

BUDLEIGH SALTERTON  
(Budleigh)

08/2711/FUL

Target Date: (16.12.2008)

Applicant: Mr & Mrs Cartwright

Location: 23 Northview Road  
Budleigh Salterton

Proposal: Erection of dwelling and garage, demolition of existing garage,  
formation of new vehicular access onto highway

### **CONSULTATIONS**

#### County Highway Authority

Apply standard advice. (see report below)

#### Natural England

Has not responded to date.

#### Jurassic Coast

Independent view of cliff recession rates and residual life of the property should be conducted. Expressed a non-expert judgmental view that as there are already a number of large buildings in the area and they are visible from the sea, it is difficult to see the development having a significant additional impact to the setting of the site. (Summary)

### **TOWN/PARISH COUNCIL**

Recommend refusal.

1. The proposal would be detrimental to the AONB. The site is adjacent to a SSSI, a CWS and a CPA.
2. The access from Northview Road on to West Hill is of substandard nature. This council feels therefore that the proposal is contrary to policies S4, D1, EN4 and EN5 of the EDLP and policies CO1, CO3, CO5 and TR10 of the DSP. It is also contrary to guidance laid out in the Budleigh Design Statement. In addition there are concerns about the stability of the cliffs and this council feels it would be beneficial if a full geological survey were carried out. It is understood that a previous application in 1977, was refused and one of the reasons was the 'proposed development would be detrimental to the appearance of the AONB by reason of its prominent siting'. (27/11/08)

Re-consulted on amended plans - These amendments do nothing to change the views of this council which was to recommend refusal. (27.04.09)

## **WARD MEMBER(S)**

The initial comments of the Ward Member(s) are -

Cllr Hall

- Visually intrusive to AONB and Jurassic Coast. Concerns regarding land stability. (18.11.08)
- I have carefully considered the amended plans and conclude that many of the objections have been overcome. I now foresee this application being dealt with under delegated powers with the following condition – the buffer zone designated for a future pathway remain intact. (27.04.09)

In the event that this application comes to Committee I would reserve my position until I am in full possession of all the relevant facts and arguments for and against.

## **REPRESENTATIONS**

### Objections

42 letters have been received raising the following points:

- Impact on AONB, SSSI, WHS, CPA – dwellings visible from the sea, the coast should be protected in the long term.
- Impact on walkers, loss of enjoyment of those using the public footpath, dwelling would ruin public view and detract from designated landscape.
- Substandard visibility connecting to Northview Road and Sherbrook Hill. Poor quality of Northview Road. Traffic hazards due to increased traffic created.
- Short-term aspirations of the property conflict with long-term land designations.
- Queries raised by the South West Coast path Assoc; Will the development affect the existing route of the SW coast path? Will the development detract from the views and coastal experience? Is there ample space for Coastal path 'roll' back?
- Discrepancies in location plan – ownership (Amended Location Plan received 16/03/09)
- Contrary to the Budleigh Design Statement.
- Cliff stability – recent reports of land slips, concern over soakaway installation and increased run-off, and water saturation of percolating water leading to cliff instability.
- Impact on amenity due to noise and traffic.
- Change of character of the area, from semi-rural to a housing estate.
- Foliage and surrounding vegetation could only be temporary.
- Application in 1977 refused.
- Impact on layout and density – overdevelopment and trend setting.
- Impact on wildlife.
- Ground stability report kept confidential.
- Confused report over what is the major cause of land instability – water percolating or wear and tear of the sea.
- Application not advertised correctly.
- Removal of trees that provide amenity value and contribute to ground stability.
- Poor 'flashy' design.

