



Appeal Decision

Site visit made on 25 July 2024

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2024

Appeal Ref: APP/K1128/W/23/3333034

Land North of A379, Frogmore, Kingsbridge TQ7 2NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Build1 Ltd against the decision of South Hams District Council.
 - The application Ref is 0863/23/OPA.
 - The development proposed is outline application with some matters reserved for the erection of 3no. self-build dwellings together with associated works. Matters relating to access and site layout are submitted for consideration. Matters relating to appearance, landscaping, plot layout and scale are reserved for future consideration.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs were made by Build1 Ltd against the decision of South Hams District Council and by South Hams District Council against Build1 Ltd. These applications are the subject of separate Decisions.

Preliminary Matters

3. I have taken the description of development as set out above from the application form as neither party has provided written confirmation that a revised description has been agreed.
4. The application was submitted in outline with matters related to Appearance, Landscaping and Scale reserved. I have dealt with the appeal on that basis, treating these matters on the relevant plans as illustrative.
5. The appeal has been accompanied by a signed Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) to secure each of the three residential units as Self-Build Dwellings on Self-Build Plots. This Obligation meets the tests set out in paragraph 57 of the Framework, and I have proceeded to determine this appeal giving due consideration to the Obligation.
6. The appeal is accompanied by a Landscape and Visual Impact Statement (July 2023) and Appendices (LVIS) and revised drawing numbers, 2210 Rev. E Proposed Plots, 2220 Rev. E Plot Passport (Plot 1), 2221 Rev. E Plot Passport (Plot 2) and 2222 Rev. E Plot Passport (Plot3) and additional drawing numbers 2211 Rev. F Proposed Plots in Context of Area, 2204 Rev. D Indicative Site Plan, 2205 Rev. F, Indicative Site Layout Sections, and 2240 Rev. A Biodiversity Net Gain Proposal. The report and plans relate to all four reasons for refusal. Although the details have not been subject to formal public

consultation, the Council and interested parties were given an opportunity to comment on them as part of the appeal. In light of this, and given my findings below, I am satisfied that no party would be prejudiced by my acceptance of the report and plans. Therefore, having regard to the principles of Holborn¹, acceptance of the further information would not be procedurally unfair and as a result I have considered it in determining this appeal.

7. During the course of the appeal the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. This consultation was accompanied by a written ministerial statement entitled 'Building the homes we need'. In light of this, all parties were given the opportunity to comment on any implications for the appeal. I have taken the responses into account.
8. The evidence from the Council acknowledges that reference to Policy DEV7 of the Plymouth & South West Devon Joint Local Plan 2014-2034 (March 2019) (JLP) was an error. I have determined the appeal on this basis.

Main Issues

9. The main issues are:
 - the effect of the proposal on the character and appearance of the area.
 - whether having regard to the development plan and national planning policy, the appeal site is an appropriate location for housing; and
 - the effect of the proposal on biodiversity.

Reasons

Character and appearance

10. The appeal site currently comprises agricultural land and an associated access. The site adjoins residential properties to the south and the gardens of further residential properties and the grounds of a public house to its south-west. The remaining site boundaries adjoin farmland.
11. The site forms part of a hillside rising up from the settlement and benefits from an existing access track off the A379. The appeal site is not subject to any specific landscape designations, although the South Devon Area of Outstanding Natural Beauty, now called the South Devon National Landscape (NL), sits beyond the south of the site on the opposite side of the A379.
12. The site is located within the Lower Rolling Farmed and Settled Valley Slopes Local Character Area comprising the historic settlement pattern of waterside villages within a patterned mosaic of small to medium irregular fields bounded by hedge tops with low wide hedges. The appeal site reflects these characteristics, forming part of the rolling farmland and valley slopes around the rural settlement of Frogmore that follows Frogmore Creek. The overall strategy for this area is to protect the settled but rural character.
13. Layout is a matter for consideration as part of this outline proposal. In relation to this Plot Passports are provided for each of the three plots. Each of the three

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

Passports are generally similar and comprise built development fairly central within large plots with access off a road to their south-eastern boundaries.

