



Appeal Decision

Site visit made on 12 November 2024

by R Kent BA (Hons) MTP DipM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2025

Appeal Ref: APP/Q1153/W/24/3342172

West Side, 4 Moorland Court, Yelverton PL20 6BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Mr David Schulz against the decision of West Devon Borough Council.
- The application Ref 1891/23/VAR was approved on 3 November 2023 and planning permission was granted subject to conditions.
- The development permitted is described as “Application for removal or variation of conditions 1 (approved drawings) 4 (windows fittings) 6 (external materials) & 6 (landscaping & planting) following grant of planning consent 3750/21/VAR.”
- The condition in dispute is No 4 which states that: *Prior to first occupation of the Plot 2 dwelling hereby approved, the four windows at first floor level on the south elevation facing 2 Moorland Court shall be fitted with a minimum of level 3 obscured glazing and fixed shut (or secured by 100m restrictors) up to a height of 1.8m above internal finished floor level and shall thereafter be permanently retained in that condition.*
- The reasons given for the condition is: *To protect the amenity and privacy of residents of the adjacent property; 2 Moorland Court in accordance with policy DEV1(1) of the Plymouth and South West Devon Joint Local Plan.*

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing bungalow and erection of 2 new dwellings at West Side, 4 Moorland Court, Yelverton PL20 6BL in accordance with application 1891/23/VAR subject to the conditions in the attached schedule.

Background and Procedural Matters

2. Outline planning permission¹ and reserved matter approval² have been granted for the demolition of a bungalow and the erection of 2 dwellings. A subsequent application³ to vary conditions of the reserved matter approval relating to the approved plans and the parking and integral garage arrangements was granted on 10 March 2022. A further application, reference 1891/23/VAR, to vary conditions imposed on that planning permission was granted planning permission by the Council on 3rd November 2023 subject to revised conditions. Condition 4 of that permission is the subject of this appeal and requires that the 4 windows at first floor level on the south elevation facing 2 Moorland Court are obscure glazed and fixed or restricted shut up to a height of 1.8 metres above internal finished floor level.
3. A section 73 application seeks permission for development to be carried out without complying with a condition imposed on a planning permission. Reserved

¹ LPA ref 3319/18/OPA

² LPA ref 0152/21/ARM

³ LPA ref 3750/21/VAR

matter approval is not a grant of planning permission. Therefore, it is not possible to grant a new approval of reserved matters under a section 73 application. If the appeal were to be allowed, the result would be the grant of a new full planning permission. The parties have had the opportunity to comment on this matter and I have taken the comments received into account.

4. Reference is made in the description of the development to it being “part retrospective.” This in itself is not a form of development and I have not included it in the description of development in the banner heading above. However, the submitted evidence confirms that the construction of the dwelling on plot 2 is well advanced and I was able to see this for myself on my site visit.
5. The approved internal layout plan for Plot 2 is shown on drawing ‘2003 309 F Floor Plans (Plot 2)’. Whilst I saw that windows have been installed in the south elevation, I noted that the location of the en-suite bathroom in the ‘Master Bedroom’ differed from that shown on the plan. Whilst I have determined the appeal on the basis of the plan before me, I have also taken account of the internal layout as built.
6. The original outline planning permission was subject to a Unilateral Undertaking (UU) to provide a financial contribution to offset the recreational impacts of future occupants of the development on the Tamar Estuaries Complex Special Protection Area (SPA) and the Plymouth Sound & Estuaries Special Area of Conservation (SAC) which together comprise the Plymouth Sound and Estuaries European Marine Site (EMS). A supplemental agreement under S106A of the Town and Country Planning Act 1990 (the Act) dated 13 January 2025 was submitted during the course of the appeal. I have had regard to this in my decision.
7. For consistency, my formal decision in paragraph 1 uses the description of the development from the original outline planning permission.

Main Issues

8. Against the background outlined above the main issues are therefore:
 - whether condition 4 requiring obscure glazing is necessary to protect the living conditions of the occupants of 2 Moorland Court with regard to privacy; and
 - the effect of the development on the Tamar Estuaries Complex Special Protection Area (SPA) and the Plymouth Sound & Estuaries Special Area of Conservation (SAC).

Reasons

Living conditions

9. The first floor windows in the south elevation of plot 2 face towards the adjoining property, 2 Moorland Court. A driveway runs adjacent to the site boundary separating it from the garden of No 2. The southern edge of the drive is lined by a hedgerow with a number of trees and other planting between it and No 2. The garden of No 2 lies behind the hedgerow. There are two further trees on the northern side of the drive between it and plot 2, one of which is located directly outside the window of bedroom 3 in the new dwelling with its canopy limiting views from that window towards No 2.

