



## Appeal Decision

Site visit made on 4 December 2023

**by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC**

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

**Decision date: 13 December 2023**

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**Appeal Ref: APP/K1128/W/22/3312269**

**South Efford House, Road to Stadbury Farm, Aveton Gifford TQ7 4NX**

- 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 Iain Doyle of Stone River Investments against the decision of South Hams District Council.
  - The application Ref 4151/21/FUL, dated 1 November 2021, was refused by notice dated 31 May 2022.
  - The development proposed is demolition of existing C2 care home and replacement with 6 C3 residential dwellings.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The site lies within what was the South Devon Area of Outstanding Natural Beauty (the AONB), but which has been recently rebranded the South Devon National Landscape. Existing legislation and policy however continue to refer to AONBs. As this remains applicable to areas now known as National Landscapes, references to the AONB below should be interpreted accordingly.
3. The Council's reasons for refusal included an objection on grounds that insufficient information had been provided in relation to impacts on an adjacent County Wildlife Site. As the Council is satisfied with the further information submitted at appeal, I shall consider the matter no further.

### Main Issues

4. The main issues are:
  - whether the site is an appropriate location for the proposed development in relation to: (a) its effect on the character and appearance of the area, including the South Devon National Landscape, and the Undeveloped Coast; and (b) access to services and amenities by future occupants;
  - the appropriateness of the site in relation to flood risk;
  - the effect of the development on bats;
  - whether the development would provide an appropriate mix of dwellings; and
  - the effect of the development on the economy.

## Reasons

### *Location*

#### *(a) Background*

5. Policy TTV1 of the Plymouth and South West Devon Joint Local Plan 2019 (the JLP) seeks to achieve a sustainable distribution of growth. This directs development to named settlements based on a hierarchy defined according to the provision of services and amenities. In this context the site is located within the countryside, outside the settlement of Aveton Gifford, as defined by Policy AG1 of the Aveton Gifford Neighbourhood Plan to 2034 (2021) (the NP). Development within the countryside is otherwise restricted by Policies AG1 of the NP and TTV6 of the JLP, and subject to a range of exceptions. Here the Council's concerns relate both to the effect of the development on the character and appearance of the area, and to the potential for future occupants to access services and amenities. In the latter regard the Council's underlying concern is presumably the environmental effects of travel.

#### *(b) Character and appearance*

6. As the site is located within what was the AONB, the duty to have regard to the purpose of conserving and enhancing natural beauty applies. Within this context paragraph 176 of the National Planning Policy Framework (the Framework) further states that great weight should be given to conserving and enhancing landscape and scenic beauty. The site also forms part of the Undeveloped Coast, within which maintenance of character is additionally highlighted as an objective within paragraph 174 of the Framework.
7. The site forms part of a sparse scatter of development towards the bottom of the valley slope on the south side of the River Avon. It is not isolated in the sense that it shares a loose relationship with a larger cluster of development at Bridge End towards the east. The site is nonetheless exposed within its immediate open valley setting.
8. At this point the river swells as it nears the sea, and the valley bottom broadens out, with mud flats and marsh lying either side of the main channel. Picturesque views exist across and along the valley with a sequence of key vantage points provided by Tidal Road and footpaths on the north side of the river. Whilst development has a very limited presence within these views, the height, mass, and white rendered finish of the existing building on site lends it prominence. Its linear form is nonetheless compact, and its north-easterly orientation means that only a small proportion of the broad frontage of the site is currently developed. Indeed, though the site as a whole technically falls within the definition of previously developed land (PDL), the green open space forming the remainder of the site blends with the undeveloped valley slope above and the marsh below, thus making a positive contribution to their attractive character.
9. The proposed cul-de-sac of dwellings would each be individually more modest in height and mass than the existing building. Their provision would however see development of an overtly suburban character spread across the width of the site's broad frontage. A much larger proportion of the site would therefore be developed, and the overall presence of built form would be considerably

increased. Within this context the otherwise alien character of the development would not be altered by use of a 'vernacular' palette of materials.

