



# Appeal Decision

Site visit made on 13<sup>th</sup> June 2023

**by J Hills MRTPI**

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

**Decision date: 18 August 2023**

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## **Appeal Ref: APP/K1128/W/23/3315666**

### **Dennings, Wallingford Road, Kingsbridge, Devon TQ7 1NF**

- 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 Dick Whittington of Dick Whittington Developments Ltd against the decision of South Hams District Council.
  - The application Ref 1386/22/FUL, dated 21 April 2022, was refused by notice dated 16 December 2022.
  - The development proposed is six new residential dwellings.
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### **Decision**

1. The appeal is allowed and planning permission is granted for six new residential dwellings at Dennings, Wallingford Road, Kingsbridge, Devon TQ7 1NF in accordance with the terms of the application, Ref 1386/22/FUL, dated 21 April 2022, subject to the conditions set out in the attached schedule.

### **Application for costs**

2. An application for costs was made by Mr Dick Whittington of Dick Whittington Developments Ltd against South Hams District Council. This application is the subject of a separate decision.

### **Preliminary Matters**

3. I note that a similar scheme<sup>1</sup> at this site was dismissed on the grounds of flood risk which has been overcome and is not a matter in dispute between the main parties in respect of this appeal. I have, however assessed the appeal on its individual merits based on the evidence before me.
4. During the course of the appeal process, a signed legal agreement dated 29 May 2023 was submitted by the appellant securing contributions towards on-going maintenance of play and sports facilities in Kingsbridge. I deal with the contents of this below.
5. I note that although plan 2515\\V\\C is shown on the Council's decision notice, it reflects plan 2515/01 C that was superseded by drawing referenced A 100.2. I have therefore not referred to the former plans in my formal decision.

### **Main Issue**

6. The main issue is whether the proposed development would provide a suitable housing mix to meet identified needs.

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<sup>1</sup> APP/K1128/W/21/3282469

## Reasons

7. The appeal site is positioned on the edge of and within walking distance from Kingsbridge, which is identified within Policy TTV1 of the Plymouth & South West Devon Local Plan 2014-2034 (JLP) as being a main town. In this location there is a broad range of services and facilities where growth is prioritised by the policy. Policy SPT2 of the JLP is supportive, amongst other things, of developments that have reasonable access to a vibrant mixed use centre. It also supports communities that have a good balance of housing types to support a range of household sizes, ages and incomes to meet identified housing needs.
8. Along with other requirements, Policy DEV8 of the JLP sets out that the Council will seek to deliver a wide choice of high quality homes which widen the opportunity for home ownership and create sustainable, inclusive and mixed communities. Local housing evidence should ensure there is a broad choice and range of housing whilst meeting the most particular needs in the area. These needs include providing *homes that redress an imbalance within the existing housing stock; housing suitable for households with specific need; and dwellings most suited to younger people, working families and older people who wish to retain a sense of self-sufficiency.*
9. Additionally, Policy KWAC H2 of the Kingsbridge, West Alvington and Churchstow Neighbourhood Plan 2021 to 2034 (NDP) promotes schemes that respond to local housing needs in terms of type, size, special needs and tenure; noting that consideration should be given, amongst other requirements, to providing houses for young families, the elderly and those wishing to downsize. In this respect, paragraph 124 of the National Planning Policy Framework (the Framework) says that decisions should support development that makes efficient use of land, taking into account the identified need for different types of housing and other forms of development, and the availability of land suitable for accommodating it.
10. The Council's JLP Supplementary Planning Document 2020 (SPD) adds some background to the JLP policies and in respect of Policy DEV8 emphasises that there is an under-occupancy and a higher proportion of 4 or more bed properties across the wider district area. Additionally, it notes that a step change in the delivery of smaller homes will facilitate down-sizing for older people, as well as opportunities for young people and families. It adds that larger properties, particularly in coastal settlements, are not suited to small households or those on lower wages. The SPD also explains that the use of a room identified as an office/study will be supported.
11. The Council's submitted Strategic Housing Market Needs Assessment (SHMNA) shows that across the wider district, there is a future housing need where approximately half of new properties should be 1 or 2 bed, and the other half should be made up from 3, 4 or more bedrooms. Whilst the need for 4 bed properties is less than that for 1,2 and 3 bed properties combined, the evidence shows a requirement of 32.6% (568) for 3 bed properties and 18.2% (316) for 4 bed properties. Consequently, this does not demonstrate a district wide imbalance in the requirement for 3 or 4 bed properties.
12. At a more localised level, both main parties agree that the Council's submitted Kingsbridge, West Alvington and Churchstow Housing Needs Assessment (KWCHNA) shows, amongst other things, that home ownership in the local area is becoming increasingly unaffordable, and new development would benefit from a relatively even balance of home sizes. Nevertheless, table 4.9 of the KWCHNA identifies that approximately 57% of new homes by 2034 should be 3 or 4 beds, and that there is an oversupply of 1 bed homes. It also advises that the youngest households occupy the smallest dwellings, before quickly taking up larger homes

as their families expand, and then more gradually downsizing to smaller homes as they age.

