



Appeal Decision

Site visit made on 3 December 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2024

Appeal Ref: APP/K1128/W/24/3347148

The Crabshell Inn, Embankment Road, Kingsbridge, Devon TQ7 1QZ

- 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 St Austell Brewery against the decision of South Hams District Council.
 - The application Ref is 3360/23/FUL.
 - The development proposed is described in the application as "*Retrospective application for new shepherds hut/ shack on wheels, consisting of a bar dispense area and pizza kitchen with servery*".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form states that work began in August 2023 and at the time of my visit I saw that the proposed shepherds hut was in place. At my visit, I saw that various planters were placed in front of the hut. The application has been dealt with retrospectively. I have dealt with the appeal on that basis and the plans before me.
3. The appellant has provided supplementary information at the appeal with technical reports covering highways, odour, and flood risk. This information was not before the Council when it made its decision and relates to matters in dispute between the main parties.
4. The new information would not involve significant alterations to the scheme that could be said to evolve it, as described in the Planning Practice Guidance. The Council and other interested parties have had an opportunity to comment on the information during the appeal. Therefore, in accepting the information, I am satisfied that there would be no procedural unfairness to anyone involved in the appeal.

Background and Main Issues

5. Although the Council did not advance the effects the development has on the character and appearance of the area in its reasons for refusal, the matter was addressed in its officer report. This included reference to associated local policies. Additionally, interested parties have raised concerns at the application stage and during the appeal. In that context, the appellant has dealt with interested party concerns in its statement. As such, I am satisfied that all parties have had a fair crack at the whip, and it would therefore not come as a

surprise to include the matter as a main issue.

6. The main issues are:

- the effect of the proposed development on the character and appearance of the area;
- the living conditions of nearby occupiers, with regard to odour;
- highway safety;
- parking pressures; and
- whether the site is a suitable location for the development, having regard to flood risk.

Reasons

Character and appearance

7. The appeal site comprises a pub and restaurant with associated parking on the banks of an estuary in Kingsbridge. There is a range of built form in the immediate and surrounding area, though buildings tend to be of stone or rendered finish. Although in an urban area, development on the estuary side is punctuated by gaps that allow wide views of the attractive natural landscape beyond.
8. In that context, the appeal site is within the South Devon National Landscape (NL) where Policy DEV25 of the Plymouth & South West Devon Joint Local Plan (JLP) affords the highest degree of landscape protection. Amongst other things, the policy encourages small-scale proposals that are appropriately located and designed to conserve and enhance the protected landscapes. This is consistent with paragraph 182 of the National Planning Policy Framework (the Framework) which attaches great weight to conserving and enhancing landscape and scenic beauty.
9. The thin wedged car parking area and part of the appeal site where the shepherds hut is located is bound on the roadside by a low-level stone wall. A well-presented typical stone building lies on the opposite side of the narrow road. The public right of way passes through the pub car park, which means that locally important views from it towards the estuary are not affected by the development. However, despite the presence of the adjoining covered seating area, the development is particularly noticeable from the highway and pavements, where I observed views to be more than fleeting or transient. From these areas, views of the NL are effectively screened by the hut.
10. The hut is of a small scale and clad with materials similar to the adjoining structure. However, it is of a basic construction and utilitarian design that is not complimentary to its surroundings. Its boxed appearance with curved metal roof stands unusually proud as a feature that is not locally distinctive, as required by JLP Policy DEV20. At my visit, the skies were clear and the sun's reflection off a side elevation of the hut amplified its incongruity. Whilst other weather conditions mean this will not always be the case, the eye is nevertheless drawn to it as an unusual feature.

11. Although the scale of the development means that the harm to the NL would be modest, the Framework requires that great weight must be given to conserving and enhancing its landscape and scenic beauty. The development fails to do either.
12. I therefore conclude on this main issue that the development has a harmful effect on the character and appearance of the area. As such, it conflicts with JLP policies DEV20 and DEV25 and Policy BE3 of the Kingsbridge, West Alvington and Churchstow Neighbourhood Plan (NP), which, in this respect, supports proposals that are locally distinctive and integrate with local built surroundings. There is also conflict with paragraph 135 of the Framework which says, in part, that decisions should ensure developments function well and add to the overall quality of the area and are sympathetic to local character.

Living conditions

13. The nearest residential property to the appeal building is about 10 metres away. The Redmore Environmental odour report makes an assessment on the basis of a proposed electric pizza oven as opposed to the existing wood fired system. It concludes that subject to the installation of such an oven, odour should not be viewed as a constraint to permitting the scheme. By implication, it is therefore likely that odour emanating from a wood fired oven is not acceptable in this location.
14. Even with the electric oven, table 2 of the report scores the development at the upper end of the low to medium impact risk category. While it is acknowledged that significant odour impacts could be avoided, smoke, grease, and odour emissions would still naturally ventilate from the hut and would not be avoided altogether. Even if technically acceptable, to some extent, nearest occupants would still be likely to be affected by odour emanating from the hut.
15. In that respect, the potential persistent use of the electric oven from about midday to 9pm every day of the week could represent a harmful environmental impact. Additionally, effects on nearby occupiers would be heightened in the summer months when windows are opened more often, or through wind direction. In the absence of objective analysis of these types of scenarios, the evidence does not go far enough to show how the living conditions of those nearby occupiers would be protected. Neither does it demonstrate the scheme is a well-integrated or acceptable use of land as set out in paragraphs 193 and 194 of the Framework.
16. Additionally, the existing built form and plans show a layout that is based on a different type of oven, reflective of the scheme initially applied for. There is a pizza oven exhaust and a projecting pizza oven structure on the south elevation. Even though some details of an electric oven have been provided, it is not convincingly demonstrated that an alternative oven, including its more permanent electricity supply requirements, or possible 3-foot type I hood, would actually be suitable. For these reasons, it would not be possible to attempt to deal with this matter through an appropriately worded condition.
17. For the reasons given, the development would have a harmful effect on the living conditions of nearby occupiers, with particular regard to odour. As such, there would be conflict with JLP policies DEV1 and DEV2, which, collectively in

this respect, seek to protect the health and living conditions of local communities from air pollution arising from new and existing development.

