



Appeal Decision

Hearing held on 19 & 20 December 2017

Site visits made on 19 & 20 December 2017

by Robert Parker BSc (Hons) Dip TP MRTPI

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

Decision date: 19 January 2018

Appeal Ref: APP/K1128/W/17/3171733

The Bay Cafe, Marine Drive, Bigbury-on-Sea, TQ7 4AS

- 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 Nick Bennett of Galion Homes (Bigbury) Ltd against the decision of South Hams District Council.
 - The application Ref 1826/16/FUL, dated 15 June 2016, was refused by notice dated 11 October 2016.
 - The development proposed is the demolition of existing buildings and the development of 4 detached four-bedroom houses and new landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The above address is taken from the application form. However, signage shows that the premises were known as The Bay View Café. I shall refer to it as such.
3. It is common ground that the Council is unable to demonstrate a five-year supply of deliverable housing sites. The extent of the shortfall is impossible to determine based upon the evidence presented, not least because the authority's figure for Objectively Assessed Need is untested. However, I note that in October 2016 the supply was accepted to be only 1.9 years.
4. The Council does not seek to rely upon the Plymouth and South West Devon Joint Local Plan. Although some limited weight may be attributed to the relevant policies of this emerging plan, they do not represent a significant change to the direction of policy insofar as the matters in dispute are concerned.

Main Issues

5. The main issues in this case are:
 - a) whether the proposal would result in the unacceptable loss of a community facility, tourist asset and/or employment use;
 - b) whether the existing building on the site should be treated as a heritage asset for the purposes of any planning balance; and
 - c) the effect of the proposal on the character and appearance of the area, having regard to the location of the site within the South Devon Area of Outstanding Natural Beauty (AONB) and South Devon Heritage Coast (SDHC).

Reasons

Community facilities and tourist assets

6. The Bay View Café was contained within a single-storey annexe at the side of Warren Cottage and commands impressive sea views towards Burgh Island. Photographic evidence indicates that the premises were operated as a tearoom from the early 1900s. The latest business ceased trading in September 2015 after the proprietor of approximately six years standing was advised that the appeal site was being sold.
7. It is clear that the café served a dual role. Firstly it provided a refreshment facility for beach users, walkers on the coastal path and guests staying in nearby self-catering accommodation. Secondly it acted as a meeting point for residents and local community groups. Although the café was routinely closed for part of the year, I understand that it ran themed food nights out of season. It was also fully licensed to sell alcohol. The evidence points to the café being a popular and thriving venue, with the premises often being fully booked in the evenings.
8. Policy DP9 of the South Hams Local Development Framework Development Policies Development Plan Document (2010) (DPD) states that in order to protect access to community services the change of use or redevelopment of a local facility will not be permitted unless there is alternative local provision; and/or there is proven absence of demand for the facility; and/or it can be shown to be non-viable. The policy construction is ambiguous but I interpret it to mean that compliance with one of the individual criteria would render a scheme acceptable.
9. Policy DP12 of the DPD explains that proposals involving the loss of tourist development will only be permitted where there is no proven demand for the facility and it can no longer make a positive contribution to the economy.
10. The above policies are consistent with the National Planning Policy Framework (the Framework) insofar as it seeks to support sustainable rural tourism and promote the retention of local services and community facilities in villages. Keeping such facilities available for both residents and visitors plays an important role in reducing the need to travel by private car, which is a key objective of national and local planning policy.
11. It is contended that there is alternative local provision in the form of The Venus Café which is located on the lower beach car park. These premises take the form of a kiosk with a takeaway menu and outdoor seating. Open all year round, this facility is designed as a fast food outlet to serve beach-goers. The customer experience is altogether different and as such it is not directly comparable to The Bay View Café which provided shelter from the elements. Whilst I note that there is an extant planning permission to extend The Venus Café to create an indoor seating area, there is no compelling evidence to persuade me that this will be implemented. I have therefore given this permission limited weight.
12. Both cafes were trading simultaneously prior to 2015 and therefore I am not convinced by the argument that the reopening of The Bay View Café would jeopardise the creation of a "beach hub". In all probability, there would be sufficient trade to support both businesses, particularly if they continued to differentiate their offer. Background market conditions are strong, with the number of visitor trips to South Hams up by 20% in the ten years to 2016. This provides further evidence of demand.