## **PLANNING POLICIES**

### **Government Guidance**

PPS 1 - Delivering Sustainable Development  
PPS 3 - Housing  
PPS 9 - Biodiversity and Biological Conservation  
PPG 13 - Transport  
PPG 14 - Development on Unstable Land  
PPG15 - Planning and the Historic Environment

Budleigh Salterton Design Statement

Devon Structure Plan 2001 - 2016

CO3 (Areas of Outstanding Natural Beauty)  
CO5 (Costal Preservation Area)  
CO6 (Quality of New Development)  
TR10 (Strategic Road Network and Roadside Service Areas)

East Devon Local Plan 1995 - 2011

S4 (Development Within Built-up Area Boundaries)  
D1 (Design and Local Distinctiveness)  
EN1 (Developments Affecting Areas of Outstanding Natural Beauty)  
EN4 (Nationally Important Sites - including Sites of Special Scientific Interest)  
EN6 (Wildlife habitats and Features)  
EN20 (River and Coastal Flooding)  
EN21 (Surface Run-Off Implications of New Development)  
TA9 (Parking Provision in New Development)  
TA7 (Adequacy of Road Network and Site Access)  
RE3 (Open Space Provision in New Housing Developments)

## **SITE LOCATION AND DESCRIPTION**

The application seeks full planning permission for the erection of a detached dwelling and garage within the garden space of 23 Northview Road, Budleigh Salterton.

The proposed building would provide 6 bedrooms over 3 storeys with an attached double garage. The south elevation is predominantly glazed to take advantage of the surrounding coastal views.

The total height of the dwelling will be 8.9 metres to the ridge height of the roof, have a total length of 15.1 metres (excluding the garage) with average width of 8.1 metres (measurements approx).

To the north of the site is a buffer area of dense vegetation with a public footpath beyond. Amended plans have been received clarifying the extent of the applicant's ownership which does not include this 'buffer' parcel of land.

The application site is situated within a designated Area of Outstanding Natural Beauty (AONB) and Costal Preservation Area (CPA), and is also adjacent to a Site of Special Scientific Interest (SSSI) and World Heritage Site (WHS). The site lies within the development boundary of Budleigh Slaterton as shown in the adopted East Devon Local Plan.

## **CONSIDERATIONS AND ASSESSMENT**

The main issues concerning this application are the impact of the proposal on the amenity of the nearby neighbours, the impact on land stability, the impact on the highway network, the impact on surrounding trees and the impact of the dwelling and its design on the character of the locality and layout.

### **Amenity Issues**

The proposal is not considered to create a detrimental amenity impact on the neighbouring property known as West Down Grange, due to its position, distance between the properties and the position of a public footpath. The property is placed approximately 21.0 metres from Sherbrook House and approximately 25.0 metres from the properties private amenity space. The proposed windows are therefore a sufficient distance to avoid direct overlooking between properties. The submitted section drawing shows that the proposed building will be positioned at approximately 0.48 metre higher in comparison to Sherbrook House. Therefore the proposed dwelling would not create a significant overbearing impact or loss of light.

The eastern boundary with 23 Northview Road will consist of a 2.4m high random brick and stonewall which is an effective boundary screen. Due to the positions of the proposed window and balcony there would not be direct overlooking between the two properties. This arrangement is considered to maintain appropriate privacy for both properties.

### **Land stability**

Planning Policy Guidance Note 14 (Development on Unstable Land) provides Local Planning Authorities with advice regarding development on unstable land.

The effects of ground instability vary in their nature, scale and extent. At their most extreme, they may threaten life and health or cause damage to buildings and structures, so generating public alarm. Whilst such alarm may or may not be justified, public perception of the risk is such that it cannot be ignored.

The developer should therefore make a thorough investigation and assessment of the ground to ensure that it is stable or that any actual or potential instability can be overcome by appropriate remedial, preventive or precautionary measures. It is important that such an assessment of a proposed development site should examine the site within its geographical context since instability of nearby ground may affect a site even where there is no evidence of instability within its boundaries.

It is *not* the responsibility of the local authority to investigate the ground conditions of any particular development site unless they propose to develop it. The Local Authority is responsible under the Building Regulations and the Housing Acts for controlling particular aspects of the development if planning consent is issued. The stability of the ground in so far as it affects land use is a material consideration which should be taken into account when deciding a planning application.

The planning authority does not owe a duty of care to individual landowners when granting applications for planning permission and accordingly is not liable for loss caused to an adjoining landowner by permitting development. Nevertheless, where development is proposed on land which the planning authority knows is unstable or potentially unstable, it should ensure that the following issues are properly addressed by the development proposed:-

- the physical capability of the land to be developed;
- possible adverse effects of instability on the development;

- possible adverse effects of the development on the stability of adjoining land; and
- possible effects on local amenities and conservation interests of the development and of any remedial or precautionary measures proposed.