14. The existing built form to the south and south-western site boundaries predominantly comprise modest sized buildings and plots set within fairly close proximity to their site boundaries and to each other. The built form is generally linear, although it does widen out to a deeper built form to the east of the site although again with built form close to each other and the site boundaries. As a result, the existing development comprises a generally tight-knit form at the lower level of the slope of the hillside.
15. In contrast, the proposal would result in 3 large plots comprising three dwellings located centrally within their plots accessed off a road that would also be slightly detached from the existing built form. By reason of the positions of the dwellings central to the site and their plots, and road off-set from the boundary, the built form would extend considerably further up the hillside than the existing and would be contrary to the existing tight-knit settlement form. Furthermore, due to the sloping nature of the site, the proposal would necessitate engineering works that would also be at odds with the existing built form. This would be contrary to the prevailing character of the area and would undermine the rural setting of Frogmore and its existing settlement pattern.
16. I acknowledge that the visual impact of the dwellings would be limited when viewed from Viewpoint Locations 1-7, 9 and 10 within the LVIS, and therefore I have no reason to disagree with its findings in relation to these Viewpoints. However, the built form would be highly visible from Viewpoint 8 appearing as a lower density development slightly detached from the settlement with the built form also highly visible from the existing dwellings that immediately adjoin the appeal site and from within the site itself. In addition, from my site visit it was clear that the proposal would also be visible from a couple of viewpoints further down Lee Lane than Viewpoint 7 in the LVIS. From here, by reason of their large plots, position of the dwellings further up the hillside and central position within their plots, the proposed dwellings would appear above the existing roof-line and out of character with the tight-knit built form of the settlement. The provision of new planting would not adequately screen the dwellings, address the large plots and would be alien to the appeal site and immediately adjoining area characterised by open fields and linear hedgerows.
17. Despite this, in light of the separation distance to the NL the proposal would conserve the landscape, scenic beauty and tranquillity of the NL, and as a result cause no conflict with JLP Policy DEV25.
18. It follows from the above that I conclude that the proposal would harm the character and appearance of the area. As such, it is contrary to Policies TTV26, SPT12, DEV10, DEV20 and DEV23 of the JLP. Amongst other things, these seek to protect the special characteristic and role of the countryside by enhancing the immediate setting, ensure proposals are designed to integrate with adjacent developments, provide a positive sense of place and identity, contribute positively to both townscape and landscape, conserve and enhance landscape and townscape character and scenic visual quality, avoiding significant and adverse landscape or visual impacts.

Whether appropriate location

19. JLP Policies SPT3 and TTV1 set out the provision and strategy for the distribution of growth and development delivering homes in accordance with a spatial strategy comprising a settlement hierarchy. Frogmore is identified as a tier 4 settlement where development will be permitted only if it can be demonstrated to support the principles of sustainable development and sustainable communities (Policies SPT1 and 2 that I will return to below) including as provided for in Policies TTV26 and TTV27. In relation to this, Policies TTV2 supports proposals that reinforce the sustainable settlement hierarchy and delivers a sustainable pattern of development.
20. There is no dispute between the parties that the site is not isolated, and I have no reason to disagree. Therefore, in relation to JLP Policy TTV26, only part 2 applies. Although the proposal would not harm any public rights of way/bridleways, would not prejudice agricultural operations and avoids Best and Most Versatile Agricultural Land, it does not re-use traditional buildings, respond to a need that requires a countryside location, and I have found above that the proposal would harm, not enhance, the immediate setting. As a result, the proposal is contrary to Policy TTV26. As the proposal does not comprise affordable housing, it finds no support from JLP Policy TTV27 either.
21. Also relevant to the proposal is Policy FSNP5 of the Our Frogmore and Sherford Community Neighbourhood Plan (February 2022) (NP). This Policy defines the settlement boundary for Frogmore. The site sits just outside of the defined boundary. Policy FSNP5 states that development will be permitted within the settlement boundary but states that elsewhere, 'development will be strictly controlled and only permitted where it can be delivered sustainably and requires a countryside location or will meet a proven local need which cannot be met within the settlement'. The evidence before me indicates that the dwellings could not be provided within the settlement.
22. In relation to need, JLP Policy DEV9 supports self and custom build housing providing it meets over-arching sustainable development, general amenity, and design policies. It states that the LPA will be proactive in exploring ways to ensure sufficient plots are consented to meet the duty set out in the Self-Build and Custom Housebuilding Regulations. However, I have already found conflict with over-arching design policies including that for character and appearance and therefore the proposal does not meet the requirements of LP Policy DEV9.
23. As a result, the proposal does not meet overarching sustainable development JLP Policies SPT1 and SPT2, or NP Policy FSNP5 that, amongst other things, state that development will be managed in accordance with principles of sustainable development including where local distinctiveness and sense of place is respected, maintained and strengthened through high standards of design, and that development should support the creation of neighbourhoods and sustainable communities which provide a positive sense of place and identity and require developments to be delivered sustainably.
24. While NP Policy FSNP9 supports private housing development sites provided they are small scale, I have found above that the proposal would not respect or maintain the parish's character as required by this policy.
25. As part of the third reason for refusal in relation to this main issue, the Council also reference JLP Policy DEV8. This seeks to ensure an appropriate mix of

dwelling types and sizes to redress an imbalance within the existing housing stock. The policy states that a mix of housing sizes appropriate to the area and as supported by local housing evidence should be provided with an application. However, as the number of bedrooms and scale of the dwellings are matters for consideration as part of any reserve matters submission, and despite the large plots, evidence to demonstrate a suitable mix of housing sizes and type appropriate to the area to redress any imbalance would be for consideration at that time. As a result, JLP Policy DEV8 does not weigh against the proposal.

