



Appeal Decision

Hearing held on 21 April 2015

Site visit made on 21 April 2015

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29 May 2015

Appeal Ref: APP/K1128/W/15/3002673

Land adjacent to Alston Nursery, Alston Gate, Malborough, Kingsbridge, Devon TQ7 3BT

- 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(20)(c) of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Paul Hoffmann, C G Fry and Son Limited against the decision of South Hams District Council.
 - The application Ref 33_46/2577/14/VAR, dated 10 July 2014, was refused by notice dated 8 December 2014.
 - The application sought planning permission for "Resubmission of planning application 46/2144/10/F for mixed tenure residential development comprising 10 open market and 7 affordable dwellings associated landscaping, access and other works" without complying with condition 2 attached to planning permission Ref 33_46/1890/11/F, dated 20 December 2012.
 - The condition in dispute is No 2 which states that: *The development hereby approved shall in all respects accord strictly with drawing numbers ACL.759.201C, 202C, 204C, 205B, 208C, 209C, 213C and 215B received by the Local Planning Authority on 05 October 2011, ACL.759.203B, 206B, 207A, 210A, 211B, 212B, 214, received by the Local Planning Authority on 28 July 2011.*
 - The reason given for the condition is: *To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates.*
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Decision

1. The appeal is allowed and planning permission is granted for the resubmission of planning application 46/2144/10/F for mixed tenure residential development comprising 10 open market and 7 affordable dwellings, associated landscaping, access and other works at Land adjacent to Alston Nursery, Alston Gate, Malborough, Kingsbridge, Devon TQ7 3BT in accordance with the terms of application, Ref 33_46/2577/14/VAR, dated 10 July 2014, subject to the conditions set out in the attached schedule.

Procedural Matters and Background

2. The site address details indicated on the application form as Alston Nursery is incomplete. The correct site address as agreed by both parties at the hearing is Land adjacent to Alston Nursery, Alston Gate, Malborough, Kingsbridge, Devon TQ7 3BT. I have therefore used this address in my decision.
3. The dwellings are already in place. The fence that has been erected in front of Plots 1 and 2 is not shown on the submitted drawings. Therefore, for the

- avoidance of doubt my deliberations are based upon the drawings as submitted and not what has been built.
4. Planning permission was originally sought for mixed tenure housing comprising 10 market and 7 affordable dwellings. This was subsequently amended to 9 market and 8 affordable dwellings. The application was amended following submission to the Council but prior to its determination.
 5. Planning permission was originally granted for the construction of 9 open market and 8 affordable dwellings, planning reference 33_46/1890/11/F dated 20 December 2012. The appellant now wishes to alter the property designs, the siting of a number of the dwellings, and to provide a gabion wall and planting.
 6. At the hearing the Council submitted Drawing Numbers ACL.759.201 Rev C and BR-SP-001 Rev M with annotations showing the revised positions of each of the dwellings. These seek to demonstrate the extent of variations to the approved scheme. The appellant was given the opportunity to comment on these drawings which do not affect the drawings on which the application was determined. No party would be prejudiced by my determining the appeal taking these drawings into consideration.
 7. Planning permission ref: 33_46/0040/15/VAR for the variation of condition 2 (amend approved plans to plots 6 to 17) of approval 33_46/1890/11/F for mixed tenure housing comprising 10 open market and 7 affordable dwellings associated landscaping, access and other works was granted on 18 March 2015. Thus, both main parties agree that the proposed alterations to the property designs and the revised positioning of plots 6 to 17 are acceptable. From all I have seen and read I have no reason to disagree with this. Furthermore, both parties agree that the proposed alterations to the property designs of plots 1 to 5 (hereafter referred to as the plots) are acceptable. Consequently, my decision concentrates on the revised positioning of the plots and the provision of a gabion wall and planting.

Main Issue

8. The main issue is the effect of the development on the character and appearance of the area which lies within the South Devon Area of Outstanding Natural Beauty (AONB).

