



Appeal Decision

Site visit made on 20 September 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2022

Appeal Ref: APP/X1118/W/22/3295511

Land adjacent Greenfield House, North Morte Road, Morthoe, Woolacombe EX34 7EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Haddon against the decision of North Devon District Council.
 - The application Ref 73115, dated 16 March 2021, was refused by notice dated 30 September 2021.
 - The development proposed is proposed new dwelling, land adjacent Greenfield House, North Morte Road, Morthoe, Woolacombe, Devon, EX34 7EF.
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Decision

1. The appeal is allowed and planning permission is granted for proposed new dwelling at Land adjacent Greenfield House, North Morte Road, Morthoe, Woolacombe, EX34 7EF, in accordance with the terms of the application, Ref 73115, dated 16 March 2021, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are the effects of the proposal on:
 - the character and appearance of the area;
 - the living conditions of future occupiers; and
 - the availability of vehicle parking facilities in the area.

Reasons

Character and appearance

3. The site lies within a linear residential form of development within the coastal settlement of Morthoe, all of which falls within the North Devon Area of Outstanding Natural Beauty (AONB). The residential area is varied in character and responds to a varied topography. The oldest dwellings are the vernacular cottages, mostly attached, which largely sit adjacent to the street. There are more modern dwellings, many detached and some within short terraces also within the surroundings. The external construction materials in the area include a large amount of painted, rendered blockwork, slate roofs, stone, and a small amount of both red brick and composite weatherboard cladding.
4. Directly opposite the site is a terrace of old cottages which have principal elevations and primary accesses directly onto the street. The street appears to be at its narrowest pinch point where the cottages are situated, with a wall largely overgrown with vegetation forming the site's boundary.

5. The appeal proposal seeks to excavate out part of the retaining bank and material behind it, and construct a dwelling over two floors. The ground floor level would contain a point of access, stairwell and utility/store area. Save for the doorway, this would be a windowless subterranean space. The first floor would contain the functional rooms of the dwelling, including two bedrooms and an open plan kitchen/lounge/diner.
6. The dwelling would have the appearance of a bungalow on top of, and surrounded by retaining structures. It would have an asymmetric roof form, with two monopitch planes rising to an offset ridge point. The horizontality of the dwelling's form would be broken up through the use of vertical bands of weatherboard cladding around all elevations at first floor level. The minimal visible ground level component would be constructed in stone to emulate the existing remains of the stone wall. The appearance of the dwelling would be contemporary, as would its palette of materials, avoiding appearing as a contrived pastiche of the older-style dwellings in the area.
7. I do not agree with the Council that the appeal site could be described as part of a field. At best, the site is an area of vegetated bank, grass or scrubland. Though the street width is already constrained, the cottages form one side and the vegetated bank provides some relief from the hard built form. The construction of a dwelling directly opposite the cottages would further visually narrow the street and urbanise an area of what is relatively green relief to the built form and such effects would be exacerbated by the inability to incorporate meaningful soft landscaping within the scheme. I also concur that it would appear relatively cramped within its plot, given the close proximity of the dwelling to the retaining walls to the sides and rear.
8. The impacts on the street scene would be localised to the immediate vicinity of the site but would not have a harmful effect on the wider AONB designation. Nonetheless, the proposal would still be in conflict with Policies ST04 and DM04 of the North Devon and Torrington Local Plan (adopted 2018) (NDTLP). These Policies collectively seek to secure good design in new development through guiding overall scale, density, massing, height, landscape, layout, materials, access and appearance, as well as ensuring solutions respond to the characteristics of the respective site and its wider context. The magnitude of harm arising from this conflict would be relatively limited given the localised extent of the impact and the otherwise satisfactory appearance of the dwelling within its surroundings.

