



Appeal Decision

Hearing held on 31 October 2023

Site visit made on 30 and 31 October 2023

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2023

Appeal Ref: APP/K1128/W/23/3324224

Former Gas Works Site, Land Adj. to Mayors Avenue, Dartmouth TQ6 9NG

- 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.
 - The appeal is made by London & Western Holdings PLC against South Hams District Council.
 - The application Ref 4488/21/FUL, is dated 26 November 2021.
 - The development proposed is demolition of existing building, relocation of existing gas governor and redevelopment to provide eight apartments with associated landscaping and parking.
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Decision

1. The appeal is dismissed and planning permission for demolition of existing building, relocation of existing gas governor and redevelopment to provide eight apartments with associated landscaping and parking is refused.

Preliminary Matters

2. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council's appeal statement sets out the grounds for refusal had it determined the application. These related to flood risk, character and appearance and the absence of financial contributions towards affordable housing, open space, sport and recreation and education. Devon County Council subsequently advised that it no longer sought a contribution to education provision. I have taken these matters into account in reaching my decision.
3. The appellant submitted an executed section 106 agreement under the Town and Country Planning Act 1990 (as amended), dated 21 November 2023. This secures financial contributions towards affordable housing, open space, sport and recreation. On the basis of this agreed section 106 agreement, this putative reason for refusal is no longer contested by the Council. I have proceeded on that basis.
4. At the Hearing, the appellant raised an issue in relation to officer delegated powers in respect of the submission of the Council's Statement of Case. The Council has provided a copy of an extract from its Constitution setting out the Record of Authorisation. This confirms the officer had the delegated powers to submit the Statement of Case on behalf of the Council.

Main Issues

5. The main issues are:

- whether the location would be suitable for the proposed development, with particular regard to flood risk; and
- the effect of the proposed development on the character and appearance of the area.

Reasons

6. The spatial strategy set out within the Plymouth and South-West Devon Joint Local Plan 2019 (the JLP) defines a Thriving Towns and Villages (TTV) Policy Area which seeks to distribute development across a hierarchy of settlements within the plan area. The appeal site is located within the settlement of Dartmouth. This is one of six Main Towns, prioritised for growth, as defined under Policy TTV1 of the JLP.
7. The appeal site is currently occupied by a single-storey building housing gas infrastructure and a surface car park. As a location for development, there is no dispute that the principle of developing this site for housing is acceptable. It is in an accessible location, close to the town centre and public transport.

Flood risk

8. The appeal site is located within Flood Zone 3 and an area subject to tidal flooding. The proposal is for a flatted development of eight market dwellings. The National Planning Policy Framework (the Framework) sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. It explains that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
9. The appellant undertook a flood risk sequential test assessment (FRSTA) dated September 2021, as part of the planning application. The FRSTA was subsequently updated in May 2023. The appeal is being considered on the basis of the 2023 FRSTA. The FRSTA concluded that the proposal passes the sequential test in accordance with the methodology set out in national policy and guidance. The Council disputes this on the basis that the parameters for that assessment were drawn too narrowly.
10. The Planning Practice Guidance (PPG)¹ explains how the sequential test should be applied to planning applications. It sets out that the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed, recognising that for certain types of developments, such as a school catchment, this may be clear. In other cases, it may be identified from other Plan policies.
11. The PPG² confirms that the planning authority will need to determine an appropriate area of search, based on the development type proposed and relevant spatial policies. Whilst the appellant has indicated that agreement

¹ Paragraph: 027 Reference ID: 7-027-20220825

² Paragraph: 029 Reference ID: 7-029-20220825

could not be reached with the Council as to the search area, it appears that advice was given by the Council at both pre-application stage and during the course of the application. This advised that the area of search should be those areas within the TTV policy area or, at the very least, the whole of Dartmouth, including two allocated sites covered by JLP Policies TTV4 and TTV5. This remained the Council's position during the appeal.