10. From the evidence before me, the elevation of the bungalow at No 2 facing the appeal site is approximately 30m from the first floor windows in the south elevation of plot 2. The windows in the south elevation of the master bedroom and bedroom 3 were clear glazed at the time of my visit which enabled me to assess the effect on the privacy of the occupants of No 2 from those windows. The combination of the distance between the two dwellings coupled with the intervening trees in the grounds of No 2 prevented clear views into the windows in the bungalow.
11. Plymouth & South West Devon Joint Local Plan 2019 (JLP) Policy DEV1 requires development to safeguard the amenity of local communities by, amongst other things, ensuring new development provides for satisfactory privacy for both new and existing residents. Further guidance is given on this in Appendix 1 of the JLP Supplementary Planning Document 2020 (SPD) with reference to residential extensions. Whilst the appeal scheme is a new dwelling rather than an extension, it is reasonable to have regard to the criteria the SPD uses to assess the effect of development on the privacy of adjoining properties. The guidance seeks to ensure that habitable room windows facing directly opposite one another should be a minimum of 21 metres apart for two storey development. The 30m distance referred to above significantly exceeds the minimum distance in the guidance.
12. The SPD also indicates the circumstances when overlooking of gardens may be unacceptable. The proposal would not result in intrusive, direct and uninterrupted views of the parts of the garden in No 2 closest to the bungalow. Even taking into account that the trees are deciduous, the branches of the trees would still have the effect of obscuring views of the garden and rear windows in the bungalow during the winter period. The proposal therefore does not conflict with the SPD regarding the effect on the privacy of the garden.
13. Whilst there may be greater expectation of privacy in a road predominantly comprising bungalows compared to a two storey development, where views from upper floor windows across gardens are more common, the effect on the privacy of No 2 would not be harmful for the reasons given above.
14. I therefore conclude that the disputed condition is not reasonable or necessary in order to protect the living conditions of the occupants of 2 Moorland Court. The development without the disputed condition would therefore comply with JLP Policy DEV1 which seeks to ensure, amongst other things, that development provides satisfactory privacy for existing residents.

Effect on nationally and internationally protected sites

15. The site falls within the 12.3km Zone of Influence for the SPA and SAC which together form the EMS. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) requires me to make an Appropriate Assessment (AA) of the implications of the proposal for the conservation objectives of the SPA and the SAC. I have therefore carried out an AA.
16. The EMS extends inland along the river tributaries from the Plymouth Sound estuary. The SAC's qualifying features are sandbanks which are slightly covered by sea water all the time; estuaries; mudflats and sandflats not covered by seawater at low tide; large shallow inlets and bays; reefs; Atlantic salt meadows; and populations of Allis shad and Shore dock. The SPA covers the upper reaches

of the river tributaries. The populations of Avocet and Little Egret are its qualifying features.

17. The evidence indicates that the close proximity of the appeal site to the SAC means future occupants of the development could contribute to disturbance of its protected areas through recreational activities causing damage to the seabed, removing fish species and causing pollution of the water. Recreational activities can also impact on the qualifying features of the SPA by introducing disturbance or damaging the birds' supporting habitats. The potential for adverse effects is likely to increase with the amount of residential development and tourism meaning that the combined effects could be significant and effect the integrity of the protected sites.
18. The Council has adopted a 'Plymouth Sound and Estuaries European Marine Sites (EMS) Recreation Mitigation and Management Scheme' (2019) which establishes a joint approach with adjoining Councils towards the mitigation of Likely Significant Effects on the SPA and SAC arising from new housing and tourism growth. A "Plymouth Sound and Estuaries EMS Contribution" is sought for new dwellings which is then used to deliver mitigation for the recreational impacts on the protected sites.
19. For this appeal, I have been provided with a copy of a UU dated 11 May 2021 made pursuant to S106 of the Act securing a contribution of £467.91 to be paid prior to the occupation of the first dwelling to be erected on the land. The supplemental agreement dated 13 January 2025 varies the obligation to include a planning permission granted under this appeal if the appeal were to be allowed.
20. The Council's evidence indicates that the contributions are used to fund various projects and capital works to mitigate recreational impacts, monitor recreational activity, and fund a warden and project management costs to deliver the mitigation projects and works.
21. I have consulted Natural England on the proposal and am satisfied that the contribution is sufficient to avoid adverse impacts on the SPA and SAC. I am also satisfied from the evidence before me that, as the appeal would result in a new planning permission if the appeal were to be allowed, the planning obligations it contains are necessary to make the development acceptable in planning terms. The purpose for which the financial contribution is sought directly relates to the development and the amount of money sought is fairly and reasonably related in scale and kind to the development. It is reasonable that the payment is made upon the occupation of the first dwelling as that is the time from when the development would have potential adverse effects on the integrity of the protected sites. As the payment would be secured through a supplemental agreement to the UU, I am satisfied that likely significant effects on the integrity of the SPA and SAC would be avoided.
22. For these reasons, the proposal would not have an adverse effect on the SPA and SAC. It would therefore comply with the Habitat Regulations and with JLP policy SPT14 which seeks to mitigate the recreational impacts from development on European Sites.

Other Matters

23. The site lies within the Tamar Valley National Landscape and I have had particular regard to the statutory duty to further the purposes of Protected Landscapes. The site already has planning permission and plot 2 was largely constructed at the time of my site visit. As a consequence, the relatively minor proposed changes which are the subject of this appeal would not harm the National Landscape and would continue to conserve its natural beauty.

