



Appeal Decision

Site visit made on 5 December 2023

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Appeal Ref: APP/K1128/W/23/3324034

Slipway, Warfleet Creek Road, Dartmouth, Devon TQ6 9GH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Dr and Mrs Michael Petri against the decision of South Hams District Council.
 - The application Ref 2438/22/FUL, dated 6 July 2022, was refused by notice dated 16 February 2023.
 - The development proposed is erection of a dwelling on part of garden to Slipway.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Areas of Outstanding Natural Beauty (AONB) should now be referred to as a National Landscape. Any reference made to an AONB within this appeal decision relates to specific policy, documentation or guidance.

Main Issues

3. The main issues are:
 - whether the site is a suitable location for the proposed development having regard to the provisions of the local housing strategy
 - the effect of the proposed development on the character and appearance of the South Devon Area National Landscape (NL)
 - the effect of the proposed development on the setting of listed buildings
 - the effect of the proposed development on the local highway network with particular regard to parking provision and highway safety
 - whether the proposed development would provide acceptable living conditions for existing neighbouring occupants, with particular regard to privacy and outlook
 - the effect of the proposed development on carbon emissions

Reasons

Location

4. Policy TTV1 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (JLP) sets out the settlement hierarchy which is to focus development on the main towns which provide a broad range of services. Beyond the towns and

villages, development is only permitted in certain circumstances, including as provided for in Policy TTV26 of the JLP. In areas that are not isolated such as the appeal site, this policy, amongst other things, only supports proposals that respond to a proven agricultural, forestry and other occupational need that requires a countryside location. Policy DNP GE12 of the Dartmouth Neighbourhood Plan September 2022 (NP) defines the countryside as areas outside settlement boundaries. On sites adjoining settlement boundaries, Policy DNP H2 of the NP is supportive of affordable housing proposals.

5. The appellant asserts the appeal site should have been included within land they describe as the Local Plan Developable Area. However, it is located outside any defined settlement boundary and is therefore within the countryside. It is also claimed that the scheme merely sought to reinstate a derelict house in a different position within the garden area. I have however been provided with no evidence of such a lawful use and that the described derelict house has not been abandoned. In any case, the proposal is not in the same location and for these reasons I afford this matter no weight. There is no dispute between the main parties that none of the aforementioned exceptional circumstances apply to this scheme, and consequently, there would be conflict with the settlement strategy.
6. Therefore, I conclude on this main issue that the site is not a suitable location for the proposed development having regard to the provisions of the local housing strategy. For the above reasons, the development would conflict with policies TTV1 and TTV26 of the JLP and policies DNP GE12 and DNP H2 of the NP. Policy DNP TE1 of the NP and policies DEV24 and DEV27 of the JLP are concerned with matters relating to character and appearance which I will deal with later in this decision.

Character and appearance

7. The appeal site comprises a highly visible, large wedge of densely vegetated and steeply sloping land that is characterised by its tranquillity and waterside setting. It is distinctly separate from the main built-up area of the adjoining settlement. This is reflected in its local designation as Undeveloped Coast and a Local Green Space. Notwithstanding the appellant's comments in respect of the appropriateness of its designation, the appeal site is within the NL where the National Planning Policy Framework (the Framework) attaches great weight to conserving and enhancing landscape beauty.
8. An overgrown terraced garden area forms a small part of the site closer to Slipway Cottage which would be similarly developed as part of this scheme. However, even if there were previously extended gardens beyond this existing terrace, I observed that the part of the appeal site where the property would be located has returned to its natural vegetated state. Here, the proposed property would be sited beyond more domestic clusters of shrubs and trees into an undisturbed green space. As such, even if the protected tree could be retained and native trees and shrubs were to be introduced using an appropriately worded condition, the resulting built form within this verdant area would still appear wholly out of place. Consequently, the proposal would fail to preserve the landscape and scenic beauty of the NL.
9. The proposed property would be of a modern design reflective of other buildings found within the more distant wider area. However, properties nearby tend to make use of greater proportions of render and slate roofing without the

inclusion of such heavily dominated fenestration detail as found in the appeal proposal. Given the extensive proposed glazing, insufficient detail has been submitted to demonstrate it would be feasible to protect the dark sky environment as required by Policy DNP GE10 of the NP. As such, it would not be appropriate to attempt to secure this using conditions.

