



Appeal Decision

Site visit made on 22 November 2023 by S Wilson LL.B. MSc MRTPI

Decision by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2024

Appeal Ref: APP/K1128/D/23/3318072

Paradise Point, Ravensbury Drive, Warfleet, Dartmouth, Devon TQ6 9BZ

- 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 and Mrs C and J Jelf against the decision of South Hams District Council.
 - The application Ref 2260/22/HHO, dated 28 June 2022, was refused by notice dated 15 February 2023.
 - The development proposed is described as the 'construction of two storey garden building with no internal link between the floors. Ground floor for use as a garden and water equipment store with changing facilities including shower & WC. First floor for use as a home office with WC. Submitted as an amendment to application ref: 3983/21/HHO'.
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Decision

1. The appeal is allowed and planning permission is granted for development described as 'construction of two storey garden building with no internal link between the floors. Ground floor for use as a garden and water equipment store with changing facilities including shower & WC. First floor for use as a home office with WC. Submitted as an amendment to application ref: 3983/21/HHO' in accordance with the terms of the application Ref 2260/22/HHO, dated 28 June 2022, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Areas of Outstanding Natural Beauty (AONB) have, since November 2023, been renamed as National Landscapes. This change in terminology has not affected the reasons for their designation or the fundamental aspects of their special qualities. I have accordingly referred to the South Devon AONB as the South Devon National Landscape (SDNL) in my recommendation.
3. During the planning application process the description of development changed from that stated on the original application form. I do not have evidence to suggest the main parties agreed. I have therefore based my recommendation on the description as it appears on the application form, as set out in the header above. This, in any event, adequately describes the development to which the appeal relates.

Appeal Procedure

4. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issues

5. There are two main issues. These are a) the principle of the proposed development with specific regard to its scale and intended function; and b) its effect on the character and appearance of the area with specific regard to the setting of a grade II listed building, the Dartmouth Conservation Area (DCA) and the special qualities of the SDNL.

Reasons for the Recommendation

Principle of Development

6. The physical size of an incidental building in comparison to the dwellinghouse might be part of an assessment to determine such but not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required to accommodate the proposed use or activity and thus achieve that purpose. The use of the building should be subordinate to the use of the house as a dwelling. Despite acknowledging that the use as an incidental building can be controlled by condition, the Council appear to have applied reasoning and policy intended for ancillary annexes. There is no sufficiently compelling evidence provided to suggest the use of the building as anything other than incidental.
7. An office, equipment store and changing facility (including shower and WC) can be incidental uses. An incidental use is one which is functionally related to the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Home working is evidently now a part of business life for the appellant, and this appears to have driven the requirement for a dedicated office space away from the busy family home. Two bedrooms in the host dwelling are currently being used to fulfil this need. At my site visit, I saw that they hosted the usual bedroom furniture, but also reams of paperwork and other office paraphernalia. The situation was clearly detrimental to the operation of the family home. Consequently, it would be reasonable to locate a home office elsewhere.
8. It is not unusual for an incidental outbuilding to be detached by more than a marginal degree from their host dwelling whilst remaining within the curtilage. The differing levels of the host dwelling's garden form a terrace into the hillside with various pathways and edge treatments. I did not get a sense of separation of the property from its curtilage during my site visit, even where the access to another property through the garden is located. Whilst the positioning of the proposed outbuilding would be a distance from the host dwelling and on a different level, it would be within its curtilage. In addition, the fact that the appeal property would be located close to the river and is proposing watercraft storage dictates the proposed position in any case. Furthermore, given the scale of the host dwelling and its large curtilage, the size of the outbuilding would be entirely subservient.
9. For these reasons, the scale of the proposed building would not be unacceptable. It is clearly intended to be as, and indeed it can be controlled going forwards, incidental to the host dwelling. In context, and design and visual effect matters which are addressed in more detail below, the principle of the proposed building would be acceptable.

Character and Appearance

10. Paradise Point is a large grade II listed, two storey dwelling. The evidence suggests it is 19th century. Its significance is derived not only from its design and scale, but also its status as a prominent waterfront and hilltop building which has a grandness and imposing feel as it presents to the estuary. The immediate area includes planned and terraced walled gardens. Whilst within substantial grounds, the relative isolation of the building has been impinged upon over time through the development of modern dwellings nearby, as well as subservient waterfront associated buildings further down the hill. There are also examples of permitted and erected overtly modern structures at various points on the hillside which include Half Tide House, Creekside, The Boat House and the curved fronted garage for Paradise Point itself. Nevertheless, the design and scale of the building, as well as its situation and planned grounds, contribute positively to the character and appearance, and thus significance, of the DCA.
11. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker should have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which they possess. Furthermore, Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas.
12. The building would be two storeys, but the contextual effect would be reduced significantly by its situation lower down the hill. The prominence and thus status of Paradise Point would therefore be preserved. The building itself would be visible, most notably from the water. It would however be set against the hillside and read alongside structures of much larger scale and more complicated composition. Further, it would be understood, from the water, as being in amongst the grounds rather than standing out incongruously from them. The design of the building would be modern, and unashamedly so. I do not object to this as a matter of principle given the immediate context in built form terms and the deployment of a similar approach to the dwelling's curved fronted garage.
13. There is a retaining wall that is prominent at this location in the garden when viewed from the river and Kingswear. The proposed design would use stone for the ground floor external surfaces, which would create the illusion that this level is part of the retaining wall. As such, the proposal would appear more as a conventional single storey outbuilding. The proposed flat green roof would be simple, unobtrusive and congruent with its verdant surroundings. The first-floor office space would have a small terrace and there would be a floor to ceiling window as part of the design. These would however be deliberate features of the overall form of the building and thoroughly in keeping with its modern brief. In this context, I do not find them to be harmful.
14. The appellant states that the office is likely to be used during office hours and therefore that light spill is likely to be negligible. I agree, however, even if the office were to be used during the hours of dark, the location of the proposal is directly adjacent and at a similar height to a number of riverside properties on