10. The development would be visible from the nature reserve footpath immediately to the north, and clearly apparent within views from Tidal Road and footpaths on the opposite side of the river. Within these views the overall increase in the presence of built form would be appreciable, as would be its incongruous suburban character. Trees and landscaping both would and could provide only limited screening, and even then, its long term effectiveness would be uncertain. The resulting visual intrusion would be accentuated in contrast with the open slope above the site. Consequent erosion of the attractiveness, natural and scenic beauty of the valley would be far greater than arises in relation to the existing building on site. The adverse effects would be furthermore likely extend beyond daylight hours given the introduction of artificial lighting across the site. This would remain perceptible from within the surroundings even if the extent of light spill could be contained.
11. The existing building is empty and boarded up. Though the appellant states that bringing it back into use would require its extension, no such extension has been approved. The acceptability of such a scheme would otherwise fall to be determined on its own merits.
12. The existing building shows signs of decay, and this could worsen in the absence of maintenance or a resumption in use. What effect this would have on the broader setting is open to speculation. However, it does not fundamentally alter my assessment of the impact of the appeal scheme set out above.
13. The Council has assessed the proposal as representing major development, which the Framework states should be refused within AONBs other than in exceptional circumstances. As my findings above indicate that the nature and scale of the development would have a strongly adverse effect upon its setting, as too the purposes of the designation, I see no reason to take a different view.
14. Having regard to the considerations set out within paragraph 177 of the Framework, the development would make a general contribution towards the supply of new housing. However, the overall contribution would be very small, particularly when taking into account the existing accommodation on site that would be lost to facilitate the development. I have no reason to believe that a similarly scaled development could not be cost effectively delivered outside the designated area. My findings above otherwise indicate that little weight can be placed on the use of PDL in this case.
15. The economic benefits generated during the construction and occupation phases of the development would again be very small, could again be generated by a development of similar size wherever it was located, and must again be offset against the loss of an employment generating use. Though future occupants might well help to support services in and around Aveton Gifford, it appears unlikely that this would have a significant bearing upon their overall viability, or upon local vitality more generally.
16. Measured relative to the existing use when previously operational, some benefit might arise in relation to a reduction in vehicular trips. However, such benefit would again be very minor in scale.

17. Given the location and layout of the development, and having considered trees and landscaping above, there would be little scope to effectively moderate the adverse effects I have identified.
18. The above being so, the benefits of the development would be at best very small and would not outweigh the harm it would cause. The development would not therefore be in the public interest. Paragraph 177 of the Framework thus indicates that permission should be refused.

*(c) Access to services and amenities*

19. Aveton Gifford lies on the north side of the river. Walking into the centre of the settlement from the site is made somewhat hazardous by the lack of a continuous solid footway and lighting. However, bus stops are located at Bridge End, and Aveton Gifford could be reached within around 2-3 minutes by cycle. Whilst a good choice of alternatives to use of motor vehicles therefore exists, even if a motor vehicle was used, the journey time from the site would be so brief that related emissions would be negligible.
20. Aveton Gifford does not host all the services and amenities likely to be required to support the day-to-day existence of future occupants. Though travel elsewhere might therefore be required, the same would be applicable to occupants of developments within the settlement boundary. The distances and environmental effects would be similar. The environmental impacts arising from travel to and from the site to access services and amenities would not therefore be unacceptable, despite its location outside the settlement boundary.

*(d) Conclusion*

21. For the reasons outlined above I conclude that notwithstanding the acceptability of the location in relation to access to services and amenities, the site would be an inappropriate location for the proposed development given the unacceptably adverse effects that it would have on the character and appearance of the area including the South Devon National Landscape and the Undeveloped Coast. It would therefore conflict with Policy TTV26 of the JLP and Policy AG1 of the NP insofar as it would fail to meet the exceptions they set out; Policy SPT1 of the JLP insofar as local distinctiveness and sense of place would not be respected, maintained and strengthened; Policies DEV20 and DEV23 of the JLP which set out broadly similar requirements; Policy DEV24 of the JLP given that it would meet none of the exceptions for development that would be detrimental to the Undeveloped Coast; and Policy DEV25 of the JLP and Policies AG2 and AG8 of the NP which support the application of national policy in relation to AONBs.

