



Appeal Decision

Site visit made on 12 October 2023

by **C Cresswell BSc (Hons) MA, MBA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 November 2023

Appeal Ref: **APP/K1128/W/23/3315808**

Seafront, Marine Drive, Bigbury On Sea, Devon TQ7 4AS

- 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 and Mrs S Hamblin against the decision of South Hams District Council.
- The application Ref 2803/22/VAR, dated 11 August 2022, was refused by notice dated 4 November 2022.
- The application sought planning permission for “demolition of existing building and outbuildings and erection of 2no. replacement dwellings including creation of new access off Marine Drive” without complying with conditions attached to planning permission Ref 3545/17/FUL, dated 7 June 2018.
- The conditions in dispute are Nos 2, 3, 4, 5, 6 and 7 which state that:
 - Condition 2- The development hereby approved shall in all respects accord strictly with the following drawing numbers: ACL.969.205 Rev B, ACL.969.206 Rev D, ACL.969.207 Rev D, ACL.969.208 Rev D, ACL.969.209 Rev B received by the Local Planning Authority on 16 April 2018 and the Site Location Plan received by the Local Planning Authority on 13 November 2017.*
 - Condition 3- The roofs of the buildings shall be clad in natural slates, fixed in the traditional manner with nails rather than slate hooks. Prior to installation, a full roofing specification including the types and sizes of natural slates to be used, together with the type, colour and profile of the ridge tiles, hip detailing, a section through the solar panels, and chimney stack and pot detailing shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out only in accordance with the details so approved unless otherwise agreed in writing.*
 - Condition 4- Prior to installation, a schedule of materials and finishes, and samples of the materials to be used in the construction of the external surfaces shall have been first submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out only in accordance with the details so approved unless otherwise agreed in writing.*
 - Condition 5- No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the site and details of any to be retained, together with measures for their protection in the course of development, details of the location and finish of all new areas of hardstanding, details of new terracing and the form and finish of retaining walls. All planting, seeding, turfing or hardsurfacing comprised in the approved landscaping scheme shall be carried out by the end of the first planting and seeding seasons following the occupation of the buildings or completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation. The landscaping scheme shall be strictly adhered to during the course of the development and thereafter.*

Condition 6- Notwithstanding the details within the approved plans and documents, prior to the commencement of development a Japanese Knotweed Survey and Removal/Mitigation Strategy shall be submitted to and agreed in writing by the Local Planning Authority. The document will include: -A detailed survey of the current extent and location of Knotweed contamination within influence of the application site. -Details of how the knotweed will be removed and disposed of prior to the commencement of development and/or how further land contamination will be prevented during the course of the development. -Details for the provision of onsite monitoring by a suitably qualified ecologist during the demolition, excavation and construction phases. The Survey and Removal/Mitigation Strategy will be strictly adhered to during the course of the development.

Condition 7- The recommendations, mitigation and enhancement measures of the Ecological Report, by David F Wills dated 7 September 2017, shall be strictly 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.

- The reasons given for the conditions are:

Condition 2- To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.

Condition 3- To ensure that the development displays good design practice and to allow the Local Planning Authority to assess the details of the scheme to ensure that is maintained.

Condition 4- To enable the Local Planning Authority to consider the details of the materials.

Condition 5- To ensure the provision of an appropriate landscaping scheme in the interests of the visual amenities of the locality and to assimilate the development into its surroundings.

Condition 6- To ensure that the development does not spread or cause land contamination.

Condition 7- To safeguard the interests of protected species.

Decision

1. The appeal is allowed and planning permission is granted for a development described as “demolition of existing building and outbuildings and erection of 2no. replacement dwellings including creation of new access off Marine Drive” at Seafront, Marine Drive, Bigbury On Sea, Devon TQ7 4AS in accordance with the application 2803/22/VAR, dated 11 August 2022, without compliance with condition numbers 2,3,4,5,6 and 7 previously imposed on planning permission Ref 3545/17/FUL, dated 7 June 2018, and subject to the conditions set out in the Schedule at the end of this Decision.

