



Appeal Decision

Site visit made on 13 December 2023

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2024

Appeal Ref: APP/W1145/W/23/3324166

Culloden House, Fosceth Hill, Westward Ho!, Devon EX39 1UL

- 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 Mr D Allaway, Maxika Homes Limited, against the decision of Torridge District Council.
 - The application Ref 1/0001/2023/FUL, dated 24 January 2023, was refused by notice dated 27 April 2023.
 - The development proposed is Erection of two detached dwellings with associated parking and landscaping, and the introduction of 4 car parking spaces for Culloden House.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published in December 2023. However, as the provisions in the Framework that are most relevant to this appeal have not materially changed, no parties will have been prejudiced by my having regard to the latest version in reaching my decision.
3. The Planning Inspectorate's Procedural Guide (Planning Appeals – England) sets out that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially the same scheme that was considered by the Council and by interested parties at the application stage. However, in seeking to resolve the Council's concerns and reasons for refusal, the appellant submitted amended plans with the appeal.
4. The amended plans include a narrower width of Unit A's first floor. Whilst this would reduce the scale of the proposed development and its likely effects on adjoining occupiers, these amendments and the addition of a relatively large, full-height screen would not be insignificant and would change the external appearance of the building. The proposed amendments therefore equate to a fundamental change to the original scheme and constitute a different proposal. In addition, accepting amendments at appeal stage could deprive those who were entitled to be consulted on the application of the opportunity to make any representations that, given the nature and extent of the changes proposed, they may have wanted to make on the amended scheme. Taking the amended plans into account could therefore also prejudice other parties' interests. The ability of interested parties to review the amended plans and comment at appeal stage does not change this. Consequently, I have determined the appeal based on the proposal determined by the Council, as per the plans listed on the Decision Notice, and have not taken the amended plans into account.

Main Issues

5. The main issues are the effect of the proposed development on the character and appearance of the surrounding area; and the living conditions of adjoining occupiers, with particular regard to outlook and privacy at No 2 Manorville.

Reasons

Character and appearance

6. Fronting Atlantic Way, the appeal site is situated to the north of Culloden House and No 1 Manorville. Although now somewhat inaccessible and unused, it has provided parking and external amenity space for those properties. Built form in the wider area varies in terms of scale, form and appearance. For example, to the south, on the Fosceth Hill side of Atlantic Way, there are several traditional, sizeable and striking buildings, many from the Victorian and Georgian periods, whilst to the east of the site are some more recent flat-roof garages, and two-storey properties and chalet bungalows (some of which now occupy the lower part of the above buildings' historic large plots). This variety continues to the north, with a mixture of buildings from different eras with a range of sizes, designs and materials, and in various states of repair. Nevertheless, residential buildings in the site's locality generally have a traditional design and appearance, with mostly pitched or hipped tiled roofs and rendered walls, and the site is experienced in relation to its immediate surroundings, which includes the attractive buildings of Culloden House and Nos 1-2 Manorville, along with the church to the west. These form the key characteristics of this end of Atlantic Way and positively contribute to its local distinctiveness, and the site is seen in the context of this more traditional character and appearance rather than the wider area.
7. The Council's decision notice alleges that the proposed development would be cramped and out of scale with its surroundings. However, there is little before me which substantiates this allegation, and its Officer Report principally focuses on the design of the proposed buildings. In any event, given the first floors would be accommodated in the roof, the proposed units would have a relatively limited height compared to more typical two-storey buildings with deeper pitched roofs. The first-floors would also be set back, whilst there would be sufficient space around the buildings for soft landscaping and open space.
8. Accordingly, the scale and extent of development proposed would be acceptable. However, the proposed modern design and materials would sharply and incongruously contrast with the traditional vernacular in the surrounding area. The appeal proposal would therefore read as an unsympathetic addition that fails to respect or suitably respond to its context. In coming to this view, I have taken into account the area's lack of design guidance/codes, the proposed units' shallow roof pitch, the various designs and external materials evident in the wider area, and the site's visibility as detailed in the Design and Access Statement. The living space being on the first floor of the proposed units and the provision of amenity space via the terraces and garden areas also cannot be reasonably described as equating to outstanding or innovative design.
9. I recognise that several planning permissions for a dwelling have previously been granted on part of the site and that there is an extant permission for an eight-storey flatted development on the adjoining plot. Other residential developments have also been approved in the surrounding area. However, the

available evidence indicates that the three schemes on the eastern part of the site were either for a building with a more traditional design and/or were made in outline, with matters such as appearance reserved for future consideration. Given the scale and position of the development on the adjoining site and the size of the development opposite, these are also not comparable to the appeal proposal. Consequently, the various extant and lapsed developments permitted near the site and on part of it (including their different layout and angle) do not lead me to a different conclusion.

