



Appeal Decisions

Site visit made on 10 December 2025

by **Andy Harwood CMS MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 December 2025

Appeal A Ref: APP/K1128/W/24/3355444

Green Vale, Modbury, Ivybridge PL21 0SR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant planning permission under section 73 of the Act.
 - The appeal is made by Mr and Mrs D Gill against the decision of South Hams District Council.
 - The application Ref is 2725/24/FUL.
 - The application sought planning permission for a replacement dwelling without complying with a condition attached to planning permission Ref 35/0121/10/F, dated 18 June 2010
 - The condition in dispute is No 3 which states that: "The existing bungalow shall be demolished and all materials resulting there from removed from the site to an authorised tip prior to the occupation of dwellinghouse hereby approved"
 - The reason give for the condition is: "To prevent the establishment of an additional dwelling in the countryside contrary to established planning policies and to secure the visual enhancement of the site."
 - The development proposed is described in the application is: Retention of Bungalow as annex for ancillary purposes.
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Appeal B Ref: APP/K1128/C/24/3355389

Appeal C Ref: APP/K1128/C/24/3355501

Appeal D Ref: APP/K1128/C/24/3355534

Appeal E Ref: APP/K1128/C/24/3355386

Appeal F Ref: APP/K1128/C/24/3355439

Green Vale, Modbury, Ivybridge PL21 0SR

- The appeal is made under section 174 of the Act.
 - Appeal B is made by Miss Lucy Gill; Appeal C by Mr David A Gill; Appeal D by Mrs Sarah Frances Gill; Appeal E by Mrs. Rosemary Gill; and Appeal F by Mrs Felicity Wycherley, against an enforcement notice issued by South Hams District Council.
 - The notice was issued on 18 October 2024.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the breach of the following conditions: The Planning Permission Concerned: Planning Permission dated 18th June 2010 for the variation of condition 3 of planning consent 35/01211101F The Conditions Concerned Condition 3 "The existing bungalow shall be demolished and all materials resulting there from removed from the site to an authorised tip prior to the occupation of the dwellinghouse hereby approved. Reason: To prevent the establishment of an additional dwelling in the countryside contrary to established planning policies and to secure the visual enhancement of the site".
 - The requirements of the notice are to:
 - (i) Remove the unauthorised bungalow from the Land; and
 - (ii) Remove all materials resulting there from the Land to an authorised tip in accordance with condition 3 of 35/.01211101F.
 - (iii) Return the Land to its original state
 - The period for compliance with the requirements is: 3 months.
 - All of the appeals are proceeding on the following ground as set out in section 174(2) (g) of the Act. Appeals B and F are also proceeding on the ground set out in section 174(2) (e). Appeals C, D and E are proceeding on the ground set out in section 174(2)(f) of the Act.
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Appeal A Decision

1. The appeal is allowed and planning permission is granted for the a replacement dwelling at Green Vale, Modbury, Ivybridge Devon, PL21 0SR in accordance with the application Ref 2725/24/FUL, without compliance with condition number 3 previously imposed on planning permission Ref 35/0121/10/F dated 18 June 2010 and subject to a new condition and the other conditions attached to the original planning permission which are set out in a schedule at the end of this decision.

Appeals B, C, D, E and F

2. It is directed that the enforcement notice is:
 - corrected by deletion within section 3 of the words ‘for the variation of condition 3 of planning consent’ and their replacement with ‘reference number’; and
 - varied by deletion within section 6 (time for compliance) of “3 months” and the replacement with “6 months”.
3. Subject to the correction and variation, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

4. The enforcement notice (Appeals B to F) seeks to enforce planning condition No 3 that was imposed on planning permission ref 35/0121/10/F which proposed a “replacement dwelling.” The notice however incorrectly refers to the planning permission being for a variation of condition. Notwithstanding this error, there is no dispute about the correct planning permission and wording of the condition or that the condition has been breached. There is no injustice caused therefore to the appellant or the Council if I use my broad powers under s176(1) of the Act to (a) correct any defect, error or misdescription in the enforcement notice by deleting the incorrect wording and replacing that with the correct description for application ref 35/0121/10/F.
5. The application (Appeal A) has been made on the basis of retaining the bungalow for use as an annexe. No act of development is therefore proposed and this in effect was therefore an application under s73 of the Act to retain the building without complying with condition 3 on planning permission 35/0121/10/F. I will deal with it on that basis.

Appeal A – s78

The main issues

6. The main issues are whether the condition meets the tests for planning conditions in the National Planning Policy Framework (the Framework) and in particular whether it remains necessary with respect to:
 - the use of the building as an annexe for ancillary purposes to the occupation of the main house; and
 - the risks of flooding from the nearby stream and whether it necessary to consider sequentially preferable sites at lower risk.