Ravensbury Drive and Southtown which spill light onto the river at night. The proposal would not be an isolated beacon. Whilst it would create an additional source of light, taken with the fact that Dartmouth is urban and spills a multitude of lights onto the river at night, light spill from the proposed building would not have a harmful effect of its own sufficient to resist the appeal scheme. Taking this and the above into account, it would not cause harm to the setting of the listed building and ensure that both the character and appearance of the DCA would be preserved.

15. In regard to the SDNL and the appeal site being partially within an area designated as Heritage Coast, the proposed development would be located in a prominent and sensitive riverbank location on the river Dart estuary, whose landscape features make a significant visual contribution to both the seascape of the Heritage Coast and the special qualities of the SDNL. In this particular case, the outcrop location with a defined slope down to a waterfront has an established garden. It has noticeable and well established variations in height which cascade down to the river. There are also prominent natural stone retaining walls creating a terracing effect.
16. The scale and extent of development would be, in terms of the National Planning Policy Framework's (the Framework) assertion for such areas, entirely limited, not major and sensitively located. It would thus avoid a harmful effect on the particular seascape qualities of the Heritage Coast or the special qualities of the SDNL. The stretch of coast and landscape at this point is not entirely undeveloped and the proposals would be read within an established group of development of a mix of types and designs and display obvious subservience thereto. The vast majority of unaltered coastline and landscape would remain so, and the building would blend acceptably into its verdant surroundings through the use of juxtaposed modern design and locally distinctive materials.

The Development Plan

17. For the above reasons, the proposal would comply with Policies DEV10 (4), DEV20, DEV21, DEV23, DEV24, DEV25 of the Plymouth and South West Devon Joint Local Plan 2020 (LP); Policies GE1, GE2, GE5, GE10, and TE3 of the Dartmouth Neighbourhood Development Plan 2022 (NP) and paragraphs 4.128, 4.129, 4.130 and 4.131 of the Plymouth and South West Devon Joint Local Plan Supplementary Planning Document 2020.
18. Amongst other things these policies require development to have proper regard to the pattern and scale of local development and distinctiveness, respect or enhance heritage assets, for development to protect and maintain the National Landscape and for outbuildings to be controlled for purposes incidental to their host dwelling. For the same reasons, the proposal would also comply with the relevant paragraphs of the Framework. The most recent changes to which, from December 2023, have not materially affected the relevant substantive parts as they relate to the main issues.

Other Matters

19. I have addressed the matter of the size, scale and function of the proposed building. As such, how akin it would be to the size of a dwelling for the purposes of the Nationally Described Space Standards is not a factor that would weigh against the appeal scheme. The Council are correct in that any

subsequent use as a separate dwelling, and all that such would entail, would require the benefit of express planning permission. It is within the Council's gift to consider the effects of such should it happen in the future. Such a situation is, in any event, conjecture at best. Conditions can be used, for the purposes of any planning permission so granted here and to reflect the intentions of the appellant, to ensure the use of the building remains associated with the dwelling.

20. I am aware that the appeal site is not within a Special Area of Conservation but part of the foraging habitat therefore, specifically in regard to bats. The Council's ecology advice sets out that it is unlikely any suitable Great Horseshoe bat foraging habitat and no pinch points or mitigation features would be impacted by the appeal scheme, subject to conditions which are explored in more detail below.

