



# Appeal Decision

Site visit made on 16 August 2022

by **S Harrington MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **09 September 2022**

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**Appeal Ref: APP/K1128/W/22/3297083**

**Fairhaven, Sandhills Road, Salcombe TQ8 8JP**

- 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 outline planning permission.
  - The appeal is made by Mrs Christine Cottle against South Hams District Council.
  - The application Ref 3268/21/OPA, is dated 20 August 2021.
  - The development proposed is erection of a single dwelling.
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## Decision

1. The appeal is dismissed and planning permission for erection of a single dwelling is refused.

## Background and Main Issues

2. The application was submitted in outline form with all matters reserved for later approval. I have therefore also dealt with the appeal on this basis.
3. There are several references in the submissions to a previous planning application<sup>1</sup>. I have been provided with limited details of that scheme and have determined this appeal based on this proposal and evidence before me.
4. As set out in the banner heading above, the Council failed to determine the application to which this appeal relates within the prescribed period. Since the appeal has been made, the Council has provided reasons that they would have refused planning permission for, had they retained jurisdiction to do so. With these reasons for refusal in mind, I consider the main issues to be:
  - The effect of the proposed development on the character and appearance of the area;
  - Whether the proposed development demonstrates adequate foul drainage arrangements;
  - Whether the proposal makes adequate provision for the inclusion of carbon reduction measures; and
  - The effect of the proposed development on highway safety.
5. The Council has also put forward that the lack of a S106 Agreement securing an occupancy restriction should form an additional reason for refusal. I deal with this matter later in my report.

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<sup>1</sup> 3010/18/FUL

## Reasons

### *Character and appearance*

6. The appeal site forms part of a substantial garden associated with a property known as Fairhaven. It is in a prominent location on a southwest facing hillside and is positioned between Fairhaven to the east, St Elmo Court to the West, and White Lodge to the north. Salcombe is designated a 'smaller town' within the Plymouth and South West Devon Joint Local Plan 2014 – 2034 (LP), and as such, Policy TTV1 of the LP provides support for appropriate levels of development in such location, although the site is not 'allocated' for development as set out within Policy TTV24.
7. The site is terraced above an area of garden and a steeply sloping access drive to the south with the site further rising steeply to the north. A number of mature trees within large mature gardens, and well-spaced buildings within a low-density area form a wooded hillside character which is a visually attractive and distinctive area within the South Devon Area of Outstanding Natural Beauty (AONB). Section 85 of the Countryside and Rights of Way Act 2000 requires that I have regard to the purpose of conserving and enhancing the natural beauty of the AONB and paragraph 176 of the National Planning Policy Framework (Framework) requires that great weight is given to conserving and enhancing the landscape and scenic beauty of the AONB. Although in outline form, the submitted block plan indicates a potential site for a single dwelling to the rear centre of the site which I have treated as illustrative.
8. The hillside which the site is situated on forms an important backdrop to numerous viewpoints of this part of the locality and AONB from the south including Cliff Road and North Sands Bay. It may be the case that from certain viewpoints a carefully designed dwelling on this site would be screened by mature trees, although this screening would likely decrease in the winter months due to leaf fall. However, notwithstanding any screening, a dwelling on this site, would undoubtedly be evident from numerous viewpoints as described above and those at Sandhills Road.
9. I have been provided with Tree Preservation Orders (TPO)<sup>2</sup> confirming that the site falls within an area TPO with nearby individually protected trees. A plan detailing root protection areas (RPA) within the site has also been submitted by the appellant. The Council is concerned that the information submitted with the application was not sufficient to adequately demonstrate that retained protected trees would not be significantly affected by the proposals, or that appropriate mitigation would be provided. From my site visit, I find that the trees and planting on and around the site make a significant positive contribution to the visual amenity and character of the area from both close and long-distance viewpoints due to their prominent position on the hillside contributing to a wider wooded vista.
10. The appellant indicates that the Council had previously agreed to the removal of a group of trees referenced G20 within the RPA. Even if this were so, and it would be possible to develop the site without impinging on root protection areas, I find that the proposal is likely to result in future pressure for tree works from future occupants of the proposed dwelling. This is as a

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<sup>2</sup> TPO 806462 – 86 & TPO 806462 681

consequence of the restricted area a new dwelling would need to be sited to avoid root protection areas and the resulting limited distance from existing mature trees impacting on light, thus creating a desire for removal of overhanging limbs, particularly given the views available from the site. Notwithstanding, the presence of the TPO means that any future work to be undertaken on the trees would require consent from the Council. Given the positive contribution I have found of the trees to the area, any additional tree removal or works will further reduce tree coverage harmfully impacting on the wooded character of the area.

