



## Appeal Decision

Site visit made on 24 October 2023

**by J Hills MRTPI**

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

**Decision date: 07 November 2023.**

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**Appeal Ref: APP/W1145/W/23/3323417**

**Land at grid reference 243189 129178, Golf Links Road, Westward Ho!, Devon EX39 1GW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr A Smith against the decision of Torridge District Council.
  - The application Ref 1/0955/2022/OUTM, dated 27th October 2022, was refused by notice dated 10<sup>th</sup> February 2023.
  - The development proposed outline application (including scale appearance and access) for hotel apartments and ground floor restaurant.
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. An application for costs was made by Mr A Smith against Torridge District Council. This application is the subject of a separate decision.

### Preliminary Matters and Background

3. I note that the appeal is made in outline with approval sought for access, appearance and scale, with landscaping and layout reserved for later consideration. I have therefore taken any indication of reserved matters shown on the submitted drawings to be illustrative.
4. I have also dealt with another appeal Ref: APP/W1145/W/23/3322238 at this site for a mixed use development. That appeal is the subject of a separate decision.
5. There is dispute between the main parties over the lawfulness of a previous planning permission<sup>1</sup> (PP1) for a 15 bedroom hotel, with 5<sup>th</sup> floor restaurant and a commercial ground floor, which was of the same scale, mass and design as this appeal proposal. The appellant submits that the previous permission that is less than a decade in age, is extant and has provided supporting evidence including but not limited to photographs and a building control certificate for a 3m trench. Furthermore, they state that wall demolition and ground levelling excavation works were carried out.
6. The Council's Officer advised the appellant that if there were satisfactory foundations in the correct place, commencement could be assumed, though they noted that only a certificate of lawfulness would give absolute clarity on this. Furthermore, it is asserted that a more recently implemented planning

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<sup>1</sup> Planning permission ref: 1/1036/2019/FULM

permission<sup>2</sup> (PP2) for outdoor structures, including covered outdoor seating, service counters and the use of land for the playing of live music represents a new chapter in the planning history; and consequently, the Council state that the previous hotel permission is lost.

7. Whilst I have paid regard to all the evidence in respect of the planning history, in these circumstances it is not appropriate for me to determine whether a use or operation is or would be lawful. This can only be formally determined by a lawful certificate application under s191 or s192 of the Town & Country Planning Act. Even if a material start had been made on PP1, I cannot be certain of its lawful status given the evidence in respect of PP2. Consequently, I am therefore not in a position to give it any weight as a potential fallback in assessing the merits of this appeal.

### **Main Issues**

8. The main issues are:

- the effect of the proposed development on the character and appearance of the area; and
- community facilities.

### **Reasons**

#### *Character and appearance*

9. The appeal site comprises an open space that lies adjacent to a busy main road and in an area characterised by its attractive public village green. This is reflected in the area's designation in the LP as a Core Tourist Area (CTA) and Tourism and Recreation Site. The area surrounding the appeal site includes mixed use buildings of varying design, scale and age. Smaller buildings are concentrated around Golf Links Road to the south and east of the appeal site. These buildings and the appeal site provide a low key and inviting introduction to the adjacent village green, before larger and more modern buildings start to define the space around it. The open and low key features add to the overall attractiveness of the resort.
10. There is no dispute between the main parties over proposed access or parking arrangements. In respect of the relationship between the proposal and existing public toilets, I am mindful that a scheme could be progressed as part of any potential reserved matters application with an alternative layout. Therefore, it is conceivable that such a scheme could avoid any unacceptable harmful effects on a perceived fear of crime.
11. Although PP1 was assessed against a superseded policy reflective of Policy NOR5, the current LP also contains policies DM04 and ST04, which, amongst other things, seek to deliver high quality design with particular focus on scale, height, fenestration, local distinctiveness and relationships to buildings and landscape features. In that context, the proposal would be notably taller than the adjacent Latitude 51 development and the buildings behind and would include large, overhanging massing above the ground floor level.
12. As such, despite the proposal having the potential to provide safe public and private spaces, it would nevertheless have a dominating and overbearing effect

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<sup>2</sup> Planning permission ref:1/1266/2021/FUL

on its immediate surrounding setting and would consequently appear out of place. Additionally, although the scheme would provide a tourist facility in a suitable location, the proposed balconies would be comparatively large and these features, together with the wrapping fenestration of varied and competing designs would result in a disproportionate and incongruous design that would not enhance the surrounding local built and landscape setting.

13. Furthermore, the current indicative layout shows a less active frontage with Golf Links Road, which would not be inviting for tourists or residents. Even if the orientation were to be amended as part of any reserved matters application, this would reduce an active frontage towards the village green. It would also be unlikely, given the parking requirements and that more expansive sea views would be gained from proposed balconies from their indicative layout.
14. Therefore, I conclude on this main issue that the proposal would cause harm to the character and appearance of the area. As such, it would be in conflict with policies ST04, DM04, NOR5 and NOR6 of the LP, which collectively in this respect seek to improve the attractiveness of the CTA. There would also be conflict with paragraphs 130 and 134 of the Framework which, amongst other things say that decisions should ensure that developments will function well and add to the overall quality of the area and that development that is not well designed should be refused, especially where it fails to reflect local design policies.

#### *Community facilities*

15. There is a temporary planning permission<sup>3</sup> for the use of part of the appeal site for a drinking, food and entertainment establishment. PP2 permits the use of the appeal site for the playing of live music. At my visit, I saw that the appeal site was being used as an outdoor seating area. Even if the site could continue to be used as an independently operated bar/drinking establishment, the proposed scheme would include an enclosed, year round ground floor commercial use adjacent to a large public village green.
16. Although the Council is concerned that the proposed use is not clear, the appellant states that the new development would include a similar indoor pub/food facility, which would be a local service as defined in the LP. Furthermore, the application form states that a restaurant is proposed and although indicative, the ground floor layout would include a large bar, lounge and restaurant. Had I been minded to allow the appeal, the ground floor unit could be controlled via the use of an appropriately worded condition. Consequently, whilst the proposal would not provide outdoor entertainment space, it would nevertheless provide an alternative service that would maintain the economic wellbeing of the local community.
17. I therefore conclude on this main issue that the proposal would not harmfully affect community facilities. As such, there would be no conflict with policies ST22 or NOR5 of the LP which, together in this respect, support proposals that would maintain the tourist character of the resort without the loss of community services and facilities.

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<sup>3</sup> Planning permission ref: 1/0024/2020/FUL

## **Other Matters**

18. I note the appellant's comments in relation to the processing of the planning application, however these do not have any bearing on my decision which is based on the planning merits of the development.
19. Additionally, the Council's Officer report and appeal statement identify a need for s106 financial contributions for off-site biodiversity net gain mitigation and local infrastructure. The appellant states that they are willing to enter into any reasonable s106 agreement, however no completed agreement is before me. As such, had I been minded to allow the appeal, it would have been necessary for me to reach a finding on this matter.

## **Conclusion**

20. Bringing together my conclusions on the main issues, I have found that the proposal would not harmfully affect community facilities and that a scheme could be progressed at the reserved matters to provide safe public and private spaces. However, this does not outweigh the harm I have found to the effect of the development on the character and appearance of the area.
21. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

*J Hills*

INSPECTOR