Conditions

24. As my decision would result in the grant of a new full planning permission, I have sought the parties' comments on what conditions, including any still relevant from the previous planning permissions, would be appropriate in the event that the appeal were to be allowed.
25. As the development has commenced, a time limit condition is unnecessary. A condition requiring that the development of both plots is carried out in accordance with the submitted plans and details, including building materials, is necessary to provide certainty. It is not necessary or reasonable to specify the supplier from which the building materials are procured as it may be possible that the same materials could be sourced from a variety of suppliers. In response to my consultation on possible conditions, the Council suggested that the conditions should include details of the leadwork and slate to be used in the development. A condition securing these details would be reasonable to provide certainty.
26. The requirement to provide obscure glazing on plot 1 is reasonable to protect the living conditions of No 6 Moorland Close. However, the reference to 'level 3' obscured glazing used by the Council is not sufficiently precise and I have therefore amended the wording to require details of the type of obscure glazing to be submitted to the Council for approval. In view of the residential nature of Moorland Close, it is also reasonable to control the hours when construction materials are delivered and when building operations take place on the site in order to protect the living conditions of occupiers of nearby dwellings. A condition safeguarding trees during the construction of the development is also reasonable to prevent them from damage during construction.
27. A condition requiring the implementation of the drainage scheme is relevant to the development being permitted and necessary to ensure the site is effectively drained. In response to my consultation on possible conditions, the Appellant indicated that the original landscaping scheme was too onerous. I have therefore imposed conditions requiring a new scheme to be submitted and implemented. This is reasonable and necessary to ensure the development is compatible with its surroundings.
28. The document 'DEV32 for Minor development Applications' provides a checklist of questions to which the appellant has responded through the design of the proposed dwellings. The buildings have been designed to meet Passivhaus standards and a condition referring to the checklist is therefore unnecessary.

Conclusion

29. For the reasons given above I conclude that the appeal should succeed. I will therefore grant a new planning permission without condition 4 and with the conditions as set out in the attached schedule.

R Kent

INSPECTOR

Schedule of Conditions

1. The development hereby approved shall in all respects accord strictly with the following plans and details:
 - Site Location Plan - 300 Rev B
 - Block Plan – 301 Rev B
 - Floor Plans (Plot 2) 309 Rev F
 - Roof Plan (Plot 2) 310 Rev F
 - Elevations (Plot 2) 311 Rev F
 - Site Plan 315 Rev G
 - Plot 1 and 2 Elevation 318 Rev B
 - Floor Plans (Plot 1) 305 Rev A
 - Roof Plan (Plot 1) 306 Rev A
 - Elevations (Plot 1) 307 Rev B
 - Plot 1 & 2 Outline Planning Height Comparison 331
 - Conceptual Drainage Layout 3001 Rev C
2. The development shall proceed in accordance with the approved external materials 'Powder Coated Metal Colour RAL 7022'; 'Yennadon Stone'; 'White Silicone Render'; 'Timber Frame, Aluminium Clad Windows and Doors'; 'Gutters'; ' and Cedar Cladding'; The external materials shall be retained as such thereafter.
3. The development shall not be carried out otherwise than in strict accordance with the 'Arboricultural Impact Assessment 1210-AIA-SB' and 'Arboricultural Method Statement 1210-AMS-SB' hereby approved for the protection of trees both prior to and during construction works.
4. The delivery of goods and building materials during the construction period for the approved development and construction and building works on the site

shall not take place outside the hours of 8am to 6pm Mondays to Fridays, 8am to 1:00pm on Saturdays and not at any time on Sundays or Bank Holidays.

5. Details of the proposed external roofing materials and any leadwork to be used in the development shall be submitted to and approved in writing by the Local Planning Authority prior to their use in the development hereby approved. The development shall be carried out in accordance with the approved details.
6. The dwelling hereby permitted on plot 1 shall not be occupied until the three windows at first floor level on the north elevation of plot 1 facing 6 Moorland Court have been fitted with obscured glazing, and no part of those windows that are less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the Local Planning Authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
7. Prior to the occupation of the dwellings hereby approved, the turning and parking areas associated with each property shall be laid out in accordance with approved plan 'Site Plan Drawing No. 315 Rev G' and made available for use by occupants of the dwellings and retained for parking and turning thereafter.
8. Prior to the occupation of the dwellings hereby approved foul and surface water drainage shall be provided in accordance with approved plans J-1571 Unit 2 Soakaway'; 'J-1571 Unit 2 Permeable Paving'; 'J-1571 Unit 1 Soakaway'; 'J-1571 Unit 1 Permeable Paving'; 'J-1571 Percolation Calculations' and 'Conceptual Drainage Layout Drawing No. 3001 Rev C'. Once installed the foul and surface water drainage schemes shall be maintained and retained for the life of the development.
9. Prior to the occupation of the first dwelling a scheme of landscaping shall be submitted to and approved in writing by the local planning authority.
10. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

End of Schedule