*Flood risk*

22. As described above, the site lies a short distance from the River Avon. Though most of the site stands on rising ground within Flood Zone 1, a small part of the site falls within Flood Zone 3. The Framework and Planning Practice Guidance (PPG) thus set out the requirement to apply the sequential test. This has been reiterated by the Environment Agency in its objection to the appeal scheme. The objective of the sequential test is to steer new development to areas at the lowest risk of flooding from any source. It would indeed be contrary to the broader objectives of sustainability to develop within locations

susceptible to flooding where alternatives exist. This is given the typically adverse broader environmental, economic, and social implications.

23. The sequential test has not been applied and the appellant has forcefully objected to carrying out the exercise. The appellant has instead sought to demonstrate that, amongst other things, the proposed dwellings would be safe from flooding, and that notwithstanding probable flooding of the lane providing general access, future occupants would not be stranded. However, these considerations are not directly relevant to the sequential test, whose concern is with site selection. As set out within the PPG, even where a flood risk assessment shows that a development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.
24. The flood risk potential of other sites and places nearby has been drawn to my attention. However, this has no bearing on the requirement to apply the sequential test. Nor for that matter does the fact that the proposed development would generate fewer vehicle movements through Flood Zone 3 than the existing did when operational, or that the site is PDL.
25. The fact that the site supports an existing form of residential use which could theoretically be resumed does not provide a basis to disapply the sequential test either. Indeed, the acceptability of the existing use in relation to flooding is not open to question given that it is already established. Similarly, the Council's 2013 approval for conversion of the care home to 3 dwellings related to a change of use of the existing building. The appeal scheme would on the other hand involve redevelopment of the site and the provision of a different form and amount of development. It thus falls to the appellant to demonstrate that this could not be more appropriately located elsewhere.
26. To be clear, the failure to apply the sequential test does not in itself indicate that the proposed development would be inappropriately located. Nor does it mean that the site is incapable of use. It simply means that the sequential appropriateness of the site in relation to flood risk remains to be established.
27. I therefore conclude that given the appellant's failure to demonstrate the appropriateness of the site in relation to flood risk, the development would conflict with Policy DEV35 of the JLP, which supports the application of national policy. In the latter regard it would be at odds with the broad objective of securing sustainable development.

#### *Bats*

28. Survey work undertaken during 2020 and 2021 established that the existing building contained roosts supporting 7 species of bats, including rare and breeding species. Bats are protected under the Wildlife and Countryside Act 1981, and are a European Protected Species under the Conservation of Habitats and Species Regulations 2017 (as amended).
29. The Bat and Nesting Bird Survey Report (the Survey Report) within which these findings are recorded is now more than 2 years old, and the separate Ecological Impact Assessment (EIA) appears to indicate that they are therefore now out of date. Nonetheless, it seems unlikely that the identified high conservation status of the site in relation to bats has since diminished. The demolition of the existing building on site would therefore result in disturbance if not death and

injury of bats, and loss of habitat. Future potentially significant negative effects have also been identified in relation to artificial light.

30. The Survey Report sets out a mitigation strategy which is reiterated in the EIA and within the appellant's appeal submissions. I have no doubt that its recommendations are sound. However, though it states that a master plan incorporating a lighting and landscape plan is required at planning stage, none has been submitted. The likely functionality of the required mitigation has not therefore been demonstrated. This includes in relation to the location of the freestanding bat house, which the more generalised Lighting Impact Assessment appears to suggest should be moved further from the proposed dwellings. Indeed, concerns raised by the Council have not been directly addressed by the appellant.
31. Though the parties disagree over whether Natural England would issue a license, no detailed assessment is required within the context of the appeal. My findings above otherwise cast unacceptable doubt on whether the mitigation strategy could be successfully implemented in relation to the development as shown on the submitted plans. Given such uncertainty the matter cannot be resolved by condition.
32. For the reasons set out above I conclude that the appellant has failed to fully demonstrate that the development would mitigate its adverse effect on bats. It would therefore conflict with Policy DEV26 of the JLP, which seeks to secure the protection, conservation, enhancement and restoration of biodiversity.

