



Appeal Decision

Site visit made on 5 March 2024

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/X1118/W/23/3328601

Land overlooking Ladies Beach at Tunnels Beaches, Granville Road, Ilfracombe EX34 8AS

- 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 and Mrs J McLintock against the decision of North Devon District Council.
 - The application Ref is 76024.
 - The development proposed is described as "proposed new dwelling on land overlooking Ladies Beach at Tunnels Beaches".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council made its decision, Areas of Outstanding Natural Beauty are now known as a National Landscape (NL). Where relevant, I have referred to them as such.

Main Issues

3. The main issues are (i) whether the proposed development would preserve or enhance the character or appearance of the Ilfracombe Conservation Area (CA); and (ii) whether the proposal would be in a suitable location having regard to cliff stability and coastal erosion.

Reasons

Character and appearance

4. The appeal site is located within the CA where there is a statutory duty to pay special regard to the desirability of preserving or enhancing the character or appearance of the conservation area. The National Planning Policy Framework (the Framework) regards conservation areas as heritage assets and attaches great weight to their conservation. The significance of the large and diverse CA derives from its historic origins as a fishing port, along with the settlement's growth in the Victorian era.
5. An extract from the Council's CA character appraisal identifies that *the town is surrounded by rising land on its East, South and West sides providing it with a natural amphitheatre setting. The hills around the town can be seen from anywhere and everywhere and as such form part of many views as well as providing a dramatic backdrop for other features within the town.* It adds that *these hills which dominate the town are geological features which have*

- restricted the growth of the town.* In that context, the appeal site is within the Torrs Park part of the CA, which includes a lower density variety of built form.
6. The appeal site comprises an attractive, steep sloping wedge of naturally vegetated land. It is in an area locally designated as a Coastal and Estuarine Zone. Policy ST09 of the North Devon and Torridge Local Plan 2011-2031, October 2018 (LP) says, amongst other things, that development within the undeveloped coast will be supported where it does not detract from the unspoilt character, appearance and tranquillity of the area.
 7. Although outside the Heritage Coast and NL, the appeal site is positioned in a highly prominent spot on the edge of a dramatic cliff face. It is distinctively separated from the adjoining backdrop of the built up area of the CA. Notwithstanding any newer development nearby, it is important to consider the effect on a conservation area as a whole rather than on particular parts of it. In any case, this juxtaposition is a distinguishing and positive feature of the CA.
 8. It is within the setting of the NL where the Framework says development should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas. Views of the appeal site from the west are restricted by the topography. However, views of it and the wider NL beyond are readily available from a number of vantage points including parts of the town and Capstone Hill.
 9. Constructed using recessive dark materials, the proposed property would be positioned at the lower part of the appeal site and set slightly into the ground. To some limited extent, these features, together with its proposed east/west orientation would reduce direct views of the larger frontage and the prominence of the proposal from Capstone Hill and other parts of the town.
 10. However, notwithstanding the variety of building types in this part of the CA, the property would nevertheless cover an uncharacteristically large footprint. The proposed height and block design over three storeys would be excessive and would result in a dominating and incongruous addition to this innately beautiful coastal edge. Consequently, the scheme would not be absorbed into the historic landscape and would fail to preserve the character or appearance of the CA.
 11. Although not formally identified as a green space, the appeal scheme would nevertheless erode much of the site's natural qualities and would be eminently visible from the surrounding area. The submitted landscape and visual appraisal (LVA) images tally with my site observations that the proposal would significantly disturb the undeveloped and dramatic coastal cliff line it lies within. Although there are other properties along the same side of the road to the west, these are not within the same part of this sensitive coastal setting. As such, no precedent is set.
 12. Furthermore, whilst it is submitted that the LVA demonstrates how visibility of the appeal building would be minimal, the report expressly identifies that the effect of the development over views of the sea and on the unsettled character of the cliff top would be adverse. For these reasons, even with the proposed landscaping, the setting of the NL would be irrevocably and harmfully eroded by the inclusion of such a prominent, manufactured feature.

13. The proposal would cause less than substantial harm to the CA's significance as a designated heritage asset due to the relatively small scale of the development proposed. Paragraph 208 of the Framework explains that in such circumstances, it is necessary to balance the harm against the public benefits of the proposed development.
14. The proposal would provide an additional property in an accessible location. The scheme would generate employment during the construction phase and continued future expenditure in local shops and services. As such, there would be very modest social and economic benefits. However, any such benefits would not be sufficient to outweigh the harm I have found to the designated heritage asset.
15. Therefore, I conclude on this main issue that the proposal would fail to preserve or enhance the character or appearance of the CA. Consequently, the proposal would be in conflict with policies ST01, ST03, ST04, ST09, ST14, ST15, DM04, DM07 and DM08a of the LP. Collectively in this respect and amongst other things, these policies seek to support developments that preserve and enhance their landscape and heritage setting, requiring them to be of an appropriate scale, massing and height.

