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# Appeal Decision

Site visit made on 17 September 2018

**by A Spencer-Peet BSc.(Hons) PGradDip.Law PGDip.LP**

**an Inspector appointed by the Secretary of State**

**Decision date: 23<sup>rd</sup> October 2018**

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**Appeal Ref: APP/K1128/W/18/3202068**

**Waves Edge, Road to Highfield, Challaborough TQ7 4JB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr and Mrs Jon Long against South Hams District Council.
  - The application Ref 4416/17/FUL, is dated 23 December 2017.
  - The development proposed is to erect replacement dwelling – resubmission of amended scheme.
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of a replacement dwelling at Waves Edge, Road to Highfield, Challaborough, TQ7 4JB, in accordance with the terms of the application, Ref: 4416/17/FUL, dated 23 December 2017, subject to the conditions in the attached schedule.

## Application for costs

2. An application for costs was made by Mr and Mrs Jon Long against South Hams District Council. This application is the subject of a separate Decision.

## Procedural Matter

3. The revised National Planning Policy Framework ('the NPPF') was published in July 2018, and replaces the first National Planning Policy Framework published in March 2012. This has not had a material impact on the main parties' cases in relation to the main issue and requirement to determine the proposal in accordance with the development plan. The main parties have not identified any specific changes to the NPPF which affect, or alter, the submissions put to me in this appeal. References to the NPPF in this decision therefore reflect the revised NPPF as published in July 2018.

## Main Issue

4. The Appellant has submitted this appeal on the basis of non-determination of the planning application. As such the matter concerns whether the height of the proposed replacement dwelling will have an adverse effect on the quality of the South Devon Area of Outstanding Natural Beauty ('the AONB'). Accordingly the main issue is the effect of the proposal on the character and appearance of the area and whether it would conserve and enhance the natural beauty of the AONB.

## Reasons

5. The appeal site is located within Challaborough, being a modest sized settlement set within a valley forming part of the AONB, and positioned on the slopes of a hillside which overlooks a small bay and beach. The appeal site is separated from the beach by a section of Coastal Path which runs from the heart of the settlement, and up towards the neighbouring settlement of Bigbury-on-Sea which is located on the adjacent headland. The appeal site has views across the bay, and is highly visible from the Coastal Path in both directions as the land rises up on either side of the valley.
6. Challaborough comprises a mixture of dwellings and is characterised, in part, by the presence of a holiday park which occupies the floor of the valley approaching Challaborough beach. The appeal site is located within a cluster of dwellings away from the holiday park, and is accessed via a narrow steep lane which serves this part of the settlement.
7. The appeal site sits between two properties on the seaward side of the narrow lane, and approximately equidistant between its neighbours. The neighbouring dwelling known as Idle Rock, sits on a plot of land higher up the hillside towards the southeast, with the neighbouring dwelling known as Shearwater being positioned on land lower down the hillside and towards the northwest.
8. As such these three dwellings occupy separate plots on the hillside, and have a consistent form in terms of mass. There is a steady and coherent progression in the roof ridgeline height, with the overall height of these three properties rising proportionately as the land rises up the hillside. This progression in ridgeline height is reflected by those properties which occupy plots on the inland side of the lane, and which sit elevated above the dwellings to be found adjacent to the Coastal Path. Consequently, when viewed from either the Coastal Path or from the lane which serves this part of the settlement, the dwellings appear to be well integrated into the surrounding landscape, with the progression in height of these dwellings up the hillside being a significant characteristic of this cluster of properties.
9. The proposed scheme seeks to replace the existing dwelling with a property which will have a roof ridgeline height that is 29cm higher than that of the existing property. As such the Parish Council and the District Council have raised concerns that this would not be consistent with the pattern of development within this cluster of dwellings, and assert that by increasing the roof ridgeline height by 29cm, the character and appearance of the AONB would be adversely affected.
10. However, I find that the appeal scheme would result in a ridgeline height which is approximately 1.5 metres lower than the ridgeline height of Idle Rocks, and which would be approximately 2.9 metres higher than the ridgeline height of Shearwater. Further the appeal scheme would replace the existing roof with a design which incorporates a shallower pitch, bringing the pitch of this roof more in line with that of its neighbours. Consequently the proposed scheme would maintain the steady incremental progression in ridge heights of these three neighbouring properties, as they rise up the hill towards the southeast, with the difference in height of 29cm not being perceptible to those visiting or living in the surrounding area.

