



Appeal Decision

Site visit made on 8 May 2024

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th June 2024

Appeal Ref: APP/K1128/W/23/3320867

Sea Thrift, Inner Hope to Outer Hope, Hope Cove, Devon TQ7 3HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Jason Privett against the decision of South Hams District Council.
 - The application Ref is 3910/22/ful.
 - The development proposed is described as the demolition of unrestricted Class C1 self-catering holiday let and replacement with Class C3 dwelling.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of unrestricted Class C1 self-catering holiday let and replacement with Class C3 dwelling at Sea Thrift, Inner Hope to Outer Hope, Hope Cove, Devon TQ7 3HH in accordance with the terms of the application, Ref 3910/22/ful, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Mr Jason Privett against South Hams Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The planning application was submitted by Mr Jason Privett and Mrs Storm Nuttall. The appeal has been submitted in the name of Mr Jason Privett and proceeds on that basis.
4. Amended plans were submitted during the application process but permission was not refused based on the revised proposals. The Procedural Guide: Planning appeals – England is clear that the appeal process should not be used to evolve a scheme, and it is important that what is considered at appeal is essentially what was considered by the Council and interested parties at the application stage. Given that interested parties have not had the opportunity to comment on the changes, it would not be appropriate to consider the revised proposals. Accordingly, I have determined the appeal based on the drawings on which the Council made its decision.
5. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. This has not raised any new matters which are determinative to the outcome of this appeal.
6. On 22 November 2023, all areas in England and Wales designated as an Area of Outstanding Natural Beauty (AONB) were retitled National Landscapes.

There has been no change to the legal designation and policy status of these areas. As such, references in my decision will be to the National Landscape. For the avoidance of doubt this will apply to the South Devon AONB.

Main Issues

7. The main issues are:

- the effect of the proposed development on the local economy, with specific regard to the loss of tourist accommodation;
- whether the proposed dwelling would meet an identified housing need having regard to the development plan; and
- the effect of the proposed development on the character and appearance of the area and whether the development would conserve the landscape and scenic beauty of the South Devon National Landscape.

Reasons

Effect on the local economy

8. The appeal site comprises a detached 3 storey building which is in a dilapidated state of repair. The proposal would see the demolition of the existing building and its replacement with a detached 2 storey 8 bedroom dwelling. The appeal submissions indicate that the building was last used as a self-catering holiday let. However, despite the intervening use of the building, the appellant accepts that the consented use of the site is a hotel. Therefore, in the absence of any substantive evidence that intervening uses have resulted in a material change of use that would have become lawful, I consider the use of the building to be a hotel, albeit it has been vacant for some time.
9. Policy DEV15 of the Plymouth and South West Devon Joint Local Plan 2014-2034 (JLP) seeks to support the local economy and sets out, among other things, that the loss of tourist or leisure development will only be permitted where there is no proven demand for the facility.
10. Policy SH EC 01 of the South Huish Neighbourhood Development Plan 2019-2034 (SHNDP) sets out that the change of use or redevelopment of a hotel to non-hotel use will only be permitted provided that specific criteria are met, including that c) demand for the hotel accommodation no longer exists. Whilst parts d) and e) suggest the types of development the conversion or redevelopment may include; this is not a closed list and would not preclude other forms of development or uses of the site in policy terms.
11. Policy SH EC 01 of the SHNDP also stipulates that where the loss of a hotel or tourism related site is justified as no longer viable, the applicant must demonstrate that the unit has been actively marketed and offered at a reasonable sale price, for a minimum period of 2 years.
12. The demonstration of a lack of demand for the hotel accommodation is clearly a policy requirement. Nevertheless, while I note the Council's concern that the proposal would result in the loss of a hotel site that could otherwise contribute to the local economy through the provision of employment opportunities and tourism related revenue, I understand that the hotel has not been used as such for a considerable length of time and has in fact been empty for over 6 years. As such, it has not been providing a facility that would otherwise be lost and

has not made any tangible contribution to the local economy in terms of tourism and related employment.