Living conditions

9. In respect of conditions for future occupiers, the Council raise three issues which I deal with in turn below, these being (a), poor light provision, (b) poor outlook, and, (c) limited external amenity space. These issues are raised in the context of NDTLP Policy DM01, which requires developments shall not significantly harm the amenities of any neighbouring occupiers or uses and ensure that the intended occupants would not be harmed as a result of existing or allocated uses. The amenities of neighbouring occupiers have not been raised by the Council in the reasons for refusal.
10. Upon further analysis, given the way it is worded, Policy DM01 applies more specifically to new residential developments where they may be sited in close proximity to potentially unneighbourly uses, such as industrial uses. As such, I do not consider it specifically relevant to this proposal which would be situated

within a residential area. Rather, the potential effects on intended occupiers in terms of light, outlook and external amenity provision would flow from the design of the scheme itself, within the site's own boundaries. As the Council have referred elsewhere within the decision notice to '*Policy DM04: Design Principles*', I refer to this as the most applicable Policy of the development plan.

11. In terms of the ingress of sunlight and daylight, the property would be orientated to face broadly north and, unusually, there would be only one obscure-glazed opening in its principal (northern) elevation. A glazed roof section between the street access and inset front door would provide a degree of natural light into the stairwell, "*covered winter garden*" and rear utility/store. The windows on the side and rear elevations would both be in relatively close proximity of retaining walls and the site boundaries. Whilst there is an absence of detailed data on which to conclude that the light levels would be unsatisfactory, I consider that the future occupiers would receive only modest levels of light and this is indicative of a compromised quality of design, even if the appellant has confirmed his acceptance of the same.
12. For similar reasons to that stated above in terms of the proximity of windows to site boundaries and retaining features, the property would have a limited outlook from windows and doors across modest distances to the same. The set-down levels of the site would prevent any longer distance views being obtained, and the principal elevation has been retained as largely closed to avoid any unneighbourly impacts on occupiers of dwellings opposite the site. The outlook from the dwelling would therefore also be suboptimal.
13. In terms of external amenity space, there would be a relatively modest space around the dwelling itself, potentially capable of accommodating a washing line or a small outdoor furniture set for sitting out on. There would be very little meaningful external amenity space for children in which to play. I do not agree that there would be a useable area at the rear and the area described as a "*covered winter garden*" would inevitably be used as either an entrance lobby and/or store. Any future occupiers would certainly have a choice in this regard, but I envisage that its use would be that of an overspill room of the dwelling and therefore discount it from any calculation of the *external* amenity space.
14. I note the appellant's argument that not every resident wants a large outside space, i.e. apartments, and that there are extensive areas of local countryside and beaches to cater for the needs of future occupiers. However, and despite the absence of a specific size requirement for external amenity areas set down in any development plan policy, I consider that the external amenity space would be undersized to properly meet the needs of future occupiers.
15. All of these issues collectively indicate that the living conditions of future occupiers would be lacking owing to the poor design of the scheme. The proposal would therefore conflict with Policy DM04 of the NDTLP. However, the magnitude of harm would be relatively limited, indicative of more of a compromised outcome rather than a wholly inappropriate design solution.

Vehicle parking

16. Policy DM05 of the NDTLP requires that development provides safe vehicular access, adequate parking and layouts which consider the needs and accessibility of all highway users, including cyclists and pedestrians. Policy DM06 indicates that developments will be expected to provide an appropriate

scale and range of parking provision to meet anticipated needs, having regard to the (a) accessibility and sustainability of the site; the availability of public transport; (c) provision of safe walking and cycling routes; and (d) specific scale, type and mix of development. The preamble to Policy DM06 also acknowledges the rural nature of northern Devon and the limited availability of public transport which necessitates a continuing dependence on private vehicles, and consequently, also adequate parking facilities.

17. The application form submitted with the appeal indicated that 1 car parking space would be provided. This is shown in the submitted site plan as a space within an existing garage block, some approximate 100 metres along the street. The garage is described as long and thin and capable of taking a small car (along with other domestic items for storage purposes).
18. During the appeal process, it was revealed that the garage was not in the ownership of the appellant and that notice had been served to terminate tenancy of the same by the appellant. At the time of writing, it is likely that the tenancy has ended and that this particular garage parking space no longer forms part of the appeal site. It was suggested to me that a condition could be imposed that prevents occupancy of the dwelling until the provision of either the garage shown, or such alternative parking provision as may be agreed in writing by the Council.
19. The appeal proposal does not include the provision of any other new parking spaces. The garage exists already and whilst it is alleged not to have recently been used as a parking space, there would be an element of taking away from the existing limited available parking to meet a new demand. The garage may have been preferable than a reliance on on-street or publicly-available car parks which are already in demand, but its constrained size and distance from the proposed dwelling would have also been suboptimal factors.
20. The proposal before me now is less certain in respect of whether an alternative parking provision can be sourced. As the suggested condition requires the provision of an element which would fall outside of the appeal site, I do not consider it reasonable or strictly enforceable. Additionally, even if an alternative parking provision were capable of being secured, I have even less detail about its current use or suitability in terms of size or proximity to the appeal site.
21. Consequently, I conclude that the scheme would fail to provide an appropriate provision of parking to meet the needs of future occupiers, having regard to the accessibility of the area, limited choice of sustainable travel means and limited availability of local public parking options. The proposal therefore conflicts with NDTLP Policies DM05 and DM06. This conflict amounts to a modest degree of harm to weigh in the overall balance.