12. The appellant's initial FRSTA applied the sequential test to the whole of Dartmouth. The updated FRSTA reduced the area of search to the catchment for the type of development proposed, namely the demolition of the existing building and redevelopment to provide eight apartments within a single building, which are within walking distance of Dartmouth town centre.
13. The updated area of search has been drawn to follow a 300m radius around the Primary Shopping Area/Centre Boundary defined on the JLP Policies Map. The justification for this is premised on the fact that its catchment will be residents who want to be close to Dartmouth town centre and able to access its services and facilities on foot. To substantiate this, the appellant provided evidence about the local housing market and the catchment area for flatted development from a local estate agent which aligned with what the appeal scheme would provide.
14. This evidence is anecdotal. Whilst I accept that people looking to live within Dartmouth may find this an attractive option as indicated by the estate agent comments, I have nothing to suggest that they would reject other developments of a different configuration or located further from the town centre.
15. Even if I were to accept that the area of search should reflect a walkable distance to the town centre, the 300m radius is based on distances of main town centre uses from the town centre boundary or retail uses from the primary shopping area as set out in Annex 2 of the Framework, none of which are applicable to a residential development. I note that the distances³ set out under Policy SPT2 of the JLP suggest that people will walk a greater distance, in the region of 800m to a local convenience store. Therefore, in the event that I were to agree that the catchment should be based upon a walkable distance to the town centre, I would still find the search area too small.
16. Policy SPT2 supports high density development, such as proposed here, in areas that are best connected to sustainable transport and services. In this regard, the proximity to the town centre would be appropriate. However, there is little evidence before me to suggest that other locations, at lower risk of flooding, either within Dartmouth or the wider TTV Policy Area would not be suitable for a higher density development of market housing.
17. The appellant has argued that 'the proposed development' includes the demolition of the existing inappropriate and ugly building which is necessary for regeneration and that this cannot be done elsewhere.
18. I accept that in some circumstances, regeneration benefits can be a factor in applying the sequential test, as the Inspector found in the Crow Lane appeal decisions⁴. However, I have not been provided with evidence that suggests the

³ Figure 3.2 – Measures of sustainable neighbourhoods and communities, JLP 2019

⁴ APP/Y3940/W/17/3180109 and APP/Y3940/W/17/3180110 – E V Naish Ltd, Crow Lane and 51/53 North Street, Wilton, Salisbury SP2 0HB

starting point for this scheme was to provide regeneration benefits to Dartmouth. This is borne out by the subsequent site search which was based upon whether a site could deliver housing, not whether a site would deliver regeneration benefits. It seems to me that, whilst a positive aspect of the scheme and broadly in accordance with the Framework's aims of making effective use of land, the regeneration aspects of the scheme are coincidental.

19. The justification for applying a narrow search area has not been adequately demonstrated through evidence. In applying such an approach, it seems to me that the aim of the sequential test to steer development away from areas at risk of flooding would be undermined.
20. A more reasonable approach would appear to be a district-wide approach focussed on the TTV policy area and drawn from housing-market evidence as advocated by the Council. This is consistent with the approach taken by Inspectors in appeal decisions⁵ to which my attention was drawn. The Council indicated that limiting the search to Dartmouth could be appropriate. However, I have not been presented with substantive evidence to justify such an approach. In the absence of this, I conclude that an appropriate area of search would be district-wide.
21. The PPG⁶ advises that where it is not possible to locate development in low-risk areas, the sequential test should go on to compare reasonably available sites within medium risk areas; and then, only where there are no reasonably available sites in low and medium risk areas, within high-risk areas. 'Reasonably available sites' are those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. This could include a series of smaller sites and / or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available'.
22. The appellant has applied the site search based on the specific attributes of the scheme proposed, that is flatted development of between six and ten units within a single building and within walking distance of the town centre. However, such a precise definition of the development is unlikely to lead to the identification of an alternative site where this development can be delivered. In applying such a rigid approach, the aim of the sequential test would be frustrated.
23. The FRSTA identified no sites within the search area but went on to consider two allocated sites within the wider Dartmouth area, Land at Cotton Lane and Noss Marina under Policies TTV4 and TTV5 of the JLP respectively. Both were found to be unsuitable for various reasons including those relating to distance from the town centre, being unsuitable for flatted development and the phasing of development. Land at Cotton Lane is a greenfield site and, arguably would not bring forward the regeneration benefits. However, as I have already found, the proposed development is essentially for housing. Given my findings in respect of the approach to both the area of search and the types of sites to be searched, I cannot conclude that either of these sites would not be able to accommodate the eight market dwellings proposed whether within a single building or disaggregated across the development.

