



Appeal Decision

Site visit made on 5 November 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2024

Appeal Ref: APP/K1128/W/23/3333422

101 Yealm Road, Newton Ferrers, Devon, PL8 1BL

- 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 The James Brent Pension Scheme c/o Agent against the decision of South Hams District Council.
 - The application Ref is 3953/21/FUL.
 - The development proposed was originally described as "demolition of 2 two-storey detached buildings & associated garage. The application seeks approval for the erection of 2no. four bed family homes and extension of an existing quay to the east of the site to provide a new landing ramp for dwelling 2."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council altered the description of the development from that set out in the banner heading above to '*demolition of 2 two-storey detached buildings & associated garage. Erection of 2no family homes and extension of an existing quay to the east of the site to provide a new landing ramp for dwelling 2.*' This removes reference to the number of bedrooms which reflects revised plans and requests made by the appellant for such changes.
3. It is noted that proposed extensions to the existing quay were also removed from the plans, though this remains in the description of development set out above. Nevertheless, the scope of the operative part of the development is the erection of 2 dwellings. I have dealt with the appeal on that basis.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;
 - whether the proposal would provide a balanced housing stock;
 - whether the development would result in undue risk to human health or to other relevant receptors, arising from contamination of the land; and
 - the effect of the proposed development on biodiversity.

Reasons

Character and appearance

5. The appeal site comprises several buildings, including a small roadside garage of little architectural quality. Set below this and surrounded by steep vegetated banks are 2 modest sized buildings of simple form and material finish. These buildings are in a poor state of repair. Despite the presence of some modern, flat roof properties of mixed material finish nearby, their appearance is typical of the majority of buildings in the surrounding area. They are located at a prominent point on the very edge of a picturesque estuary behind a quayside slipway. Here, the tree lined banks are a prevailing feature amongst intermittent and small-scale developments such as the Harbour Authority Office, and boat sheds on quaysides. Larger scaled properties tend to be set back from the water's edge and are separated by their generous grounds.
6. In that respect, the appeal site is within an area locally recognised as being characterised by its rounded hills and steep undulating slopes overlooking river valleys. It is said that the coastline, estuary, and river are key factors in the area being designated as a National Landscape. In such locations, Policy DEV25 of the Plymouth & South West Devon Joint Local Plan (JLP) affords the highest degree of landscape protection. Additionally, and amongst other things, policies N3P-1, N3P-3, and N3P-9 of the Newton and Noss Neighbourhood Plan (NP) seek to encourage small-scale, low density proposals that are designed to conserve and enhance such protected landscapes, preventing the addition of incongruous features, and ensuring development blends into the landscape.
7. These policies are consistent with paragraph 182 of the National Planning Policy Framework (the Framework), which attaches great weight to conserving and enhancing landscape and scenic beauty.
8. In that context, in part, JLP policies DEV20 and DEV23 and NP Policy N3P-4 support proposals that have proper regard to the pattern of local development, conserve and enhance views that contribute to the quality of the area, and that deliver locally distinctive design. The Council's JLP Supplementary Planning Document (SPD) amplifies these policies by noting that good design starts from an understanding of the place.
9. Although not within it, the appeal site is next to the Undeveloped Coast where JLP Policy DEV24 says that development that would have a detrimental effect on its unspoilt character, appearance or tranquillity will not be permitted except under exceptional circumstances. Additionally, the protection of the waterfront and the banks of the river is supported within NP Policy N3P-2.
10. It is acknowledged that various policies in the Framework and parts of the National Design Guide recognise that well designed places do not need to copy their surroundings in every way, so long as they fit within the overall form and layout of their surroundings. Equally, the requirement that developments are sympathetic to local character, including the surrounding built environment is embedded within the Framework.
11. In this case, the proposed dwellings would be attached to one another across a particularly wide footprint. This unbroken expanse of building would

consume a considerable amount of the estuary bank and would be devoid of any verdant respite between properties. Furthermore, most unlike any other of the larger lower density properties, the proposal would be prominently positioned on the water's edge. As such, it would be uncharacteristic to replicate the large-scale properties found further upslope.

