the grant of planning permission under section 73 are also required to restate the conditions imposed on earlier permissions that continue to have effect. It also provides the power to not attach conditions, which were previously imposed, or to attach modified versions of them.
23. I have removed the commencement condition (original condition No.1) as it is no longer necessary given that works have commenced. I have varied the plans condition (original condition No.2) to include the plans showing the amended design the subject of this appeal.
24. In accordance with the earlier permission, a condition is required regarding occupancy in order to achieve sustainable communities and a further condition relating to unexpected contamination in order to ensure appropriate remediation.
25. The Council have previously accepted and approved a landscape scheme¹, materials to be used in the construction of the development, and foul and surface water drainage schemes². Conditions are required to ensure that these are implemented in the interests of the character and appearance of the area, prevention of pollution and prevention surface water runoff.
26. Previously imposed conditions remain relevant and necessary restricting certain classes of permitted development in order for the Council to assess any proposal which may affect available outdoor garden space in the interests of living conditions, as well as ensuring the proposal is carried out in accordance with an Ecological Report in the interests of protected species.
27. Although I note the appellant's comments in relation to external lighting and the possible requirement for security lighting, the previously proposed condition regarding external lighting at the site is still relevant and necessary in

¹ 2665/22/VAR

² 2001/22/ARC

the interests of ecology and the submission of a future lighting scheme can be addressed by the main parties.

Conclusion

28. For the reasons set out above, the appeal is allowed.

S Harrington

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: CO.01.A, CO.02.B, CO.03.A, and CO.04.B.
- 2) The dwelling hereby permitted shall not be occupied other than by:
 - i. a person or persons as their principal home;
 - ii. persons living as part of a single household with such a person or persons;
 - iii. persons who were living as part of a single household with such a person or persons who have since died;
 - iv. non-paying guests of any of the persons listed in (i) – (iii).

The occupant(s) shall at any time supply to the Local Planning Authority such information as the Authority may reasonably require in order to determine that this condition is being complied with, within one month of the Local Planning Authority's written request to do so.

- 3) 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) 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 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 local planning authority.

- 4) The landscape scheme shall be implemented in accordance with the details agreed by the Local Planning Authority on 21st September 2022 (application reference 2665/22/VAR).

- 5) The surface water drainage shall be installed in accordance with the details agreed by the Local Planning Authority on 22nd July 2022 (application reference 2001/22/ARC) and hereafter maintained in perpetuity.
- 6) The foul drainage shall be installed in accordance with the details agreed by the Local Planning Authority on 22nd July 2022 (application reference 2001/22/ARC) and hereafter maintained in perpetuity.
- 7) The materials to be used in the construction of the development hereby approved shall accord with the details agreed by the Local Planning Authority on 22nd July 2022 (application reference 2001/22/ARC).
- 8) Unless otherwise agreed in writing by the Local Planning Authority, there shall be no external lighting at the site. Prior to the installation of any external lighting a scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the position, type, luminance and cowl of all external lights. Upon the commencement of the use the external lighting shall accord strictly with the approved details.
- 9) Notwithstanding the provisions of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking, re-enacting or further amending that Order), no development of the types described in Schedule 2, Part 1, Classes A-H of the Order and Part 2 Class A shall be carried out on the site, other than that hereby permitted, unless the permission in writing of the Local Planning Authority is obtained.
- 10) The recommendations, mitigation and enhancement measures of the Ecological Report, by Green Lane Ecology, August 2018, shall be fully implemented prior to the occupation of the development hereby approved and adhered to at all times. In the event that it is not possible to do so all work shall immediately cease and not recommence until such time as an alternative strategy has been agreed in writing with the local planning authority.

End of Conditions