Other Matters

22. I have taken into account the numerous representations from interested parties. Whilst I note the existence of a restrictive covenant affecting the site, this is not a material planning consideration. Similarly, the existence of a right of way is not a consideration that lends to a reason for refusal.
23. I have considered the likelihood of construction activities and deliveries causing disruption to neighbours and users of the highway. Such effects would be for a

temporary duration and whilst unavoidable for at least some time, could be minimised through the use of a construction management plan condition. I note that there would be additional vehicular movements from the introduction of a further dwelling to the area but do not consider that the number or type of movements would result in any prejudicial highway conditions and consider it very unlikely that any future occupier would attempt to park on the road immediately outside of the site.

24. The biodiversity effects from the proposal could be addressed by way of a planning condition in order to demonstrate compliance with NDTLP Policies ST14 and DM08, as suggested by the Council.
25. Whilst there is a suggestion that any dwelling constructed would be used as a holiday home, there is no policy requirement to condition that new dwellings should only be used as primary residences. Therefore, whilst I can only assume that it would contribute meaningfully to the local stock of housing, whether it is used as such or for holiday purposes is not strictly capable of being controlled.
26. I have given consideration to the means of surface water drainage and the site constraints and regard that a condition could be used to seek relevant details of such prior to any first installation.
27. Though there is also a suggestion that allowing the appeal would result in a precedent for similar developments being created, I do not consider that this would be so given the acceptability of the principle in any event and given that every proposal is determined on the basis of its own individual merits.

Planning Balance

28. In respect of its effects on the character and appearance of the area, the living environment for future occupiers and absence of parking provision, the proposal conflicts with the development plan when considered as a whole.
29. The Council has highlighted that at the present time, it is incapable of demonstrating a five year supply of housing land against the nationally-set requirement in the National Planning Policy Framework (the Framework). In cases where there is an absence of a five year housing land supply (5YHLS), Paragraph 11 of the Framework is engaged. This sets out that where the most important policies for determining the application are out-of-date, i.e. in this case where there is an absence of a 5YHLS, permission should be granted unless: (i) specific Framework policies that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or (ii) any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole.
30. I consider that a single dwelling can make a readily deliverable valuable contribution to supply even in the context of a modest acknowledged shortfall. Therefore, this is a public benefit that weighs heavily in favour of the scheme.
31. The AONB designation is an area of particular importance given the highest status of protection by the Framework, but, in this case, due to the containment of the site, there would be no material effect on the AONB so this in itself does not provide a clear reason for refusal.

32. Having regard to the caselaw cited by interested parties on the 'tilted balance' which is that set out in Framework paragraph 11, I have weighed all of the limited to modest harms of the scheme both separately and together and come to a view that they would not be so significant or demonstrable so as to outweigh the benefit of providing an additional dwelling to the local housing stock and the related economic opportunities that would be generated. In my view, the balance weighs in favour of granting planning permission when assessed against the Framework taken as a whole.