Highway safety

18. The Council is concerned that the proposed development, that would include a roped off area, poses an unacceptable risk to young children or those unfamiliar with highway risk. Although advanced as a matter that would conflict with JLP policies DEV1 and DEV2, these are principally concerned with health and living conditions. That being said, JLP Policy DEV1 does require that proposals are accessible to all people. Highway risk is dealt with under JLP Policy DEV29, where it says, amongst other things, that proposals should provide safe and satisfactory traffic movement and vehicular access to and within the site.
19. There is limited space directly in front of the hut for customers to stand. Additionally, the swept path drawing aligns with my own observations that the turning of vehicles would be an awkward manoeuvre in the proximity of the hut. This would be likely to be more challenging or stressful during busier times. Even so, there is an alternative turning area at the other side of the car park, which is a more inviting option. Furthermore, this is an existing car park where all users would be aware of the shared use of space with vehicles. While parking spaces are directly opposite the hut, the narrow layout of the parking area forces very low vehicle speeds.
20. Even if the proposed rope couldn't be enforced, the hut and its shielding planters are positioned at a point where the car park transitions into the outdoor pub space. Those queueing would be more inclined to opt to stand in this outdoor space than in the car park. Moreover, the use of the buzzer system would be likely to reduce the suggested excessive congregation of customers at busy times. For these reasons, I find that conflict in this regard would be very unlikely and that the scheme would be accessible to all people. Additionally, it is of note that the Council's highways officer has raised no objection.
21. I therefore conclude on this main issue that the development does not have a harmful effect on highway safety. As such, there is no conflict with JLP policies DEV1, DEV2 or DEV29.

Parking pressures

22. Concerns have been raised that the development causes customers to park on pavements near the appeal site. There are however parking restrictions in place nearby and any violation of these could be enforced through the appropriate body. In that context, the evidence shows that the area the hut occupies has been formally used for seating for some time. Therefore, it is unlikely that the hut generates additional vehicular activity beyond that associated with its use.
23. The Council says that the number of overall parking spaces is likely to have reduced over time. Accordingly, it is concerned that the number of existing spaces does not meet JLP policy requirements or those set out in its JLP Supplementary Planning Document. Nevertheless, there is unlikely to have been a loss of parking space as a result of this development. Even if I were to agree that 2 spaces have been lost, the pub is close to the settlement centre

and is well served by a public right of way. Consequently, it is accessible to walkers or those using public transport. For the reasons given, it has not been clearly shown that the scheme increases on-street car parking as controlled by Policy KWAC T3 of the NP.

24. The appellant's Technical Note concludes that no mitigation is required for similar reasons to those set out above. Additionally, it advises that car sharing will continue to reduce vehicle movements. In light of the above, the effects of parking on the immediate and surrounding area have been considered.
25. I therefore conclude on this main issue that the development does not have a harmful effect on parking pressures. As such, there is no conflict with JLP Policy DEV29 which says, in this respect, that proposals should consider the impact of development on the wider transport network. Neither is there conflict with NP Policy KWAC T3.

Flood risk

26. The appeal site is in flood zone 3 where a flood risk assessment is required. The Council refused the scheme partly on the grounds that insufficient information had been provided to show that the hut would be resilient to flood; and would not result in becoming unstable and causing harm to buildings in the event of a flood. As part of the appeal, the appellant provided an assessment with an evacuation plan to move the hut offsite in an attempt to overcome the reason for refusal. It would have been beneficial for this information to have been provided during the application stage. Nevertheless, the Council accepts the proposed measures, which I find no reason to disagree with. Had I been minded to allow the appeal, these measures could have been secured through an appropriately worded condition.
27. Therefore, I conclude on this main issue that the site is a suitable location for the development, having regard to flood risk. As such, there would be no conflict with JLP Policy DEV35 or NP Policy Env6 which, together in this respect, seek to promote development that is safe for its lifetime, avoiding exacerbating water issues.

Other Considerations

28. The development forms part of the wider offer at the pub as an additional food outlet, which the appellant says will help safeguard its future and role as a local community facility. The intention is to use the facility in the busier summer months to allow the pub to trade in the quieter winter months. I have however been provided with little evidence to show the existing business is reliant on the proposal. Even so, the importance of food and drink sales and a broader offer to customers is acknowledged as a benefit of the development. This, together with the safeguarding of existing and potential creation of new jobs are benefits that weigh moderately in favour of the scheme.
29. Additionally, the development makes use of previously developed land within a settlement, which is encouraged within local and national policy.
30. I have paid regard to the planning history. However, I have determined the appeal on the evidence before me and my own observations.

Planning Balance and Conclusion

31. 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.
32. Bringing together my conclusions on the main issues, I have found that the proposal does not have a harmful effect on highway safety or parking pressures. Additionally, uncontested evacuation measures would mean it is in a suitable location with regard to flood risk. However, this does not outweigh the harm identified to the character and appearance of the area and living conditions of nearby occupiers. As such, there would be conflict with the development plan as a whole.
33. Furthermore, even when considered cumulatively, the weight given to the other material 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