10. In that context, the visual effects of the proposed frontage elevation would result in a severe and imposing façade that would consequently appear incongruous. The resulting harmful effect would be amplified by the steep slope the building would be visually projected from. This, together with a proposed siting in a naturally vegetated landscape setting that is divorced from other buildings would mean that the proposal would fail to have proper regard to the pattern of local development.
11. Policy DNP TE1 of the NP does not explicitly rule out the subdivision of plots outside settlements, though the supporting text does note that *there may be opportunities for replacement dwellings and conversions and subdivision of plots within the town and settlement boundary*. Therefore, even if this policy were relevant, there would be conflict with it given my findings above on the effect of the proposal on the NL.
12. Therefore, I conclude on this main issue that the proposal would harmfully affect the character and appearance of the NL. As such, it would be in conflict with policies DEV10, DEV20, DEV23, DEV24, DEV25 and DEV27 of the JLP and the Council's AONB Management Plan. There would be conflict with policies DNP TE1, DNP TE2, DNP GE1, DNP GE3 and DNP GE10 of the NP. Collectively in this respect, and amongst other things, these policies and guidance seek to promote integrated developments that preserve and enhance the NL. There would also be conflict with the Framework which attaches great weight to conserving and enhancing landscape beauty in the AONB.

Listed buildings

13. There are listed buildings near the site and consequently there is a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special regard to the desirability of preserving the buildings or their setting.
14. The grade II Bridge over Warfleet Creek Road dated 1863 is significant as it is a road bridge carrying the embanked Castle Road across Warfleet Creek Road. A flight of stone steps descend from the top of the bridge to a lower level and the building's setting is primarily linked with the built-up area. Based on my site observations, the appeal site does not contribute to the setting and significance of this listed building.
15. The grade II Dartmouth Pottery, dated 1819 is a large rectangular building built down the hillslope. Its significance derives from being a former brewery that plays an important role as an industrial building to contrast with the later houses. Given the amount of other buildings surrounding the listed building, the proposal would avoid harming its setting and significance.
16. The well-preserved grade II Lime Kilm and associated quay has a significance that derives from their connection with the mid-19th century industrial area they sit within. Additionally, they are set against a tranquil and verdant backdrop of the undisturbed steep slopes on the edge of the settlement. Views

of the listing can be gained from a number of public vantage points. The proposed property would disturb the setting of the listed lime kiln and quay by breaking up the naturally vegetated part of its backdrop. Consequently, the eye would be drawn to the development from a number of vantage points which would be harmful to the setting of the listed building.

17. Nevertheless, the harm would be less than substantial and in accordance with paragraph 202 of the Framework, that harm should be weighed against public benefits of the proposal, including securing its optimum viable use. There would be some limited public benefit gained through an additional property that would be added to the housing stock. However, the public benefits of 1 additional property would not offset the identified harm to which I must attach considerable importance and weight.
18. Therefore, I conclude on this main issue that the proposal would harmfully affect the setting of listed buildings. As such, there would be conflict with Policy DEV21 of the JLP and Policy DNP TE3 of the NP which together in this respect seek to conserve and enhance the historic environment. In that context, there would also be conflict with the Framework.

Highways

19. The Council's highways officer did not object to the proposal, though the scheme would increase the volume of traffic and number of vehicles likely to use the site. The plans show a garage next to Slipway Cottage that was not built at the time of my visit, though does have a planning permission for such a development. Regardless of its realistic implementation, vehicles would nevertheless be likely to have to reverse into spaces closely arranged side by side and off a very narrow lane, onto an area that is currently shared. As such, although vehicle movements are likely to be slow and alternative parking on the highway is available elsewhere, vehicular access to and within the site would be unduly restricted by the development. Furthermore, road users would not be expecting to have to avoid reversing vehicles. Additionally, driver visibility carrying out the aforementioned manoeuvres would be likely to be restricted by the constrained layout arrangement.
20. Therefore, I conclude on this main issue that the proposal would have a harmful effect on the local highway network with particular regard to parking provision and highway safety. As such, the proposed development would conflict with Policy DEV29 of the JLP which says, amongst other things, that development proposals should provide safe and satisfactory traffic movement and vehicular access to and within the site.