10. For the above reasons, I conclude that the proposed development would harm the character and appearance of the surrounding area. I therefore find that it conflicts with Policies ST04 and DM04 of the North Devon and Torridge Local Plan 2011-2031 (NDTLP). Amongst other aspects, these seek development with a high-quality design and appropriate appearance which reinforces the key characteristics of the area in which it is proposed and contributes positively to local distinctiveness. The proposal would also be inconsistent with the provisions in the Framework in relation to maintaining an area's prevailing character and achieving well-designed and beautiful places.

Living conditions

11. The site adjoins the garden of No 2. Although it is relatively long and the proposed development would be positioned a reasonable distance from the rear wall of No 2, the main sitting out area is towards the lower end of the garden.
12. Unit A would be positioned close to the shared boundary and adjacent to No 2's main sitting out area. Combined with its depth and height, and taking account of the land levels, Unit A would therefore appear as a dominating and enclosing feature that would significantly reduce the outlook from the garden of No 2. The proposed roof design, built-up nature of the surrounding area, size of No 2's garden and that the proposal would not result in significant loss of daylight or sunlight to No 2 do not lead me to a different conclusion.
13. Unit A would have glazing facing towards No 2, whilst views of that property's garden would also be possible from the proposed terrace. However, the available evidence indicates that the glazing could be obscured and a suitably sized privacy screen could be erected on the terrace. These elements, securable by condition, would avoid overlooking of No 2.
14. Nevertheless, for the above reasons, I conclude that the proposed development would harm the living conditions of adjoining occupiers, with particular regard to outlook at No 2. I therefore find that it conflicts with NDTLP Policy DM01 which, amongst other aspects, sets out that development will be supported where it would not significantly harm the amenities of neighbouring occupiers. The proposal would also be inconsistent with the provisions in the Framework in relation to ensuring a high standard of amenity for existing users.

Other matters

15. I note the appellant's frustration with regards to the position of the Council and Town Council in relation to this and previous schemes, and the lack of opportunity for them to discuss and resolve the Council's concerns before the decision was made. However, these issues are procedural matters which are not determinative as to the acceptability of the appeal proposal, which I have determined on its merits, based on the evidence before me.

Planning Balance

16. There is no objection to the principle of development, with NDTLP Policy ST06 supporting development within the defined development boundaries. With no objections raised by the Council in relation to other matters such as drainage, ecology and highways, there would also be no conflict with various other NDTLP Policies related to those matters. Nevertheless, the harm I have identified and the conflict with the above development plan policies leads me to conclude that the appeal proposal conflicts with the development plan as a whole.
17. The appeal proposal would create two new windfall dwellings on a brownfield site in an accessible location within the defined development boundary. The provision of additional accommodation, supported by the Framework which seeks to significantly boost housing supply and delivery, would contribute towards the mix and supply of family-sized housing in the district and the local economy. Responding to comments from the Town Council on the previously approved scheme and the indication of local support for more housing, the appellant acquired the western part of the site in order to provide two dwellings rather than one. The units, with an energy efficient design encompassing many passive house principles, would also have sufficient internal and external space, along with car and cycle parking. However, given the scale of the development and that there is an extant permission for one dwelling on the site, the benefits of the appeal proposal would be relatively limited. Consequently, I find that the above matters outweigh neither the harm I have identified nor the conflict with the development plan.
18. In undertaking the above balancing, I note the appellant's reference to the presumption in favour of sustainable development within the Framework. However, the test set out in paragraph 11d of the Framework applies where there are no relevant development plan policies or the policies which are most important for determining the application are out-of-date. I have little substantive evidence that this is the case here. Accordingly, the approach set out in paragraph 11d of the Framework does not apply in this instance.

Conclusion

19. The proposal conflicts with the development plan read as a whole and there are no material considerations which carry sufficient weight to warrant a decision otherwise than in accordance with it. The appeal is therefore dismissed.

T Gethin BA (Hons), MSc, MRTPI

INSPECTOR