11. Further the scale of the proposed scheme would appear to be consistent with the scale of the neighbouring properties within this cluster, and would sit well within its plot providing a good level of external amenity space. Whilst the design features of the proposed scheme may be different than that of its neighbours, I do not find that it would necessarily draw the eye or be overly prominent when viewed in the context of this part of Challaborough. Further the proposed replacement dwelling would represent an update and remodelling of a tired structure, and would give the site a more modern appearance in line with the surrounding properties. As such the proposed replacement dwelling would enhance the appearance of the site, and therefore would not result in harm to the character and appearance of the area.
12. The NPPF is clear that Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty, and that great weight should be given to conserving these qualities. As such, and in line with the opinion provided by the District Council's Planning Officer and the AONB Unit, I conclude that the proposal does respond positively and sensitively to the wider landscape character, and that therefore no harm to the AONB arises by virtue of the proposed development.
13. Given that the Council is concerned about the impact of the proposal on the character and appearance of the surrounding area, and the impact on the wider AONB, I have further assessed the proposed scheme against those development policies which seek to ensure that local distinctiveness is respected, and those which concern the conservation, preservation or enhancement of the character and appearance of the surrounding landscape. In this regard I find that the South Hams Core Strategy ('the Core Strategy') and the DPD policies are generally consistent with the NPPF, and I therefore attach significant weight to these policies in the determination of this appeal. As such, and for the reasons given above, I find that the appeal proposal does accord with Policies CS7 and CS9 of the Core Strategy, and with Policies DP1 and DP2 of the DPD. Further I have given limited weight to the policies contained within the Emerging Plymouth and South West Devon Joint Local Plan ('the Joint Local Plan'), and in this regard I find that the proposal accords with Policies DEV20, DEV24 and DEV27 of the Joint Local Plan with particular reference to the preservation of the surrounding landscape and local distinctiveness.

#### *Other Matters*

14. Further to the above, I have also considered whether the proposal accords with the principle of sustainable development in terms of the NPPF. As such I find as above, that the replacement of the existing dwelling would represent an enhancement of the site and would not adversely affect the character and appearance of the surrounding area. Further the appeal scheme offers good levels of access to services and facilities, and consequently the proposal is in line with the environmental and social dimensions of sustainable development. The proposed development would also bring about economic benefits in the form of employment during the construction phase. As such I find that the proposal would represent a form of sustainable development and would accord with those elements of Policies DP4 and DP7 of the South Hams Development Policies Development Plan Document ('the DPD') which concern sustainable development.

15. I have been referred to the previous application and subsequent appeal that was made in relation to this site, and it has been put to me that the previous appeal decision determined that any proposal which results in a ridgeline height above that of the existing dwelling, would adversely affect the character and appearance of the surrounding area and thereby impact on the AONB. However I disagree with this interpretation of the comments made in the previous appeal decision. As such the conclusions reached in this appeal emphasise that it is the progression in height of the dwellings that is the significant characteristic of this cluster of properties, and not that the height of the individual dwellings are the same as each other. Accordingly, given the progression in height is maintained by this proposal, and that the additional 29cm would be barely perceptible, I conclude that this amended scheme is acceptable and in accordance with the previous appeal decision.
16. It has further been put to me that, by allowing this appeal, a precedent would be set permitting the increase of roof heights across the area. However each application, and appeal, must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission in this case. As such, I can see no reason why the determination of this appeal decision would lead to any harmful developments within the area.
17. I have further noted the reference made by interested parties, to the Bigbury Neighbourhood Plan. However, whilst the evidence before me suggests it is at an advanced stage, I note that it is yet to be ratified and published. Consequently I have attributed no weight to the Neighbourhood Plan, in the determination of this appeal.
18. Finally it has been put to me that the height of the proposed dwelling would impact on the privacy and outlook of neighbours. However I find as above that the small increase in height when compared to the exiting property on this site, would be barely perceptible, and given the separation distances between the properties which comprise this part of Challaborough the proposed scheme would not result in any overlooking or loss of privacy. Accordingly I find that the appeal proposal would not be in conflict with Policy DP3 of the DPD which seeks to protect residents by restricting developments which result in unacceptable loss of privacy.

### **Conditions**

19. In addition to the standard three year period implementation condition, which is a statutory requirement, it is necessary, in the interest of certainty and precision, to define the plans with which the appeal scheme should accord. I further find it reasonable to include conditions requiring details of any landscaping, external finish and fenestration, boundary treatments, parking and access arrangements be agreed with the Local Planning Authority, in the interests preserving the character and appearance of the surrounding area, and in the interests of highway safety.
20. In addition to the above, and in the interests of protecting the environment, I also find it reasonable and proportionate to include a conditions requiring that details of the drainage system and foul water disposal be approved by the Local Planning Authority.

