



Appeal Decision

Site visit made on 25 February 2025

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 March 2025

Appeal Ref: APP/K1128/W/24/3350818

Four Winds, Devon Road, Salcombe, Devon TQ8 8HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Garth Watkins of Interclass Homes LLP against the decision of South Hams District Council.
 - The application Ref 4264/23/VAR, dated 21 December 2023, was refused by notice dated 4 March 2024.
 - The application sought planning permission for “readvertisement: amendments to permission 41/1840/06/F for changes of design for two new dwellings” without complying with conditions attached to planning permission Ref 41/2322/11/F, dated 6 September 2011.
 - The conditions in dispute are Nos 2 and 3 which state that: *2. The development hereby approved shall in all respects accord strictly with drawing number(s) PL1, PL3, PL3, PL4, PL5, PL6, PL7, PL8, PL9, PL10, PL11, PL12, (all revision P) and the design and access statement received by the local planning authority on 7th September 2011; and 3. Prior to their use in the development samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out only in accordance with the details so approved. Such details/samples shall include a sample panel of the facing stonework (including details of the mortar to be used) and a sample of the slate cladding.*
 - The reasons given for the conditions are: *2. To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates; and 3. to enable the local planning authority to consider the details of the materials.*
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Decision

1. The appeal is allowed and planning permission is granted for readvertisement: amendments to permission 41/1840/06/F for changes of design for two new dwellings at Four Winds, Devon Road, Salcombe, Devon TQ8 8HJ in accordance with the application Ref 4264/23/VAR, without compliance with condition numbers 2 and 3 previously imposed on planning permission Ref 41/2322/11/F dated 6 September 2011 and subject to the following conditions:
2. The development hereby permitted shall be carried out in accordance with drawing nos SLP - 2018-021-09; 2018-021-04a – Proposed GF Plan; 2018-021-05a – Proposed FF Plan; 2018-021-06a – Proposed SF Plan; 2018-021-07a – Proposed Third Floor Plan; 2018-021-08a – Proposed Roof Plan; 2018-021-10 – Proposed Front Elevation; 2018-021-11 – Proposed Rear Elevation; 2018-021-12 – Proposed SW Side Elevation; and 2018-021-13 – Proposed NE Side Elevation, all dated November 2019. For the avoidance of doubt, the approved plans referred to in this decision do not relate to those elevations identified on the plans dating to 25th September 2006.

3. The external surfaces of the development hereby permitted, including the obscure glazing, shall be maintained in accordance with those details set out in the approved plans and for the lifetime of the development.

Preliminary Matter

4. 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, there have been few substantive changes albeit that paragraph numbers have changed. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context.

Background and Main Issue

5. The appeal site has a planning history that includes a permission ref 41/1840/06/F for the demolition of a dwelling and erection of 2 dwellings, allowed at appeal in 2007. The appellant says this is extant, though there is little evidence of its lawful commencement. There is a more recent 2011 planning permission under ref 41/2322/11/F that is the subject of this appeal. This was granted a lawful certificate in 2018. There is no dispute between the main parties that the 2 properties that have been built do not accord with either permission.
6. Section 73A of the Town and Country Planning Act 1990 allows for retrospective permission for development already carried out. In that context, while this scheme seeks to vary the plans and materials conditions relating to the 2011 permission, the appellant focusses on the differences between what has been built and the 2007 permission. The Council submits that the 2007 permission is not capable of being carried out and that comparisons with this proposal cannot be determinative.
7. Whilst I have paid regard to all the evidence in respect of the 2007 permission, in these circumstances it is not appropriate for me to determine whether a use or operation is or would be lawful. This can only be formally determined by a lawful certificate application under s191 or s192 of the Town & Country Planning Act. Even if a material start had been made on the 2007 permission, I cannot be certain of its lawful status given the evidence in respect of the 2011 permission. Therefore, although a material consideration, it can only be afforded very limited weight as a potential fallback in assessing the merits of this appeal.
8. In any case, the Council is concerned that the proposed design and use of materials harms the character and appearance of the area, citing its location within a National Landscape (NL). The statutory purposes of the NL are to conserve and enhance the natural beauty of the area of outstanding natural beauty. It is necessary to seek to further these purposes in decision making. Furthermore, in such areas the Framework attaches great weight to conserving and enhancing its scenic beauty. Accordingly, I consider the main issue to be the effect that varying conditions 2 and 3 would have on the character and appearance of the area.

