



Appeal Decision

Hearing held on 26 November 2024

Site visit made on 26 November 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/K1128/W/24/3349941

Brewery Quay, Island Street, Salcombe TQ8 8DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr A Manning-Smith of Valentine London Ltd against the decision of South Hams District Council.
 - The application Ref is 4120/23/VAR.
 - The application sought planning permission for demolition of existing buildings, retention of southern boundary wall and quay, erection of building containing commercial units and 4no. Principal Residence residential units and associated car parking without complying with a condition attached to planning permission Ref 0434/20/FUL, dated 13 October 2020.
 - The condition in dispute is No 1 which states that:
"The 4 residential units hereby permitted shall not be occupied other than by: i. a person or persons as their 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). The occupant(s) shall at any time supply to the Local Planning Authority such information as the Authority may reasonably require in order to determine that this condition is being complied with, within one month of the Local Planning Authority's written request to do so".
 - The reason given for the condition is:
"In accordance with policy H3 of the Neighbourhood Plan in order to achieve sustainable communities".
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Decision

1. The appeal is dismissed.

Applications for costs

2. Before and at the hearing, costs applications were made by the main parties against each-other. These are the subject of separate Decisions.

Preliminary Matter

3. The appeal seeks to remove a Principal Residence condition attached to a planning permission. This permission refers to 4 Principal Residence residential units in the description. Nevertheless, if the condition were to be removed, 4 residential units would remain permitted, albeit they would not be subject to any restrictive condition. Both main parties are in agreement that the appropriateness of a Section 73 application is not a matter of contention. I have dealt with the appeal on that basis.

Background and Main Issue

4. The appeal relates to a commercial and residential building in a part of Salcombe where such uses are commonplace. Planning permission was previously granted here at appeal¹ in June 2019 for a dwelling over commercial space. Due to the advanced stage of preparation of the Salcombe Neighbourhood Development Plan (NP), the previous Inspector included a Principal Residence occupancy condition. At this hearing the appellant explained that in light of a change in circumstance and parking requirements, the maximum number of flats (4) over commercial space was applied for. This was permitted in February 2020 under 0434/20/FUL and is the scheme that relates to this appeal. Following the earlier adoption of the NP, it too included a Principal Residence condition.
5. In that context, Policy SALC H3 of the NP seeks to limit the impact of dwellings used for second or holiday accommodation on the local housing market. The policy only supports new open market housing, other than replacement dwellings, where there is a restriction to ensure that the housing is occupied as a Principal Residence. Despite representations made in respect of neighbourhood and local plan adoption scrutiny, there is no dispute between the main parties that Policy SALC H3 is adopted policy that is part of the development plan and may be given full weight. That being said, the appellant notes that the policy sets down no standards such as testing viability or marketing.
6. The appellant contends that material considerations indicate the condition is no longer reasonably necessary, as they have been unable to sell any of the apartments since marketing started in May 2021. Additionally, it is advanced that in lieu of complying with adopted policy, a contribution towards affordable housing would assist in supporting sustainable communities, which is identified as a reason for the condition.
7. The Council is concerned that the removal of the condition would enable the accommodation to be used as second or holiday homes and that other material considerations do not indicate the policy requirements should be set aside.
8. The main issue is whether, having regard to local and national policy, and other considerations, the condition is reasonable and necessary in the interest of ensuring the properties are only occupied as a principal residence.

Reasons

9. Notwithstanding the assertions made within the written evidence, the appellant agreed at the hearing that the scheme would represent a material departure from the development plan; specifically, NP Policy SALC H3.
10. It is claimed there are other policies, including DEV8 and DEV9 of the Plymouth and South West Devon Joint Local Plan (JLP) that would support the scheme. In part, these policies seek to achieve mixed and balanced communities through the delivery of a range of housing to meet local housing

¹ APP/K1128/W/18/3215145

needs. One such method of achieving this would be through off-site financial contributions to affordable housing.

11. However, the National Planning Policy Framework (the Framework) says in paragraph 65 that affordable housing should not be sought for residential developments that are not major developments. There is little to show the scale of this development would trigger any such requirement. Consequently, while the need for permanently occupied affordable housing in the area is not disputed, having also paid regard to the Affordable Housing Needs Report, it would not be reasonable, necessary, or directly related to the development to attempt to secure an off-site contribution through the application of the aforementioned JLP policies or the Framework.
12. This would also apply to NP Policy SALC H3 where there is no provision for affordable housing contributions. Therefore, a completed planning obligation would be unlikely to meet the tests set out in the Framework. In any case, notwithstanding the submitted draft Section 106 template, which has not been completed, there is no such mechanism before me to secure such contributions.
13. Additionally, it is claimed that other JLP policies should have been identified in the Council's reason for refusal. It is acknowledged that reference is made in JLP Policy DEV8 to a particular need in the area for homes that redress an imbalance within the existing housing stock. In that respect, even if the number of second or holiday homes in Salcombe is less than that set out in the NP, it is agreed that the proportion is unquestionably high. NP Policy SALC H3 has statutory primacy and deals with this particular imbalance in an attempt to create sustainable communities. Therefore, although other policies could potentially have been referred to by the Council, it would not have been a necessity.
14. *Other considerations* - The appeal site is constrained as it is located within a narrow and busy part of Salcombe. The combination of a ground floor commercial space that has responded to flood risks, and the overall layout means that the type of flatted accommodation provided may not be desirable to certain groups of prospective occupants, such as families, as their permanent home. In that context, the appellant has been hindered somewhat by the timing of the NP. Indeed, they may well not have chosen to proceed from the very outset in the knowledge restrictions would be imposed. This is a material consideration that weighs moderately in favour of the proposal. Moreover, the decision not to pursue the single dwelling scheme due to a change in personal circumstances is acknowledged.
15. The appellant explained that for contractual reasons it had not been possible to market the properties for rent. That is not to say though that they could not be sold and subsequently rented on short, medium, or longer-term leases, as long as occupants met the terms of the condition. Neither does it mean that the high-quality flats with lift access would not be suitable or desirable for a wide range of age groups wishing to locate to the area, thus contributing towards sustainable communities.
16. In addition to the written evidence, the appellant set out at the hearing that despite a sustained period of marketing, including a series of price reductions with post Covid adjustments, new photos, extra floor space not previously accounted for, and 16 open house events, none of the 4 units of