Conditions

33. I have given consideration to the conditions suggested by the Council in light of the Framework and Planning Practice Guidance. I have made minor amendments in the interests of precision but have added conditions that I also consider necessary to make the development acceptable in planning terms. Unavoidably, a number of these conditions require action before the development can commence.
34. In addition to the statutory time limit for commencement, a condition is necessary to specify the approved plans in the interests of certainty. For further certainty, a condition is necessary seeking a plan of the existing site levels of the proposed finished floor levels prior to any alteration of the same.
35. I have taken on board comments of neighbours about the desire to minimise disruption from construction activities and consider a condition requiring approval of a construction management plan is necessary. This would also encompass the Council's suggested construction working hours condition.
36. In the interests of environmental quality, a condition is necessary to secure details of the surface water drainage scheme to be implemented at the site.
37. In the interests of the character and appearance of the area, a condition is necessary stipulating the external construction materials.
38. The Council has suggested a condition restricting permitted development rights. Given the constrained nature of the site and degree to which any alterations, even of a minor nature, could affect both the future and neighbouring occupiers, I consider it necessary to impose such a condition. Whilst the Planning Practice Guidance typically advises against such a condition unless in exceptional circumstances, I consider that the nature of the site and scheme warrant such a condition in this case.
39. A condition requiring the reporting and management of unexpected contamination would address any potential health hazards if an issue arose.
40. In the interests of the living conditions of neighbouring occupiers, a condition is necessary requiring the window in the first floor of the north elevation to be provided and maintained as obscure glazed. For similar reasons, I consider it necessary for a privacy screen be added above the low wall enclosing the northern boundary on the western side of the dwelling. The terrace to this side of the dwelling would lend itself to the greatest level of use for sitting out and a privacy screen would minimise the potential effects on neighbouring occupiers.
41. In the interests of the biodiversity value of the area, a condition is necessary to secure relevant mitigation and enhancement measures.

Conclusion

42. In view of the above, in this case, the presumption in favour of sustainable development forms a consideration of such materiality that it outweighs the conflict with the development plan and indicates that a decision should be taken other than in accordance therewith.
43. The appeal is therefore allowed.

Hollie Nicholls

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 20029 L1A Location Plan dated March 2021
 - 20029 P1A Block Plan dated March 2021
 - 20029 P2A Floor Plans & Elevations dated March 2021
 - 20029 P3A Section AA & 3D Visualisations dated March 2021
 - 20029 P4A Ecological Enhancements dated March 2021
- 3) Prior to the commencement of development, a scaled plan(s) showing existing levels on the site and proposed finished floor levels of the dwellinghouse shall be submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved plan(s).
- 4) Prior to commencement of any part of the development hereby permitted, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the Local Planning Authority. The CMP shall include:
 - (a) a timetable of the works;
 - (b) daily hours of construction, which shall not be permitted outside of Monday – Friday 08:00 – 18:00, Saturday 08:00 – 13:00, nor at any time on Sunday, Bank or Public Holidays;
 - (c) any road closure;
 - (d) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between the permitted construction working hours under (b);
 - (e) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;

(f) the compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;

(g) areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the County Highway for loading or unloading purposes;

(h) the means of enclosure of the site during construction works; and

(i) the proposed route of all construction traffic exceeding 7.5 tonnes.

The development shall not be carried out unless in strict accordance with the approved details.

- 5) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.
- 6) The development hereby approved shall be constructed in accordance with the following schedule of external materials:
 - Walls – Render/ composite cladding
 - Roof – Standing seam
 - Windows - Aluminium
 - Doors – Aluminium/ composite wood to road level
 - Boundary treatments - Morte Stone to road level wall/ hedges/ 1.8m closed boarded fence / privacy screen
- 7) Notwithstanding the detail shown in the approved plans, prior to first occupation of the dwelling hereby permitted, details of a glazed privacy screen to the northern boundary of the western side terrace shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken and retained in accordance with the approved details.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any order revoking and re-enacting that Order) express planning permission shall be obtained for any development within classes A-E and AA of Part 1 and classes A and B of Part 2, of Schedule Two of the Order.
- 9) Should any unexpected contamination of soil or groundwater be discovered during development of the site, the Local Planning Authority should be contacted immediately. Site activities within that sub-phase or part thereof, should be temporarily suspended until such time as a procedure for addressing any such unexpected contamination is agreed with the Local Planning Authority.
- 10) The stairwell window on the front (north) elevation of the dwelling/building shall be obscure glazed and non-opening prior to the first use of the room to which it relates and retained as such thereafter.
- 11) Prior to the approved dwellinghouse being brought into use, a bat and bird box shall be sited on the building (as detailed on approved drawing Ref 20029 P4A) and shall be retained thereafter.