The building as an annexe

7. Historically the building was a self-contained dwelling and hence it is referred to within the representations and in this decision as the “bungalow”. Planning permission (35/0121/10/F) was given to replace that bungalow with the newer dwelling on the site that I saw. The bungalow retains facilities that enable its independent occupation although at the moment, it is occupied by an elderly parent of the appellant who requires assistance and care from their family.
8. The appeal site incorporates a large area of land including a substantial lawn which is to the south eastern side of the buildings on the site. The buildings include the substantial new 2-storey dwelling, next to that and between it and the bungalow is a very large detached double garage with a high roof. The bungalow is close to the double garage and also, on its south-western side, a smaller older garage which would appear to be from a similar era as the bungalow itself. A narrow, unsurfaced track leads into the site and opens out a little alongside these buildings to a hard-surfaced area where there is space provided for parking in front of both of the garages. Whilst there is some planting and wire fencing around the garden area immediately next to the front of the bungalow, this provides minimal severance. There is generally very little separation between any of the buildings nor between them and the surround domestic garden which includes the large lawn along the south western side of the site. Vehicles driving to the new garages have to pass close to the front of the bungalow. To go in and out of that garage the vehicles are also then close to the north eastern elevation of the bungalow. A stream bisects the lawn from a broader grassed area and then agricultural fields beyond that boundary which rise up towards the south-east. The domestically used area including the buildings and the shared garden, is within a natural bowl with rising countryside surrounding it.
9. The Council has referred to previous appeal decisions (although has not provided reference numbers of those cases) where inspectors have reasoned that a occupation of a separate building within the curtilage of the dwellinghouse may not constitute a material change of use even if it contains facilities to enable independent occupation. I agree with those assessments and in such cases, a test is whether a new planning unit has been created in terms of assessing the need for planning permission. This present case is a little different however in that the building was a dwellinghouse and its use has not been materially changed and as such, it seems to me that it remains as a dwellinghouse. It is still used for residential purposes albeit the occupant is currently integrally linked with the main house as the occupant requires some assistance from other close family members who live there. The reason for the planning condition requiring the demolition of the bungalow was in order to prevent the establishment of an additional dwelling in the countryside contrary to planning policies. That is not now the reason why the application has been refused even though the representations clearly indicate an underlying concern by the Council and interested parties about that matter.
10. Notwithstanding the historical reason for the 2 dwellings being in existence, the 2 buildings are closely related to one another, are on one parcel of land that is not subdivided and which is in occupation by members of the same family who interact closely with one another. There is an intimate relationship due to the close physical

positioning of the bungalow with the other activity on the site. I only saw the site at a snap-shot in time when there wasn't much activity. However, in common-sense terms, I would expect there to be people who live or visit the main house to drive cars close to the bungalow, for there to be activity in the garden such as lawnmowing, children playing, people sitting out and enjoying the surrounding countryside, all in very close proximity to both the main house and the bungalow. There is an intimate relationship between the occupation of the bungalow and the rest of the site. I am satisfied in these respects that the site remains as one planning unit due to the functional linkages, common ownership as well as occupation by one family and the lack of physical separation.

11. The bungalow is a modest building, appears much smaller than the dwelling that was meant to replace it. Consequently, relative to that it appears subservient to what is now the main dwelling and the large, detached garage within a parcel of land which is integrally used by the same family. It is a dwelling but its occupation and use as ancillary accommodation can be secured by a different planning condition. This is as suggested by the appellant. The bungalow is very close to the core part of the site and it is clearly well positioned to enable for the care of the current elderly relative and could be used as an integral part of the residential use of the site if circumstances change. As children grow older, they may appreciate their own space by occupying it and their parents often, in my experience, also appreciate that. It could be used for other ancillary purposes such as hobbies or just for storage, for example.
12. Policy DEV10 of the adopted Plymouth and South West Devon Joint Local Plan (2014-2034) (LP) requires high quality in terms of design and resilience as well as living standards. However, it allows for the residential annexes where they are within the same curtilage and ownership as the principle dwelling. That is also subject to the annexe being ancillary to the principal dwelling via a functional link, with no separate demarcation or boundary. The term 'curtilage' is heavily relied upon in that policy but it is not defined in law. The extent of a building's curtilage is a matter of judgement in each case and a matter of fact and degree taking account of the physical layout of the building and land, the ownership past and present and use or function past and present. Given the close proximity of all of the buildings within the appeal site, the continued ownership by the same family as when the replacement dwelling was approved and the continued integral functional linkages, the bungalow as well as the replacement dwelling, as a matter of fact and degree, are within the same curtilage.
13. In relation to this main issue, the use of the building as an annexe for ancillary purposes to the occupation of the main house is acceptable and complies with LP Policy DEV10 for the reasons I have set out above. The condition originally attached is not necessary if an alternative planning condition is imposed to secure the use of the bungalow as ancillary accommodation. The LP Supplementary Planning Document 2020, amongst other things, provides further advice on how to consider LP Policy DEV10 and this would also be complied with.

