



Appeal Decision

Site visit made on 24 June 2024

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 July 2024

Appeal Ref: APP/K1128/W/23/3335242

Former Guttery Reservoir, Lower Broad Park TQ6 9EY

- 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 Peter Bromley against the decision of South Hams District Council.
 - The application Ref is 0457/23/FUL.
 - The development proposed is erection of 7 new dwellings and associated access road.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 7 new dwellings and associated access road at Former Guttery Reservoir, Lower Broad Park TQ6 9EY in accordance with the terms of the application, Ref 0457/23/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. On 22 November 2023 all designated Areas of Outstanding Natural Beauty (AONB) in England and Wales became "National Landscapes". The legal designation and policy status of AONBs are unchanged, but I have replaced reference to the South Hams AONB with the South Hams National Landscape (SHNL) in my decision to reflect this change.
3. The appeal site is subject to previous planning permissions in relation to the construction of 3 dwellings¹ and a recent permission²(the recent permission) granted in March 2024 in relation to the erection of 6 new dwellings and associated road. Given the date of approval of the recent permission and its nature being similar to that of the appeal proposal, albeit for 6 dwellings, there is a greater than theoretical possibility that this permission would be implemented. I therefore ascribe the recent permission as a fallback position significant weight.

Main Issues

4. The main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on the living conditions of neighbouring occupiers with particular regard to loss of privacy and noise, and the living conditions of future occupiers, with particular regard to private outdoor space associated with plots 1, 2, 5 and 6; and

¹ 2167/16/FUL

² 0238/24/FUL

- Whether the proposal makes adequate provision for education, open space, play facilities, playing pitch/sports facilities and affordable housing, having regard to development viability.

Reasons

Character and appearance

5. The appeal site is a former reservoir on steeply sloping topography on the edge of Dartmouth and within the SHNL and designated undeveloped coast. Due to the hillside location, the appeal site is visible from both nearby and distant viewpoints. However, given its location adjacent built form and previously developed character, it is seen to be more visually associated with the surrounding built form of the settlement as opposed to the open fields and landscape beyond the site. Therefore, the appeal site does not positively contribute to the wider landscape or scenic beauty of the SHNL.
6. Although built form in the area is of predominantly traditional appearance including detached and terrace dwellings, there are notable examples of large expanses of glazing. Furthermore, notable areas of hardstanding fronting Victoria Road also contribute to the residential character of the area.
7. The overall appearance of the proposal is similar to that of the recent permission, although along with a slightly amended layout which provides some additional landscaping, the appeal proposal features a terrace of three dwellings as opposed to a pair of semi-detached dwellings at the entrance to the site.
8. The proposed terrace would continue the general terracing form of dwellings along Victoria Road, and are of traditional appearance, with ridgelines stepping up along with the topography of the site. Whilst of more contemporary appearance due to large areas of glazing, the proposed two pairs of semi-detached dwellings would be seen in the context of nearby dwellings featuring similar glazing. From more distant views, despite appearing as three stories from the front elevation, they would be well related to the immediately surrounding built form and would retain the clear visual break of development created by fields between the appeal site and development on the skyline at Yorke Road above.
9. Furthermore, the siting of the two pairs of semi-detached dwellings, due to their spatial relationship with Victoria Road, would provide a clear visual stop of residential development at this part of Dartmouth, preventing the appearance of development spreading into undeveloped areas of the SHNL.
10. Although the proposal includes larger areas of hardstanding than the recent permission, the additional hardstanding would not significantly alter the overall appearance when viewed from the surrounding area. Moreover, even if domestic paraphernalia was present and vehicles parked and bin stores were increased in size, the proposal would not appear uncharacteristic of this location. Additionally, details of landscaping which would assist in breaking up the areas of hardstanding can be secured by condition.
11. Overall, I find that the proposal would appropriately integrate into its environment, appearing as a well-designed development which, given my findings on the contribution of the site to the designated landscape above, would conserve the scenic beauty of the SHNL.

12. Consequently, I conclude that the proposal would not adversely affect the character and appearance of the area. As such, it would accord with policies SPT1, DEV 10, Dev 20, DEV 23, DEV 24 and DEV 25 of the Plymouth and South West Devon Joint Local Plan 2019 (LP). These policies, amongst other things, seek housing development to be of high quality having proper regard to the pattern of local development and respecting sense of place, as well as conserve and enhance the landscape character and scenic beauty of the SHNL and undeveloped coast. There would also be no conflict with the overarching aims of the Framework which requires, amongst other things well designed places which conserve the natural environment and do not compromise the special qualities and characteristics of the SHNL.