accommodation had sold. It is claimed that the properties have continually been marketed with a 20% reduction on their normal value to take account of the Principal Residence restriction, and that no other flats in the area have sold with the restriction in recent years.

17. Be that as it may, one property was provisionally sold about a month after being advertised for substantially less than its guide price. It is acknowledged that price comparisons are difficult in a location with an over inflated housing market that is influenced by waterside views. However, it is of note that the Council's evidence shows that the average price of a flat in Salcombe is considerably lower than current asking prices. These average prices may also include unfettered properties that could achieve a higher value than those with a Principal Residence condition.
18. Furthermore, there was a significant gap in full marketing between August 2022 and May 2023 that exceeded the recommended rest period to promote properties as new listings. It is understood that the lease was extended in April 2023 from 150 to 999 years. This is likely to have been a factor in the earlier attractiveness or otherwise of the properties to prospective purchasers when considering longer term investment options.
19. The appellant says that the pricing has been independently reviewed, taking account of the above-mentioned factors. Furthermore, it is claimed that gaining a mortgage for the properties has been difficult for prospective purchasers. However, notwithstanding the content of the submitted solicitor's letter, I have been provided with no firm evidence to show it would be impossible to further reduce the price of the properties, or that there are other financial reasons why they cannot be sold. Had a definitive contribution towards affordable housing been offered, this could have alternatively been used as part of a revised pricing approach. For the reasons given, even in the absence of specific policy standards to test viability or saleability, it has not been convincingly demonstrated that all marketing options have been exhausted.
20. Drawing these matters together, there is no intention whatsoever to stifle housing occupancy within Salcombe. The appellant has found themselves in a position where site constraints and changing development plan policy have been likely to have had some effect on the saleability of the accommodation. Additionally, aspects of the appellant's marketing efforts go some way towards demonstrating that selling these properties has not been easy. However, the removal of the condition would undermine the purpose of NP Policy SALC H3 to redress the balance of an unquestionably high proportion of second or holiday homes in Salcombe and the impact that has on achieving a sustainable and balanced community. For the reasons given, the condition is evidently relevant and precisely worded to achieve the policy aims. This is a matter that attributes significant weight, which is consequently not trumped by any of the aforementioned policies or other considerations.
21. I therefore conclude that having regard to local and national policy, and other considerations, the condition is reasonable and necessary in the interest of ensuring the properties are only occupied as a principal residence. As such, there would be conflict with NP Policy SALC H3.

Other Matters

22. There are a number of listed buildings nearby. Consequently, there is a statutory duty to pay special regard to the desirability of preserving their setting. The appeal proposal would have no effect on their setting. Furthermore, neither party has raised any concerns in this respect. Accordingly, I am satisfied the proposal meets the requirements set out in s.66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 Act (The Act).
23. The appeal site is in the Salcombe Conservation Area where there is a statutory duty under s.72 (1) of the Act to pay special regard to the desirability of preserving or enhancing its character or appearance; and, as set out in the Framework, where great weight should be given to the asset's conservation. The appeal proposal would have a neutral effect on the Conservation Area, thus preserving it. Accordingly, in this regard, the proposal would also satisfy the requirements of the Act.
24. The appellant says that there are positives associated with new housing in a sustainable location. The benefits of housing in a sustainable location are acknowledged. Even so, the removal of the condition would result in a different type of occupancy. Therefore, as the properties have already been built, there would be no additional benefit to the overall supply of housing in the area. Therefore, I give this matter very little weight.

Conclusion

25. 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.
26. I have concluded above that the proposal conflicts with the development plan, when taken as a whole. 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

APPEARANCES

FOR THE APPELLANT:

Mr Andy Manning-Smith	Appellant
Mr David Cooper	Solicitor
Mr Julian Cooper	Real Estate Investment
Mrs Wendy Hopkins	Agent
Mr George Venning	Affordable Housing Specialist

FOR THE LOCAL PLANNING AUTHORITY:

Miss Charlotte Howrihane	Senior Planning Officer
Mr Adrian Noon	Principal Planning Officer
Mr Graham Swiss	Senior Strategic Planning Officer
Mrs Alex Rehaag	Principal Affordable Housing Enabler

INTERESTED PARTIES:

Mr Richard Pillar
Mrs Christine Phillipson
Mr Mark Long
Mr Max Phillipson
Mrs Judy Pearce

DOCUMENTS PRESENTED DURING THE HEARING

DOC 1 Appeal Ref: APP/K1128/W/18/3215145

DOC 2 - Application No.: 1622/22/VAR dated 12 May 2022