Procedural Matter

2. The land falls within the zone of influence of the Tamar European Marine Site. This includes the Plymouth Sound and Estuaries Special Area of Conservation and the Tamar Estuaries Site Complex Special Protection Area. The Council say that the proposed development would lead to increased recreational pressures on these sites and, in the event of development taking place, a financial contribution would be necessary to help mitigate the impacts. This formed the basis of the second reason for refusal shown on the Decision Notice. However, since the application was determined by the Council, the appellant has provided a legal agreement to secure the financial contributions which the Council seeks. In light of this, the Council has indicated that it is prepared to withdraw the second reason for refusal.

Background

3. The site contains a detached house situated in a generously sized plot of land. At the time of my site visit, the existing house appeared to be undergoing renovation work and most of the garden had been excavated. The site benefits from a 2018 planning permission¹ to demolish the existing house and replace it with two bungalows. These bungalows could potentially be used as second homes as there is nothing in place to control occupancy.
4. Planning permission² was granted in 2022 to vary the original proposal. This involves changing the design of the bungalow which would occupy Plot 2. However, by this time, the Neighbourhood Plan³ had come into effect. In order to control the prevalence of second homes, Policy BP4 of the plan says that new dwellings should be used as a 'principal residence'. This is defined in the plan as a dwelling where the residents spend the majority of their time when not working away from home. Hence, in order to comply with Policy BP4, a legal agreement was secured to ensure that the proposed dwelling on Plot 2 can only be occupied as a principal residence.
5. The site therefore benefits from two planning permissions; the original proposal from 2018 (with no restriction on occupancy) and the varied scheme from 2022 (with a legal agreement to secure a principal residence). I understand that both of these permissions are extant. The appellants now seek a further variation of the scheme, but without a legal agreement to secure a principal residence. This is the subject of the current appeal.

Main Issues

6. The main issue is whether a principal residency restriction is necessary.

Reasons

Principal residence

7. Policy BP4 of the Neighbourhood Plan says that *new open market housing, other than one for one replacement dwellings, will only be supported where there is a Section 106 agreement in place to ensure its occupancy as a principal residence...Where proposals for the replacement of existing dwellings by more than the number of dwellings to be demolished is approved, the additional dwellings will be subject to a Section 106 agreement.*
8. As it is proposed to replace the existing single dwelling with two new dwellings, the policy requires a legal agreement to ensure that one of the new dwellings is occupied as a principal residence. No such legal agreement has been provided and so the proposal does not comply with Policy BP4.
9. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. In this case, relevant material considerations include the extant planning permissions on the site, which would represent 'fallback' positions in the event of this appeal being dismissed.

