



Appeal Decision

Site visit made on 21 May 2024

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 June 2024

Appeal Ref: APP/W1145/W/23/3334759

Land adjacent to Hill House, Abbotsham, Bideford, Devon

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Gabrielle Horrell against the decision of Torridge District Council.
 - The application Ref is 1/0380/2023/FUL.
 - The application sought planning permission for construction of 4 bedroom detached dwelling, with associated access, parking, amenity space and landscaping. All matters reserved without complying with a condition attached to planning permission Ref 1/1134/2021/OUT, dated 27th January 2022.
 - The condition in dispute is No7 which states that: *Prior to the first occupation of the dwelling hereby permitted, a footpath from the site to the southern edge of the Glebe Houses carriageway shall be provided and retained as such thereafter, in accordance with details that shall first have been submitted to and approved by the local planning authority in conjunction with the local highways authority.*
 - The reason given for the condition is: *To provide pedestrian facilities from the site to the village, in the interests of highway safety and sustainability.*
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Decision

1. The appeal is allowed and planning permission is granted for construction of 4 bedroom detached dwelling, with associated access, parking, amenity space and landscaping. All matters reserved at land adjacent to Hill House, Abbotsham, Bideford, Devon in accordance with the application Ref 1/0380/2023/FUL, without compliance with condition number 7 previously imposed on planning permission Ref 1/1134/2021/OUT, dated 27th January 2022 and subject to the conditions in the attached schedule.

Preliminary Matters

2. The address is taken from the Council's decision notice as no address is provided in the application form. This address is similar to that provided in the appellant's appeal form.

Background and Main Issues

3. Outline planning permission and the reserved matters have been granted for a single dwelling. The appeal seeks permission to carry out the development without complying with condition 7 of the outline permission. This requires the provision of a footpath from the appeal site to the southern edge of the Glebe Houses.

4. The Council is concerned that the footpath is necessary to achieve a safe and suitable access. Additionally, it does not consider that sufficient evidence has been provided to demonstrate the costs of providing the footpath would render the scheme unviable.
5. Furthermore, the Council says the development does not represent sustainable development, citing conflict with policies ABS, ST01 and ST07 of the North Devon and Torridge Local Plan 2011-2031 (LP). Amongst other things, these policies set out the housing strategy for Local Centres and Villages, and the overarching approach to sustainable development. Even though the appeal site is outside the defined settlement boundary, planning permission has already been granted for a dwelling. Whilst the reasons for granting the permission are acknowledged, section 73(2) is clear that consideration can only be given to the question of the conditions subject to which planning permission should be granted.
6. Therefore, the main issue is whether condition 7 is reasonable or necessary having regard to highway safety and viability.

Reasons

7. There is no dispute that the appeal site is well related to the built form of Abbotsham, adjoining its development boundary. As described within the Manual for Streets and the National Design Guide (NDG), it is within a desirable walking distance of the village, which has modest service and facility provision. This includes a pre/primary school, church, pub, playground, village hall and bus stop. Future occupants would be likely to use private vehicles for day to day access to jobs and shops.
8. Like many rural villages there is a mix of paved areas and grass verges serving numerous properties. Those wishing to exercise, socialise, walk to school, or drivers and other road users would be likely to be aware of the existing arrangement of the shared use of space. In that context, it is acknowledged that older children are more vulnerable to collisions, though there is no submitted record of any incidents near the appeal site.
9. Whilst historic readings from 2010 and 2018 show traffic speeds above the posted limit, the appeal site is nevertheless well within the 30mph area. In that respect, the existing grass verge would not be an optimal choice for all road users, including those with reduced mobility or prams. However, parts of the verge are level with the road and could still be used for access or refuge. Furthermore, other existing properties on the opposite side of the road have driveway areas that offer additional pull in spaces for pedestrians or cyclists.
10. At my lunchtime visit, I walked along the roadside and grass verge where the footpath would be provided, as well as into the village. At that time, the volume and speed of passing vehicles was low and not noticeably excessive respectively. Consequently, the roadside walk did not feel unnerving. This experience was commensurate with a village environment. Moreover, I observed that there was a nearby traffic calming speed sign and a streetlight. These features would be likely to encourage speed reduction and improve visibility for all road users.
11. No recent speed counts have been provided. However, it is claimed that speeds have reduced since the 2018 survey as a result of 2 speed signs, a community

monitoring group and reporting to the police. It is acknowledged that my observations only represent a snapshot in time, recognising there may be busier times of the day. Notwithstanding this and having paid regard to the observations of the Council's highway officer, for the above reasons, I find it likely that vehicle speeds have reduced since 2018.

