



Appeal Decision

Site visit made on 20 March 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 May 2023

Appeal Ref: APP/K1128/W/22/3304731

Little Shear, Inner Hope To Outer Hope, Hope Cove TQ7 3HH

- 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 Mr & Mrs S Coleman against the decision of South Hams District Council.
 - The application Ref 0865/21/VAR, dated 4 March 2021, was refused by notice dated 17 June 2022.
 - The application sought planning permission for the demolition of existing dwelling and construction of two new dwellings with associated external works (resubmission of 3005/19/FUL) without complying with a condition attached to planning permission Ref 1079/20/FUL, dated 12 November 2020.
 - The condition in dispute is No 2 which states that: *The development hereby approved shall in all respects accord strictly with drawing number(s) Site Location Plan and Block Plan (3881.01.A), Proposed Ground and First Floor Plans (3881.21.B), Proposed Site Plan (3881.23.F), Proposed Elevations Sheet 1 of 2 (3881.30.F), Proposed Elevations Sheet 2 of 2 (3881.31.E), Proposed Street Elevation (3881.32.B), Proposed Sections A-A & B-B (3881.40.D) received by the Local Planning Authority on 27.4.2020.*
 - 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 dismissed.

Preliminary Matters

2. The application form confirms that the approved development commenced before the submission of the appeal application. During my site visit, I observed that the bungalow had been demolished, the foundations and most of the walls of the new dwellings had been completed, and large sections of the retaining walls around the site boundary had been constructed. However, as it is unclear if condition 2 had been breached before the submission of the appeal application, I have considered the appeal as proposed.
3. Whilst a condition was imposed on the original planning permission requiring the details of materials to be approved by the local planning authority, the Addendum to the Design and Access Statement submitted with the appeal application proposes the use of stone in the terraced areas. The appellant's Statement of Case confirms the material as pre-finished cast stone. Therefore, I have considered the proposed material in my determination of the appeal.

4. On the decision notice, the Council refers to the plans upon which the planning application was determined, including the Site Location and Block Plan with the reference 3881 23J. During the appeal, it has been confirmed that the reference for the Site Location and Block Plan upon which the Council determined the planning application is 3881 01 Rev B (received on 29 March 2021). I have therefore determined the appeal accordingly.

Background and Main Issue

5. Planning permission has been granted for the demolition of the dwelling known as Little Shear and the erection of two new dwellings. Work has commenced on the new dwellings and, during the excavation of the site, more soil was removed than originally anticipated due to the soft ground conditions.
6. The appellant now wishes to amend the design of the new dwellings to incorporate a full-height upper floor which would result in a different roofscape, and minor revisions to the footprint and internal layout of the dwellings. The use of pre-finished cast stone walling and changes to landscape features including the terracing in the rear garden and retaining walls around the dwellings are also proposed.
7. Therefore, the main issue is the effect of the amended design on the character and appearance of the area, with particular regard to the South Devon Area of Outstanding Natural Beauty (AONB) and the South Devon Heritage Coast (SDHC).

Reasons

8. As the appeal site is located within the AONB, I have had regard to Chapter 15 of the National Planning Policy Framework (the Framework) which requires that great weight should be given to conserving and enhancing the natural beauty of the area and that the AONB has the highest status of protection in relation to these issues. The AONB was designated for a range of special qualities, including the rugged coastline of the SDHC. Paragraph 178 of the Framework states that development within an area of Heritage Coast should be consistent with the special character of the area and the importance of its conservation.
9. Located off a main road in the settlement of Hope Cove which slopes down towards the coastline, there is a significant change in levels from the appeal site's road frontage to its rear boundary. The ridgeline of the amended design would be lower than the adjacent bungalow known as Sunnygale, and the same height as the approved development, reflecting the sloped topography in the area. The roofscape of the amended design would also be reflective of the front elevation of Sunnygale with dominant mirrored gables of a similar roof pitch.
10. The amended design incorporates retaining walls along all boundaries of the appeal site. The height and length of front wall would be a significant and prominent feature in the street scene given the change in levels along the front boundary. The amended retaining wall to the side boundary with Sunnygale would also be substantial in height, continuing around the rear of the dwellings and incorporated into a series of stepped terraces in the garden areas. This would result in an almost continuous wall wrapping around the dwellings. Although partially obscured from view from the road to the front of the appeal site, a section of the wall would still be experienced from this location and given the undulating topography and generally open boundaries of the

surrounding properties, the walls would also be publicly visible in the surrounding area.