26. I therefore conclude in relation to this matter that having regard to the development plan and national planning policy, the appeal site is not an appropriate location for housing. As such, the proposal conflicts with JLP Policies SPT1, SPT2, SPT3, TTV1, TTV2, TTV26 and DEV9 and NP Policies FSNP5 and FSNP9, the aims of which I have outlined above. Although not referred in the Council's decision notice, JLP Policy SPT2 has been referenced by the main parties in their submissions with NP Policy FSNP5 referenced by the main parties and interested parties and NP Policy FSNP9 referenced by the appellant. I have therefore considered them as part of my assessment above.

Biodiversity

27. JLP Policy DEV26 supports the protection, conservation, enhancement and restoration of biodiversity and geodiversity across the plan area. The site is not designated for its biodiversity value. Policy DEV26.5 states that net gains in biodiversity will be sought from all major development proposals. The development is not a major development proposal.
28. Policy DEV26.6 states that development will provide for the long-term management of biodiversity features retained and enhanced within the site. In relation to this, the original and amended plans detail the provision of a biodiversity enhancement area, new devon banks planted with natural species, and enhanced boundary native planting with the Preliminary Ecological Appraisal recommending a number of enhancements including bat and bird boxes, grassland management, habitat creation and landscaping to enhance biodiversity that could be secured by condition should I allow the appeal.
29. I note that DEV26.5 of the Plymouth & South West Devon Joint Local Plan 2014-2034 Supplementary Planning Document July 2020 encourages minor developments to deliver measurable net gain, but this is not a requirement, and the application is not subject to statutory biodiversity net gain.
30. In light of the above, subject to conditions, the proposal would not harm biodiversity. As such, it would accord with the provisions of JLP policy DEV26.

Other Considerations

31. Set against the harm identified above, the proposal would boost the supply of housing, provide zero carbon energy efficient plots, create construction jobs, use local supply chains, and promote the retention and expansion of local services and facilities in this and other villages nearby. However, given the small scale of the proposal, the benefits would be moderate.
32. Under the Self-build and Custom Housebuilding Act 2015² (the 2015 Act), the Council has a 'duty to grant planning permission' and a 'duty as regards

² Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016)

- registers'. The Council must therefore give enough suitable development permissions in its district to meet the identified demand for self-build and custom-build housing and should not treat the need as a component of general market housing. These duties are also emphasised in Footnote 29 of the Framework. With regards to registers, the latest figures available from the Council confirms that it has 353 entries on its self-build register, which is a clear indication of demand within the Council's area. This is a material consideration in respect of this proposal and the appeal is accompanied by a legal agreement to ensure that the housing would be for self and custom build.
33. Although the Council state that they are on track to provide the required number of self and custom build housing units over the plan period if the same building rates continue, there is no dispute between the main parties that the Council has not met its current requirement in full. The appellant states that there is a significant shortfall of at least 90 self-build plots using the latest figures available from the Council. I have limited contrary evidence before me and therefore have no reason to disagree with this figure.
34. Within the context of the Council's duties under the 2015 Act, the provision of 3 self-build dwellings would be a modest contribution to the demand identified on the Council's register and carries commensurate weight in favour of the proposal.
35. My attention has been drawn to a number of other planning applications and decisions within and at the edge of Frogmore. However, in the absence of detailed information in the form of plans and reports in relation to each application, I cannot be sure that they are directly comparable to the current appeal. Moreover, I am required to consider the current appeal on its merits.
36. I acknowledge that the proposal would safeguard and enhance biodiversity, be in a location close to a range of services and facilities, benefit from suitable bin storage and collection, would not harm the living conditions of neighbouring occupiers, is not at risk of flooding and would utilise an existing and suitable access. Nonetheless, as these are requirements of local planning policies and national guidance, they are neutral in my consideration.

Conclusion

37. Although I have found no harm, subject to conditions, with regard to the effect of the proposal on biodiversity, the proposal would cause harm to the character and appearance of the area and as a result conflicts with the spatial strategy. In my view, this is the prevailing consideration, and the proposal should be regarded as being in conflict with the development plan, when read as a whole.
38. Material considerations outlined above, including the Framework, do not indicate that the proposal should be determined other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude the appeal should be dismissed.

C Rose

INSPECTOR