Cliff stability

16. Amongst other things, policies ST03, ST09, DM02 and DM04 of the LP support developments that respond to climate change and that are located to avoid unacceptable risk to public health and safety due to coastal erosion or land instability. Additionally, paragraph 180 of the Framework says in this respect that decisions should prevent new development from contributing to, being put at unacceptable risk from, or being adversely affected by land instability.
17. The appeal site is next to a section of road that was constructed about 120 years ago and the appellant submits that there has been no movement to the carriageway or hotel opposite. Additionally, it is claimed that local knowledge and regular monitoring inspections of the Tunnels Beach site, including near the appeal site do not suggest unacceptable conditions exist.
18. However, the aforementioned inspections and submitted cliff slope stability assessment (SA) are based on visual exercises and historic data, rather than any detailed, site specific stability testing as recommended by the Council's engineer.
19. The appellant submits that further investigatory work into cliff stability needs to be done before the proposed development can take place. Although costly, they consider that such investigations could be reasonably imposed using a planning condition, if the appeal were to be allowed. The Planning Practice Guidance is only supportive of the submission of further details within conditions if they are justified. Whilst detailed ground investigations would be costly, the stability of the appeal site is fundamental to establish whether or not the proposal could proceed. Furthermore, development on stable land is a requirement that is enshrined within local and national policy.
20. In that context, the SA says that extensive intrusive assessments may not be able to identify possible adverse geological features on large coastal slopes and that there are obviously greater risks associated with building on cliff tops. As such, in these particular circumstances, even if further survey work were to be

conducted, I cannot be certain that the development would not be adversely affected by land stability. Accordingly, had I been otherwise minded to allow the appeal, it would not have been appropriate to attempt to deal this matter using a condition.

21. In respect of coastal erosion, the SA recommends that the proposed dwelling does not come within 6.6m of the crest edge to allow for long term erosion. However, the evidence shows that coastal erosion rates over the longer term would be likely to significantly encroach onto the developed part of the appeal site, including its garden, pool and parking areas. Therefore, although the dwelling would be about 6.6m from the crest, the scheme as a whole would be likely to be put at unacceptable risk from future coastal erosion. Even if this could be dealt with, it would not address the aforementioned uncertainties in respect of cliff stability or outweigh the harm I have identified in the first main issue.
22. Therefore, I conclude on this main issue that the proposal would not be in a suitable location having regard to cliff stability and coastal erosion. Consequently, the proposal would conflict with policies ST03, ST09, DM02 and DM04 of the LP.

Other Matters

23. I have paid regard to the representations in respect of the processing of the application, the appeals site's inclusion with the development boundary, the demolition of other properties, the design review panel and of the Council's heritage officer assessments. However, I have made my decision on its planning merits, based on the evidence before me and my own observations.
24. The proposed biodiversity net gains are acknowledged. However, this matter would not sufficiently outweigh the harm I have identified above.
25. I have had regard to other matters raised including construction management, trees, living conditions of nearby neighbours, highways stability and traffic. However, as I am dismissing the appeal on the main issues for the reasons given above, I have not pursued these matters further.

Planning Balance and Conclusion

26. The appellant refers to a potential fallback position. They provide evidence that a part of the appeal site has a planning permission for car parking. Even though the parking area may not have been used as such for some time, there is a theoretical prospect it could be. I am satisfied this represents a material consideration that can be afforded some weight. In any case, the proposed development would introduce a considerable amount of built form onto the site. This would be markedly more harmful than the effect of land laid out for parking.
27. Additionally, it is claimed that fencing surrounding the site has been deemed permanent. However, it is not appropriate to determine whether this operation or the aforementioned parking use is lawful. This can only be formally determined by a lawful certificate application. Even if I were to attribute some limited weight to the latter fallback, if permanent fencing were to be introduced, this would be confined to a small area of the appeal site. Even with the presence of existing parked vehicles and possible fly-tipping, the proposal would be a more prominent and harmful addition to the landscape. For these

reasons, the fallbacks are not overriding material considerations that indicate the harm I have found to the conflict with the development plan as a whole should be set aside.

28. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

J Hills

INSPECTOR