12. Furthermore, the fact that the proposal would introduce a single dwelling within a short walk or cycle from the village centre with its public transport links, means that any additional conflict between pedestrians, cyclists and vehicles would be likely to be negligible. As such, access to the site would be safe and suitable and there would be no unacceptable impact on highway safety as set out in the National Planning Policy Framework (the Framework) and Policy ST10 of the LP. Therefore, in respect of highway safety, the condition would not go to the heart of the permission, and it would not be necessary.
13. It is said that a length of about 160m or more of footpath would be required by the condition. Even though no detailed viability assessment is submitted, the Planning Practice Guidance (PPG) says that conditions that place unjustifiable financial burdens on an applicant will fail the test of reasonableness. This would apply even if the appellant has agreed to the condition, which is the case here. The appellant claims that the footpath would cost about £100k, and there is no substantive evidence to the contrary. Given the very small scale of the development, this sum of money would be likely to have significant financial implications on the overall deliverability of the scheme. Consequently, it would not represent a proportionate or practical new connection as supported within Policy DM05 of the LP.
14. Furthermore, the condition would require works on land that is not in the control of the appellant. The PPG says that this will often fail the tests of reasonableness. It adds that such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission. Based on the evidence, there is no prospect that the footpath would be delivered within such a timeframe. For the above reasons, the footpath would be a disproportionate and unnecessarily onerous requirement of the permission.
15. The Council's highway officer refers to part 1 of Policy DM05. However, this is primarily concerned with ensuring a safe vehicular access is provided that considers the needs of all highway users. It is understood that this has already been demonstrated with the approval of the reserved matters application. Accordingly, there is little evidence of conflict with this part of the policy.
16. Therefore, I conclude that condition 7 is not reasonable or necessary having regard to highway safety and viability. As such, there would be no conflict with policies ST01, ST07, ST10 or DM05 of the LP, section 9 of the Framework, the NDG or the Manual for Streets 2.

Other Matters

17. My attention has been drawn to an appeal decision at Stibb Cross. That site was however next to a trunk road where up to 10 new dwellings were proposed. The scale and nature of that proposal is consequently materially different and not comparable with this appeal.

Conditions

18. By allowing this appeal a new planning permission is created. The PPG advises that, for clarity, decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect, unless they have already been discharged.
19. As the reserved matters application has already been granted, it is unnecessary for me to attach a condition requiring approval of these details. I have imposed an amended commencement of development condition to reflect the approved reserved matters application. It is necessary to require compliance with the submitted plan.
20. In accordance with the previous planning permission, a condition restricting the hours of work during development is reasonable in the interests of the living conditions of nearby residents. Additionally, conditions securing compliance with the ecological appraisal and the provision of a bat box and sparrow terrace are necessary in the interests of biodiversity.
21. I have not imposed the previous drainage condition as details were required prior to or accompanying the reserved matters application. As this has already been approved, there is little evidence that this condition is still necessary. I have imposed a condition in relation to unexpected contamination.

Conclusion

22. For the reasons set out above, the appeal is allowed.

J Hills

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the reserved matters application ref 1/0386/2023/REM.
2. The development hereby permitted shall be carried out in accordance with the following approved plan: Location Plan received 28.09.2021.
3. The development hereby permitted shall only be carried out, (including the delivery of construction materials), during Monday to Friday between the hours of 07:00 to 19:00 and Saturday between the hours of 08:00 to 13:00 with no works, (or the delivery of construction materials) being carried out on Sundays and Bank Holidays.
4. The development hereby permitted shall be carried out in accordance with the biodiversity mitigation measures set out at section 5.2 of the Preliminary Ecological Appraisal Report prepared by Orbis Ecology dated 21 September 2021.
5. Prior to the first occupation of the dwellings hereby permitted, a bat box and sparrow terrace shall be installed as indicated within the Preliminary Ecological Appraisal Report prepared by Orbis Ecology dated 21 September 2021 and shall be retained as such thereafter.
6. Unless otherwise agreed by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until conditions a) to d) have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing until condition d) has been complied with in relation to that contamination.

a) Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination.
- (ii) an assessment of the potential risks to: human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the

Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. Approval by the local planning authority of the report submitted at this stage will confirm whether there is a need to undertake remediation measures under conditions b), (c) and (e) below.

b) Submission of Remediation Scheme.

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

c) Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.

d) Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of condition a), and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of condition b), which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with condition c).

e) Long Term Monitoring and Maintenance

Where an approved remediation scheme includes a requirement for a monitoring and maintenance scheme to ensure the long-term effectiveness of the proposed remediation over time, a report setting out monitoring and maintenance requirements must be submitted in writing for the prior approval of the local planning authority. Following completion of the measures identified in that scheme and when the remediation objectives have been achieved, reports that demonstrate the effectiveness of the monitoring and maintenance carried out must be produced and submitted to the local planning authority.

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.