Reasons

9. The appeal site is an area of land located on the northern boundary of Malborough adjacent to open fields to the west and the A381 Totnes to Salcombe road to the east.
10. The layout of the plots as approved by the original planning permission ref: 33_46/1890/11/F provides a road frontage beyond an existing hedge bank. The appeal scheme repositions the plots approximately 2 metres nearer to the A381 and 0.4 metres south. In addition, a gabion wall has been constructed across the frontage of Plot 1 and part of the frontage of Plot 2.
11. The Council is concerned that the close proximity of the plots to the highway together with the gabion wall result in an unduly prominent, overbearing and visually intrusive addition to the street scene and are detrimental to the visual amenity and harmful to the wider AONB.

12. Turning first to the revised positioning of the plots. The land is elevated from the highway. Consequently due to their layout fronting the highway the plots if built in the positions as approved by the extant permission would have been readily visible from the highway, the countryside and surrounding residential properties creating a strong presence and important gateway into the village. I consider that the current position of each of these dwellings, although closer to the highway than the approved scheme, sit just as comfortably within the site and the street scene.
13. Furthermore, the impact of the repositioning of the plots on the wider landscape is less discernible the further from the site the plots are viewed. Consequently, I consider that the "as built" position of each of these dwellings, although closer to the highway than the approved scheme, represent a minor change to that distant view. Overall, having regard to the extant permission I consider that the relatively small change in location of the plots has no greater impact on the character of the area or the AONB than the approved scheme.
14. Turning now to the gabion wall. At the hearing the appellant maintained that a retaining wall is necessary due to the difference in land levels between the site and the road and not as a result of the repositioning of the plots. The Council contends that alternative methods could have been adopted and have expressed concerns regarding the wire cages and the colour of the stone used in this location. Whilst front boundary walls are a common feature in the South Hams area neither of the main parties could point me to a similar feature within the vicinity of the appeal site. However, having walked the grass verge opposite the appeal site, I note that the rear boundary fences, hedgerow and domestic paraphernalia of the properties to the south of the site obscure distant views of the wall when looking north upon leaving the village. Consequently, due to the straight nature of this section of the road and the intervening vegetation the wall is only visible for a short distance when approached from either direction.
15. The appellant contends that although the wall may be visible at present, the proposed landscaping in front of the wall would provide a natural screen. The Council's landscape officer acknowledged at the hearing that there was sufficient space in front of the wall to establish a mixed species hedgerow that once established would soften the visual impact of the wall. From all I have seen and read and having regard to the way in which a section of the wall has already been screened by existing planting I am satisfied that once the proposed planting is established the wall as currently constructed will not have an adverse effect on the street scene or the AONB. In addition, I consider that any cutting back of the existing hedgerow would not materially compromise the degree of screening afforded. Concerns expressed regarding ivy covering a section of the wall could be overcome by the imposition of a landscaping condition as suggested by the appellant.
16. I consider the development does not result in harm to the character and appearance of the area or the AONB and as such, is not contrary to Policies CS7 and CS9 of the South Hams Local Development Framework Core Strategy (2006) and Policies DP1 and DP2 of the South Hams Development Policies Development Plan Document (2010) which aim to provide good design, including that which respects the character and local distinctiveness of the site and its surroundings.

17. These policies are consistent with the National Planning Policy Framework (the Framework) which indicates that great weight should be given to conserving the landscape and natural beauty in AONBs, which have the highest status of protection in relation to landscape and scenic beauty.