Living conditions

13. The neighbouring property Birchover is located adjacent to the proposed terrace of three dwellings and features numerous windows on the side elevation overlooking the appeal site. However, the window-to-window separation distance between the proposed terrace of dwellings and Birchover is similar to that of approved dwellings with the recent permission and is not uncommon within a residential area.
14. Furthermore, whilst the proposal would result in an additional dwelling compared to the recent permission, this would be stepped back further from Birchover. Given this spatial relationship with Birchover and separation distances with other surrounding neighbouring properties, the proposal would not result in significant overlooking.
15. The proposal would inevitably result in additional movements and noise associated with day-to-day residential activities. Notwithstanding, such activity is expected within a residential area, and proposed parking areas are sufficiently distanced from Birchover, with an intervening access drive to prevent any significant harmful impact.
16. Moreover, whilst resulting in an additional dwelling, given residential activity that would be associated by future occupiers of the recent permission, a single additional dwelling is unlikely to significantly increase disturbance given the surrounding urban context.
17. The Plymouth and South West Devon Supplementary Planning Document (2020) (SPD) provides guidance on the provision for outdoor amenity space which is stated to include all front, rear and side useable areas. However, the SPD also outlines that exceptions to stated standards can be negotiated on a case-by-case basis.
18. The appellant has identified the sizes of outside areas for each plot, which includes some path areas and areas adjacent parking spaces. Notwithstanding, even if the useable garden areas associated with plots 1, 2, 5 and 6 were below space standards outlined within the SPD, the rear garden spaces would still provide sufficient space for future occupiers to enjoy that, given the surrounding countryside, wouldn't feel overly enclosed or constrained.
19. To conclude, the proposal would not significantly harm the living conditions of neighbouring occupiers with particular regard to loss of privacy and noise, and the living conditions of future occupiers, with particular regard to private outdoor space. The proposal would therefore accord with LP policies DEV 1 and

DEV 10. These policies seek, amongst other things, to ensure living conditions are safeguarded and provide sufficient external garden space. In this respect, there would also be no conflict with guidance within the SPD.

Infrastructure and affordable housing

20. The appeal submission was accompanied by a revised viability statement (dated 12 December 2023) (VS). In light of the VS, the Council have accepted that it is not justified to seek planning obligations in relation to affordable housing, education or open space/play/sports provision and does not wish to pursue their 4th reason for refusal.
21. Limited evidence is before me as to if the obligations specified in the Council's reason for refusal would be necessary to make the development acceptable in planning terms, and directly, fairly and reasonably related in scale and kind to the development. Nevertheless, even if I were to find that the requested contributions were well founded, the VS has demonstrated that the contributions would make the proposal economically unviable, and I find no reason to reach alternative conclusions.
22. Consequently, the proposal makes adequate provision for education, open space, play facilities, playing pitch/sports facilities and affordable housing, having regard to development viability. The proposal therefore accords with LP Policy DEL 1 which amongst other things, accepts relaxation of planning obligations on the basis of robust viability evidence.

Other Matters

23. A number of concerns have been brought to my attention from interested parties. Even if the site address provided on the application form differs from that on previous planning applications, I have no reason to believe this is inaccurate, or has prevented the Council from undertaking the required publicity and public consultation.
24. The Flood Risk Assessment and Drainage Strategy (21 December 2022) (DS) outlines that the flood risk criterion at the site is considered to be surface water / fluvial, related to its location close to the top of a steep catchment which feeds the culverted Victoria Stream. The DS provides preliminary design measures to make the development safe throughout its lifetime, without increasing flood risk elsewhere and, where possible, to reduce flood risk overall.
25. The Environment Agency have raised no objections, although suggest a condition relating to swale and site levels illustrated within a preliminary Surface Water Drainage Strategy. Nevertheless, planning conditions can be imposed requiring full final details of the drainage scheme, including swale and site levels and to ensure its maintenance and retention. Given the substantive evidence before me, I see no reason why the proposal could not provide adequate drainage provision.
26. Albeit a snapshot in time, I observed a number of vehicles parked along Victoria Road at my site visit. Given the proposal incorporates two off-road vehicular parking spaces per dwelling, there would be no significant increase in on-road parking. Furthermore, subject to a planning condition, the proposal would provide a safe access and given the numbers of movements associated

with the proposal would not result in unacceptable highway safety concerns, and I note the Highway Authority have reached similar conclusions.

27. Although I note an interested party's representation that hedgehogs may live on or near the site, the Ecological Impact Assessment (October 2022) (EIA) concluded that the appeal site is of relatively low ecological interest, with no/minimal adverse impacts predicted on important ecological features. I have no substantive evidence before me to indicate that the EIA is inaccurate, and planning conditions can be imposed to ensure that ecological recommendations, mitigation and enhancement measures are fully implemented and retained thereafter.