¹ Council Ref: 3545/17/FUL

² Council Ref: 4226/21/VAR

³ Bigbury Neighbourhood Plan 2019-2034

10. The 2018 planning permission has no legal agreement in place to secure a principal residence. Therefore, the appellants could build the Plot 2 bungalow and use it as a second home to suit their needs. However, I understand that they do not favour the design of this bungalow. Their preference is the design shown in the current appeal proposal (which also reflects the design of the dwelling in the 2022 planning permission).
11. With this in mind, the appellants say that they will build a dwelling on Plot 2 based on the 2018 design and subsequently demolish it. Their intention would then be to apply for planning permission for the dwelling proposed in the current appeal. As this would be a one-for-one replacement, it is argued that Policy BP4 would not apply and so there would be no need for a principal residency restriction to be imposed.
12. However, even if the appellants were to go to the trouble and expense building the bungalow only to knock it down again, there is no guarantee that planning permission would be obtained for a replacement dwelling. Indeed, the Council has indicated that it would likely resist such a proposal as it would conflict with sustainable development objectives. If an application for a replacement dwelling were to be made in the future, it would need to be assessed against the development plan policies in force at that time. A decision would then be made based on the strength of evidence presented. Hence, given the degree of uncertainty involved, I do not consider that this approach represents a reliable fallback position if the current appeal were to fail.
13. If the appellants did not implement the 2018 planning permission, it would remain extant and so could be developed in the future by a subsequent owner. In my view, this is very likely given that it would enable a new home to be built in Bantham without any restriction on occupancy. The development would be attractive to those seeking a second home as well as people looking to reside permanently in the area. It would have a clear advantage over other new housing in Bigbury, which would require a legal agreement in order to comply with Policy BP4 of the Neighbourhood Plan.
14. Hence, in the event of this appeal being dismissed, the most likely scenario is that a dwelling would be constructed on Plot 2 based on the design that gained planning permission in 2018. However, the evidence indicates that there are planning benefits to the design proposed in the current appeal as it would be more energy efficient and would comply with Lifetime Homes standards in terms of accessibility. It would therefore be preferable for the dwelling to be built according to the current plans rather than the 2018 plans. Consequently, the appeal proposal represents a less harmful form of development than the fallback position established by the 2018 planning permission.
15. In reaching this decision, I have considered the views of local residents who express concern at the prevalence of second homes in the area. However, my decision is based on the unique circumstances of this case and does not establish a precedent for second homes in Bigbury. While the proposal would conflict with Policy BP4 of the Neighbourhood Plan, the 2018 planning permission pre-dates this policy and already enables a dwelling to be built on the site without a principal residency restriction. This permission is likely to be implemented in the event of the appeal being dismissed and is therefore a material consideration to which I attach substantial weight. Given the design

benefits of the appeal proposal, it would represent a less harmful form of development than the fallback position.

16. I therefore conclude on this issue that it is unnecessary to impose a principal residency restriction in this particular case.

Other matters

17. As indicated above, the appellant has provided a legal agreement to mitigate recreational pressures on the Tamar European Marine Site. This is consistent with Policy DEV26 of the Local Plan, which seeks to enhance biodiversity and gives the highest level of protection to European sites. I therefore consider the financial contributions to be necessary, directly related to the development and fairly related in scale and kind.

Conditions

18. In the interests of clarity, standard conditions requiring the development to be carried out in accordance with the plans and within a time limit have been imposed. To protect the character and appearance of the area, conditions have been imposed requiring a landscaping scheme and details of external materials. There are also conditions to prevent contamination. In the interests of highway safety, there is a condition to maintain of-street parking and turning. To protect from flooding there is a requirement for a drainage scheme. In the interests of nature conservation, there is also a condition protecting bats.

Conclusion

19. For the above reasons, the appeal is allowed.

C Cresswell

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2115.301.A, 2115.302.A, 2115.303.A, 2115.304.C, 2115.305.C, 2115.306.B, 2115.307.C, 2115.308.B, 2115.309.A, 2115.311.A, 2115.312.B, 2115.313.B
- 3) Details of facing materials and roofing materials to be used in the construction of the proposed development shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved samples.
- 4) The landscaping scheme shall be implemented in accordance with drawing number 2115.307.C (Landscape Plan). All planting, seeding, turfing or hard surfacing comprised in the approved landscaping scheme shall be carried out by the end of the first planting and seeding seasons following the occupation of the buildings or completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation. The landscaping scheme shall be strictly adhered to during the course of the development and thereafter.
- 5) If during the course of development, Japanese knotweed is found to be present on the site, a revised Japanese Knotweed Survey and Removal/Mitigation Strategy shall be submitted to and agreed in writing, by the Local Planning Authority. The agreed Survey and Removal/Mitigation Strategy will then be strictly adhered to during the course of the development.
- 6) The recommendations, mitigation and enhancement measures of the Mitigation Method Statement (Bats) by David F Wills dated 7th September 2017, and the updated Mitigation received by the Local Planning Authority on 15th September 2022, shall be fully implemented prior to the commencement of the use 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.
- 7) The garages and hardstandings hereby permitted shall remain available in perpetuity for the parking and turning of motor vehicles in association with the use of the dwellings.
- 8) 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.

- 9) The drainage scheme shall be installed in accordance with the approved plans, maintained and retained in accordance with the agreed details for the life of the development.