A land stability report has been submitted by the applicant (by John Grimes). A further independent assessment of this report has been conducted (by David Roche) at the request of the planning authority. The fact that the cliff is eroding in this area is evident from visual inspections of the site as well as the findings of previous studies on the area. Cliff instability appears to be episodic and cannot be predicted easily in the locality. The decisive issue is whether the granting of planning consent for the dwelling would increase the rate of this natural erosion and in addition have a detrimental impact on the nearby public footpath. In many circumstances this would be a 'buyer beware' issue, but in this instance if the development threatened cliff stability this would directly impact on public views, public enjoyment of this area (adjacent World Heritage Site), with the potential to impact on the public safety of those using the path. The proposal should therefore be assessed in terms of compliance with PPG14.

Although both reports come to a similar conclusion that the proposed dwelling can be accommodated they differ on the main cause of cliff erosion in this locality— Grimes considers sub-aerial percolation (from seasonal rainfall) to be the main factor, whereas Roche considers that sea and wave action produce cliff instability. As a result of the Grimes report the applicant has suggested the installation of a water harvesting tank, to be positioned landward of the dwelling which will minimise water run-off percolating down through the cliff. This will also allow connection to a South West Water pipe to the north of the proposed dwelling. If sea action is the main cause of cliff instability then the creation of a dwelling is unlikely to impact on this erosion rate.

The Grimes report quotes recession rates of up to 70m in 100 years and 20m in 100 years depending on location - as certain points along the cliff are more liable to failure than others. The Roche report claims that the dwelling can probably be built safely for at least minimum 100 years provided the dwelling is positioned at least 40 metres from the cliff edge (in the worst case scenario). According to the submitted plans part of the proposed dwelling is within 40 metres of the cliff edge, but not in the area where Grimes considers the most likely for cliff instability. Roche goes on to state that the Grimes stability report infers a greater risk than he would concur – 'it would appear that there are no reasons relating to cliff instability to prevent the proposed development'. The applicants were given the opportunity to respond to the independent assessment conducted by Roche of the original Grimes stability report.

Disagreement arose over the description and terminology of 'discontinuities' within the rock, which according to Grimes does not infer a weakness in the rock strata due to orientation of these discontinuities, in relation to the forces imposed upon them. The Grimes report maintains that the angle of this discontinuity is unlikely to result in cliff failure and will not be a significant influence on engineering behaviour of this ground mass. The long term liability for any subsidence and/or potential damage to 3<sup>rd</sup> party land lies with the developer. The Local Planning Authority is satisfied that the development will not impact adversely on public safety.

The Planning Authority is satisfied that possible adverse effects have been accounted for under both reports in compliance with PPG14 and that a sufficient level of detail has been submitted for the LPA to grant planning permission in this respect.

#### Impact on the public footpath

A public footpath hugs the cliff line and is in frequent use. It is acknowledged that this public footpath is enjoyed by walkers, and contributes to the public enjoyment of the area and provides public views of the surrounding scenery. The natural qualities of this area are undisputed. However, the footpath at present is bordered by dense vegetation, and more so on the landside with hedge heights in excess of 3.0 metres (approx.). The vegetation growth is such that the majority of the resulting building will not be viewable. This has been demonstrated by the agent

on drawing 20:234-15 Rev A – illustrating that for the most part the view of the dwelling would be obscured by 3.0 metres high vegetation and dense Gorse bushes. Building density and height varies along the route, but the application site area is arguably the most screened section along this stretch of the footpath preventing any detrimental visual impact. Further along the footpath in an easterly direction the vegetation is less dense and views of existing properties are arguably more prominent in comparison to what is proposed.

The gradual coastal erosion will cause the re-positioning of the existing public footpath at some point. It is understood, that should this occur, that relevant footpath department could have compulsory purchase powers to commandeer land if necessary (under CRoW Act 2000). There is a buffer zone which will allow for its relocation if or when necessary. However, according to the land stability reports the proposed dwelling will not affect the rate of erosion and therefore cannot be considered to directly affect the footpath.