13. Therefore, the proposal to redevelop the site would not result in the loss of the hotel accommodation or have an adverse impact on local employment opportunities. Accordingly, given the current situation, the proposal would not conflict with the aims of the SHNDP local economy - business, and tourism policies; the purpose of which paragraph 6.2.1 of the SHNDP indicates is to prevent loss of employment uses, especially tourism related.
14. Moreover, there is no substantial evidence before me to suggest that there is an unmet demand for hotel accommodation generally in the locality, which the hotel could provide for. Rather it is put to me by the appellant, as well as interested parties, that there is an overprovision of tourist facilities in the area, so that the loss of the hotel would not have a significant, if any, effect on the overall levels of tourism.
15. In that regard my attention is drawn to a planning permission granted by the Council nearby for the change of use from hotel/guesthouse with owners' accommodation to 5no. holiday lets and owners' accommodation at Sand Pebbles Hotel¹ whereby the Council considered that hotels were well provided for in the settlement and there was a lack of demand for this type of accommodation.
16. While the appellant's submissions set out that the property has been marketed unsuccessfully for a period of 12 months, the Council express concern that in the absence of a meaningful marketing exercise, as required by SH EC 01 of the SHNDP, the loss of the hotel facility cannot be justified. However, given the condition of the building I am satisfied that it would be unlikely that any further marketing of the site would be successful in terms of securing the future use of the site as a hotel.
17. Reference has been made to planning permission granted by the Council for the demolition of the hotel and construction of a new hotel² on the site in 2004, which it asserts demonstrates that there is potential for the redevelopment of the site for a larger hotel. A considerable period of time has lapsed since this permission was granted, and the development did not occur. It is not clear whether such a proposal, if permitted again, would actually be built now.
18. Therefore, while the proposal would conflict with Policy DEV15 of the JLP and Policy SH EC 01 of the SHNDP in terms of the need to demonstrate a lack of demand for the hotel, for the reasons set out above the proposed development would not have an adverse effect on the local economy, with specific regard to the loss of employment opportunities, and would therefore not give rise to any identified planning harm.

Housing Need

19. Policy DEV8 of the JLP seeks to deliver a wide choice of homes, to increase opportunities for home ownership, meet needs for social and rented housing, and create sustainable, inclusive and mixed communities. It highlights that this will comprise a mix of housing sizes, types and tenure to meet the needs of the area, to broaden choice and meet specialist needs for existing and future

¹ LPA Ref. 3294/20/FUL

² LPA Ref. 46/0769/04/F

residents through the provision of, among other types, housing suitable for households with specific need. The appellant's submissions indicate a need for the accommodation of the size proposed for multi-generational accommodation, which includes children and elderly parents in need of care.

20. The Council's concerns relate to the imbalance of housing stock within the parish, with regards to the size of housing units, as well as the need for affordable homes. It is suggested that, given the overprovision of larger detached properties, there is a need for smaller units to redress this, particularly for those household groups with an identified need such as younger people, working families and older people.
21. While the proposal would not meet these specific requirements, either in terms of size or affordability, Policy DEV8 does not appear to be a list of requirements that need to be met, but rather supports the provision of a broad range of housing types. Consequently, it does not preclude the provision of other types of housing, and as such the proposal would not conflict with Policy DEV8. Moreover, the South Huish Housing Needs Report dated, August 2023, which postdates the JLP, found a need for larger housing, comprising of 5 or more bedrooms, that would benefit respondents in housing need.