Conditions

21. In addition to the standard time period for commencement of the development, a condition requiring works to accord with the approved plans would be necessary for enforcement purposes.
22. Conditions requiring the agreement of external materials that also describes the method of fixation and construction and protects the condition and appearance of existing and proposed natural stone are necessary to ensure development integrates acceptably with its sensitive surroundings. Since the materials condition addresses what the building would be constructed from, the detail would be required prior to the commencement of development. As would, given what it concerns, a condition requiring agreement of a suitable methodology for specific tree protection during on site works.
23. A Construction Management Plan is required to safeguard the living conditions of neighbours during the construction process. This also takes into account the limited access and riverside location of the appeal site and the potential effects on both. The detail would be required, for practical purposes, prior to the commencement of development.
24. A scheme for landscaping, including the removal of vegetation, is necessary to ensure the natural qualities of the sensitive location are protected. It would be sufficient to agree this detail prior to the first occupation of the building.
25. A condition that restricts the use of the building to purposes incidental to Paradise Point is necessary as the establishment of a separate unit of accommodation has the potential to give rise to an over intensive use of the site and to ensure accordance with LP Policies DEV21, DEV23 and DEV25. This would be a compliance condition.
26. A condition limiting the clearance of vegetation during the bird nesting season (01 March to 31 August, inclusive) is necessary to ensure no disturbance to nesting birds. In the same interest, a condition requiring the approval of any external lighting is necessary to protect the sensitive environment and landscape qualities of the site, as well as the integrity of the wider area in regard to potential bat foraging habitat.
27. A condition that requires the surface water drainage scheme to be installed in accordance with the approved plans, maintained and retained is necessary to ensure that surface water run off does not increase to neighbouring properties

in accordance with Policy DEV35 of the LP and to ensure surface water discharge does not pollute the River Dart in accordance with LP Policies DEV2 and DEV26.

28. A condition requiring that the development be constructed in accordance with the details set out in the Flood Risk Assessment by JBA Consulting dated March 2021 is necessary to ensure that the development is safe from flooding for its lifetime in accordance with the Framework, LP Policy DEV35 and NP Policy GE11.
29. A condition requiring further openings ordinarily permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015, including rooflights, is necessary to protect the sensitive location.

Conclusion and Recommendation

30. For the reasons given above, the appeal scheme would comply with the development plan and there are no material considerations worthy of sufficient weight (including the Framework) that would indicate otherwise. I therefore recommend the appeal be allowed, subject to the conditions in the attached schedule.

S Wilson

APPEAL PLANNING OFFICER

Inspector's Decision

31. I have considered all the submitted evidence and my representative's report and on that basis the appeal is allowed.

John Morrison

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:

17-224-PL-02, 17-224-PL-04, 17-224-PL-05A, 17-224-PL-06B, 17-224-PL-07, 17-224-PL-08, 17-224-PL-09, 17-224-PL-10A, 17-224-PL-11, 17-224-PL-12, 17-224-PL-14, and 17-224-PL-13A
 - 3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted and their method of fixation and jointing/pointing has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any re-enactment of that Order) all new natural stone walls constructed in accordance with the plans hereby approved and all existing natural stone walls shall be retained in their natural stone external finish and shall not be rendered, colour washed or otherwise treated in a manner that would obscure the natural stone finish.
 - 5) No development shall take place until a tree survey and methodology for root protection of affected trees (in accordance with the relevant British Standard) shall be submitted to and agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 6) No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to, and approved in writing by the local planning authority. The plan shall provide for:
 - a timetable of the works;
 - the parking of vehicles of site operatives and visitors;
 - the method and locations for loading and unloading;
 - storage of plant and materials used in constructing the development;
 - the erection and maintenance of hoarding, displays and viewing areas;
 - measures to control the emission of dust and dirt during construction;
 - details of recycling/disposal of waste from demolition and construction;
 - delivery, demolition and construction working hours.
- The approved Construction Environmental Management Plan shall be adhered to throughout the construction period for the development.
- 7) Prior to the first use/occupation of the development hereby permitted, a hard and soft landscaping scheme, including details of removal shall be submitted to and approved in writing by the local planning authority. The scheme shall include details of:

- Features for retention and means of protection during the development;
- Features to be removed with clear justification for the proposed removal;
- The location, species, density and size of proposed tree, shrub and hedge planting;
- The means of establishment, protection and maintenance of the trees, shrubs and hedges;
- Materials, heights, levels and details of hard landscaping;
- Materials, heights and details of fencing and other boundary treatments;

All elements of the landscaping scheme shall be implemented and maintained in accordance with the approved details unless otherwise agreed in writing by the local planning authority. All work shall be completed before the end of the current first available planting season following practical completion of the development hereby permitted; unless otherwise agreed in writing by the local planning authority. Any trees or plants that, within five years after planting, are removed, die or become seriously damaged or defective shall be replaced with other species, size and number as originally approved, unless consent is given to any variation.

- 8) The building hereby permitted shall be used solely for purposes incidental to the enjoyment of the dwelling known as Paradise Point and shall not at any time be used/occupied independently.
- 9) No vegetation clearance shall take place during the bird nesting season (01 March to 31 August, inclusive) unless the developer has been advised by a suitably qualified ecologist that the clearance will not disturb nesting birds and a record of this kept.
- 10) Details of any external lighting (including security lighting) to be erected, placed, or sited within the site shall be submitted to and approved in writing by the local planning authority prior to its installation. Development shall then be carried out and maintained in accordance with the approved details.
- 11) Development shall be carried out in accordance with the surface water drainage scheme shown on the plans hereby approved and shall be retained and maintained in accordance therewith thereafter.
- 12) Development shall be carried out in accordance with the Flood Risk Assessment by JBA Consulting dated March 2021.
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any act or order so revoking) no openings other than those authorised by this permission, including rooflights, (if any) shall at any time be inserted into the building hereby permitted.