



Appeal Decision

Site visit made on 21 January 2025

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 February 2025

Appeal Ref: APP/Q1153/W/24/3349822

Wheatley Cottage, Lewdown, Devon EX20 4QW

- 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 Graham Yeo against the decision of West Devon Borough Council.
 - The application Ref is 0065/24/FUL.
 - The development proposed is described in the application as “demolition of existing dwelling & 1x proposed new build dwelling to be constructed on the same site including driveway & garage including the refurbishment of the stone workshop & reinstatement of the corrugated metal shed, gardens & orchard area (re-submission of application ref: 2013/23/FUL)”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the Council's notice of decision, the National Planning Policy Framework (the Framework) was revised on 12 December 2024. Having regard to the matters that are most relevant to this appeal, the main parties have been given an opportunity to comment. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context.
3. The appellant has provided a carbon report and drainage strategy that was not before the Council when it made its decision. The new information would not involve alterations or make a substantial difference to the scheme. Furthermore, the Council and its consultees have had an opportunity to comment on this information. Therefore, in accepting the information, I am satisfied it would not cause unlawful procedural unfairness to anyone involved in the appeal.

Main Issues

4. The main issues are:
 - whether the proposed development can be adequately drained;
 - the effect of the proposed development on the character and appearance of the area, with particular regard to heritage assets;
 - local housing stock; and
 - whether the proposal would achieve low carbon design.

Reasons

Drainage

5. The proposed replacement dwelling would require a new drainage system. The Council refused the scheme partly on the grounds that insufficient information had been provided to adequately demonstrate how surface water drainage could be dealt with. Documents submitted with the appeal show that the proposed surface water drainage would require an attenuation tank due to ground conditions. This would combine with the proposed foul water system before discharging to the nearest watercourse.
6. As an alternative to this, one of the drainage options on 'Criff Field' would be on land within the ownership of the appellant, with connections to a watercourse. This would be some considerable distance away from the proposed drainage site location. Across this stretch, it is claimed there would be a minimal drop in ground level between the anticipated sewage system and drain. However, this option has not been fully worked up and is not proposed. Therefore, in the absence of any compelling evidence to the contrary, it is simply not known whether site constraints would hinder the deliverability of such a method of surface water disposal. It would therefore not be reasonable to attempt to secure this option using an appropriately worded condition.
7. The proposed drainage method has not been contested by the Council. However, the outfall connection to the nearest watercourse would need to cross a highway and enter 3rd party land. There is no dispute between the main parties that some form of agreement from the other land owner would be required to facilitate the proposed scheme. The appellant claims that consent has been given in principle for a headwall to be built and that all permits would be acquired prior to works commencing. However, even though neighbour notifications have been made, no such mechanism or firm assurances from this landowner for securing the use of their land for the duration of the development has been provided. In that context, it is suggested that a planning condition requiring final signed agreement would meet the tests of reasonableness and enforceability set out in the Framework.
8. However, the Planning Practice Guidance (PPG) says that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. It is only in exceptional circumstances that this may be appropriate where there is clear evidence that the delivery of the development would otherwise be at serious risk. It is noted that this scenario may apply in the case of particularly complex development schemes.
9. While the delivery of the development could potentially be at risk without the secured agreement of an adjacent landowner, other options could be explored. Additionally, the scheme is for a single dwelling and would consequently not be particularly complex. Therefore, although a condition would undoubtedly be more convenient for the appellant, exceptional circumstances of the type set out in the PPG have not been demonstrated. As such, there is insufficient certainty or clarity in detail to ensure the reasonable or enforceable use of a condition, negatively worded or otherwise.
10. For the reasons given, it has not been convincingly demonstrated that the appeal site could be adequately drained. Consequently, there would be conflict with Policy DEV35 of the Plymouth & South West Devon Joint Local Plan 2016 (JLP), which says, amongst other things, that development should ensure that it minimises

surface water run-off and does not increase flood risks or impact water quality elsewhere.

Housing stock

11. 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, where the number of 4 bed homes make up 58% of the total. The Council says the housing need in this area is for smaller residential units of 1-2 bedrooms. Conversely, the appellant refers to a recent Housing Needs Report for Lewdown where it is said that respondents felt their accommodation was too small, which is acknowledged.
12. The existing dwelling is however already a 3-bedroom unit of accommodation. Notwithstanding its poor state of repair, the appellant had originally intended to extend the property, which could have created a 4th bedroom. There is little to show that this would not have been a possibility. The replacement dwelling is evidently necessary, and it is claimed the more practical extra space would meet the specific needs of a local family. As such, it would be unreasonable to penalise the appellant on the grounds that the scheme replaces this 3-bed dwelling rather than extend it.
13. The proposed layout includes an office, storage, utility, and snug spaces that would all be relatively compact, and appropriate to their intended function. As such, having paid regard to the Council's JLP Supplementary Planning Document (SPD), it is not considered that the snug should be classed as another bedroom. Overall, the size of the replacement dwelling when compared with the existing would result in a similar house type.
14. My attention has been drawn to another appeal under APP/Q1153/W/21/3282233. However, this is not comparable as that scheme was for a new dwelling on greenfield land, as opposed to the replacement of a property on a site with a residential use. Even if a single dwelling materially affects the overall housing mix, for the reasons given, there would be no need for this proposal to redress an imbalance within the existing housing stock.
15. I therefore conclude on this main issue that the proposal would not have a harmful effect on the housing stock. As such, there would be no conflict with JLP policies SPT2 or DEV8.