Character and appearance

22. The appeal site occupies an elevated position on the edge of the built-up area, with adjoining agricultural land to the rear. This part of the settlement comprises mainly residential properties of a broad range of sizes, ages, architectural styles, including bespoke modern designs, which sit on the rising land around the bay of Hope Cove. The proposed dwelling is of a flat roof contemporary design, to be constructed using stone, copper, timber cladding and glazing. Set across 2 floors, it would replace the existing 3 storey hotel which is currently in a poor state of repair. The proposed dwelling would be greater in footprint than the existing building but significantly lower in height and would be set below the ground level of the rising land to the rear of the site.
23. Despite the scale of the proposed dwelling, its low profile and position set into the hillside, together with the provision of a green roof, is such that it would not appear as an unduly prominent or discordant feature in the views towards the site in which it would be visible. Moreover, given the lack of consistency in the design and appearance of the surrounding dwellings in the immediate area, which includes properties that vary in scale and external materials, the modern design of the dwelling, which would reflect the time in which it was constructed, would not harm the character and appearance of the site environs.
24. The site lies within the South Devon National Landscape (the NL). Paragraph 182 of the Framework explains that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and AONBs which have the highest status of protection in relation to these issues.
25. Due to the ground levels and overall height of the dwelling, views of the scheme from the surrounding countryside would be somewhat limited. From where it would be apparent, most notably within the cove itself, it would sit within the varied built form of the nearby residential properties. As the dwelling would be viewed in this context and would replace an existing building

considerably greater in height and prominence, there would be no harm to the visual qualities and essential characteristics of the NL in terms of its landscape and scenic beauty.

26. Notwithstanding the modern design of the dwelling, the positioning of natural stone walls adjacent to the bedroom and kitchen windows in the side elevation of the building and the overhang above the lower ground opening to the SW elevation serving the dining area, would serve to minimise glare and levels of light emitted from these glazed areas. Furthermore, the extent and arrangement of the glazing and associated light spillage would be unlikely to be materially different to that of the existing building, with its array of large openings, at a much higher level, and including rooflights, which in combination would generate a considerable amount of light should the building be brought back into use.
27. In addition, given the siting and orientation of the dwelling, which reflects the nearby properties which also include main windows facing towards the cove, it would not lead to a level of light pollution that would appear as particularly intrusive or harm the intrinsically dark skies in the wider area. While outside lighting could be controlled through the imposition of a suitable planning condition, in the absence of any tangible harm, a condition to require light reducing film to be used on windows or to restrict further openings would not be necessary.
28. For the foregoing reasons, I conclude the proposed development would not harm the character and appearance of the area and would conserve the landscape and scenic beauty of the NL. In that regard it would accord with Policies DEV20, DEV23 and DEV24 of the JLP that seek good standards of design, and development that contributes positively to both townscape and landscape, and conserves and enhances character and scenic and visual quality, and protect the areas unspoilt character, and Policy DEV25 of the JLP which requires great weight to be given to conserving landscape and scenic beauty in protected landscapes. It would also comply with the aims of Policies SH Env2, SH HBE3, SH Env5 and SH Env8 of the SHNDP which require development to maintain the intrinsic character of the landscape, demonstrate high quality design, safeguard locally important views and not detract from the unlit environment of the Parish, and the aims of the Framework with regards to achieving well-designed and beautiful places and the conservation of NLs.

Other Matters

29. Concern has been expressed regarding the future subdivision of the property and/or its use as holiday accommodation. While I note the appellants willingness to enter into a legal agreement to prevent the use of the dwelling as a second home, a planning condition could secure the occupation of the dwelling as a principal residence and prevent its use either as a second home or holiday accommodation. Should either the appellant or future occupiers seek to subdivide the accommodation in a way that would require planning permission, the Council would be required to assess such a scheme against relevant policies at the time.
30. There is nothing before me to suggest that the property could not be provided with an adequate electricity supply to support the provision of electric vehicle charging points and air source heat pumps.

Appropriate Assessment

31. The proposal has the potential to increase pollution during the construction phase, through waterborne pollutants which may enter controlled waters. There is, therefore, potential that the proposal, in combination with other development, could result in adverse effects on the integrity of the Plymouth Sound and Estuaries Special Area of Conservation (SAC).
32. The Council advises that mitigation in the form of environmental protection measures throughout the construction phase, to include the control of dust and contaminated run-off, can avoid such adverse effects. This could be secured through a planning condition to require the submission and approval of a Construction and Environmental Management Plan, prior to the commencement of the development, to be adhered to throughout the construction of the development.
33. Following appropriate assessment under the Conservation of Habitats and Species Regulations 2017, I am, therefore, satisfied that adverse effects on the integrity of the SAC will be avoided.

