



Appeal Decision

Site visit made on 22 October 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 March 2025

Appeal Ref: APP/K1128/W/23/3331771

Sheerwater, Devon Road, Salcombe, Devon TQ8 8HJ

- 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 & Mrs R Guess against the decision of South Hams District Council.
 - The application Ref is 3273/22FUL.
 - The development proposed is demolition of existing dwelling and construction of new replacement dwelling including existing garage renovation and associated landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr & Mrs R Guess against South Hams District Council. This application is the subject of a separate Decision.

Preliminary Matter

3. On 22 November 2023, all areas in England and Wales designated as an Area of Outstanding Natural Beauty (AONB) were retitled National Landscapes (NL). There has been no change to the legal designation and policy status of these areas, but I have replaced reference to the South Devon AONB with the South Devon NL (SDNL) in my decision to reflect this change.

Main Issues

4. The main issues are the effect of the proposed development on:
 - protected species; and
 - the character and appearance of the area having regard to the SDNL.

Reasons

Protected species

5. The Bat Survey Update report, compiled by Green Lane Ecology and dated July 2022, sets out that a bat presence/likely absence survey was carried out in 2021 after the existing dwelling was assessed as having a low to medium bat roost potential. The survey confirmed that the building contains a summer non-breeding day roost for one Common pipistrelle. Bats are a European Protected Species (EPS). The update survey carried out a year after the original survey did not observe any bats emerging from the building, but the report confirms that the classification and conservation significance of the roost remains the same.

6. The Bat Emergence/Activity Survey report, compiled by Green Lane Ecology and dated July 2022, confirms that no bats were observed emerging from the detached outbuilding and no fresh evidence of recent use was observed.
7. The Bat Survey Update report states that the works can be registered under a Bat Low Impact Class Licence as the demolition of the existing dwelling would result in the loss of the summer non-breeding day roost, which is described in the report as low conservation importance when considering the type of roost and the species of bat which are common and widespread. This licence allows a registered ecologist to disturb or capture common bats, or damage or destroy low conservation status roosts.
8. Natural England make the decision whether or not to grant a license, but as decision maker I must be confident that there would be a reasonable prospect of the licence being granted by Natural England in order for me to grant planning permission.
9. A license can only be granted by Natural England if the development meets three derogation tests. In summary these are, that the development is necessary for imperative reasons of overriding public interest; that there is no satisfactory alternative that will cause less harm to the species; and thirdly, that it will not be detrimental to maintaining the population of the species at a favourable conservation status in their natural range.
10. The appellants assert that as the proposal can be carried out under a Bat Low Impact Class Licence, a reasoned statement is not required, which is a technical document with relevant supporting evidence that sets out the reasons by which the three derogation tests are met. However, this does not alter the fact that the derogation tests need to be satisfied in order for a licence to be granted and that I, as the decision maker, need to be satisfied that there would be a reasonable prospect of the licence being granted by Natural England.
11. In relation to the first test, the Council have considered the proposal to be unacceptable in principle and thus deem there is no overriding reason for granting approval. This forms the third reason for refusal. The other two tests are not raised as a matter for concern by the Council. Based on the evidence before me, including the advice and recommendations of the ecologist, I have no reason to come to a different conclusion on the second and third tests.
12. Turning back to the first test, I have no substantive evidence or reasoning before me that the development is necessary for imperative reasons of overriding public interest and therefore, I cannot be satisfied that this test would be met.
13. The third reason for refusal refers to a conflict with Policy DEV26 of the Plymouth & South West Devon Joint Local Plan 2014 – 2034 (JLP), which states, under Part 4, that harmful impacts on European and UK protected species must be avoided wherever possible, subject to the legal tests afforded to them where applicable, and unless the need for, or benefits of, the development clearly outweigh the loss. However, based on the compensatory and mitigation measures for bats set out in the ecology reports, I find that the favourable conservation status of an EPS would be conserved, and the proposal would not result in harmful impacts on protected species. Consequently, there would not be a conflict with Policy DEV26 of the JLP.

14. However, given my consideration of the derogation tests and having had regard to my duties under Regulations 9(1) and 9(3) of the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations), based on the evidence before me, I am not satisfied that all three tests would be met. Therefore, I cannot be confident that there is a reasonable prospect of a mitigation license being granted by Natural England, and, as such, I am unable to grant planning permission.