Conditions

28. The Council has provided a list of suggested conditions in the event of the appeal being allowed, which I have assessed with regard to the advice provided in the Planning Practice Guidance. A condition regarding the approved plans is required to provide certainty.
29. A condition is necessary to ensure that the proposed dwellings are occupied as a principal residency in order to safeguard the sustainability of Dartmouth. Conditions are also necessary to ensure adequate details are submitted in relation to landscaping and materials, and given the quantum of built form proposed, removal of certain permitted development rights in the interests of the character and appearance of the area.
30. Further conditions are necessary to ensure appropriate boundary treatments and a lighting strategy in the interests of neighbouring and future occupiers living conditions as well as protecting the character of the area. Conditions are required in relation to surface water and foul drainage as it is necessary for drainage to be adequately managed to avoid flooding and in the interests of water quality. A condition to ensure adherence to the EIA is necessary in the interests of biodiversity, and a condition requiring submission of details of renewable energy systems are necessary to ensure the proposal contributes to carbon reduction targets.
31. A condition is necessary to ensure access and circulation roads are provided in the interests of highway safety. Notwithstanding the appellant's comments in relation to potential use of parking spaces and a suggested 'tailpiece' condition, given restricted on-road parking, a condition is necessary to ensure off-road parking provision is secured and retained. Such a condition would not remove the appellants statutory route to vary conditions.
32. Given the previous use of the land, a condition is required in relation to unexpected contamination in the interests of public safety, whilst a condition is also necessary to ensure appropriate refuse storage facilities are laid out and provided to prevent conflict with highway users and protect occupiers living conditions.
33. Finally, given the residential character of the area, a further condition is necessary in relation to a Construction Traffic Management Plan to ensure continued safe operation of the surrounding highway network during the construction period and to protect neighbouring occupiers living conditions.

Conclusion

34. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

S Harrington

INSPECTOR

Schedule

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 drawing Nos: D056-22-Location Plan; D056-22-102A; D056-22-103B; D056-22-104B; D056-22-105A; D056-22-106A; D056-22-107A; D056-22-108B; D056-22-109A; D056-22-110A; D056-22-111A; D056-22-112; D056-22-113.
- 3) The dwellings 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;
 - (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) will 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) Notwithstanding condition 2 no development shall take place until details of both hard and soft landscape works shall have first been submitted to, and approved in writing by the Local Planning Authority. The Landscape Plan shall include details of:
 - (i) Existing features for retention and means of protection during the development;
 - (ii) Features to be removed with clear justification for the proposed removal;
 - (iii) The location, species, density and size of proposed tree, shrub and hedge planting;
 - (iv) The means of establishment, protection and maintenance of the trees, shrubs and hedges;
 - (v) Materials, heights, levels and details of hard landscaping;
 - (vi) Materials, heights and details of fencing and other boundary treatments;

All elements of the landscaping plan shall be implemented and maintained in accordance with the approved details. All work shall be completed before the end of the first available planting season following completion of the development hereby permitted.

Any trees or plants that, within five years after planting, are removed, die or become seriously damaged or defective shall be replaced with the same species, size and number as originally approved. The landscaping plan shall be strictly adhered to during the course of the development.

- 5) Prior to commencement of any part of the site the Local Planning Authority shall have received and approved a Construction Management Plan (CMP) including:
- i. the timetable of the works;
 - ii. daily hours of construction;
 - iii. any road closure;
 - iv. confirmation that the public footpath adjacent to the site will not be blocked or restricted from use by the construction works
 - v. hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 08:00 and 18.00 Mondays to Fridays inc.; 09.00 to 13.00 Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the Planning Authority in advance;
 - vi. the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;
 - vii. the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;
 - viii. areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;
 - ix. hours during which no construction traffic will be present at the site;
 - x. the means of enclosure of the site during construction works; and
 - xi. details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site obligations
 - xii. The proposed route of all construction traffic exceeding 7.5 tonnes.
 - xiii. Details of the amount and location of construction worker parking.
 - xiv. Photographic evidence of the condition of adjacent public highway prior to commencement of any work, and any damage incurred to the highway as a result of construction vehicles to be made good within 3 months of completion of build); The construction management plan must then be implemented and adhered to throughout the construction phase of the development as per the agreed details.

- 6) Prior to the commencement of development the proposed estate road, footways, footpaths, verges, junctions,, retaining walls, service routes, road maintenance/vehicle overhang margins, embankments, visibility splays, accesses, car parking and street furniture and their method of construction shall be first approved in writing by the Local Planning Authority and thereafter constructed and laid out in accordance with the approved details prior to the first occupation of the units hereby approved.