11. The horizontal structure of the amended retaining walls, emphasised by the regular layered positioning of the cast stone blocks, would introduce a formal appearance to the street scene. Combined with the proposed use of different external materials on the dwellings clearly differentiating between the boundary treatment and the buildings behind, the amended retaining walls would be incongruous, uncommonly prominent features in the area.
12. Due to the topography of the area, many of the properties surrounding the appeal site incorporate retaining walls comprising natural stone and painted render, contemporary brick and blockwork, and similar pre-finished cast stone walling to the proposed material. However, where I noted retaining walls were present, they were significantly smaller in height and length than the amended design and limited to one or two boundaries. Examples of rendered walls in the area, such as the front retaining wall on Sunnyside, were painted in the same colour as the dwelling, resulting in the appearance of being part of the building, rather than a separate boundary feature. Moreover, the examples of walls I observed nearby with similar pre-finished cast stone were constructed using different sized blocks and laid out in a pattern with significantly less linear emphasis than the amended retaining walls.
13. Whilst I note the sustainability characteristics of the cast stone and its low maintenance in comparison to alternatives, the material I observed during my site visit within the retaining walls constructed was not, in my view, of a particularly high quality. Furthermore, the blocks used had a highly engineered appearance which, combined with their regular and stepped positioning, jarred against the natural materials found elsewhere in the streetscene.
14. Even if this material has been used within the Council's development in Salcombe, this is not a reason, in itself, to permit otherwise unacceptable development. Notwithstanding the limited comparable evidence regarding the development in Salcombe, I have based my decision upon the evidence before me and the effect of the amended design on the character and appearance of the appeal site's surroundings.
15. The Council's Planning Application Report identifies that the appellant would accept a condition to render the front retaining wall. However, given the scale of the proposed front retaining wall, it would be an intrusive feature in the street scene, irrespective of its finish or colour. Therefore, imposing this condition would not make the amended design acceptable. The appellant has also offered to lower the height of the front retaining wall. However, I have limited detail before me concerning the scale of this reduction. In any event, any reduction in height of the front retaining wall would not alter the harmful effect of the side and rear walls on the character and appearance of the area.
16. Although new planting is proposed as part of the amended design to provide screening to the amended retaining walls, this would take time to grow. As highlighted by the appellant, the landscaping already planted to the front has yet to establish and, given the scale of the amended retaining walls, it would be a significant amount of time before the new planting would provide effective screening. Additionally, limited space is available between the road and the front retaining wall for new planting. In the meantime, as recognised by the

appellant, the retaining wall to the front would be a dominant feature in the street scene, irrespective of any screening to the driveway it would provide.

17. In conclusion, the amended design would unacceptably harm the character and appearance of the area and would not conserve, enhance, protect, and maintain the special qualities and unique landscape of the AONB and SDHC. It would conflict with policies DEV10, DEV20, DEV24, and DEV25 of the Plymouth and South West Devon Joint Local Plan 2014 to 2034 (the Local Plan) which seek, amongst other things, to deliver high-quality housing that contributes positively to the townscape and landscape, including the AONB and SDHC. Furthermore, Policy DEV25 requires development proposals to be designed to prevent the addition of incongruous features, maintain an area's distinctive sense of place, or reinforce local distinctiveness.
18. It would also conflict with Policy HBE3 of the South Huish Neighbourhood Plan 2019 to 2034 which supports the use of local stone and discourages imported stone. Finally, I find conflict with the aims to conserve or enhance the natural environment, including areas of AONB and Heritage Coast, set out in Chapter 15 of the Framework.

Other Matters

19. Although the amended design was reported to the Council's Development Management Committee with an officer recommendation for approval, the Committee did not accept this recommendation. Whilst I acknowledge the frustrations of the appellant, particularly in light of the additional information provided and the length of the determination period, the Council is not bound to accept the recommendations of officers provided they have valid planning reasons to justify coming to a different determination.
20. Several representations have been made by interested parties concerning whether the appeal application sought amendments beyond the scope of variations permitted under section 78 of the Town and Country Planning Act 1990. However, as held by the Judge in *Armstrong v SSLUHC*¹, one of the uses of a section 78 planning application set out in the Planning Policy Guidance (the PPG) is to seek a minor material amendment². Furthermore, whilst planning permission cannot be granted under section 73 to extend the time limit within which development must be started, or to change the description of the development, no further restrictions are stipulated in the PPG³.
21. A draft Deed of Variation to the original s106 planning obligation connected to the approved development has been provided as part of the appeal documentation. This would limit the occupation of the property to a principal residency and not a holiday home. However, as I have found the proposed development unacceptable for other reasons, it is not necessary for me to consider this further as it would not alter the outcome of the appeal.

¹ *Armstrong v Secretary of State for Levelling-up, Housing and Communities & Anor* [2023] EWHC 176 (Admin) (27 January 2023)

² Paragraph: 013 Reference ID: 17a-013-20140306

³ Paragraph: 014 Reference ID: 17a-014-20140306

Conclusion

22. The amended design conflicts with the development plan as a whole and there are no material considerations, either individually or in combination, in this case that suggest a decision should be made other than in accordance with the development plan. Therefore, the appeal is dismissed.

Juliet Rogers

INSPECTOR