Other matters

18. At the hearing my attention was drawn to an extant outline planning permission¹ for mixed tenure housing, comprising 8 no. open market dwellings and 8 no. affordable dwellings on land north of the appeal site. Whilst this permission would result in properties alongside the A381 the layout is not directly comparable with the appeal before me and there is no guarantee that this development will be implemented. Thus, this matter does not add weight to my reasons for allowing the appeal. The appeal decisions² drawn to my attention by the appellant are noted but do not influence my decision to any material degree.
19. Neighbouring residents have raised issues regarding the effect on living conditions with particular reference to outlook. I viewed the appeal site from two bedrooms and the bathroom of the property known as 'Redmire'. Having regard to the scale and siting of the development relative to this property, and based upon the evidence available to me, I concur with the Council's analysis that the appeal scheme would not harm substantively the living conditions of any neighbour such that dismissal of the appeal scheme would be warranted.
20. Residents have raised concerns regarding the impact of the landscaping along the front of the site on highway visibility at the junction of Luckhams Lane with the A381. From my site visit I am satisfied that taking into account the proposed landscaping and the existing hedgerow, an acceptable level of visibility would be maintained at this junction. In reaching this conclusion I note that the County Highways Authority has raised no objections to the development. Also, no technical evidence to suggest that the development would materially restrict visibility at this junction such that highway safety would be compromised has been submitted.
21. I note the opposition to the development evidenced by the number of interested parties at the hearing. However, the failure of the developer to adhere to the original approved plans and the lack of enforcement action taken by the Council are not matters which influence my decision. I have determined the appeal before me on its own merits in relation to the development plan, the Framework and other material considerations.
22. No evidence has been provided to suggest that pooled contributions have been secured contrary to the Secretary of State's policy concerning pooled contributions as recently expressed in the amendment to the Planning Practice Guide or that the original Obligation would have failed to have complied with the provisions of the CIL Regulations. I have had regard to the submissions from both main parties regarding the submitted Deed of Variation dated 11 March 2015. Both parties agree that the financial contributions required by the S106 Agreement dated 13 December 2012 have already been paid in full to the Council. In addition, both parties agree that the Deed of Variation achieves the purely administrative task of linking the existing S106 Agreement to the

¹ Outline Planning Permission Ref: 33_46/0918/14/0

² APP/K1128/A/13/2210-6029 & APP/D3315/A/14/2219960

new planning permission that would be created were I to allow the appeal. From all I have seen and read I have no reason to differ from this view.

Conclusion

23. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Conditions

24. In allowing the appeal and granting planning permission I have considered those conditions imposed on the original planning permission and those suggested by the Council, in the light of Paragraph 206 of the Framework. I have modified, combined and amended the wording of some of the suggested conditions where appropriate. For the avoidance of doubt it is necessary to require that the development is carried out in accordance with the relevant plans. I agree that details of the materials to be used for new and replacement timber doors and windows, hard surfaced areas, boundary treatments and landscaping are necessary to ensure a satisfactory appearance to the development. The Council has suggested a condition regarding external lighting. I consider that a condition to control external lighting is necessary to safeguard the living conditions of neighbouring residents and future occupiers of the new dwellings. The provision of the vehicular access, parking and turning areas should be the subject of appropriate conditions in the interests of highway safety.
25. As the dwellings have already been built and I consider their appearance satisfactory I consider conditions requiring the submission of details of the materials to be used for the external surfaces of the building and details of stonework are not necessary.
26. Although only used in exceptional circumstances, a condition removing permitted development rights is justified given the layout of the new dwellings and their close proximity to each other.

Elizabeth Jones

INSPECTOR

Attached – Schedule of Conditions

APPEARANCES

FOR THE APPELLANT:

Mr David Lohfink	Appellant, C G Fry & Son
P J Hoffmann	C G Fry & Son Ltd
Mr S E Coles	WYG (Wellington) - Agent

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Kenyon	Major Projects Manager, South Hams District Council
Mr C Brook	Engineering Manager South Hams District Council
Mr A Whish	Landscape Officer, South Hams District Council
Councillor Judy Pearce	South Hams District Council
Councillor Paul Coulson	South Hams District Council

INTERESTED PERSONS:

Mr J Yeoman	Chairman, Malborough Parish Council
Ms J Hocking	Chairman, South Huish Parish Council
Ms K Pennington	DCH Group
Mr Allen	Local Resident
Mr Biggs	Local Resident
Mr Bryant	Local Resident
Mr Cole	Local Resident
Mr E Putt	Local Resident

PLANS SUBMITTED AT THE HEARING

1. Copy of drawings - Drawing Numbers ACL.759.201 Rev C, ACL.759.202 Rev C, ACL.759.203 Rev B, ACL.759.204 Rev C, ACL.759.213 Rev C, ACL.759.214, ACL.759.215 Rev B, 211/01 Rev I, 1-2-P-001, 3-5-P-001, 3-5-P-002, 6-7-P-001, 8-10-P-001, 11-13-P-001, 11-13-P-002, 14-17-P-001, 14-17-P-002, 1-2-P-001 Rev A, 3-5-P-001 Rev A, 3-5-P-002 Rev A, 6-7-P-001 Rev A, 8-10-P-001 Rev A, 11-13-P-002 Rev A, 14-17-P-001 Rev A, 14-17-P-002 Rev A from the Council.