Such details shall include plans and sections indicating, as appropriate, the design, layout, levels, gradients, materials and method of construction.

- 7) Notwithstanding the submitted information, no development shall be commenced until full details of the most sustainable drainage option has been submitted to and approved in writing by the Local Planning Authority.

Thereafter, the drainage scheme shall be installed in strict accordance with the approved plans, maintained and retained in accordance with the agreed details for the life of the development. Design steps as below:

- i. Soakaway testing to DG 365 to confirm the use of soakaways or to support an alternative option. Three full tests must be carried out and the depth must be representative of the proposed soakaway. Test results and the infiltration rate to be included in the report.
 - ii. If infiltration is suitable then the soakaway should be designed for a 1:100 year return period plus an allowance for Climate change (currently 50%).
 - iii. Only once all of the above have been assessed and discounted will an offsite discharge be deemed acceptable. Attenuation should be designed for a 1:100 year return period plus an allowance for Climate change.
 - iv. The offsite discharge will need to match the Greenfield runoff rate. This must be calculated in accordance with CIRIA C753. The discharge must meet each of the critical return periods. Full details of the flow control device will be required.
 - v. If discharging surface water to the main sewer, then written permission from SWW will be required.
 - vi. The permeable parking should be designed in accordance with CIRIA C753. Full design details and sectional drawing showing the specification and make up. The permeable paving should be designed using flow barriers in the sloping areas as base of the attenuation layer needs to be flat and to ensure there will be no surface water seepage downslope.
 - vii. A scaled plan showing a full drainage scheme, including swale and site levels, design dimensions and invert/cover levels, within the private ownership. The soakaways should be sited 5m away from all buildings and highways to accord with Building Regulations and 2.5m from all other site boundaries for best practice.
- 8) The development hereby approved shall be carried out in accordance with the actions set out in the Ecology Report by GE Consulting dated October 2022 and any measures required under licence from Natural England. Prior to the commencement of use, the recommendations, mitigation,

compensation, net gain and enhancement measures shall be fully implemented and thereafter retained for the life of the development.

- 9) Prior to their installation, details of boundary fences and walls shall be first approved by the Local Planning Authority and thereafter installed in accordance with the approved details.
- 10) Prior to its installation details of foul drainage shall be first approved by the Local Planning Authority and thereafter laid out in accordance with the approved details and maintained for the lifetime of the development.
- 11) Prior to installation, a schedule of materials, colour and finishes, to be used in the construction of all external surfaces, including roofs, shall be submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be carried out only in accordance with the approved details.
- 12) 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.

- 13) The refuse storage facilities and collection point shall be laid out in accordance with the details provided in the approved plans prior to the first occupation of the dwellings, and retained as such thereafter.
- 14) Notwithstanding the details approved in condition 9 of this permission the parking areas and garages shall be used solely for vehicle parking and shall be retained for this purpose for the lifetime of this development.
- 15) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) Order, 2015 (and any Order revoking and re enacting this Order), no development of the types described in the following Classes of Schedule 2 shall be undertaken without the express consent in writing of the Local Planning Authority other than those expressly authorised by this permission:
 - i. Part 1, Class A (extensions and alterations)
 - ii. Part 1, Class AA (enlargement of a dwellinghouse by construction of additional storeys)
 - iii. Part 1, Classes B and C (roof addition or alteration)
 - iv. Part 1, Class D (porch)

- v. Part 1, Class E (a) swimming pools and buildings incidental to the enjoyment of the dwellinghouse and; (b) container used for domestic heating purposes/oil or liquid petroleum gas)
 - vi. Part 1, Class F (hardsurfaces)
 - vii. Part 1, Class G (chimney, flue or soil and vent pipe)
 - viii. Part 1, Class H (microwave antenna) and;
 - ix. Part 2, Class A (means of enclosure)
- 16) Prior to construction works above ground level, SAP10 calculations, details of renewable heating, renewable energy systems, battery storage and Electric Vehicle charging points shall be first approved by the Local Planning Authority and thereafter installed and maintained for the life of the development in accordance with the approved details prior to first occupation.
- 17) Prior to installation of any lighting (including security lighting), a Lighting Strategy shall be submitted to and agreed in writing by the Local Planning Authority. The strategy shall detail how impacts from lighting associated with the proposed works will be minimised in accordance with current best practice guidance (BCT/ILP, 2018), and shall include details of the position, type, luminance and cowl of all external lights to the building and surrounding site. All external lighting shall be installed in accordance with agreed specifications and locations set out in the strategy and no other lighting shall be operated on the site other than in accordance with the approved scheme.

End of Conditions