#### *Mix*

33. Policy DEV8 of the JLP seeks to secure developments which provide a mix of housing sizes, types and tenures appropriate to the area, as supported by local housing evidence. This helps to deliver the Council's objective of redressing an imbalance within the existing housing stock, the existence of which is highlighted within the JLP Supplementary Planning Document 2020 (the SPD). The latter indicates that within South Hams imbalance arises specifically due to the disproportionate number of 4 or more bed dwellings. It follows that there is a lesser availability of accommodation for smaller households within the District, thus placing those in need of such accommodation at a disadvantage.
34. As all 6 of the proposed dwellings would have 4 bedrooms the development would not provide a mix. It would not therefore help to redress the existing imbalance in the housing stock but would instead help to exacerbate it. This would be the case whether or not there is a wider market for 4-bed dwellings, and despite the fact that some requirement for 4-bed dwellings still exists as a component of the District's overall needs.
35. For the reasons outlined above I conclude that the development would fail to provide an appropriate mix of housing, and would therefore fail to fully meet the broader needs of the community within the District. Conflict this arises with Policy DEV8 of the JLP as set out above.

#### *Economy*

36. As a care home the building on site is considered as an employment use by the Council. Were it in active use it would provide jobs. The active use of the building on site however ceased more than 10 years ago. Whilst the Council is



content that the use could resume, as the use currently supports no jobs, none would be lost were the development to take place.

37. The site nonetheless retains the potential to support both jobs and the local economy. Here Policy DEV14 of the JLP sets out criteria against which proposals resulting in loss of employment sites will be considered. This includes assessment of whether there is a reasonable prospect of the site being used for an employment use in the future. I am satisfied that the SPD does not exclude care homes from consideration. This is given that it identifies a wide range of uses providing 'employment opportunities' alongside more typical business uses. These include such broad categories as tourism development and leisure.
38. The appellant provided some evidence with the appeal to demonstrate that the care home use was no longer feasible. Though alternative employment uses were also considered, the evidence provided was insufficient to satisfy the above policy requirements. The appellant's subsequent marketing of the property for employment use has taken place wholly during the course of the appeal, and confirmation of this was presented at a very late stage in the process.
39. Within this context the property has been marketed for 12 months, in accordance with the SPD. However, the evidence before me does not suggest that this marketing was undertaken in relation to any particular mix of employment uses 'tailored to the location'. Insofar as it confirms interest in relation to some of the uses identified within the SPD, it also does not demonstrate a lack of demand. In this regard the information provided is not detailed enough for me to form a clear picture of exactly what the level of interest was, what the reasons were for this interest not progressing any further, and whether they could have been resolved. Insofar as the appellant has however advanced viability as inhibiting alternative employment uses, I have not been provided with any detailed modelling which confirms the assumptions made.
40. The building on site originated as a dwelling. In permitting an unrestricted residential conversion of the care home in 2013 the Council has furthermore previously accepted that the employment use of the site could be lost. The historic use of the building as a dwelling is however less relevant than the current lawful use, and the previous approval pre-dated adoption of the JLP. The previous scheme was not therefore assessed against Policy DEV14 and the SPD, and the evidence before me does not suggest that they were mirrored within the previous development plan. I therefore attach little weight to the historic residential use of the building on site, and little weight to the 2013 approval.
41. For the reasons set out above I conclude that the evidence presented is insufficient to fully justify loss of the employment site. Given its potential to support jobs and the local economy, I can only therefore find that loss of the employment site would be economically harmful. The development thus conflicts with Policy DEV14 of the JLP and the SPD as set out above.

### **Other Matters**

42. The application was partly refused on ground that financial contributions which the officer report lists as relating to school transport, affordable housing, open

space, sports and recreation, had not been secured. No more than a draft Unilateral Undertaking has been set before me. Had I resolved to allow the appeal and circumstances existed in which planning permission could be granted this would have been a matter requiring my further consideration. However, as I have resolved to dismiss the appeal for other reasons, no further assessment is required.

### **Conclusion**

43. For the reasons set out above the effects of the development would be unacceptable, giving rise to conflict with the development plan taken as a whole. There are no other considerations which alter or outweigh these findings. I therefore conclude that the appeal should be dismissed.

*Benjamin Webb*

INSPECTOR