



# 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/23/3322238**

**Land at grid reference 243189 129178 Golf Links Road Westward Ho!  
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 1/0514/2022/OUTM, dated 13 May 2022, was refused by notice dated 17 November 2022.
  - The development proposed is outline application (including scale, appearance and access) for 9 residential units and ground floor commercial unit (amended description).
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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

3. It has been confirmed 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. The Council has advised that since it made its decision, there is now a 5 year housing land supply. This is not contested and I have dealt with the appeal on that basis.
5. I have also dealt with another appeal Ref: APP/W1145/W/23/3323417 at this site for a mixed use development. That appeal is the subject of a separate decision.

## Background and Main Issues

6. 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 5th floor restaurant and a commercial ground floor. The appellant submits that the previous permission 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.

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

7. 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 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.
8. 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.
9. The Council's Officer report and appeal statement identify a need for s106 financial contributions for local infrastructure. The appellant has commented on this and would consequently not be prejudiced by its inclusion within the main issues.
10. As such, the main issues are:
  - the effect of the proposed development on the character and appearance of the area;
  - whether suitable mitigation is in place in respect of biodiversity enhancements and local infrastructure provision;
  - the effect of the proposed development on community facilities; and
  - surface water

## **Reasons**

### *Character and appearance*

11. 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.
12. The current indicative layout shows a less active frontage with Golf Links Road, which would not follow the grain of the surrounding development and would consequently 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. Moreover, it would be

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

unlikely given the parking requirements and that sea views would be gained from the proposed balconies. Additionally, alterations to the proposed appearance and scale would not be possible as part of any reserved matters application. As such, the proposal would not be designed to respond sympathetically to buildings and landscape features in the local neighbourhood as required by policies ST04 and DM04 of the LP.

13. The proposed residential units of accommodation with ground floor commercial use would be of a similar height to the adjoining Latitude 51 development and could avoid harmful window to window relationships. Additionally, had I been minded to allow the appeal, the choice of external materials could have been controlled through an appropriately worded condition. However, despite any such benefits, the proposed bulk and massing of the building with its overhanging and multifarious design features would introduce both stark and unduly complicated elevational arrangements and an imposing prominence at the entrance to the adjacent village green. In addition, the scheme would dominate the surrounding setting of small buildings along Golf Links Road and would result in an incongruous building that would not improve the attractiveness of the CTA or enhance the area's tourism role as required by policies NOR5 and NOR6 of the LP.
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.

#### *Suitable mitigation*

15. The appellant's submitted ecology report concludes that there are no realistic opportunities for mitigating the loss of grassland habitat units on site and compensation should be sought via a contribution towards an appropriate conservation project. Although the Council has suggested a condition in respect of biodiversity mitigation, it is not demonstrably precise or enforceable. Therefore, in the absence of any mechanism to secure off-site compensation, it has not been demonstrated that the proposal would conserve or enhance biodiversity as required by policies DM08 and ST14 of the LP.
16. In respect of local infrastructure, 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 green infrastructure and education is reasonably related in scale and kind to the needs generated by the proposed development and is consistent with the requirements of Policy ST23 of the LP. Therefore, in the absence of any mechanism to secure such contributions, it has not been demonstrated that the proposed development would mitigate against the harm caused to local infrastructure.
17. I therefore conclude on this main issue that the proposal would not secure suitable mitigation in respect of biodiversity enhancements and local infrastructure contributions. As such, it would be in conflict with policies DM08,

ST14 and ST23 of the LP. It would also fail to accord with paragraph 180 of the Framework where it states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for then planning permission should be refused.

### *Community facilities*

18. 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.
19. 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 ground floor commercial unit is proposed and although indicative, the layout includes a large open area that could be suitable for a range of uses of benefit to the local community. 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.
20. 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.

### *Drainage*

21. The Council's flood risk management officer is concerned that there is a lack of information in respect of a betterment to surface water run-off generated by the proposed development. Whilst certain information is lacking, the proposal would make use of a green roof and the local water authority says that surface water can be effectively managed in accordance with the submitted drainage strategy. Furthermore, there is no firm evidence that it would not be feasible to adequately drain surface water or provide betterment from the proposed development.
22. For these reasons, I conclude on this main issue that the proposed development would be unlikely to cause unacceptable harm in respect of surface water. As such, there would be no conflict with Policy ST03 of the LP which says, amongst other things that development should adopt effective water management including Sustainable Drainage Systems, water quality improvements, water efficiency measures and the use of rainwater.

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

### **Other Matters**

23. 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.

### **Conclusion**

24. Bringing together my conclusions on the main issues, I have found that the proposal would not harmfully affect community facilities or surface water drainage. However, this does not outweigh the harm I have found to the character and appearance of the area and the lack of suitable mitigation for biodiversity and local infrastructure.

25. 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