### Impact on AONB

The primary objective of planning policies within the AONB is to conserve and enhance the area and respect traditional built form. Policies EN1 and CO3 of the development plan are the relevant policies to be considered. It is considered this is particularly important within a sensitive part of the AONB which is already affected by the presence of other buildings. The main issue is whether the proposal has a detrimental impact on this designated landscape within the present context of the surrounding built form.

The proposal may be visible from public views further down the coast line towards Exmouth. However, the majority of this area would be covered by the shooting range and is not publicly accessible. There are two sizeable dwelling either side of the application site. As such the proposed dwellings would be seen within the context of these buildings and within the settlement of Budleigh Salterton as a whole. The proposal would maintain the established semi-rural character of this specific area without detriment to the conservation of the wider AONB.

It is not considered that the creation of a new dwelling, which is well screened in this location by natural vegetation, has a visual impact sufficient to warrant refusal of the application. The Jurassic Coast team concur with this view.

### Design and Layout

The design of the proposal is considered to be acceptable within the existing plot size and takes place within the Budleigh development boundary. The character of the area is defined by large properties with generous gardens. The proposal would continue this trend and does not represent a cramped form of development contrary to the urban grain of the immediate locality. The development would not set a precedent which would create a detrimental precedent of subdivision on the layout of the area.

The proposed building does have more bulk in comparison to the adjoining properties, but considering the general built form of houses in the area there is not an objection to its size and scale.

The site is adjacent to, but not within a SSSI and WHS. The creation of an additional dwelling in this location is unlikely to impact on the habitat of the SSSI and there is no substantive evidence that the proposed garden areas could not provide adequate foraging areas for wildlife species. In terms of a visual impact on the WHS it is not considered that a refusal reason could be sustained.

### Open Space Contribution

The Council's standard open space unilateral undertaking has been signed and therefore the proposal meets the requirements of policy RE3 of the EDLP.

### Impact on trees and landscape

The site features several mature and medium to high canopy trees within and surrounding the site. Specifically the western boundary of the site is well screened, adjacent the public footpath and within the site area are four centrally positioned macrocarpa trees. These add intrinsic amenity value to the site and locality, provide additional screening for the proposed dwelling, and provide a natural boundary.

As previously mentioned views from the footpath are limited due to density and height of vegetation. A landscaping scheme will produce screening on the applicants' side, to control the visual impact of the site in the event of natural damage to the surrounding area. This will allow the LPA to retain suitable control over this aspect.

### Highway Issues

Although there are some potholes and general 'wear and tear' on Northview Road this is a publicly maintained highway. Adequate access exists onto Sherbrook Hill in terms of visibility for the additional traffic generated. In terms of net highway increase in traffic volume it could be expected that an additional 6-8 movements per day area would be created. This would not create a detrimental highway hazard that could result in a sustainable refusal reason following standard highway advice.

The additional traffic would not create a detrimental degree of noise that could reasonably result in a refusal reason – considering the existing traffic use of the road and anticipated decibel levels.

### Previous Planning History

An outline application for a dwelling had been refused in 1977 for a dwelling within the site (planning ref; 77/1454). Density guidelines since the 1977 have changed significantly and current applications are considered in accordance with PPS3 - 'Housing'. This government policy has focused residential development on brownfield land and within defined development boundaries. Again the latest policy is relevant in determining the application. In the proceeding 32 years since the refusal the urban settlement has grown, changed and evolved around the site. Members will note that 2 dwellings have been approved in the near locality in 2005/6 - see 15A and 25A on site location plan. This has changed the context of the development, and for the reasons already outlined above the proposal is considered acceptable.

### **CONCLUSION**

The concerns raised by local objectors received have been noted and have been duly addressed by the relevant consultees and planning authority. Sufficient land stability reports have been submitted by a suitably qualified engineering geologist, which have been independently assessed. As such the application has been recommended for approval as the proposal is considered to conform to the relevant development plan policies with no overriding material circumstances.