13. Although the mixed scale of the proposed properties would not include smaller 1 or 2 bed units, they would deliver office/study spaces as supported by the Council's SPD and a mix of 3 and 4 bed properties that are shown to be required by local and district wide housing evidence. Although other planning permissions may be delivering housing in the area and these properties may not necessarily be affordable to many younger people or suited to those looking to downsize (which are also needs identified in the South Hams & West Devon Housing Strategy (2021- 2026) and through the Council's declaration of a Housing Crisis), 67% of the scheme would include smaller than 4 bed units, which would ensure that there is a range of housing in the local area that could be suitable for expanding and working families.
14. Therefore, I conclude that the proposed development would provide a suitable housing mix to meet identified needs. As such, the proposed development would accord with Policy KWAC H2 of the NDP and policies SPT2 and DEV8 of the JLP. There would also be no conflict with chapter 11 of the Framework which, amongst other things, says decisions should promote an effective use of land in meeting the need for homes.

### **Planning obligation**

15. The appellant has submitted a Unilateral Undertaking pursuant to Section 106 of the Act, providing a planning obligation in relation to contributing towards the on-going maintenance of play and sports facilities in Kingsbridge. I have therefore considered them against the tests in Regulation 122 of the CIL Regulations 2010 and the Framework.
16. The obligation deals the on-going maintenance of play and sports facilities in Kingsbridge. The Council has identified a need for a contribution to meet the needs generated from the proposed development. Moreover, the provision of a contribution towards supporting play and sports facilities is reasonably related in scale and kind to the needs generated by the proposed development and is consistent with the requirements of Policy DEL1 of the JLP.
17. I therefore consider that the obligations meet the necessary tests in law and I have taken account of them in reaching my decision.

### **Other Matters**

18. I have paid regard to the Garden Mill appeal decision, although I am not aware of its detailed site-specific circumstances. Furthermore, that scheme was much larger than in this appeal and sought to vary the mix of a previous approval where the Inspector found that proposal to be unbalanced, as 11, 2 bed units of the total 32 units were to become 4 or 5 bed units. For these reasons, that appeal is materially different to this proposal.
19. A previous Inspector concluded in the similar scheme<sup>2</sup> that from the evidence before him, there was a need for 4 bedroom and detached dwellings within Kingsbridge. Although I cannot be certain from the submitted evidence that the same information was available at that point when compared with this appeal, the two schemes are sufficiently closely related in that they include an identical housing mix. I therefore attach substantial weight to the previous decision as a material consideration in respect of housing mix. In any case, based on the

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<sup>2</sup> APP/K1128/W/21/3282469

evidence before me, I have found that the proposed development would provide a suitable housing mix to meet identified needs.

20. A number of other matters have been raised by interested parties and I have taken them all into account. This includes matters such as: the effects of the proposed development on flooding, drainage, the removal of a stone wall, the condition of narrow lanes, infrastructure, blocked and restricted vehicle access for emergency vehicles in particular; parking, fumes and smells from cars; the loss of a species rich hedge; trees; design, height, massing, use of glazing, sunlight, light pollution and noise during construction. I have also had regard to the living conditions of existing occupiers of neighbouring properties and due to separation distances and the sloping topography, I find no harm arising from the proposed balconies.
21. I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of the aforementioned matters. Furthermore, some of the issues raised would be covered by conditions. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed.

### **Conditions**

22. The conditions suggested by the Council have been considered in light of the advice contained within the National Planning Practice Guidance and the Framework. I have made some amendments to the suggested conditions in the interests of clarity and to ensure compliance with the Framework. The appellant has agreed to the use of pre-commencement conditions in accordance with the regulations<sup>3</sup> where necessary.
23. In addition to the standard implementation conditional, it is necessary for certainty, to define the plans with which the scheme should accord. I have imposed a condition relating to unexpected contamination to ensure remediation is dealt with appropriately. Pre-commencement conditions covering a construction management plan, tree protection and reptile translocation are necessary in the interests of public amenity, highway safety, biodiversity and to ensure no harm is caused to protected species. I have also included a condition that requires parking and turning to be provided prior to first occupation in the interests of highways safety.
24. Surface water and foul drainage conditions are necessary in the interests of controlling runoff onto the highway or nearby properties and to ensure a sustainable foul water system is maintained. Additionally, I have imposed a condition removing certain permitted development rights in the interests of living conditions and character and appearance. I have also included a compliance condition in respect of ecological and reptile mitigation to safeguard legal protected species and ensure no biodiversity loss.
25. Landscaping, materials finish and stonework conditions are all necessary in the interests of character and appearance. A lighting condition and a compliance condition in respect of timber louvres is required in the interests of the living conditions of occupiers of neighbouring properties.
26. Conditions requiring the development to be constructed in accordance with a carbon reduction statement, the submitted plans electric vehicle charging points and solar panels are required prior to first occupation to ensure the development contributes to the carbon reduction aims of the JLP.