Conditions

34. The conditions set out in the accompanying schedule are based on those suggested by the Council in their appeal statement should the appeal be allowed. Where I agree the conditions are necessary, I have amended the wording, in the interests of precision and clarity, and to comply with advice in the Planning Practice Guidance (PPG). In addition to the standard condition controlling the timescale within which the development must commence, a condition is required to specify the relevant plans, in the interests of certainty.
35. A condition is necessary to restrict the occupancy of the dwelling as a principal residence only and not as a second home or holiday letting accommodation, to ensure the sustainability of the parish is not undermined by the number of properties that are not occupied on a permanent basis.
36. To minimise impacts on and provide net gains for biodiversity, including roosting bats which may utilise the building, in accordance with advice in the Framework, conditions are necessary to secure details of the recommended mitigation and enhancement measures set out in the submitted Ecological Impact Assessment³, as well as the submission of a Construction and Environmental Management Plan, for the reasons set out above.
37. A condition to agree details of any external lighting is necessary to minimise light spillage in the interests of the character and appearance of the area and disturbance to protected species, including bats.
38. A condition to require the demolition of the existing building and construction of the proposed development in accordance with the submitted 'Dev32 carbon reduction checklist for minor applications' is required in order to ensure the proposal delivers low carbon development, in accordance with Policy DEV32 of the JLP. In the interests of the character and appearance of the area, a condition to require details of landscaping of the site is necessary.

³ GE Consulting dated December 2022 (Ref: 1313-EcIA-SC)

39. It is necessary to impose a condition to secure details of a surface water drainage strategy to ensure the development does not exacerbate the risk of flooding elsewhere. The suggested condition includes reference to specific guidance; however, I have omitted these so that the parties can agree the precise requirements based upon relevant guidance and site circumstances at the time that the details are agreed. The appeal submissions indicate that foul drainage will connect to the mains sewer, in the absence of any reason as to why this would not be feasible, a condition requiring details of the foul drainage is therefore not necessary.
40. The Council has suggested a condition requiring the submission of details of the facing materials, and roofing materials, in the interests of visual amenity. However, it is clear from the plans, which include a 'Sample Material Sheet' which materials are to be used, as such a condition requiring further details is not necessary. A condition relating to the assessment of unexpected contamination is necessary to ensure it is dealt with appropriately, should it be encountered during demolition or construction works.
41. A condition has been put to me which would restrict permitted development rights for the proposed dwelling under various parts of Schedule 2, Part 1, Class A, and Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The PPG states that area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
42. Whilst there are specific exceptions for some classes where permitted development rights do not apply, the GPDO does not withdraw all permitted development rights for land within a NL, but rather requires planning permission to be sought for specific types of development. It can therefore be surmised that development within a NL for which permitted development rights remain intact is regarded by the Government as being no different in terms of the application of permitted development rights to land outside of it. Consequently, I have not been presented with compelling reasons why permitted development rights should be withdrawn in this case. Moreover, in relation to development under Class AA of the GPDO, this would not apply to dwellinghouses constructed after 28th October 2018 in any case.
43. It has not been demonstrated that the use of the flat roof areas, which are accessible by future occupiers, would be harmful, as such, a condition to restrict their use, is not necessary.

Conclusion

44. I have found that the proposal would not conflict with Policy DEV8 of the JLP in respect of housing need and would not harm the character and appearance of the area, and as such would accord with relevant policies in that regard. Moreover, I have found that there are material considerations that outweigh the minor conflict with those policies that seek to protect tourist development, including hotel accommodation. Such justifies a decision otherwise than in complete accordance with the development plan. For the foregoing reasons, the appeal is allowed.

