



Appeal Decision

Site visit made on 16 July 2024

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2024

Appeal Ref: APP/K1128/W/24/3341426

Slipway, Warfleet Creek Road, Dartmouth, Devon TQ6 9GH

- 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 Dr and Mrs Michael Petri against the decision of South Hams District Council.
 - The application Ref is 2380/23/FUL.
 - The development proposed is erection of a dwelling on part of garden to slipway.
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Decision

1. The appeal is dismissed.

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 Devon AONB with the South Devon National Landscape (SDNL) in my decision to reflect this change.
3. Within their appeal statement, the Council have referred to a recent appeal¹ decision (the previous appeal) at the appeal site. However, no details of the previous appeal scheme, or a full copy of that decision have been provided. Whilst noting the references to the previous appeal decision made by the Council within their statement, I have reached my own findings based on the circumstances of the present case.

Procedural Matters and Main Issues

4. It is clear from the Council's Officer Report that whilst not forming a reason for refusal, the Council have found less than substantial harm to a heritage asset. The effect of the proposal on the surrounding historical built environment has also been raised by interested parties during the planning application process and the appellant has had opportunity to respond to these matters within the appeal submission.
5. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.

¹ APP/K1128/W/23/3324034

6. Consequently, the main issues are:

- whether the site is a suitable location for the proposal, having particular regard to relevant development plan policies;
- the effect of the proposal on the character and appearance of the area;
- whether internal and outdoor living space would provide sufficient living conditions for future occupants;
- the effect of the proposal on the living conditions of neighbouring occupiers with particular regard to loss of privacy;
- the effect of the proposal on the local highway network with particular regard to highway safety;
- the effect of the proposal on surface water run off;
- the effect of the proposal on heritage assets; and
- the effect of the proposal on carbon emissions.

Reasons

Location

7. Policy DNP GE12 of the Dartmouth Neighbourhood Plan September 2022 (NP) defines the countryside as areas outside settlement boundaries. Whilst adjacent to nearby built form and therefore not isolated, the appeal site is outside of a settlement boundary.
8. Policy TTV1 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (LP) sets out the settlement hierarchy which focuses development on the main towns which provide a broad range of services. Beyond the towns and villages, development is only permitted in certain circumstances, including as provided for in LP Policies TTV26 and TTV27.
9. In areas such as the appeal site, NP Policy DNP H2 and LP Policy TTV27 are supportive of affordable housing proposals, subject to certain circumstances, whilst LP Policy TTV26 only supports proposals that respond to a proven agricultural, forestry and other occupational need that requires a countryside location. The appeal site is also located within the Undeveloped and Heritage Coast where LP Policy DEV24 supports proposals where, amongst other things, it can be demonstrated that the proposal requires a coastal location and cannot be reasonably located outside the Undeveloped Coast.
10. The proposal relates to an open market dwelling and there is no substantive evidence before me that it provides for any of the aforementioned circumstances. Consequently, there would inevitably be conflict with the settlement strategy.
11. Therefore, I conclude on this main issue that the site is not a suitable location for the proposal having regard to relevant development plan policies. The proposal would conflict with LP policies SPT1, SPT2, TTV1, TTV2, TTV26, TTV27 and DEV24 and NP policies DNP GE3, DNP GE12 and DNP H2. These policies seek, amongst other things to deliver sustainable development through a settlement hierarchy, whilst protecting the special characteristics of the countryside, Undeveloped and Heritage Coast, and Local Green Spaces (LGS).