21. In the interest of highway safety and public convenience, I have included a condition requiring details of Construction Management Plan be agreed with the Local Planning Authority prior to commencement or any works at the appeal site.
22. Finally in this regard, I agree with the Council that the exceptional condition which restricts permitted development rights is proportionate in this case, given the sensitivity of the surrounding environment, and as a means of ensuring the preservation of the character and appearance of the surrounding landscape.

### **Conclusions**

23. For the reasons given above, and having regard to all other matters raised, the appeal should succeed and planning permission granted subject to conditions that are necessary in the interests of certainty and safeguarding the character and appearance of the AONB.

*Andrew Spencer-Peet*

INSPECTOR

## **Schedule of Conditions**

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.
- 2) The development hereby approved shall in all respects accord strictly with drawing numbers 015/001/07 Rev B 'Proposed Floor Plans and Elevations', 04 Rev A 'Site Plans' and Design and Access Statement received by the Local Planning Authority on and 2 January 2018 and drawing 05 Rev A 'Indicative Street Views' received by the Local Planning Authority 12 March 2018.
- 3) The building works shall not be implemented until a landscaping scheme has been submitted to and approved by the Local Planning Authority, including details of the boundary treatment of the proposed development. The scheme submitted shall be fully implemented in the planting season following the completion of the development and the plants shall be protected, maintained and replaced as necessary for a minimum period of five years following the date of the completion of the planting.
- 4) Notwithstanding Condition 2, full details of external finishes and fenestration, to include the removal of the Eternit Cedral weatherboard shall be submitted to and approved in writing by the Local Planning Authority.
- 5) 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.
- 6) Notwithstanding the provisions of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking, re-enacting or further amending that Order), no development of the types described in Schedule 2, Part 1, Classes A-H and Schedule 2, part 2, Class A of the Order, including the erection of extensions, porches, garages or car ports, the stationing of huts, fences or other structures shall be carried out on the site, other than that hereby permitted, unless the permission in writing of the Local Planning Authority is obtained.

- 7) Prior to the commencement of the development hereby approved, details of the disposal of foul water shall be submitted to and approved in writing by the Local Planning Authority and the approved foul water system shall be installed prior to occupation of the dwelling. Following its installation the approved scheme shall be permanently retained and maintained thereafter.
- 8) Prior to the commencement of the development, details of the surface water design including percolation test results and supporting calculations shall be submitted to and approved in writing by the Local Planning Authority. Details of maintenance and management responsibility for the drainage system must be submitted to and approved in writing by the Local Planning Authority prior to commencement on site. Such approved drainage details shall be completed and become fully operational before the development first brought into use. Following its installation the approved scheme shall be permanently retained and maintained thereafter. Surface water drainage systems design and installation shall be accordance with CIRIA C697 The SuDS Manual and CIRIA C698 Site Handbook for the Construction of SuDs.
- 9) Prior to the commencement of the development, details of any ground level changes shall be submitted to and approved in writing by the Local Planning Authority. Any works shall subsequently be undertaken only in accordance with the approved scheme.
- 10) The dwelling hereby approved shall not be occupied until the parking area relating to it and shown on the submitted drawings shall have been properly consolidated, surfaced, laid out and constructed. The parking area shall be kept permanently available for the parking and manoeuvring of motor vehicles in connection with the development hereby permitted.
- 11) Prior to commencement of any part of the site the Local Planning Authority shall have received and approved a Construction Management Plan (CMP) including:
  - (a) the timetable of the works;
  - (b) daily hours of construction;
  - (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 8:00 hours and 18:00 hours Mondays to Fridays inclusive; 9:00 hours to 13:00 hours Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the Local Planning Authority in advance;
  - (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, unless prior written agreement has been given by the Local Planning Authority;
- (h) hours during which no construction traffic will be present at the site;
- (i) the means of enclosure of the site during construction works; and
- (j) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site
- (k) details of wheel washing facilities and obligations.
- (l) The proposed route of all construction traffic exceeding 7.5 tonnes.
- (m) Details of the amount and location of construction worker parking.
- (n) Photographic evidence of the condition of adjacent public highway prior to commencement of any work;
- (o) site management arrangements, including the site office and developer contact number in the event of any construction/demolition related problems, and site security information.

This CMP shall be strictly adhered to during the construction of the development hereby permitted, unless variation is approved in writing by the Local Planning Authority.