12. The variation in planes, volumes, and configurations would go some way towards breaking up the building's overall massing. However, notwithstanding the conclusions set out in the Landscape and Visual Appraisal, these features lack any sense of uniformity or simplicity of design that is commonplace in the local area. In that context, the plans show that the attempted stepped design approach would do very little to reduce the dominating effects of the building's height, massing, and prominence. Additionally, the side elevations would create stark, projecting, and jarring features against a tranquil estuary setting. The juxtaposition would not be complementary.
13. It is agreed that the building would take on a varied visual presence from different locations, including from the roadside elevations, which would not be harmfully prominent. Furthermore, some complimentary local materials such as stone and render would be incorporated into the finish. However, even though there are some nearby properties that make use of timber and metal cladding, the extent of material variation would result in an overall lack of cohesion. This, together with a high proportion of glazing would make the building appear out of place. Consequently, while the benefits of tidying up the existing site are acknowledged, the eye would be drawn to the incongruity of the multitude of contrasting design features found in the new development.
14. I therefore conclude on this main issue that the proposal would harmfully affect the character and appearance of the area. As such, there would be conflict with JLP policies DEV20, DEV23, DEV24, and DEV25, and NP policies N3P-1, N3P-2, N3P-3, N3P-4, and N3P-9. There would also be conflict with paragraph 135 of the Framework which says that decisions should ensure developments add to the overall quality of the area and are sympathetic to local character and landscape setting.

Housing stock

15. Amongst other things, JLP policies SPT2 and DEV8 seek to promote a good balance of house types and sizes supported by local housing evidence. This is to redress an imbalance within the existing housing stock. The evidence shows that there is a shortage of 1-, 2-, and 3-bedroom homes. Accordingly, NP Policy N3P-11 says, in part, that applications for new dwellings reasonably capable of accommodating more than 3 bedrooms will be required to provide evidence of local need.
16. The supporting letter from Frank Knight was written some time ago and covers heightened housing demands for 4 bed properties. Whilst there may be some demand for larger properties, this does amount to an accurate or detailed analysis of local housing need in the area, as required by NP Policy N3P-11.
17. It is claimed there is a conflict between these policies and NP Policy N3P-3 which supports low density of buildings. This policy also requires that development respects landscape and character, which I have already identified conflict with, in the main issue above. Even so, I do not agree that respect for low density of buildings means there would be any requirement or expectation

to provide large properties capable of accommodating more than 3 bedrooms in this area.

18. The challenging topography and associated costs of development are acknowledged. However, the proposed layout for each property includes both a large office and study, suitable for home working demands. This would go beyond the suggested provision of one such space in the Council's SPD.
19. Additionally, I am not persuaded that the second lounge at roadside level would be unsuitable for use as a bedroom. In fact, it could provide the elderly or those less able with very accessible accommodation. Even though the basements may not necessarily be suitable for additional bedroom space, it is said that the retaining wall will form semi-basement structures containing habitable rooms. Nevertheless, the Council says the properties would deliver nearly 300sqm of accommodation. This would be more than double the minimum Nationally Described Space Standards for a 6 bed, 3 storey dwelling. For the reasons given, although this is only a minimum requirement, in the absence of a local housing need, the development could be reasonably capable of accommodating more than 3 bedrooms.
20. I therefore conclude on this main issue that the proposed development would not provide a balanced housing stock. As such, there would be conflict with JLP policies SPT2 and DEV8, and N3P-11 of the NP.

Contamination

21. The appeal site was formally used as a laboratory for testing antifouling agents for marine paints. The Phase 1 Preliminary Geotechnical and Contamination Assessment Report (the phase 1), dated October 2021 indicates there to be several potential sources of contamination at the appeal site. The appellant says that requiring a phase 2 assessment prior to the determination of the application would be unreasonable and disproportionate, thus failing to meet the tests set out in the Framework.
22. It is acknowledged that the appellant had initially been led to believe this matter could be addressed using an appropriately worded condition. Even so, the phase 1 says that an intrusive ground investigation is required to confirm its preliminary recommendations. As such, the conclusions cannot currently be relied upon. It is also noted that the phase 1 includes plans that are not part of this scheme. Therefore, comments made in respect of the covering of hardstanding may differ with this proposal.
23. Furthermore, as referenced in the Council's reason for refusal, the phase 1 adds that the appeal site has significant geotechnical challenges and physical constraints where the design may need to be modified. Importantly, the phase 1 does not recommend that any of these additional works should be dealt with by condition. It continually raises questions over the practicality or buildability of the scheme, and the importance of carrying out intrusive investigations to develop the project further.
24. In these circumstances, the particularly sensitive nature of the appeal site and the amount of identified unknown factors means that it would be proportionate to first carry out further investigation. For the reasons given, the evidence does not convincingly demonstrate that risks from contamination can be

satisfactorily reduced to an acceptable level. This should be done ahead of granting permission.