13. Turning now to viability, The Bay View Café has been vacant for more than two years and it would need a complete refit prior to reopening as a food establishment. The appellant has costed the works to be in the order of £163,000, based upon a full food offer. Plans have been drawn up showing an enlarged kitchen, together with separate staff and customer toilets provided within the existing building envelope. This would leave space for only 2 covers inside the premises. The majority of customers would need to sit outside.
14. The Council considers that the café could be reopened in its previous format with approximately 20-24 internal covers and external seating for up to around 30. This option would require a lesser investment of approximately £60,000. It was argued on behalf of the appellant that the kitchen configuration would give rise to unacceptable public health risks due to its small size and the need to use sheds for food storage. Whilst a larger kitchen may be desirable, the Council's environmental health officer has indicated that it is not a requirement. The establishment was able to achieve 4 and 5 star food hygiene ratings in the years running up to its closure and there are no records of any episodes of food poisoning. Thus I have no reason to believe that the current layout could not operate successfully to the relevant standards.
15. Although it may be best practice to have a dedicated staff toilet, this is not essential and numerous other food establishments in the district exist without such provision. As regards compliance with the Disability Discrimination Act (DDA), this is ultimately a matter for the courts. However, there would be scope to convert at least one of the existing toilets to a disabled facility without needing to encroach significantly into the customer seating area. Furthermore, the internal step could be replaced with a ramp to accommodate wheelchair access. These would be reasonable adjustments to comply with the DDA.
16. Overall, the balance of evidence leads me to the view that the scope of works identified by the appellant would go beyond the minimum necessary to reopen the café. In my judgement, the Council's cost estimate is a more realistic one. It was contended that even when using this figure the owner's income would fall below the median earnings for the South Hams area. However, there is no reason why a café operator would not be prepared to accept less than this benchmark as a reward for their labour. I do not subscribe to the view that an entrepreneur would expect a higher return to compensate for the additional risk.
17. In any case, there is no firm evidence here to suggest that the former operator was dissatisfied by the level of return – quite the opposite in fact, as he traded successfully for a number of years and showed no signs of vacating prior to the site being placed up for sale. This is a factor to which I have attached considerable weight. The appellant's detailed financial analyses are theoretical and do not reflect the recent realities of a successfully trading business. They attract significantly less weight as a material consideration.
18. One key indicator of viability is whether there are persons willing to take on the business opportunity. Following refusal of the planning application, the appellant sought to market the café between January 2017 and July 2017. Despite falling short of the 1 year minimum marketing period set out in the DPD, the exercise stimulated a number of offers. These were withdrawn when details of the fit-out cost were provided by the agent. Whilst I appreciate that this was provided for information only, and did not automatically commit the

parties to carrying out the works, it will inevitably have influenced their decision not to proceed.

19. At the hearing I heard that there is a group of local residents willing to fund the reopening of the café as a cooperative. The appellant argued that this expression of interest had not translated into a firm offer. However, I do not consider that the opportunity was properly explored. The agent failed to respond to requests for information and by the time draft heads of terms were provided it was already evident that the developer was pursuing an appeal. Understandably, this broke the residents' resolve to carry out the work necessary to prepare an offer as they came to the conclusion – whether rightly or wrongly – that the marketing exercise was not a genuine one.
20. Drawing matters together on this issue, the evidence presented persuades me that The Bay View Café was an important local facility for which there is currently no alternative provision. There is clear demand for the facility, both from former users and prospective operators. It has not been satisfactorily demonstrated that the reopening of the café would be non-viable, or that it can no longer make a positive contribution to the local economy. I therefore conclude that the proposal would conflict with Policies DP9 and DP12 of the DPD insofar as they seek to protect community facilities and tourist assets.

