



Appeal Decisions

Site visit made on 20 March 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2023

Appeal A Ref: APP/K1128/W/22/3309553

The Cove Guest House, Torcross TQ7 2TH

- 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 Mikael Armstrong against South Hams District Council.
 - The application Ref 0043/22/VAR, dated 4 January 2022, was refused by notice dated 26 April 2022.
 - The application sought planning permission for the renewal of extant planning application 53/0136/09/F (demolition of guest house and replacement with single dwelling) without complying with a condition attached to planning permission Ref 53/3160/11/F, dated 03 February 2012.
 - The condition in dispute is No 2 which states that: *The development hereby approved shall in all respects accord strictly with drawing number(s) 221.01, 221.02, 221.04 and Location Plan received by the Local Planning Authority on 12 December 2011.*
 - 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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Appeal B Ref: APP/K1128/W/22/3309554

The Cove Guest House, Torcross TQ7 2TH

- 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 Mikael Armstrong against the decision of South Hams District Council.
 - The application Ref 2110/22/VAR, dated 14 June 2022, was refused by notice dated 10 August 2022.
 - The application sought planning permission for the variation of condition 2 (approved plans) of planning consent 53/3160/11/F without complying with a condition attached to planning permission Ref 1411/21/VAR, dated 23 December 2021.
 - The condition in dispute is No 1 which states that: *The development hereby approved shall in all respects accord strictly with drawing numbers: Site Location Plan, received by the Local Planning Authority on 4/5/2021; 1501-PL-00 – Existing site, location and block plans; 1501-PL-01 – Proposed landscape strategy and block plan; 1501-PL-02 – Proposed ground floor plan; 1501-PL-03 – Proposed first floor plan; 1501-PL-04 – Proposed roof plan; 1501-PL-05 – Proposed east elevation; 1501- PL-06 – Proposed north elevation; 1501-PL-07 – Proposed west elevation; 1501-PL-08 – Proposed south elevation; 1501-PL-09 – Proposed south elevation/site section AA, received by the Local Planning Authority on 9 April 2021.*
 - 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. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

Appeal A

3. Planning permission for the demolition of an existing guest house and replacement with a single dwelling was renewed on 3 February 2012 (the February 2012 planning permission). The February 2012 planning permission also retrospectively permitted the demolition of the former guest house, which was completed in February 2011. The planning application the subject of Appeal A sought to vary a condition imposed on the renewed planning permission.
4. The appeal application form indicates that the development had not commenced at the time of their submission to the Council. This was confirmed during my site visit. However, the evidence before indicates that the appeal site benefits from a Lawful Development Certificate¹ for the commencement of development of works to comply with the renewed planning permission given the former guest house has been demolished. An application to discharge all relevant pre-commencement conditions imposed on the February 2012 planning permission was approved on 20 April 2021².
5. The appellant has requested that I consider the plans submitted with the appeal application form in my determination of the appeal. However, revised plans were submitted to the Council during the determination period of the appeal application, and these were the plans before the Council when it made its decision. These are also the plans upon which interested parties would reasonably consider to be the subject of the appeal. Consequently, having regard to the Wheatcroft Principles³, as I cannot be certain that determining the appeal based on the originally submitted plans would not prejudice the interests of other parties, my decision is based on the revised plans as considered by the Council.

Appeal B

6. Another planning permission has been granted on the appeal site for a single dwelling on 23 December 2021⁴ (the December 2021 planning permission). The planning application which is the subject of Appeal B sought to vary a condition imposed on the December 2021 planning permission.

Background and Main Issue

7. On each of the aforementioned planning permissions, a condition listing the plans that form part of the application to which the respective approval was imposed. Due to the rising costs of construction, the appellant now wishes to amend the design of the new dwelling to enable the use of a prefabricated form and consequently vary the respective conditions.

¹ Certificate of Lawful Development ref: 3446/20/CLE

² Planning application ref: 0693/21/ARC

³ *Bernard Wheatcroft Ltd v SSE [1982] JPL 37*

⁴ Planning application ref: 1411/21/VAR

8. Although I have set out the different cases in this decision as Appeals and B in the above heading, as they comprise the same scheme and the sole reason for refusal is identical, I have considered them together and referred to the amended design in singular terms.
9. Consequently, the main issue is the effect of the amended scheme on the character and appearance of the area, with particular regard to the South Devon Area of Outstanding Natural Beauty (AONB) and the Undeveloped Coast.