Living conditions

21. The proposed property would be sited on a steep slope where the potential for overlooking private garden spaces can be increased. However, the principal elevation would mostly look out over a road, lime kiln and quay rather than private gardens or properties. There is established intervening vegetation between the appeal site and gardens to the west. Even if not on an existing building line and some new opportunities of glimpsed views of neighbouring gardens were to result, the proposed side elevation windows and balcony could include obscure glazing to overcome any potential privacy conflict.

22. Notwithstanding the elevated presence of the proposal in the landscape, it would be located some considerable distance from other properties in the nearby area. Therefore, if I were minded to allow the appeal, extensive boundary fencing or natural screening would not be necessary. As such, the proposal would avoid any harmful overbearing effects on the outlook of existing occupants and visitors.
23. For these reasons I conclude that the proposed development would not harmfully affect the living conditions of existing neighbouring occupants, with particular regard to privacy and outlook. As such, the proposed development would accord with Policy DEV1 of the JLP which, amongst other things, seeks to ensure new development provides satisfactory privacy and outlook for both new and existing residents. I have been provided with no substantive evidence to demonstrate there would be conflict with Policy DEV2 of the JLP in respect of this main issue.

Carbon emissions

24. Although PV panels and a heat pump are not shown on the plans, the appellant has not disputed the Council's suggested conditions that would effectively secure proportionate renewable energy systems. Additionally, even if a Passivhaus Design Standard could not be secured by an appropriately worded condition, the development would include triple glazing which would contribute towards maximising the energy efficiency of the building's fabric as promoted by Policy DEV32 of the JLP.
25. For these reasons, the proposal would not have a harmful effect on carbon emissions. As such, the proposed development would accord with Policy DEV32 of the JLP and Policy DNP GE7 of the NP which together in this respect seek to reduce carbon emissions through development.

Other Matters

26. The appellant notes English Nature raise no objection to the scheme. Natural England did not object to the development though their response advised the local planning authority to use national and local policies to determine the proposal. I have agreed with the Council's determination of the conflict with a number of its policies and therefore afford this matter no weight. In any case, the lack of objection is not a reason in itself to allow unacceptable development.
27. The site is within the Berry Head Special Area of Conservation. Within the context of this appeal, the responsibility for assessing the effects of the proposal on the European designated site falls to me as the competent authority. Had I been minded to allow the appeal, and the circumstances therefore existed in which planning permission could be granted, it would have been necessary for me to examine this matter further, and to undertake an Appropriate Assessment (AA) of the implications of the appeal scheme for the European designated sites.
28. However, as the identified harm above provides clear reasons for dismissing the appeal, the outcome of any such AA would have no bearing on the overall outcome of this appeal. There is therefore no need for me to consider this matter any further as part of my decision since any findings on this issue would not change the appeal outcome.

29. I have paid regard to the appellant's comments in respect of the cost of housing, their personal circumstances and those of their tenants. However, I have assessed the appeal on its planning merits and these matters would not outweigh the harm I have identified above.
30. It has been brought to my attention that there is a lawful certificate for a proposed mobile home on the appeal site, ancillary to the property known as Slipway. As such, there is a realistic fallback position. However, even if the appellant were to occupy such a mobile home, this would need to meet the definition of a caravan and be ancillary accommodation forming part of a single planning unit. Conversely, the proposal would introduce a new permanent and imposing building that would be more harmful to the character and appearance of the area, the setting of listed buildings and the local highway network. In addition, it is possible that both the appeal proposal and the fallback could be carried out. For these reasons, I attribute no weight to the potential fallback.

Planning Balance and Conclusion

31. Bringing together my conclusions on the main issues I have found that the development would not harmfully affect the living conditions of existing neighbouring occupants and that carbon reduction measures could be satisfactorily controlled using an appropriately worded condition. However, this does not outweigh the harm I have found to the significant conflict with the development plan's local housing strategy, the harm to the character and appearance of the area, the setting of listed buildings and to the local highway network.
32. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development fails to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

J Hills

INSPECTOR