Character and appearance

12. As well as being within the Undeveloped and Heritage Coast, the appeal site is also within the SDNL. I observed the appeal site to be visually prominent from surrounding public viewpoints and is seen as an open vegetated area. The site is visually distinct and separate from the main built-up area of the adjoining settlement. It therefore makes an important contribution to the tranquil and verdant waterside character of the area.
13. Notwithstanding the appellant's comments in respect of the appropriateness of the sites designation, it is nevertheless within the SDNL. The National Planning Policy Framework (the Framework) attaches great weight to conserving and enhancing landscape beauty in such areas. Furthermore, whilst also refuted by the appellant, the appeal site is located within the 'LGS10 Warfleet Creek, Lime Kilns, Quay and Slip' LGS as indicated within Map 8 of the NP. LGS's are green areas of particular importance to the community.
14. The proposal would be single storey with large areas of glazing under a shallow green shingle pitch roof and natural timber clad elevations. The modest scale and chalet like appearance of the building would not be reflective of nearby built form, which whilst featuring a mix of architectural design features, are of notably larger scale. Moreover, the proposed dwelling would be seen above roof tops of nearby built form and would be clearly seen as being divorced from the historic pattern of local development.
15. Notwithstanding any previous uses of the appeal site as a garden, the proposal would still be seen to harmfully extend built form up the hillside and incongruously encroach into the vegetated verdant and visually prominent hillside landscape which could not be mitigated by future landscaping. Subsequently, the proposal would fail to preserve the landscape and scenic beauty of the SDNL.
16. The site also features a protected tree which due to its prominent location and size positively contributes to the character of the area. The appellant's Arboricultural Impact Assessment and Method Statement and Tree Protection Plan indicates that the proposal would be outside of the root protection area (RPA) of this tree.
17. However, the RPA is plotted radially. Both the steep topography of the site, and the proximity to an adjacent highway cutting could lead to a biased rooting zone and I note the Council's Tree Officer has formed a similar conclusion. I therefore have insufficient evidence to conclude that the proposal would not result in the future loss of the protected tree, and resultant further harm to the character of the area.
18. Consequently, I conclude that the proposal would harmfully affect the character and appearance of the area. The proposal would conflict with LP policies DEV10, DEV20, DEV21, DEV23, DEV24, DEV25 and DEV28. There would also be conflict with NP policies DNP TE2, DNP TE3, DNP GE1, DNP GE3 and DNP GE10. In combination these policies seek, amongst other things, to promote good standards of design that contribute to the landscape character and preserve and enhance the SDNL. There would also be conflict with the South Devon AONB Management Plan 2019-2024 and the provisions of the Framework which attaches great weight to conserving and enhancing landscape beauty in AONBs.

19. NP Policy DNP TE1 supports the sub-division of existing plots subject to certain circumstances including where there is no loss to the character or environmental quality of the SDNL. However, the Council have confirmed within their appeal statement that in line with the previous appeal Inspectors decision, as the proposal is sited outside of the settlement boundary, this Policy is not relevant to the proposal. Given the evidence before me I see no reason to disagree.

Living space

20. The evidence indicates that the proposal would provide 70sqm of internal floor space, which is below the nationally described minimum space standards (NDSS) for a 3-bedroom dwelling. LP Policy DEV10 requires proposals to meet the NDSS in order to provide good quality accommodation to meet the needs of their occupants.
21. The Plymouth & South West Devon Joint Local Plan 2014-2034 Supplementary Planning Document 2020 (SPD), further outlines that compliance with the NDSS will be required in the majority of cases, although a relaxed standard may be allowed in exceptional circumstances, for example, for the conversion of a listed building or another building where bringing it back into use is considered a greater benefit. Where a relaxed standard is permitted, the SPD requires significant justification.
22. Even if there are other properties within Dartmouth and Kingswear featuring less floor space, as is put to me by the appellant, the proposal would nevertheless result in a dwelling significantly below the NDSS standards. Whilst acknowledging the internal layout, given the number of potential occupants associated with a 3-bedroom dwelling, the proposal would lead to a cramped form of permanent accommodation if fully occupied.
23. The SPD also provides guidance on the provision for outdoor amenity space which is stated to include all front, rear and side useable areas. The appeal site is a relatively large area, stated by the appellant to be almost half an acre. However, due to the challenging topography, large areas of garden would be steeply sloping, and aside from an area of lawn adjacent the dwelling, would not be easily useable by future occupants. Notwithstanding, the appeal site is directly adjacent to the waterside, associated footpaths and open space. Given this relationship with surrounding public open space, and in combination with the useable private garden area that is available, the proposal would provide sufficient outdoor space for future occupiers.
24. To conclude, whilst the proposal would provide adequate outdoor space, it would provide inadequate internal space to provide sufficient living conditions for future occupants. The proposal would therefore conflict with LP Policy DEV10. This policy seeks, amongst other things, to ensure living conditions are safeguarded and provide sufficient external garden space.