Flood risk

14. The appeal site is close to a stream. The Council considers that the site is partly within Flood Zone 2 and partly with Flood Zone 3, therefore having a combination

of high to medium probability of flooding. The appellant's flood risk assessment concedes that the footprint of the bungalow is just within Flood Zone 2.

15. There is no material change of use proposed for the bungalow. However, the existing planning condition which has not been complied with, requires the demolition of the bungalow. Had that been complied with, there would be no building in existence which may have reduced the risks to its occupants from flooding and would also have increased the flood storage capacity of the land, potentially reducing flood risks elsewhere. For instance, it may have reduced the risks of the replacement dwelling flooding. Although these were not reasons for the imposition of the condition, it may have been a further advantage of compliance with it.
16. With respect to the first main issue, I have determined that the bungalow is acceptable as an annexe and can be restricted as such with the imposition of an alternative planning condition. Bearing in mind the advice of the the Framework, which is an important material consideration, in particular footnote 62, the planning condition would secure the bungalow as a minor development because it would be used for ancillary purposes to the main dwelling. Even though the bungalow may have some risk of flooding this will be an ancillary building. The main dwelling is accepted as being at a lower probability risk from flooding and so the household's main accommodation will be available should a flood event occur and relatives of the occupant will be close by to help with any related problems.
17. In relation to this main issue, because this would be a minor ancillary development, notwithstanding the risks of flooding from the nearby stream, it is unnecessary to consider sequentially preferable sites at lower risks. This would not conflict with LP Policy DEV35 which seeks to manage flood risks. It would also comply with the need to safeguard against the risk of flooding as required by Policy MNP2 of the Modbury Neighbourhood Plan 2014-2034 (NP).

Other matters

18. The retention of the bungalow would not cause any harm to the character and appearance of the landscape. Whilst the history and background of planning permission being given for a replacement dwelling on the site is a cause for some concern by interested parties, I have considered the appeal on the basis of current circumstances. The condition in question was imposed to prevent there being 2 dwellings on site which would not comply with planning policies restricting new housing in the countryside. Although development plan has changed, this is still a broad aim within the Framework and from what I have read, the current LP and the NP. With the imposition of the replacement condition however, the building would not be a separate dwelling in the countryside and could only lawfully be used for ancillary purposes.
19. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have not included the standard time-limit but have included those referring to requirements "prior to occupation" and "prior to

commencement” because I do not have the information to know whether any ongoing requirements are still relevant and enforceable. Importantly, there is a restriction on permitted development rights which I have also repeated.

Appeal A Conclusion

20. Accordingly, for the above reasons, I conclude that the proposal complies with the development plan as a whole and the appeal should succeed.

Appeals B and F on ground (e)

21. To succeed on this ground, it is necessary for the appellant to demonstrate that copies of the notice were not served as required by s172 of the Act. Section 172(2) in particular requires that a copy of an enforcement notice shall be served: (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. However, even if copies were not served as required, by reason of s176(5) of the Act, I can disregard that fact if neither the appellant nor the person who required service have not been substantially prejudiced by that failure.
22. The appellants state that they live within the main dwelling but were not served with a copy of the notice. Notwithstanding that fact, they were clearly aware of the notice and submitted appeals in time for them to be accepted as valid prior to the effective date of the notice. There is no evidence that these appellants have been caused any prejudice as a result of any failure to serve a copy upon them.
23. The appeals under ground (e) therefore fail.

Appeals C, D and E on ground (f)

24. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The notice requires compliance with the planning condition that there is no dispute has been breached because the bungalow was not demolished prior to the occupation of the replacement dwelling. The purpose of the notice is therefore as set out in s173(4)(a) to remedy the breach by making the development comply with the terms (including conditions and limitations) of any planning permission.
25. Each of the appellants is arguing the benefits of retaining the bungalow and I have considered those merits in relation to Appeal A. I have allowed that appeal and if that planning permission is complied with, it will override the effect of the notice. However, when the notice was issued, there was no other lesser step that could have achieved the purpose of the notice.
26. The appeal under ground (f) therefore fails.

Appeals B, C, D, E and F on ground (g)

27. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The notice requires compliance with the relevant planning condition and therefore the demolition of the bungalow. The bungalow is occupied by a member of the family unit who is also one of the appellants. They are elderly and require close-care. Furthermore, 3 months from this decision would not provide sufficient time to carry out ecological surveys due to

the implications for bat roosts in the roof space that could be disturbed when the building is demolished.