25. I therefore conclude on this main issue that the proposed development would result in undue risk to human health or to other relevant receptors, arising from contamination of the land. As such, there would be conflict with JLP Policy DEV2 and NP Policy N3P-4 which, together in this respect, seek to safeguard against contamination, avoiding harmful environmental impacts and health risks for both new and existing development arising from soil, air, water, land, or land instability.

Biodiversity

26. The planning application was made in October 2021. The biodiversity gain planning condition does not apply in relation to planning applications made before February 2024.
27. The scheme is not major development and, in such circumstances, JLP Policy DEV26 does not require specific net gains in biodiversity. It does however say that enhancements for wildlife within the built environment will be sought where appropriate from all scales of development. The scheme would deliver bird nesting and bat roosting provisions. It would also include green roofs with some additional landscaping. These amount to enhancements as required by the policy.
28. Furthermore, the Framework says in paragraph 186 that if significant harm to biodiversity resulting from a development cannot be avoided then planning permission should be refused. The Council does not identify significant harm in this respect and confirms that there would be a marginal loss of habitat. For these reasons, had I been minded to allow the appeal, I am satisfied that any such biodiversity enhancements could be securing using an appropriately worded condition.
29. I therefore conclude on this main issue that the proposed development would not have a harmful effect on biodiversity. There would consequently be no conflict with JLP policies SPT12 or DEV26, and NP Policy N3P-2, which, together in this respect, aim to protect habitats and conserve biodiversity. There is little to show that NP Policy N3P-7 would be relevant in this respect.

Other Considerations

30. The proposal would provide 2 sustainably constructed and energy efficient properties with renewable energy measures. These would add to the overall supply of housing in a sustainable location, which has a range of accessible services and facilities. Modest economic gains would be achieved during the construction phase and thereafter by additional spend in the local community. It would make use of previously developed land which is encouraged in the Framework.

Other Matters

31. The appeal site is within an area identified by Natural England as having the potential to significantly affect the Plymouth Sound and Estuaries Special Area of Conservation (SPA). These are statutorily protected habitats sites under the Conservation of Habitats and Species Regulations 2017 (as amended). Within the context of this appeal, the responsibility for assessing the effects of the

proposal on the European designated site falls to me as the competent authority. Had I been minded to allow the appeal, and the circumstances therefore existed in which planning permission could be granted, it would have been necessary for me to examine this matter further, and to undertake an Appropriate Assessment (AA) of the implications of the appeal scheme for the European designated sites.

32. However, as the identified harm in respect of the character and appearance of the area, housing stock, and contamination provide clear reasons for dismissing the appeal, the outcome of any such AA would have no bearing on the overall outcome of this appeal. There is therefore no need for me to consider this matter any further, as part of my decision since any findings on this issue would not change the appeal outcome. This includes the signed and dated Unilateral Undertaking that the Council was concerned was lacking when they determined the application. In that respect, I would have reviewed whether the described wording of the SPA was correct.
33. I have paid regard to the comments made in respect of the processing of the application, though these have no bearing on my decision which is based on the planning merits of the proposal. Furthermore, the lack of objection from the South Devon AONB unit is not a reason in itself to allow unacceptable development.

Planning Balance and Conclusion

34. Section 38(6) of the Planning and Compulsory Purchase Act 2004 says development should be in accordance with the development plan 'unless material considerations indicate otherwise', and this is reaffirmed in the Framework. In this respect, I acknowledge the case law cited by the appellant which emphasises that the development plan should be considered as a whole.
35. Bringing together my conclusions on the main issues, I have found that the proposal could be developed without harm to biodiversity. This is a neutral factor and would consequently not outweigh the harm caused to the character and appearance of the area, the balance of housing stock, and contamination. As such, there would be conflict with the development plan as a whole.
36. Furthermore, even when considered cumulatively, the weight given to the other considerations would not outweigh the identified harm. Accordingly, other considerations do not therefore indicate that permission should be granted contrary to the development plan. Therefore, the appeal is dismissed.

J Hills

INSPECTOR