Employment land

21. Policy DP14 of the DPD sets out the circumstances under which the loss of employment land and other employment generating uses will be permitted. The supporting text explains that employment uses may be of a different type and scale depending on their location within settlements or in the countryside. It advocates using a wider definition to include all those uses that employ a significant number of people on the site and/or contribute to the rural economy or an economy specific to South Hams. Given the importance of tourism within Bigbury-on-Sea, a seaside café would qualify as an employment generating use.
22. The Bay View Café employed somewhere in the order of 20-25 persons. The nature and scale of the business dictates that most, if not all, of these would have been casual or seasonal workers deriving a part-time wage. The café would have been a significant local employer during the holiday season, but it would not have been of strategic importance in the context of the wider economy. Although criterion (d) of Policy DP14 would permit loss of the employment generating use in such circumstances, there is a requirement in the second part of the policy to consider mixed use development which contains an element of employment which, as a minimum, provides for the same number of jobs. The appeal scheme would be wholly residential and it would provide no long term jobs. As such, there would be conflict with DPD Policy DP14.
23. Development plan policy is consistent with the Framework's intention to support sustainable economic growth and a prosperous rural economy. Given the broad alignment of objectives at national and local level, the loss of employment opportunities would weigh against the proposed development.

Heritage asset

24. According to local residents, Warren Cottage is the oldest house within Bigbury-on-Sea. Historic England, who recently assessed the building for listing, advise that it is of local interest as one of the earliest surviving coastal cottages to

service the local fishing community; with the later Bay View Café addition illustrating the early twentieth century development of Bigbury-on-Sea as a holiday destination. The building is a prominent and distinctive feature within the village and is evidently cherished by the community. The building retains communal value and a modicum of its original character and architectural interest, despite the extensions and alterations which have been carried out over the years. Some of the legibility which has been lost through the removal of slate cladding and installation of uPVC windows and manmade roof slates could quite easily be restored by a future owner.

25. Therefore, notwithstanding the decision not to list the building, it is appropriate to treat Warren Cottage and its café annexe it as a non-designated heritage asset. Paragraph 135 of the Framework states that the effect on the significance of a non-designated heritage asset should be taken into account in determining the application. A balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

Character and appearance

26. The appeal site is positioned roughly halfway along Marine Drive and is visible from various public vantage points including the main beach car park and Burgh Island. It is viewed in the context of surrounding residential properties which are built in a mixture of architectural styles. The settlement comprises predominantly bungalows but there are also examples of modern two-storey houses, Coastguards being a recent example. The proposed dwellings would have similarities with these newer developments, incorporating reduced eaves heights and a blend of traditional and contemporary materials.
27. The appearance of the development would be quite different to the existing building on the site, but that is not to say that it would be incompatible with the prevailing character of the area or that it would harm panoramic views of Bigbury-on-Sea from Burgh Island. On the contrary, I agree with the finding of the Design Review Panel that the scheme would represent high quality design which is sympathetic to its context and neighbouring properties.
28. Although concerns have been raised regarding the density and layout of the proposed development, the gaps between dwellings would ensure that the scheme does not appear unduly cramped. The dwellings themselves would be no higher than Warren Cottage and therefore I do not share the local concern that the scale of the buildings would make them overly dominant. The open site frontage would be maintained and the use of Devon banks and maritime species planting would help to assimilate the development into its setting.
29. Bigbury-on-Sea lies within the AONB and also forms part of the SDHC. Residents have made reference to the impact on these designations, but the issue does not form part of the Council's case for opposing the scheme. Having regard to the location of the site within the built-up area of an existing settlement, I do not consider that there would be any material harm to the landscape and scenic beauty of the AONB or the natural beauty of the undeveloped coastline.
30. The Council confirmed at the hearing that it does not object to the design of the appeal scheme in isolation. Its concern relates principally to the loss of Warren Cottage as a distinctive building within the settlement of Bigbury-on-Sea. As I have explained above, this matter will need to be weighed in the overall planning balance. The layout and architecture of the scheme would cause no

material harm to the character or appearance of the area and would accord with Policies CS7 and CS9 of the South Hams Local Development Framework Core Strategy (2006) and Policies DP1, DP2 and DP6 of the DPD insofar as they seek to achieve high quality design which takes account of its context.