Character and appearance

16. The appeal site comprises narrow areas of land straddling a country lane that is nestled into its surroundings by rising fields and many trees. It is in an isolated countryside location where other properties are few and far between. The appellant provides examples of the mix of house designs in the surrounding area. Notwithstanding the Council's landscape Officer comments, this is consistent with my own observations that the scale, design, and use of materials is varied.
17. Within the larger plot there is a small cottage of some age with a rundown appearance. It is agreed that this non-designated heritage asset (NDHA) is in a poor condition where a replacement could be supported. In that context, Policy TTV29 of the JLP permits replacement dwellings in the countryside, subject to

certain criteria being met. Part 2 of the policy requires that the size of the new replacement dwelling will not be significantly larger than the original house volume.

18. In that context, the Council's JLP SPD says that when considering whether there would be a 'significant' change, two key elements should be taken into account. Those being landscape or visual harm, and whether the number of bedrooms proposed by a change in size means household needs in the area are not met. I have already concluded above that there would be no failure to meet local household needs. In respect of landscape effects, JLP Policy DEV20 takes primacy and adds, in part, that development should be of an appropriate scale, massing, and height.
19. The dwelling would be taller and of a greater footprint than the existing. However, its overall height would remain relatively low due to the pitched roof design. Additionally, it would be of narrower form with a greater set back from the adjoining lane, when compared with the original building. This would reduce its overall presence, and it would consequently not result in a significantly larger or imposing feature in this well screened landscape. That being said, given the less than significant increase in scale and massing, it would have been possible to remove certain permitted development rights for further extensions using an appropriately worded condition, had I been minded to allow the appeal. As such, the size, scale, and massing of the proposal would be appropriate.
20. The design would introduce larger fenestration openings. There would be a rather prominent double height central feature, which would not be particularly subtle. Notwithstanding this, it would form part of the swept curved entrance that would add an interesting architectural detail. While these features would not mirror those found in the original building, the fenestration and design would maintain a good sense of symmetry. On the whole, these features would not be excessively large and take design cues from the NDHA.
21. Furthermore, although slightly taller than the original feature, the proposed stone walling and material finish to the property would maintain an attractive frontage which is part of the local vernacular. The roof pitch would not necessarily be reflective of a typical Devon longhouse, though the introduction of slate over a simple, narrow building design would result in complimentary features when viewed from the rural lane. In that respect, material finishes could have been secured by condition. Collectively, this would mean that the development would respond positively and creatively to the existing features associated with the NDHA and its rural setting, as required by JLP Policy DEV21.
22. For the reasons given, there would be no conflict with JLP policies DEV20, DEV21, DEV23, and TTV29. There would also be no conflict with the Council's JLP SPD where it says, amongst other things, that distinctiveness can be delivered through new designs that respond to local characteristics in a contemporary way. Additionally, there would be no conflict with paragraph 139 of the Framework which says, in this respect, that significant weight should be given to development which reflects local design policies.

Carbon reduction

23. JLP Policy SPT1 aims in part to increase opportunities for the use of renewable energy, where developments are able to accommodate the impacts of climate change. Amongst other things, JLP Policy DEV32 says that the need to deliver a

low carbon future should be considered in the design and implementation of all developments. Opportunities such as reuse or recycling to minimise the use of natural resources should be identified.

24. Although it is said not to be part of the development plan, the Council refers to its adopted Climate Emergency Planning Statement (CEPS) as being of particular relevance. In that context, my attention has been drawn to appeal decisions at Town Farm¹ and Dream Hill Garage². However, neither of these decisions were shown to be in compliance with the Council's CEPS. Even though the document is a material consideration, there is little to demonstrate that the proposal would be in conflict with Part M5 of it.
25. The Framework says that the planning system should support the transition to net zero by 2050 and take full account of all climate impacts including overheating, water scarcity, storm and flood risks. It adds in paragraph 163 that the need to mitigate and adapt to climate change should also be considered in assessing planning applications, taking into account the full range of potential climate change impacts.
26. The scheme would make use of passive ventilation, high thermal capacity insulation, air source heating, double glazing, solar panels, and rainwater collection. These features show that careful consideration has been paid to a low carbon future, providing opportunities to minimise the use of natural resources in the development over its lifetime. This is consistent with the aforementioned policies, guidance and the Framework. In that respect, the case law references cited by the Council are acknowledged.
27. Therefore, I conclude on this main issue that the proposed development would achieve a low carbon design. As such, the development would accord with JLP Policy DEV32. There would also be no conflict with chapter 14 of the Framework.

Other Matters

28. The scheme would make use of previously developed land and would add to the overall supply of homes in the district. These are matters that weigh moderately in favour of the development.

Planning Balance and Conclusion

29. 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.
30. Bringing together my conclusions on the main issues, I have found that the proposal would achieve a low carbon design. It would not lead to an imbalance in the housing stock, nor would it harmfully affect the character and appearance of the area, with particular regard to heritage assets. However, this would not outweigh the harm identified in respect of the importance of providing adequate drainage. As such, there would be conflict with the development plan as a whole.
31. Furthermore, even when considered cumulatively, the weight given to the other material considerations would not outweigh the identified harm. Accordingly, other

¹ APP/Q1153/W/23/3334616

² APP/K1128/W/24/3342419

considerations do not therefore indicate that permission should be granted contrary to the development plan. Therefore, the appeal is dismissed.

J Hills

INSPECTOR