E Worley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out using the materials indicated on the planning application form and in accordance with the following approved plans:

S01 – Location Plan
02 Comparative Block Plan
03 Comparative long Sections
04 Lower Ground Floor Plan
05 Higher Ground Floor Plan
06 Roof Plan
07 SW Elevation
09 NW Elevation
10 Sample Material Sheet
11 View from the West
12 View into kitchen/dining/living areas from southern walled garden
13 View into kitchen and landscape beyond entrance hall
14 View into courtyard garden from higher ground floor bedroom
15 Landscape Plan
16 Axonometric view from south west
- 3) The dwelling hereby approved shall not be occupied otherwise than by
 - i. person(s) as his or her only or principal home;
 - ii. persons living as part of a single household with such a person or persons;
 - iii. persons who were living as part of a single household with such a person or persons who have since died; or
 - iv. non paying guests of any of the persons listed in (i) – (iii).

For the avoidance of doubt the dwelling shall not be occupied as a second home or holiday letting accommodation. The occupant(s) shall supply to the Local Planning Authority (within 14 days of the Local Planning Authority's written request to do so) such information as the Authority may reasonably require in order to determine whether this condition is being complied with.

- 4) The development hereby approved shall be carried out in strict accordance with the recommendations, mitigation and enhancement measures set out in the Ecological Impact Assessment, prepared by GE Consulting dated December 2022 (Ref: 1313-EcIA-SC). The biodiversity net gain features set out therein shall be fully implemented prior to the first occupation of the dwelling and shall be retained thereafter in perpetuity.
- 5) Prior to the commencement of the development hereby approved, a Construction and Environmental Management Plan (CEMP), to include details of environmental protection measures to be implemented throughout the demolition and construction phases, shall be submitted to, and approved in writing by the Local Planning Authority. For the avoidance of doubt this shall include measures provided within the Ecological Impact Assessment by GE Consulting dated December 2022 (Ref: 1313-EcIA-SC). The measures in the approved CEMP shall be implemented in full throughout the demolition and construction periods.
- 6) Prior to the installation of external lighting on the site, details of the design, location, and the intensity of illumination of the lighting shall be submitted to and approved in writing by the Local Planning Authority. Only the approved lighting shall be installed and maintained in accordance with the approved details and no additional external lighting shall be installed.
- 7) Prior to the commencement of the development hereby permitted (including preparatory earthworks), a scheme of soft landscaping and tree planting shall be submitted to and approved by the Local Planning Authority. The scheme shall include:
 - The location, number, species, density, form and size of proposed tree, hedge and shrub planting and grassed areas
 - Details of proposed mitigation to replace the trees which are shown to be removed on the Arboricultural Impact Assessment & Tree Protection Plan, Dwg Ref: 05787 AIA.TPP 15.2.22, in accordance with Table 28 of the Plymouth and South West Devon Joint Local Plan 2014-2034 Supplementary Planning Document 2020
 - The method of planting, establishment and protection of tree, hedge and shrub planting and grassed areas
 - Maintenance schedules for the establishment of new planting and its ongoing management
 - A timetable for implementation of all hard and soft landscape treatment

The development shall be carried out in accordance with the approved scheme of soft landscaping and tree planting, including the timetable for implementation. Any trees or plants which, within a period of 5 years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.

- 8) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with. Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority.
- 9) Prior to the commencement of the development, details for the disposal of surface water, including percolation test results and supporting calculations shall be submitted to and approved in writing by the Local Planning Authority. Details of maintenance and management responsibility for the drainage system must be submitted to and approved in writing by the local planning authority prior to commencement on site. The approved scheme shall be fully implemented prior to the occupation of the development and permanently retained thereafter.
- 10) The demolition of the existing building and construction of the development hereby approved shall be carried out in strict accordance with the details contained in the 'DEV32 carbon reduction checklist for minor applications' submitted as part of the application. The measures contained therein to limit carbon emissions shall be implemented in full prior to first occupation of the dwelling and shall remain operational, throughout the lifetime of the development.

******* end of conditions *******