2. Copy of drawings with annotations – Drawing Numbers ACL.759.201 Rev C and BR-SP-001 Rev M from the Council.

DOCUMENTS SUBMITTED AT THE HEARING

3. Copy of Decision Notice, Drawing Number ACL.925.201, Officer's Report and Drawing Number ACL.925.202 in relation to Outline Planning Permission Ref 33_46/0918/14/O from the Council.

Richborough Estates

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: ACL.759.205 Rev B, ACL.759206 Rev B, ACL.759207 Rev A, ACL.759208 Rev C, ACL.759209 Rev C, ACL.759210 Rev A, ACL.759211 Rev B, ACL.759212 Rev B, 1-BR-002, 1-BR-003, 2-BR-002, 2-BR-003, 3-BR-002, 3-BR-003, 4-BR-002, 4-BR-003, 5-BR-002, 5-BR-003, 6-BR-002, 6-BR-003, 6-BR-004, 7-BR-002, 7-BR-003, 7-BR-004, 8-BR-002, 8-BR-003, 9-BR-002, 9-BR-003, 10-BR-002, 10-BR-003, 11-BR-002, 11-BR-003, 12-BR-002, 12-BR-003, 13-BR-002, 13-BR-003, 14-BR-002, 14-BR-003, 15-BR-002, 15-BR-003, 16-BR-002, 16-BR-003, 17-BR-002, 17-BR-003, BR-SP-001 Rev M, 1-2-P-001, 3-5-P-001, 3-5-P-002, 6-7-P-001, 8-10-P-001, 11-13-P-001, 11-13-P-002, 14-17-P-001, 14-17-P-002, 211/01 Rev I, 211/02 Rev A, 211/03.
- 2) Within two months of the date of the Appeal Decision details of all new and replacement timber doors and windows, including their method of opening and proposed finish shall be submitted to and approved 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. The doors and windows shall be carried out in accordance with the approved details, shall be completed in accordance with a timetable agreed in writing with the local planning authority and shall be retained as such thereafter.
- 3) Within two months of the date of the Appeal Decision details indicating the positions, design, materials and type of boundary treatment shall be submitted to and approved in writing by the local planning authority. The boundary treatment shall be carried out in accordance with the approved details, shall be completed in accordance with a timetable agreed in writing with the local planning authority and shall be retained as such thereafter.
- 4) Within two months of the date of the Appeal Decision details of all hard surfacing materials (including colour finish), steps, surfacing edge restraints to all roads, service strips, and pathways shall be submitted to the local planning authority. The final approved details shall be completed in accordance with a timetable agreed in writing with the local planning authority and shall be retained as such thereafter.
- 5) No dwelling shall be occupied until the parking and turning areas and vehicular access thereto have been laid out within the site in accordance with drawing No BR-SP-001 Rev M. The parking and turning areas shall be retained as such thereafter.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that 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:- Part 1, Class A, B, C, D, E (a) and (b), F, G, H. Part 2, Class A.
- 7) Within two months of the date of the Decision Notice a soft landscaping implementation programme shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be

implemented and thereafter maintained in accordance with the approved details. In the event of any of the trees or shrubs so planted dying or being seriously damaged or destroyed within five years of the completion of the development, replacement planting, details of which shall be submitted to and approved in writing by the local planning authority, shall be planted and maintained in position(s) first approved in writing by the local planning authority.

- 8) There shall be no installation/construction of street lighting to public areas unless otherwise previously approved by the local planning authority. Details of any external lighting (including security lighting) to be erected, placed or operated on the site shall be submitted to and approved in writing by the local planning authority prior to its installation/construction. Such details shall include the position, heights, type, luminance and cowling of all external lighting. The lighting shall be carried out in accordance with the approved details.

Richborough Estates