Living conditions of neighbouring occupiers

25. Although on a hillside position and featuring large expanses of glazing, the proposal would be sited some distance from neighbouring properties. Whilst there would inevitably be some views of neighbouring properties gardens and windows, intervening vegetation, spatial relationship and separation distances would prevent any significantly harmful overlooking.

26. Consequently, I conclude that the proposal would not harmfully effect the living conditions of existing neighbouring occupiers, with particular regard to privacy. In this respect, there would be no conflict with LP policies DEV1 and DEV2 which, amongst other things, seeks to protect living conditions and ensure new development provides satisfactory privacy for both new and existing residents.

Local highway network

27. Warfleet Creek Road terminates at a slipway, is narrow and lacks turning areas, particularly near the appeal site. The proposed plans indicate that a garage and parking spaces would be provided for the new dwelling, as well as a parking space and garage for Slipway Cottage. The proposed garage associated with Slipway Cottage is the subject of a separate planning permission that has been granted, although this permission does not go as far as permitting access and parking for a second dwelling at the site.
28. The proposal would result in an increase in vehicular movements attracted to the site. Given the constraints of Warfleet Creek Road, manoeuvring into the parking area would involve reversing and is challenging given the confines of the parking areas and limited visibility. Moreover, I observed that the highway adjacent the appeal site is utilised by pedestrians accessing the slipway and waterside footpath who may not be expecting to have to avoid reversing vehicles. Given the confined space and lack of visibility available there is a potential for increased conflict between highway users and I note the previous Inspector also came to similar conclusions in the previous appeal.
29. Whilst detailed plans of the parking area have not been provided, I observed the area to be reasonably level and of sufficient width to be able to provide side by side parking. I therefore see no reasons as to why parking could not be provided in accordance with the proposed plans. In this respect there would be no conflict with NP Policy DNP ST2.
30. Nevertheless, I conclude that the proposal would have a harmful effect on the local highway network with particular regard to highway safety. As such, the proposal would conflict with LP Policy DEV29. This policy, amongst other things, seeks to ensure proposals provide safe and satisfactory traffic movement and vehicular access to and within the site. There would also be conflict with the provisions of the Framework that seeks to achieve safe and suitable access for all users.

Surface water

31. The proposal seeks to discharge surface water to the public sewer and I am informed that this method of drainage has been agreed in principle with South West Water. However, although some details are shown within the site plan, a comprehensive drainage scheme is not before me.
32. Given the steep topography and level differences between the appeal site and public sewer, water run off could be significant, particularly during a storm event. Given the substantive evidence before me, it has not been adequately demonstrated that the proposal would not result in flooding elsewhere from surface water run off. Therefore, I consider this is a matter which should be resolved before any planning permission is granted rather than leaving it to a planning condition.

33. Consequently, I am not satisfied that there is sufficient information before me to reach a conclusion that the proposal would not have a harmful effect on surface water run off. Therefore, the proposal would be contrary to LP Policy DEV35 and NP Policy GE11. These policies seek, amongst other things to prevent and manage flood risks.

Heritage assets

34. There are a number of listed buildings near the appeal site. The grade II Bridge over Warfleet Creek Road's significance is as historic transport infrastructure carrying the embanked Castle Road across Warfleet Creek Road. The building's setting is primarily linked with the built-up area which it is part of and experienced within. Due to the separation distance, the appeal site does not contribute to the setting, and the proposal would not harm the significance of this listed building.
35. The significance of the grade II listed 'The Pottery' derives from being a former brewery that plays an important role as an industrial building within the area, contrasting with later houses. Given the amount of other buildings intervening between the listed building and the appeal site, the proposal would not harm its setting and significance.
36. The grade II listed Lime Kiln and associated quay's significance derives from their connection with the mid-19th century industrial area they sit within. Furthermore, they are set against the verdant backdrop of the hillside slopes on the edge of the settlement. The appeal site can be viewed within the setting of the Lime Kiln on the hillside slope. As such, the proposal would appear as eye-catching built form in an otherwise undeveloped backdrop of the Lime Kiln, resulting in harm to the setting of the listed building.
37. This harm would be less than substantial. In accordance with the Framework, that harm should be weighed against public benefits of the proposal. There would be some limited public benefit gained through an additional property to the areas housing stock. However, the public benefits of an additional property would not offset the identified harm to which I must attach considerable importance and weight.
38. To conclude, the proposal would have a harmful effect on a heritage asset. There would be conflict with LP Policy DEV21 and NP Policy DNP TE3. These policies seek, amongst other things to conserve and enhance the historic environment. The proposal would also conflict with the provisions of the Framework which also seek to conserve and enhance the historic environment.

