



Appeal Decision

Site visit made on 12 February 2025

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 February 2025

Appeal Ref: APP/K1128/W/24/3353842

Sungates, Chittleburn Hill, Brixton, Devon PL8 2BJ

- 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 Mr Steve Minhinett of Ercle Designs limited against the decision of South Hams District Council.
 - The application Ref is 1936/24/FUL.
 - The development proposed is described in the application as “proposed new dwelling in replacement of previously permitted class Q”.
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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. I note that paragraph numbers referred to in the Council’s decision notice have now altered.
3. The address given in the application form and decision notice includes reference to 76 Hydepark road which is not shown to relate to the appeal site. The appeal form refers to Cornwall, which is also incorrect. I have therefore corrected the address to that set out in the banner heading above.

Background and Main Issues

4. Since the Council made its decision, the appellant has attempted to address a reason for refusal regarding insufficient drainage information. The new information would not significantly alter the scheme or represent a fundamental change to it. The Council has commented on this and therefore, in accepting the information, I am satisfied that it would not cause unlawful procedural unfairness to anyone involved in the appeal. In that context, the Council is agreeable to the detail contained within the revised drainage plan. I am satisfied its concerns in this respect have been overcome.
5. I therefore consider the main issues to be:
 - whether the site is a suitable location for the proposed development having regard to the local settlement strategy and access to services and facilities; and
 - the effect of the proposed development on the character and appearance of the area with particular regard to design.

Reasons

Location

6. The appeal site is in the countryside and comprises a large parcel of steeply sloping land that lies between a busy road and public footpath. Despite the presence of two small buildings and a nearby home, its trees and natural vegetation are prevailing characteristics of this rural setting. The nearest settlements are not appreciable from the appeal site and are some distance away. This physical and visual separation from any settlement adds to the appeal site's overall sense of remoteness. This is recognised by the fact it is not within any defined settlement boundary of the Brixton Parish Neighbourhood Plan (NP). NP Policy Dev1. deals with development within such boundaries and would consequently not be applicable to this proposal.
7. Outside defined settlements, Policy TTV1 of the Plymouth & South West Devon Joint Local Plan (JLP) only permits development where it would support the principles of sustainable development set out in policies SPT1, SPT2, and TTV26 of the JLP. Together, the SPT policies, amongst other things, seek to create communities that have reasonable access to areas that meet daily needs for local services and facilities, promoting sustainable transport options.
8. In that context, there is a public footpath that is said to link to the appeal site, though this is not shown on the plans. Even if available for future occupiers, this path is unlit with gloomy sections including steep banks and an unwelcoming underpass that provides little natural surveillance. Moreover, it covers a good distance from the appeal site before connecting with settlements in either direction. This would not be an inviting route for pedestrians or cyclists to navigate on a regular basis, particularly during the dark or in inclement weather conditions.
9. The existing bus stop shown in the appellant's travel plan would be reached from a section of the busy A379 that has no pavement. Pedestrians or cyclists would be very unlikely to decide to use this road to access such services. At my visit, walking from the appeal site, I attempted to access this bus stop from the public footpath. I was not able to reach it without first covering a far longer distance in the direction of a garden centre. Even if a shorter route were available, it is not clear how regular this service might be. For the reasons given, future occupants would be likely to be largely dependent on private vehicles for access to public transport, local services, and the larger settlements beyond to meet daily community needs.
10. JLP Policy TTV26 focusses on development in the countryside. It says that the special characteristics and role of the countryside will be protected. Part 1 of the policy only permits isolated development here in exceptional circumstances. Notwithstanding my assessment above, the Council considers that the appeal site is not isolated in the terms set out in this policy. Even if I were to agree with the Council, Part 2 of TTV26 says that proposals should respond to a proven agricultural, forestry or other occupational need that requires a countryside location. There is no dispute that the proposed open market dwelling would not meet any exceptional circumstances or occupational need. Therefore, for the reasons given, there would be conflict with the settlement strategy. There would also be conflict with paragraph 83 of the Framework that says housing should be located where it would enhance or maintain the vitality of rural communities.

11. Accordingly, I conclude on this main issue that the site is not a suitable location for the proposed development having regard to the local settlement strategy and access to services and facilities. As such, there would be conflict with JLP policies SPT1, TTV1 and TTV26; and NP Policy Dev1.