⁵ APP/N2739/A/13/2192692, APP/E0915/W/16/3158612

⁶ Paragraph: 024 Reference ID: 7-024-20220825 and Paragraph: 028 Reference ID: 7-028-20220825

24. As I have set out above, I find a wider search area to that proposed by the appellant should be applied. Moreover, the site search should not confine itself to those sites that could deliver the precise development proposed. Evidence submitted by the Council indicates the potential availability of other sites across the district to accommodate the proposed development in accordance with the approach set out in the PPG. However, this list is limited to those sites with planning permission. I have no information about the availability of other sites such as allocated or unallocated sites without planning permission within the area of search, which may be in an area at lower risk of flooding and suitable for the proposed development. It therefore follows that, in the absence of information about alternative site availability within a wider search area, I cannot conclude that there are no reasonably available sites for the proposed development. Consequently, I find that the sequential test has not been met.
25. The appellant's architect explained other uses had been considered. However, limited substantive evidence was put to me that the site could not be regenerated in an alternative way or for a use at less risk from flooding. This does not lead me to a different conclusion in respect of the sequential test.
26. Given my findings in this regard, it has not been necessary for me to go on to consider whether or not the proposed development would satisfy the requirements of the exception test.
27. I conclude that the location would be unsuitable for the proposed development with particular regard to flood risk. It would therefore conflict with Policies SPT1 and DEV35 of the JLP and Policy DNP GE11 of the Dartmouth Neighbourhood Plan (2022) (the DNP). Together these seek sustainable development and require a sequential approach to development in areas known to be at risk from flooding, resisting such development if there are reasonably available sites appropriate for the proposed development in an area with a lower probability of flooding. It would also conflict with the Framework and the PPG as referred to above.

Character and appearance

28. The appeal site is located on Mayor's Avenue which branches off from the main road running along the River Dart waterfront. Separated from the river by roads and an area of green space, the site occupies a prominent position in relation to the waterfront, the town centre and main roads into the centre.
29. Development along this stretch of Mayor's Avenue has a vertical emphasis, with buildings of three and four-storeys in height. The appeal site is currently occupied by a single-storey building and an area of surface parking. Positioned between a three-storey traditional building and the four-storey Mayflower Court, it appears as an anomalous gap. The proposed development would be a similar height to Mayflower Court, it would infill the gap and provide a more consistent building height along the road.
30. The building would have a cubic form with fourth floor accommodation set back from the front elevation at roof level. This roof top element would have a shallow pitched roof which would be somewhat at odds with the more cubic form of the building. However, it would be relatively unobtrusive and visible from limited viewpoints looking towards the front of the building due to its setback position. The rooftop setback would be similar to other developments along the waterfront, including Lee Court beyond Mayflower Court to the east.

Furthermore, given the varied roofscape within the locality and the distinct lack of uniformity, this feature would not harm the overall appearance of the proposed building nor appear incongruous with nearby development.

31. A series of balconies, some recessed, enclosed by glazed balustrades and large areas of glazing would characterise and break up the front elevation. In combination with a varied palette of complementary materials, this would provide visual interest to the building.
32. Whilst concerns have been raised in regards to the amount of glazing to this elevation, I observed that both Vavasour House and The Sails, a prominent building on the corner of Mayor's Avenue, to the east includes significant areas of glazing to their front elevation. I also observed large areas of glazing to be a common feature to much of the contemporary architecture within the area. In this context, it would not be out of character with surrounding development.
33. The rear elevation of the building would have a much simpler form. Whilst lacking in significant detailing, it would have an appearance not dissimilar to surrounding development. It would also not be widely visible from the public realm, being seen through glimpsed views between buildings on Clarence Street to the rear.
34. In conclusion, I find that the proposal would not harm the character and appearance of the area. It would therefore accord with Policy DEV20 of the JLP, Policy DNP TE2 of the Dartmouth Neighbourhood Plan 2022 and the Framework. These policies together seek high quality design that contributes to local distinctiveness and support contemporary design that is not harmful to the character and appearance of the Dartmouth area.