28. For both reasons, I will extend the period to 6 months. This would strike a more proportional and reasonable balance between the farming activities and the need to control the development. The fact is that this may be academic given the granting of planning permission in appeal A which will override the enforcement notice.
29. The appeal on ground (g) is allowed.

Appeals B, C, D, E and F Conclusion

30. For the reasons given above, I conclude that Appeals B, C, D, E and F should not succeed. I shall uphold the enforcement notice with a correction and variation. Notwithstanding this, given the effect of s180(1) of the Act, the enforcement notice ceases to have effect so far as inconsistent with the planning permission granted under Appeal A.

Andy Harwood

INSPECTOR

Schedule of conditions

- i. The existing bungalow shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Green Vale (the replacement dwelling).
- ii. The development hereby approved shall in all respects accord strictly with drawing numbers DG02B,03B,04B,05B,06B,07B,08C,09D,10A and 11A received by the Local Planning Authority on 05/05/2010.
- iii. Prior to development commencing constructional details of all eaves, verges and hips shall be submitted to and approved in writing by the Local Planning Authority, together with details of any extract or flue that terminates through the roof cladding. All such extractors shall terminate through in-line slate ventilators positioned on non-prominent roofslopes.
- iv. Prior to the commencement of development, details of the proposed render type and colour(s) shall be agreed in writing with the Local Planning Authority and shall be applied without the use of metal beads or stops. Movement joints, where required, shall be positioned at changes of direction or directly behind rainwater downpipes.
- v. All areas of new stone walls shall be constructed of natural random stone laid traditionally on its quarry bedding and pointed in a brown mortar finish recessed from the outer face of the walls. A sample panel or not less than two square metres shall be provided for inspection and written agreement by the Local Planning Authority prior to the construction of any of the new walls. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting this Order), all new stone walls, constructed in accordance with the approved drawings and the terms of this condition, and all existing stone boundary walls shall be retained in their natural stone finish and shall not be rendered, colourwashed or otherwise treated in a manner which would obscure the natural stone finish, nor shall they be demolished either in whole or in part.
- vi. Prior to the commencement of development, details of all new and replacement timber doors and windows, including their method of opening and proposed finish, shall be submitted to and agreed in writing by the Local Planning Authority. Standard background trickle vents shall not be used unless previously agreed in writing with the Local Planning Authority.
- vii. No work shall commence on site until full details of all ducts, flues, rainwater goods, vents and other external attachments have been first submitted to and approved in writing by the Local Planning Authority. The work shall thereafter be carried out in accordance with the approved details and shall thereafter be retained in that form unless otherwise agreed in writing by the Local Planning Authority.
- viii. The roofs of the buildings shall be clad in natural slates, fixed in the traditional manner with nails rather than slate hooks. Any hips shall be finished with a close mitre or narrow cement fillet rather than hip tiles. Prior to development commencing, a full roofing specification including the types and sizes of natural

slates to be used, together with the type, colour and profile of the ridge tiles shall be submitted to and approved in writing by the Local Planning Authority.

- ix. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) Order, 2008 (and any Order revoking and re-enacting this Order), no development of the types described in the following Classes of Schedule 2 shall be undertaken without the express consent in writing of the Local Planning Authority other than those expressly authorised by this permission:- (a) Part 1, Class A (extensions and alterations) (b) Part 1, Classes B and C (roof addition or alteration) (c) Part 1, Class D (porch) (d) Part 1, Class E (a) swimming pools and buildings incidental to the enjoyment of the dwellinghouse and; (b) container used for domestic heating purposes/oil or liquid petroleum gas) (e) Part 1, Class F (hardsurfaces) (f) Part 1, Class G (chimney, flue or soil and vent pipe) (g) Part 1, Class H (microwave antenna) (Including those classes described in Schedule 2 Part 2 of the Town and Country Planning (General Permitted Development) Order 1995 (and any Order revoking and reenacting this Order) (i) Part 2, Class A (means of enclosure).
- x. No development shall take place until there has been submitted to and approved by the Local Planning Authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the site and details of any to be retained, together with measures for their protection in the course of development. All planting, seeding, turfing or hardsurfacing comprised in the approved landscaping scheme shall be carried out by the end of the first planting and seeding seasons following the occupation of the buildings or completion of the development, whichever is the sooner. Any trees or plants which within a period of five 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 unless the Local Planning Authority gives written consent to any variation. The landscaping scheme shall be strictly adhered to during the course of the development and thereafter.
- xi. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with. Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the permitted development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the local planning authority.
- xii. Prior to the occupation of the dwellinghouse non reflective glazing shall be installed and thereafter so maintained in perpetuity in accordance with details previously submitted to and agreed in writing by the Local Planning Authority.