Reasons

10. As the appeal site is located within the AONB, I have had regard to paragraph 176 of the National Planning Policy Framework (the Framework) which requires that great weight should be given to conserving or enhancing the natural beauty of the area and that the AONB has the highest status of protection regarding these issues. The appeal site is also located within a locally designated area of Undeveloped Coast. Paragraph 174 of the Framework requires that decisions should contribute to, or enhance, the natural and local environment by protecting or enhancing these valued landscapes.
11. In addition, Policy DEV24 of the Plymouth and South West Devon Joint Local Plan 2014 to 2034 (the Local Plan) seeks to ensure that development is designed to conserve, enhance, protect or maintain the special qualities and natural beauty of the unique landscape of the AONB. Further, Policy DEV25 seeks to conserve the unspoilt character of the Undeveloped Coast and 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. Alongside policies DEV24 and DEV25, policies SPT1, DEV10, DEV20, DEV21 and DEV23 of the Local Plan seek to deliver, amongst other things, high-quality sustainable housing that contributes positively to the townscape and landscape.
12. The appeal site comprises land adjacent to the seawalls overlooking an area of beach on the edge of the settlement of Torcross. Given the topography of the surrounding area, few existing dwellings are visible in the same views as the appeal site. Of these, however, the predominant characteristic of the built form includes two-storey buildings of a modest bulk with pitched roofscapes. Although the amended scheme would be positioned to permit the realignment of the existing access road to the site and the property of Downsteps, removing the sharp bend which would otherwise limit access for larger vehicles, its three-storey form would be significantly higher than the surrounding dwellings. Its height, scale and overall bulk would also dominate the adjacent small-scale property of Downsteps, located at a lower level to the appeal site. In addition, the regularly spaced timber framed post and beam design, regardless of its colour, would have a horizontal emphasis that would draw further attention to the number of storeys in the amended scheme.
13. Whilst longer distance views from public spaces are limited to glimpses due to the topography and existing built form surrounding the appeal site, it is prominent in views from the nearby South West Coastal Path and steep cliff steps that lead down to the publicly accessible beach. Combined with the elevated relationship of the site with the shoreline, the scale of the amended scheme would be further emphasised given its upper floor would be visible to those on the beach.

14. In conclusion, I find that the design of the amended scheme would be incongruous with the surrounding built form due to its height, scale and bulk, and would also be a discordant feature in the rugged coastline. It would therefore cause unacceptable harm to the character and appearance of the area, and would not conserve or enhance the AONB, or conserve the undeveloped character of the Undeveloped Coast. It would conflict with policies SPT1, DEV10, DEV20, DEV21, DEV23, DEV24 and DEV25 of the Local Plan which seek, amongst other things, to deliver high-quality sustainable housing that contributes positively to the townscape and landscape, including the AONB and Undeveloped Coast. I also find conflict with Chapters 12 and 15 of the Framework which seek to achieve high-quality, beautiful and sustainable buildings and places, and aim to conserve or enhance the natural environment.

Other Matters

15. Whilst I acknowledge that the appellant is seeking to amend the design of the dwelling due to rising construction costs, it is appropriate for me to consider if the existing planning permissions from February 2012 and December 2021 on the appeal site represent fallback scenarios. In so doing, I have had regard to a Court of Appeal⁵ decision which stipulated that, for a scheme to be considered a fallback, there should be a real prospect, or greater than theoretical possibility, that it would be constructed, regardless of the outcome of this appeal. Further, as set out in a High Court⁶ decision, a two-stage approach should be pursued whereby the weight is ascribed to the possibility.
16. Although of significantly different designs, both approved schemes would provide a two-storey dwelling and would be sited to minimise visibility from the beach. Additionally, both approved schemes incorporate features and materials in the beachside façade that would break up this elevation and would limit the emphasis on the height of the dwelling, irrespective of its face area in comparison with the amended scheme. Whilst the overall volume of the amended scheme is marginally less than the approved schemes, it would be concentrated closer to Downsteps and, combined with the emphasis on the three storeys, would have a bulkier appearance than the approved schemes. Consequently, notwithstanding the use of large amounts of glazing or similar external materials, I conclude that the amended scheme would be more harmful to the character and appearance of the area than the approved schemes.
17. My attention has been drawn to the increased costs of constructing the approved schemes. However, I have limited substantive evidence before me demonstrating that they could not be constructed, irrespective of my decision on the appeals. Furthermore, given the planning history and the appellant's efforts through the planning system to sustain the site's readiness for a new dwelling, a significant level of commitment has been demonstrated. Therefore, I conclude that there is a greater than theoretical possibility that either of the approved schemes could be constructed and I attach substantial weight to these fallback scenarios.
18. I recognise that the principle of a single dwelling on site is well established, and it would provide a new dwelling to the area. The prefabricated Huf Haus design of the proposed development would result in a more efficient construction than

⁵ *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314

⁶ *Gambone v SSCLG* [2014] EWHC 952 (Admin)

a traditionally built dwelling, therefore allowing a more rapid assembly on site. This would be beneficial to the appellant but would also reduce the impact on the surrounding area during construction. The redevelopment of a currently vacant and untidy site and repairs to the sea walls would also provide benefits to the area. Whilst these factors weigh in favour of the grant of planning permission, the resultant public benefits would be modest. As a result, they would not outweigh the harm I have identified above.

19. I acknowledge the frustrations of the appellant regarding the determination of the appeal applications, including the change of planning officers, and references to the graphics provided as part of the application documentation. However, my decisions are based on the evidence before me and an objective assessment of the planning merits of the proposed development.

Conclusion

20. The amended scheme conflicts with the development plan as a whole and there are no material considerations, either individually or in combination, that suggest decisions should be made other than in accordance with the development plan. Therefore, both appeals are dismissed.

Juliet Rogers

INSPECTOR