Carbon emissions

39. A Carbon Reduction Statement outlines a number of carbon reduction and energy efficiency measures. Such measures, as well as the provision of Photo Voltaic cells, heat pump heating and hot water systems could be secured through the imposition of an appropriately worded planning condition which would contribute towards maximising the energy efficiency of the proposal.
40. Consequently, subject to the imposition of a planning condition, the proposal would not have a harmful effect on carbon emissions. As such, it would accord with LP Policy DEV32 and NP Policy DNP GE7 which seek to reduce carbon emissions through development and mitigate against climate change. The

proposal would also accord with the provisions of the Framework in meeting the challenge of climate change.

Other Matters

41. The appellant has indicated that due to their age, access to the appellant's current home is becoming unsustainable due to the route incorporating a large number of steps. Furthermore, if the appeal were to fail, it could displace the current occupiers of Slipway Cottage who are also elderly as the appellants may seek to move into this property. Age is a protected characteristic and therefore I have had due regard to the three aims of the Public Sector Equality Duty set out in S149 of the Equality Act 2010, including removing or minimising disadvantages that may be suffered by this group.
42. However, there is no obligation preventing people other than the appellant occupying the property, nor evidence that the development proposed is suitable to address any particular need. Moreover, whilst I accept that the proposal may be a financially appealing option for the appellant, it has not been shown that the appeal scheme is the only option available to achieve the appellant's desired aims, and as such that failure of the appeal would result in current occupiers of the host property needing to vacate. Therefore, I conclude that the weight that I attach to this matter is limited in this case.
43. NP Policy H4 requires that new dwellings will only be supported where there is a restriction to ensure its occupancy as a principal residence is guaranteed through a planning condition or legal agreement. This is due to the impact upon the local housing market, economy and community of second or holiday homes. Whilst the lack of such an agreement forms one of the Council's reasons for refusal, the appellant has agreed to such an occupancy restriction. Subject to a restriction, I see no reason why the proposal would not accord with NP Policy H4. However, as I am dismissing the appeal for the reasons given above, I have not pursued this matter further.
44. A lawful development certificate (the Certificate) for a proposed mobile home ancillary to the property known as Slipway has been granted at the appeal site. However, even if the development the subject of the current appeal has a similar appearance to a mobile home, this proposal relates to a permanent dwelling that could be occupied independently and would result in the creation of a separate planning unit. Consequently, even if the appellant were to occupy a mobile home that is the subject of the Certificate, this would be ancillary accommodation forming part of a single planning unit with Slipway.
45. Therefore, the proposal differs significantly from the fallback position and would be more harmful to the local highway network due to the reasons provided above associated with an increase in movements associated with two dwellings. For these reasons, I attribute limited weight to the potential fallback.
46. The appellant states that 'English Nature' raise no objection to the proposal. Although Natural England did not object to the development, their generic advice to the Council highlights the need to protect and enhance valued landscapes through the planning system. I have found conflict with a number of policies for the reasons outlined above and the lack of objection is not a reason in itself to allow unacceptable development.

47. The site is within the Berry Head Special Area of Conservation (SAC). If the circumstances leading to the grant of planning permission had been present, I would have considered the impact of the proposal upon the SAC, in accordance with the Conservation of Habitats and Species Regulations 2017. However, as I am dismissing the appeal on the main issues above, there is no need for me to consider this matter any further as there would be no effect on the SAC.

Conclusion

48. For the reasons given above, I find that the proposal would conflict with the development plan, read as a whole. No material considerations, individually or cumulatively, indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

S Harrington

INSPECTOR