## **RECOMMENDATION**

APPROVE subject to compliance with the Unilateral Undertaking signed and dated 16<sup>th</sup> October 2008 and the following conditions:-

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission and shall be carried out as approved.  
(Reason - To comply with section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).
2. Prior to the commencement of the development hereby approved the position of the proposed rainwater harvesting system and associated soakaway systems (as specified in the agents letter received 24<sup>th</sup> April 2009) shall be illustrated on a block plan (scale 1:500) to be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.  
(Reason – To ensure a satisfactorily level of water percolation into the surrounding ground, which would not detrimentally impact on ground stability.)
3. Notwithstanding the provisions of the Town and Country planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that order with or without modification) no works shall be undertaken within Schedule 2 Part 1, Class A and E for the enlargement, improvement or other alterations to the dwelling hereby permitted, other than works that do not materially affect the external appearance of the buildings, shall be undertaken.  
(Reason – To protect the visual amenity of the designated landscape, to protect the amenity of the adjoining property and to retain control over ground stability.)
4. Prior to the commencement of the development hereby approved samples of the external materials to be used in the construction of the dwellinghouse, including details of materials and finishes for the east boundary shall be submitted to and approved in writing by the Local Planning Authority. The development shall be built in accordance with the agreed details.  
(Reason – To protect the visual amenity of the designated landscape.)
5. Prior to the commencement of the development hereby approved a landscaping and planting scheme shall be submitted to and approved in writing by the Local Planning Authority. If necessary the planting scheme shall be amended and resubmitted as required by the Local Planning Authority within 21 days of any such request until a scheme is agreed. The proposal shall indicate the species and size of all tree/shrubs and screening and the position in which they shall be planted. The landscaping and planting scheme shall be carried out and completed during the next planting season following the substantial completion of the development hereby approved or during such later planting season as may be agreed in writing with the Local Planning Authority. Any tree or shrub damaged or becoming seriously diseased within five years from the date on which the scheme shall have been completed shall be replaced with the same or similar species of tree or shrub. For the purposes of this condition the expression 'planting season' shall mean the period between 15<sup>th</sup> September and 15 March.  
(Reason - To protect the visual amenity of the designated landscape.)

## Informative

1. With regards to condition 2 – for the avoidance of doubt the position of the rainwater harvesting system and associated soakaway should be positioned landward (i.e. to the south) of the hereby approved dwelling.
2. The applicant is reminded that responsibility and subsequent liability for safe development and secure occupancy of the site rests with the developer and/or landowner. The question of stability has been a material planning consideration and resolution of this issue does not necessarily imply that the requirements of any other controlling authority would be satisfied. The granting of planning permission does not give a warranty of support or stability.

## Reasons for approval

The proposal complies with the Devon Structure Plan 2001-2016 Policies CO3 (Areas of Outstanding Natural Beauty), CO5 (Coastal Preservation Area), CO6 (Quality of New Development) and TR10 (Strategic Road Network and Roadside Service Areas).

The proposal complies with the adopted East Devon Local Plan 1995-2011 Policies S4 (Development Within Built-up Area Boundaries), D1 (Design and Local Distinctiveness), EN1 (Developments Affecting Areas of Outstanding Natural Beauty), EN4 (Nationally Important Sites - including Sites of Special Scientific Interest), EN6 (Wildlife habitats and Features), EN20 (River and Coastal Flooding), EN21 (Surface Run-Off Implications of New Development), TA9 (Parking Provision TA7 (Adequacy of Road Network and Site Access) and RE3 (Open Space Provision in New Housing Developments).

The proposal does not adversely affect the privacy and/or amenity of neighbouring properties. The design and external appearance of the proposal does not harm the visual amenity of the site and surrounding area.

The proposal does not harm the natural beauty of the landscape designated as an Area of Outstanding Natural Beauty.

The proposal does not harm the unspoilt character and appearance of the Coastal Preservation Area.

The proposal does not harm or give rise to a perceived threat from important trees on or adjacent to the site.

The proposal is contained within the defined built-up area boundary of the settlement.

## Approved plans

Existing landscaping and vegetation plan No. 4635 received 02/04/2009

Amended block plan 20-234-10 received 02/04/2009

Amended Location Plan received 02/04/2009

20-234-13 B received 02/04/2009

20-234:14 received 13/10/2009

20-234-15 A

20-234-12 B

## List of Background Papers

Application file, consultations and policy documents referred to in the report.