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<sup>3</sup> The Town and Country Planning (Pre-Commencement Conditions) Regulations 2018

27. Prior to first occupation, a condition requiring obscure glazing on certain elevations is required in the interests of living conditions of future occupiers. As already discussed above, I have not imposed the Council's suggested roof restriction condition due to separation distances and the changing topography between existing and future properties.

**Conclusion**

28. For the reasons set out above, the appeal is allowed.

*J Hills*

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: 2515/SLP, 05529 TIP 27.11.2020, 05529 TPP 27.11.2020, 05529 TCP, 1567\_0120\_P1, 1567\_0500\_P1, 1567\_0560\_P1, 1567\_0561\_P1, 1567\_0580\_P1, 1567\_0700\_P1, 1567\_0720\_P1, A101, A100.2, A103, A109, A110, and A112, 2515/02.C, and A108.2.
3. Prior to commencement of any part of the site the Planning Authority shall have received and approved in writing a Construction & Environmental Management Plan (CEMP) including:
  - (a) the timetable of the works;
  - (b) daily hours of construction;
  - (c) any road closure;
  - (d) confirmation that the public footpath adjacent to the site will not be blocked or restricted from use by the construction works.;
  - (e) hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 08:00 and 18.00 Mondays to Fridays inc.; 09.00 to 13.00 Saturdays, and no such vehicular movements taking place on Sundays and Bank/Public Holidays unless agreed by the Planning Authority in advance;
  - (f) the number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits, including confirmation that delivery vehicles will wait at an appropriate location away from the site before being called forward for direct access on to it;
  - (g) a site plan showing 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;
  - (h) 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;
  - (i) hours during which no construction traffic will be present at the site;
  - (j) the means of enclosure of the site during construction works;
  - (k) details of proposals to promote car sharing amongst construction staff in order to limit construction staff vehicles parking off-site obligations;
  - (l) The proposed route of all construction traffic exceeding 7.5 tonnes;
  - (m) Details of the amount and location of construction worker parking; and
  - (n) Photographic evidence of the condition of adjacent public highway prior to commencement of any work, and any damage incurred to the highway as a result of construction vehicles to be made good within 3 months of completion of build).

The approved Construction Method Statement shall be adhered to throughout the construction period for the development set out above.

4. The development shall not be carried out until all measures within the hereby approved Tree Protection Plan Rev no. 1: 05529 TPP 27.11.2020 received by the Local Planning Authority, which are within the land outlined in red on the submitted site location plan, have been installed in accordance with the submitted Tree Protection Plan and in accordance with the details contained within the mitigation strategy contained within the Arboricultural Impact Assessment Report prepared by Aspect Tree Consultancy dated 27th November 2020 and the Addendum to this assessment (dated 6th May 2021), received by the Local Planning Authority on 17th June 2022. Once installed the measures shall be retained until all machinery, equipment and materials have been removed from site. At no time shall any machinery, equipment or materials for the construction of the dwellings hereby approved be stored within the Tree Protection Areas and Construction Exclusion Zones shown on the submitted Tree Protection Plan.
5. Prior to the commencement of development including site clearance, a detailed scheme for translocation of reptiles shall be submitted to and approved in writing by the Local Planning Authority. The scheme of translocation shall include a plan to show the receptor site(s) and proximity to the development; details of habitat creation and management works prior to translocation including the provision of artificial refuges; details of reptile exclusion fencing to be installed and a plan to show location of fencing; details of capture methodology and habitat manipulation to discourage reptiles from returning during construction phase of development and details of receptor site management and monitoring during the construction phase of the development and ongoing habitat management at the receptor site in perpetuity. Once approved works shall proceed in strict accordance with the approved scheme for translocation of reptiles and the land shall be maintained in perpetuity thereafter as a habitat for reptiles. The temporary reptile fencing shall remain in situ for the duration of the development works and shall only be removed once all works have been completed including landscaping works and equipment and machinery associated with the construction phase of the development have been removed from the site.
6. No part of the development hereby approved shall be occupied until the parking facilities, visibility splays, turning areas and access drainage have been provided in accordance with the submitted details and these shall be retained and maintained thereafter.
7. Notwithstanding the submitted details, the development hereby permitted shall not proceed above slab level until:
  - a. Supporting calculations for the attenuation and flow control are submitted to and approved in writing by the LPA. Designed for a 1:100 year event plus 40% for climate change and 10% urban creep. The site is within a Critical Drainage Area which means that any surface water leaving the site must be limited to the 1:10 year green field runoff rate.
  - b. Details of the management company and maintenance plan for the whole site.



c. Detailed Construction Phase surface water drainage plan, as a minimum to include details of the sediment control and final point of discharge.