Character and appearance

12. The proposed dwelling would be positioned near the top of the sloping site, built on 3 levels. Access would be achieved using an existing approved track at a lower level. The ground floor would include a carport entrance that would be set into this slope. Notwithstanding the likely requirements for significant earth movements, to a certain extent, this would reduce the overall effect of a 3-storey building.
13. However, the 2 floors above would still be of a considerable massing and height that would be far in excess of any built form that currently exists. The cumulative effect of large sections of solid walls, expansive and prominent dormers, together with a full width balustrade would generate a particularly bulky appearance.
14. Additionally, while attempts to mirror design elements of the nearby building are acknowledged, that property bears little resemblance to the proposal. Having said this, the existing property is not of notable architectural value or necessarily an example of a locally distinctive built form. Even so, the scheme would include a cluttered and asymmetrical collection of fenestration detailing amongst stone cladding and render, over multiple floors. This, combined with the excessive massing would amount to poor design that would be unsympathetic to this verdant landscape setting. Even though paragraph 132 of the Framework would not apply to development proposals, there would be conflict with paragraph 135 of the Framework in this regard.
15. Given the amount of boundary vegetation, there would be some natural screening of the development from the A379, particularly during certain times of the year when trees are in full leaf. At the time of my visit, gaps in the trees and vegetation enabled views of the road and vehicles passing, though these were glimpsed. Be that as it may, I saw that the existing buildings were eminently noticeable from the public footpath. The proposed dwelling would be so much larger than these buildings. It would therefore stand proud, and the eye would be drawn to it as an incongruous feature in the landscape. It would be very difficult to attempt to screen the proposed dwelling from such public vantage points.
16. For the reasons given, the proposal would have a harmful effect on the character and appearance of the area, with particular regard to design. As such, there would be conflict with JLP Policy DEV20 and NP Policy Dev2. which, together in this respect, seek to have proper regard to surroundings in terms of scale, massing, height, topography and detailing, minimising visual impacts.

Other Considerations

17. *Fallback* – My attention has been drawn to an application ref 4530/22/PDM made under Part 3, Class Q of the General Permitted Development Order 2015 (as amended) to convert a building to a dwelling. The Council agrees that this was not determined and that there would consequently be a ‘deemed’ consent.
18. In that respect, the appellant claims that the acceptability of the principle of allowing a dwelling on the appeal site rests on confirmation of such a status within

previous officer communication. However, any such communication, helpful or otherwise, cannot be relied upon as it is not a decision of the Council. The Council has not therefore been inconsistent, as suggested by the appellant. Moreover, it is not appropriate within this appeal to determine whether or not the Class Q scheme would be permitted development. This could only be formally determined by a lawful certificate application.

19. Nevertheless, the Council provide evidence to show that the Class Q scheme would not meet the requirements of the legislation in respect of the red line area surrounding the building. Therefore, in the absence of any compelling evidence to the contrary, it is not clear that any fallback from the deemed consent could actually be carried out. Even if it could, the appellant says that the asbestos building would require significant effort to achieve adequate air tightness. This would mean that the probability of this scheme being advanced is likely to be small. Notwithstanding the above, the deemed consent indicates that there would be more than a theoretical prospect of the fallback, and it is therefore a material consideration. However, for the reasons given, it can only be given very limited weight.
20. The appellant claims that the proposal represents 'betterment' when compared with the fallback. There would be some possible advantages in using more energy efficient materials, PV panels, EV charging, creating a building that would contribute towards the quality housing stock. However, there is little reason why the conversion of a very small building could not be adapted to become energy efficient using appropriate materials and carbon reduction measures. Neither is it clear why such a conversion would not represent quality housing. I give these considerations very little weight.
21. It is claimed that the recessed design of the scheme would reduce its effects on the landscape. However, the proposal would cover a significantly greater footprint than the fallback and would be much taller. For the reasons given, it would be considerably more harmful to the character and appearance of the area. In that respect, it is acknowledged that a large dwelling would provide suitable accommodation to meet the specific needs of the appellant and their extended family. However, it is not shown that this would be the only or optimal way to meet their requirements. Overall, the proposal would be no better than the fallback.

Other Matters

22. I have paid regard to the appellant's comments in respect of the processing of the application and the site history. However, these matters have no bearing on my decision which is based on the planning merits of the proposal.
23. The appeal site falls within the Zone of Influence for the Tamar European Marine Site (comprising the Plymouth Sound and Estuaries SAC and Tamar Estuaries Complex SPA). 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 otherwise 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.

24. In that context, notwithstanding the submitted draft agreement, I would have looked at whether or not it would have been necessary to have secured a financial contribution towards mitigating recreational pressure on the SPA ahead of granting permission. However, as the identified harm in respect of the location of the development and character and appearance of the area 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.

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.
26. Although the appeal site could be adequately drained, I have found that the proposal would conflict with the settlement strategy, having poor access to services and facilities, and that it would have a harmful effect on the character and appearance of the area. As such, there would be conflict with the development plan as a whole. Furthermore, even when considered cumulatively, the weight given to the fallback and 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