Reasons

9. The appeal site is in an elevated position, forming part of a residential street in an urban area. Here, properties tend to be set back from the road and vary greatly in their design, scale, and massing. Much like the 2011 permission, the appeal buildings are eminently modern in appearance with their flat roofs and similar blocked design. The proposal's roof tops step down slightly, reflecting the

topography. Moreover, the simplified design arrangement contains clean lines of vertical emphasis found on the metal cladding. This has a narrowing and less cluttered effect on the building's appearance. Consequently, built over a very similar height, the scheme successfully breaks up the overall massing in much the same way as that already approved.

10. The Council is concerned that the building contains a poor choice of materials. However, the metal cladding is of a high quality, and its intermittent use around the building is broken up by contrasting render that is a commonplace material finish. While the absence of slate hanging is acknowledged, this combination of high-quality material finish significantly improves upon the collective extent of grey and white render found on the 2011 approval.
11. Additionally, having paid regard to the character of the settlement described within the Salcombe Neighbourhood Development Plan (NP), I saw that a nearby building opposite the appeal site appeared to have a metal roof with a muted finish. Like the appeal building, this material takes on different hues depending on its exposure to the sun and light. The variation of grey tones is similar to other nearby roofs with traditional materials. Accordingly, the cladding sits comfortably amongst some of the taller grey, red, and brown roofs, including those with solar panels that are found in the surrounding area. For these reasons, material finishes to the building are sympathetic to this part of the street, which would further the purposes of the NL.
12. As part of this proposal, there are further glazed elements on each storey within the narrow columns fronting the street. These columns are set back from the main frontage and step further back at the top floor, which reduces their overall prominence. Rather than appearing strident as suggested by the Council, the proposed fenestration maintains a vertical emphasis, does not appear excessively large or clumsy, and is set amongst well defined sections of render. This render detailing is visually appealing and integrates well with the similar finishes found on properties either side of the appeal site. Moreover, the proposed windows give the building a certain lightness when compared with the blank and heavier industrial feel of this part of the 2011 permission.
13. A key design feature of the appeal scheme is the quality stone walling at the front of the site with its impressive curves and architectural form. The eye is drawn to this rather than the rest of the development behind it. In that respect, the additional stone walling replaces some sections of hit and miss timber panels, which represents a substantial improvement of material finish. For the reasons set out above, in accordance with paragraph 140 of the Framework, the quality of the approved development is not materially diminished by the proposal.
14. There are concerns regarding the effect the additional windows have on the NL known for its intrinsic dark skies. While some light will emanate from the new windows, the building is set within a part of the urban area where the dark skies would already be affected by numerous properties containing large fenestration openings. Furthermore, the reduction in lower-level glazing with this scheme may well reduce the overall levels of light spilled. Therefore, it has not been shown that the development has a harmful effect on the NL in this respect.
15. For the reasons given, the variation of conditions 2 and 3 would not have a harmful effect on the character and appearance of the area. As such, there would be no

conflict with policies DEV20 and DEV25 of the Plymouth and South West Devon Joint Local Plan (JLP), or NP policies B1 and Env1, which, collectively in this respect, seek to ensure development proposals meet good standards of design, are innovative and integrate with local built surroundings, contribute positively to townscape and landscape, have proper regard to the pattern of local development in terms of local distinctiveness, visual impact, massing, materials, detailing, preventing incongruous features that conserve landscape and scenic beauty.

Conditions

16. I have made some amendments and omissions to the Council's suggested conditions in the interests of clarity and to ensure compliance with the Framework.
17. By allowing this appeal a new planning permission is created. The Planning Practice Guidance advises that, for clarity, decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect, unless they have already been discharged.
18. I have varied the plans condition showing the amended design that is the subject of this appeal. Additionally, I have varied the materials condition to reflect those shown on the plans so that effective control over the external appearance of the building can be maintained, and to protect the living conditions of neighbouring occupiers. In that context, for the avoidance of repetition, it is not necessary to impose the Council's suggested obscure glazing conditions. Moreover, the scheme does not include hit and miss privacy screens to comply with, which makes that condition unenforceable. In any case, lower-level windows are not proposed on the side elevations and the stone wall provides effective screening, which makes this fencing unnecessary.

Conclusion

19. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission with varied conditions as set out in the formal decision.

J Hills

INSPECTOR