Other Matters

31. The Bay View Café has been listed as an Asset of Community Value (ACV). This status is the subject of an ongoing appeal. The primary purpose of ACV listing is to afford to the community an opportunity to purchase the property. Although it is a material consideration which lends weight to the argument that this was a valued local facility, it has not been determinative in this case. Of greater significance have been the relevant development plan policies and the Framework.
32. It became apparent at the hearing that the developer is intending to demolish the buildings on the appeal site. This would require an application for prior approval in relation to the method of demolition and any proposed restoration of the site, but the Council would not be able to object in principle. The developer declined to comment on the reasons for taking this course of action and there is no certainty over whether demolition is likely. But in any event, my decision must be made based on the circumstances prevailing at the time of the hearing.
33. The appellant contended that a café on the appeal site would have an adverse impact on surrounding residential land uses. There is no evidence to show that this has been a problem in the past and adjoining occupiers actively support retention of the café use. As such, I have given the argument limited weight.
34. Residents have raised a number of other concerns, including the trend for second homes and holiday homes, the effect on highway safety, loss of views and privacy, light pollution and the lack of community engagement from the developer. I have given careful consideration to these matters but they do not alter or outweigh my findings on the main issues.

Planning balance

35. The starting point for my assessment must be the development plan. S38(6) of the Planning and Compulsory Purchase Act 2004 stipulates that planning applications should be determined in accordance with the development plan unless material considerations indicate otherwise.
36. I have found that the proposal would conflict with Policies DP9, DP12 and DP14 of the DPD in relation to the loss of community facilities, tourist assets and employment land. These policies are consistent with the Framework and therefore they must be afforded significant weight. There would also be harm arising from the loss of Warren Cottage as a non-designated heritage asset. Whilst I appreciate that the building is not protected the proposal for its total demolition carries moderate weight against the scheme.
37. Against this harm I must balance the benefits of housing delivery. The appeal proposal would provide a net addition of 3 family-sized dwellings to help address the shortage of housing. In a district which was accepted to have only 1.9 years supply of housing land just over a year ago this benefit carries considerable weight. As with all housing schemes, the development would support employment in the construction industry in the short term. This would be an economic benefit.

38. National planning policy seeks to boost significantly the supply of housing. Paragraph 49 of the Framework explains that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. Where relevant policies of the development plan are out-of-date paragraph 14 of the Framework states that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Given the Council's inability to demonstrate the requisite land supply, it is this "tilted balance" which needs to be applied.
39. Contrary to the case put forward by the appellant, sustainable development is not simply about housing supply. The Framework must be read as a whole. The retention of community facilities and support for local business and employment opportunities are integral to achieving sustainable development objectives. In this particular case, the harm to social and economic well-being arising from the loss of the café as a community facility, tourist asset and local employer would significantly and demonstrably outweigh the benefits arising from housing delivery. As such, the proposal does not constitute sustainable development. The balance goes against the scheme, even before the demolition of Warren Cottage as a non-designated heritage asset is factored into the equation.

Conclusion

40. I conclude that the proposal does not comply with the development plan as a whole and does not represent sustainable development in the terms of the Framework. There are no material considerations which would warrant a decision other than in accordance with the development plan.
41. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Angus MacDonald	Galion Homes (Bigbury) Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Matt Jones MRTPI	Senior Planning Officer
Joe McCarthy BSc	Viability Officer
Karen Proctor MCIEH	Senior Specialist Environmental Health
Thomas Jones	Lead Strategic Planning

INTERESTED PARTIES:

Richard Baker (Ringmore PC)	Craig Halford
Cllr K Baldry (SHDC)	Mrs Margaret Hawes
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Rosie Barrett	Julia Isham
Mr M Borgatti	John Little
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Jim Chadwick	Kim Tisdom
Charles Clowes	Mrs Pamela Trundle
Cllr Hannah Getley (PC)	Mike Wynne-Powell
Jill Gubbins	

DOCUMENTS SUBMITTED AT THE HEARING

1. List of conditions
2. Signed Statement of Common Ground
3. Missing Drawing no. P19 Rev P1
4. Historic England Reject at Initial Assessment Report, 29 January 2016
5. Viability analysis (appellant)
6. Viability analysis (Council)
7. Viability analysis (appellant)
8. APP/K1128/W/16/3145745 - Appeal decision for Seafront, Marine Drive, Bigbury-on-Sea and plans upon which that decision was based