Character and appearance

15. The appeal site is within the SDNL and is on the steep sloping side of a ria valley that is one of the special qualities of the unique natural beauty for which the SDNL is designated as a nationally important protected landscape. The site is surrounded by, and has a backdrop of, other residential properties that are cut into the topography with vegetation dispersed across the valley side. Due to its elevated position on the side of the valley, it is visible from the opposite side of the estuary, but it is seen in the context of the built form around it, which consists of a variety of housing styles and forms.
16. The existing building is a large detached dwelling. The many internal staircases have resulted in the living accommodation being spread across numerous levels and the building therefore works with the existing sloping nature of the site. The exterior is finished in painted render under a pitched tiled roof. The proportion of the site occupied by the dwelling and hard standing is substantial. There are areas of the site that are currently planted, and the vegetation does offer some softening of the existing built form, but it makes a limited contribution to the character and appearance of the site and its immediate surroundings.
17. The proposed replacement dwelling would have a considerably more modern design and form than the existing building. Three stories of the dwelling would have large expanses of glazing and when viewed from the public realm, it is these areas of the building that would be read as the main parts of the living accommodation. Although there would be smaller ancillary areas of living accommodation at a higher level than the existing building, they would be set behind natural stone walling with minimal openings or take the form of a small entrance building at the car park level. As such, the areas of the building that would be patently read as the replacement dwelling would be restricted to the aforementioned storeys with extensive glazing. With this in mind, whilst the overall floor area of the proposed replacement dwelling would be larger than the existing dwelling, the massing and bulk of the proposed development would not be dissimilar to the existing built form.
18. A potential stand out element of the proposed development is the oversailing section of the building facing over the estuary. However, this is similar to the projection on the existing building that is also externally rendered. As such, it would not result in the introduction of a form of architecture that deviates from the existing built form.
19. When viewed from the opposite side of the estuary, the building having a predominantly natural stone external face would help it to sufficiently blend into the rising backdrop of the site. The rendered banding would help to break up the glazing and add variety into the palette of external materials. It would also result in the building reflecting and responding to the built form that currently occupies the

site and also surrounds the site. Furthermore, there are trees around the site that offer a notable level of screening from the public realm on the opposite side of the estuary.

20. Whilst the plans do not show that there would be a significant loss of the existing greenery within the site, I acknowledge that the ability to create additional areas of planting will be difficult due to the large areas of hard standing. However, this is not fatal to the scheme as the plans do indicate that the existing vegetation will be enhanced through the introduction of more planting and green roofs will be introduced into the built form. This would provide further opportunity for screening and softening of the development and can be secured through an appropriately worded planning condition.
21. The scale of the proposal would not be at variance with its environs as large buildings are relatively common on this side of the estuary. Moreover, the horizontal emphasis of the building and its stepped form would work with the sloping nature of the site and sit amongst the surrounding built form that nestle in a similar manner on the side of the estuary. The large expanses of glazing would not appear stridently out of place within the context of other distinctly modern architecture that is also visible when stood on the other side of the estuary. The entrance hut at the car park level would make a small intervention into the view of the estuary from Devon Road and the replacement dwelling would therefore have a limited impact on this public viewpoint.
22. At the car park level of the site is a detached outbuilding that is used as a garage, storage and an annexe. The outbuilding is the built element of the site that is the most visible from Devon Road. The proposal would see the footprint of the building remain the same but there would be an increase in massing at first floor level. The overall height would remain similar to the existing building, and this would be achieved through the use of a shallow pitched roof. Due to the building being set down within the site, the increase in massing would not result in the building rising above the road level and this part of the development would therefore be accommodated within the street scene. The external wall materials would further help the building to be in keeping with the buildings along Devon Road.
23. The views of the estuary from Devon Road would not be materially affected by this element of the proposal as the increase in massing would be minimal and there is an existing fence along the road boundary that already prevents views over the outbuilding towards the estuary. Furthermore, as the building would remain ancillary to the replacement dwelling, the density of dwellings on the site would not increase as a result of the proposed development.
24. For these reasons, I conclude that the proposed development would not result in material harm to the character and appearance of the area having regard to the SDNL. Consequently, the proposal would comply with Policies DEV20, DEV23 and DEV25 of the JLP and Policies SALC ENV1, SALC ENV7 and SALC B1 of the Salcombe Neighbourhood Development Plan 2018 – 2034, which collectively seek, in part, for development to meet good standards of design, be in keeping with the surrounding area, respond to and integrate with the local built surroundings, conserve and enhance the landscape and seascape character, prevent damaging or inappropriate development within protected landscapes and retain the existing low density development and trees in the area. The proposal

would also comply with the good design and environmental protection policies of the National Planning Policy Framework.

Conclusion

25. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise.
26. In this case I have found no conflict with the development plan, but having regard to my duties required under the Regulations is an important material consideration in the determination of this appeal. As I cannot be satisfied that all derogation tests would be met, I am not confident there is a reasonable prospect of a mitigation license being granted by Natural England. Consequently, I am unable to grant planning permission.
27. The proposed development would accord with the development plan but the material considerations in this case indicate that a decision should be made contrary to the development plan. Accordingly, the appeal should be dismissed.

K Reeves

INSPECTOR