11. The Design and Access Statement (DAS) explains how the proposal seeks to result in a carbon neutral high standard of design, with ecological and biodiversity gain and an enhanced landscaping scheme and that the current agents are experienced in high level design. My attention has also been drawn to recommendations of a Design Review Panel, however whilst relating to this site, it is in relation to a differing proposal than this appeal to which I have not been provided detail, and therefore I can only afford minimal weight to these recommendations.
12. I acknowledge that the proposal seeks to establish the principle of a single dwelling on a site within the settlement of Salcombe, and the appellant has ambitions for the proposal to be of a high-quality design in accordance with the Framework. It has also been put to me that there is potential for alteration of the site without the requirement for further permissions from the Council, although this is somewhat limited by the existence of the TPO.
13. Notwithstanding that matters of appearance, landscaping, layout and scale are reserved, the proposal would inevitably result in the introduction of further built development in what is an undeveloped parcel of land. I find that a building on this site, even if this were of high-quality design, would harmfully impinge on the overall character of the area by introducing additional built form in closer proximity to surrounding development within this low-density area, together with impacts on existing mature trees and planting. Consequently, the proposal would erode the sense of openness and character of this wooded hillside which I find contributes to the natural beauty of this part of the AONB.
14. Therefore, whilst the proposal in this location would not conflict with the aims of Policy TTV1 or TTV24 of the LP given the proposal is for a single dwelling, I have found the proposal would harm the area's overall character and appearance and detract from the landscape and scenic beauty of this part of the AONB. This would result in a conflict with the aims of Policies SPT1, SPT2, DEV10, DEV20, DEV23, DEV25, DEV26 and DEV28 of the LP and Policies ENV1 and ENV7 of the Salcombe Neighbourhood Development Plan 2018 – 2034 (NP). These policies seek, amongst other things, to ensure that development is of good quality that conserve and enhance the character and quality of area within which it is located; maintain the area's distinctive sense of place and existing low-density character; conserve the landscape and scenic beauty of the protected landscape; and, limit loss or deterioration of protected trees. The proposal would also be contrary to the provisions of the Framework in relation to achieving well-designed places which are visually attractive as a result of good architecture and of an appropriate density.

### *Foul drainage*

15. The Council has cited concerns that the proposal has failed to demonstrate satisfactory foul discharge arrangements. Policy DEV35(8) requires that development will only be permitted subject to confirmation that sewage / wastewater treatment facilities can accommodate the development or will be improved in advance of the development taking place.
16. No confirmation that such satisfactory facilities are available has been provided to me. I am therefore concerned that any planning permission granted might be negated by the lack of suitable facilities to provide a foul drainage connection. Therefore, this is a matter which should be resolved before planning permission is granted rather than leaving it to a planning condition.
17. Consequently, I am not satisfied that there is sufficient information before me to reach a conclusion that planning permission can safely be granted in relation to foul drainage matters and therefore the proposal would be contrary to Policy DEV35.

### *Carbon reduction*

18. The Council has cited a concern that the proposal provides no measures to reduce the carbon footprint of the development. Policy DEV32 of the LP identifies a need to deliver a low carbon future for the plan area and identifies several measures and provisions that should be included within new developments.
19. The Council has quoted an appeal decision<sup>3</sup> which indicates that the Inspector, in that case, felt that it was not appropriate to leave this matter to be addressed at a later stage in the planning process and could not be appropriately addressed through a suitably worded planning condition. Whilst this may be so, I have not had sight of all the details, or aware of the context of that appeal.
20. The DAS states that the proposal would be carbon negative, and therefore the appellant has accepted the principle of meeting the low carbon requirements, where applicable, of DEV32. However, no specific details are provided at this stage which I find is unsurprising given the outline nature of the proposal.
21. Given that the proposal relates to a single dwelling, I find that the requirements of DEV32 can be considered at detailed reserved matters stage, if outline planning permission were to be granted. Consequently, I find that the proposal would accord with the provisions of DEV32 subject to an appropriately worded condition.

### *Highway safety*

22. Whilst details of access are reserved, the submitted information indicates the access will be via an existing drive serving Fairhaven, onto Sandhills Road. I acknowledge the Highway Authority and Council's concerns in relation to the existing access being substandard in terms of visibility. On my site visit, I noted that a pedestrian pavement runs to the southern side of Sandhills Road, and whilst this part of the highway is relatively straight, a mixture of parked

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<sup>3</sup> APP/Q1153/W/20/3259659

cars, distance to sharp bends to the east and west and the enclosed nature of the highway serve to reduce vehicular speeds.

23. There would be a modest increase in vehicles using the access. The appellant state that access details would be designed in conjunction with a highways consultant at the reserved matters stage. Based on my own observations, noting the relatively low number of movements and speeds of vehicles I witnessed, and the existing visibility available, I am satisfied that this could be accommodated without an unacceptable impact on highway safety, even taking account of existing reduced visibility.
24. The proposal would therefore accord with DEV29 of the LP, which, amongst other things, requires development to provide safe and satisfactory traffic movement and vehicular access to and within the site and seeks to locate new homes in locations that can enable safe, secure walking, cycling and public transport access to local services and amenities. It would also accord with paragraph 110 of the Framework which requires development to provide safe and suitable access for all users, and paragraph 111 which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

### **Other Matters**

25. Both Salcombe Town Council and the Council have brought to my attention the requirements of Policy H3 of the NP which requires new open market dwellings be subject to a condition or other planning obligation to ensure its occupancy is as a principal residence. The Council have stated that the NP is subject to modification that requires this to be secured via a legal agreement. I have not been provided with any further details on the stage of examination of the NP modification. Notwithstanding, I have no signed legal obligation before me and an occupancy condition has not been included within the Councils suggested conditions or commented upon by the appellant. However, as I am dismissing the appeal for the reasons given above, I have not pursued this matter further.
26. The Council has cited concerns that insufficient information has been forthcoming in terms of the potential impact on protected species, habitat and mitigation. A Wildlife Trigger Table has been submitted by the appellant concluding that a wildlife report would not be required in this instance. Whilst the site forms part of a domestic garden, given the mature planting at the site it may well be the case that the site is utilised by protected species. However, as I am dismissing the appeal for the reasons given above, I have not pursued this matter further.

## **Conclusion**

27. Whilst I have found that there would be no harm to highway safety and reductions in the carbon footprint of the proposal could be secured, such a lack of harm would be neutral in the planning balance. Therefore, for the reasons given above, I find that the proposal would conflict with the development plan, read as a whole.
28. No material considerations have been shown to have sufficient weight to indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

*S Harrington*

INSPECTOR