All works shall be carried out in accordance with the approved maintenance and drainage plans and thereafter maintained.

8. Prior to first occupation of any dwelling on the site, full details of hard and soft landscape works, including an implementation and management plan prepared by an appropriately qualified professional, shall have been submitted to and approved in writing by the local planning authority. Details of soft landscape works shall include retention of any existing trees and hedges; finished levels/contours; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and shall include details of boundary treatments. The hard landscape works shall include means of enclosure; boundary and surface treatments; vehicle and pedestrian/cyclist circulation. All works shall be carried out in accordance with the approved details and the implementation plan and thereafter maintained in accordance with the approved management plan.
9. The electric vehicle charging points as shown on the approved plans shall be installed prior to the first occupation of the dwellings hereby approved. They shall then be retained and maintained for the life of the development.
10. The solar PV panels as shown on the approved plans shall be installed prior to the first occupation of the dwellings hereby approved. They shall then be retained and maintained for the life of the development.
11. Prior to first occupation of the dwellings hereby approved the timber louvres as detailed on drawing number 2515/02.C, received by the Local Planning Authority on 2nd November 2022 shall be installed in accordance with the hereby approved details and shall thereafter be retained and maintained for the lifetime of the development.
12. Prior to the first occupation of the dwellings hereby approved, all first and second floor windows on the north elevations of units 2,3 and 4 shall be fitted with obscure glazing, and so shall all windows marked to be fitted with obscure glazing on drawing number 2515/02.C. These windows shall be fitted with a minimum of level 3 obscure glazing over the entirety of each of the windows with no clear area and shall thereafter be permanently retained in that condition.
13. The construction of the dwellings hereby approved shall be carried out in accordance with the details contained in the Carbon Reduction Statement received by the Local Planning Authority on 14th November 2022. All measures contained within the hereby approved document to limit carbon emissions shall be implemented prior to first occupation of the hereby approved dwellings and maintained as such thereafter.
14. 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.

15. Prior to installation, a schedule of materials and finishes to be used in the construction of the external surfaces, including roofs, shall have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out only in accordance with the details so approved.
16. The stonework shall be constructed of natural stone which matches the colour and texture of that occurring locally, details of which shall be submitted to and agreed in writing by the Local Planning Authority, prior to the installation. The new stonework shall be laid on its natural bed and pointed in a lime mortar recessed from the outer face of the stone. Machine cut or sawn faces shall not be used in the wall or for quoin stones. Once installed, the stonework shall be retained and maintained for the life of the development.
17. Foul drainage shall be connected to the South West Water main foul sewer in Wallingford Road unless an alternative means of foul water drainage is submitted to and agreed in writing by the Local Planning Authority prior to installation of any alternative system. Once installed, the foul drainage system shall be retained and maintained for the life of the development.
18. Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) Order, 2015 (and any Order revoking and re-enacting this 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:
  - (a) Part 1, Class A (extensions and alterations)
  - (b) Part 1, Class AA (enlargement of a dwellinghouse by construction of additional storeys)
  - (c) Part 1, Classes B and C (roof addition or alteration)
  - (d) Part 1, Class D (porch)
  - (e) Part 1, Class E (a) swimming pools and buildings incidental to the enjoyment of the dwellinghouse and; (b) container used for domestic heating purposes/oil or liquid petroleum gas)
  - (f) Part 1, Class F (hard surfaces)
  - (g) Part 1, Class G (chimney, flue or soil and vent pipe)
  - (h) Part 1, Class H (microwave antenna) and;
  - (i) Part 2, Class A (means of enclosure)

19. The recommendations and safeguarding measures given in the Ecological Assessment Update prepared by Burton Reid Associates dated March 2021 and Reptile Mitigation Strategy prepared by Burton Reid Associates dated March 2021 received by the Local Planning Authority on 04 March 2021 where it relates to the land outlined in red on the submitted site location plan shall be followed, including precautions to prevent threat of harm during construction works, and incorporation of biodiversity enhancement measures as described in the reports.
  
20. Details of any external lighting (including security lighting), including design, siting and illumination-type and lux level, to be erected, placed, or sited within the site shall be submitted to and approved in writing by the Local Planning Authority prior to installation. The work shall thereafter be carried out in accordance with the approved details and retained as such thereafter. Under no circumstances shall it cause light pollution nor shall external illumination be operated on the site other than in accordance with the approved scheme.