Planning Balance

35. The appeal site is in a location identified for growth and would be in accordance with the spatial strategy set out in the development plan. The location itself is accessible, reducing the need for unsustainable trips. The Council has suggested that there is nothing out of the ordinary in this, referring me to an appeal decision⁷ where a similar scenario arose. The Inspector in that case attached minor weight to this factor. I do not have the full details of that appeal. However, in the appeal before me because the site is so accessible to the town centre, I attribute moderate weight to this factor.
36. The proposal would provide regeneration and environmental benefits through the redevelopment of this brownfield site. The Framework states that substantial weight should be given to the value of using suitable brownfield land within settlements for homes and other identified needs. However, in this case it has not been demonstrated that this site is suitable given my concerns about flood risk. I therefore only attribute moderate weight to this benefit.
37. The Council can demonstrate a five year supply of housing. Nevertheless, the Government is seeking to significantly boost the supply of housing and the Council has declared a Housing Crisis. In that context, the provision of a small development of eight dwellings in a mix of sizes, restricted to ensure they would only be available as a primary home, coupled with a contribution to affordable housing would be modest benefits of the scheme.

⁷ APP/C1950/W/22/3307844 – Land to the North of Bradmore Way, Bradmore Way, The Brookmans Estate, Brookmans Park

38. There would be economic benefits arising from the increase in household expenditure on goods and services within the town, as well as contributions to jobs both directly and indirectly as well as additional revenue generated through council tax receipts.
39. Additional social and environmental benefits would arise from the use of the site for residential purposes which would overlook the public open space opposite, providing natural surveillance and helping to deter anti-social behaviour. The site currently detracts from the character and appearance of the area. The proposal would enhance the appearance of the site and make a positive contribution to the townscape. There is some local support for this. The development would also incorporate photovoltaic solar panels and electric vehicle charging, thereby reducing its environmental impact. Cumulatively, all these are benefits of the scheme which, due to the limited size of the scheme, carry moderate weight in its favour.
40. Other factors including contributions towards open space, sport and recreation which would be required to mitigate the development, meeting internal space standards and being built to comply with energy efficiency standards would be neutral factors in the balance.
41. Whilst there are benefits, the site is within Flood Risk Zone 3 and an area at highest risk of flooding. The sequential test has not been passed. This would be in conflict with both development plan and the Framework policies that seek to avoid inappropriate development in areas at risk of flooding by directing development away from areas at highest risk. This would not be outweighed by the benefits of the scheme. My conclusion is therefore that the scheme conflicts with the development plan as a whole.

Conclusion

42. I find that the proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed and planning permission refused.

Rachael Pipkin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Ground	Barrister
Charlotte Burchell	Associate Director, Planning Consultant
Alison Murrell	Planning Consultant
Paul Myers	Director – Architect
Anthony Copping Joyce	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Fraser	Barrister
Clare Stewart	Principal Planning Officer

INTERESTED PARTIES:

William Baker	Local Resident
John Hansell	Representing Mr & Mrs Sparkes (residents of 5 Kings Quay House)
Marcus Salmon	Planning Specialist, Environment Agency

Documents submitted at the Hearing

- HD1 Extract of Dartmouth Neighbourhood Plan
- HD2 Copies of Joint Local Plan policies
- HD3 Defra Guidance – Flood risk assessment: the sequential test for applicants
- HD4 Appeal decision APP/N2739/A/13/2192692 Land between 59 and 63 Brigg Lane, Selby
- HD5 Appeal decision APP/E0915/W/16/3158612
- HD6 Council Statement of Case – Updates to Tables October 2023
- HD7 Closing Statement for the appellant

Documents submitted after the Hearing

- PHD1 Email correspondence from Devon County Council confirming a planning obligation to secure education contributions would not be required
- PHD2 Updated list of planning conditions
- PHD3 Executed S106 Agreement
- PHD4 Extract of constitution
- PHD5 Email from appellant highlighting the blue pencil clause within the S106 agreement