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## Appeal Decision

Hearing opened on 18 March 2025 and resumed on 3 June 2025

Site Visit made on 3 June 2025

**by O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 June 2025

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### **Appeal Ref: APP/K1128/W/24/3355774**

#### **Brewery Quay, Island Street, Salcombe, Devon TQ8 8DP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Andrew Manning-Smith of Valentine London Ltd against the decision of South Hams District Council.
  - The application Ref is 2970/24/FUL.
  - The development proposed is described as 'Removal of Condition 1 (restriction of occupancy to a principal home) of planning application reference 0434/20/FUL to allow for unrestricted residential occupancy (C3) of the 4 no. units.'
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### **Decision**

1. The appeal is allowed and planning permission is granted for demolition of existing buildings, retention of southern boundary wall and quay, erection of building containing commercial units and 4no. residential units and associated car parking, at Brewery Quay, Island Street, Salcombe, Devon TQ8 8DP in accordance with the terms of the application, Ref 2970/24/FUL, subject to the conditions in the Schedule to this decision below. For the avoidance of doubt, these include a condition restricting occupancy of the flats to principal homes.

### **Applications for Costs**

2. An application for costs was made by South Hams District Council (SHDC) against Mr Andrew Manning-Smith of Valentine London Ltd, and vice-versa. These applications are the subject of separate Decisions.

### **Preliminary Matters**

3. The description of the appeal development, referred to in the banner heading above, refers to the 'removal of a condition', but the application has not been made under s73 of the Town and Country Planning Act 1990. As such, the parties have agreed that it would be better described based on the description of the development of planning permission 0434/20/FUL, as a fresh planning application. I have therefore determined the appeal on this basis.
4. The Hearing opened on 18 March 2025. On the morning, the appellant sought to make new legal submissions, including in writing, and to provide further viability and other evidence, of which the Council had little or no notice. To give the other parties time to properly respond, I therefore adjourned the Hearing until a later date. By this approach, I am satisfied that no party has been prejudiced.

5. The appeal originally included a draft planning obligation under s106 of the Town and Country Planning Act 1990, making financial contributions in respect of affordable housing. However, during the appeal, the appellant confirmed that this would not now be pursued.

## **Background and Main Issue**

6. Planning permission was sought in August 2017 for the erection of commercial floorspace and a six-bed dwelling (the single dwelling scheme), and was approved on appeal in June 2019<sup>1</sup>. This decision included a condition preventing occupation of the dwelling other than as a person or persons' principal home, those living with them, or by their non-paying guests. Subsequently, a scheme for four flats with commercial floorspace was granted in 2020<sup>2</sup> (the original four flats scheme), with a similar condition. The development has been completed, and the commercial unit is used by a marine business, but none of the flats have been occupied.
7. An application<sup>3</sup> under s73 of the Town and Country Planning Act 1990 sought to remove the principal residence condition. It was refused by the District Council, and dismissed on appeal<sup>4</sup> in December 2024 (the 2024 appeal). The application before me effectively seeks to apply retrospectively for the development as built, but without the principal residence condition. There is no suggestion however that there has been a breach of planning control.
8. The main issue is whether the residential units should be restricted, such that they can be occupied only as a principal residence.

## **Reasons**

### *Planning Policy*

9. The principal residence condition was previously imposed in accordance with Policy SALC H3 (hereafter referred to as Policy H3) of the Salcombe Neighbourhood Plan (NP), made September 2019. The policy states that new open market housing will only be supported where there is a planning condition (or alternative controls) to ensure its occupancy as a principal residence. Whilst recognising the benefits of second home ownership, the policy identifies that the sustainability of the town is being compromised by the number of properties that are occupied on a non-permanent basis.
10. There is no dispute that South Hams District has the second-least affordable ratio of median house prices to incomes in the South West. Tourism is important to Salcombe, but the town is one of the most expensive areas in the District. It has very high levels of second homes and holiday lets, with nearly half of all properties being not permanently occupied, harming its vitality. The National Planning Policy Framework (the Framework) seeks to support strong, vibrant and sustainable communities.
11. Policy H3 states that new unrestricted market homes will not be supported, in order to meet the housing needs of local people, and to strengthen the community and economy. Unlike some other Development Plan policies, it is permissively

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<sup>1</sup> PINS reference APP/K1128/W/18/3215145

<sup>2</sup> LPA reference 0434/20/FUL

<sup>3</sup> LPA reference 4120/23/VAR

<sup>4</sup> PINS reference APP/K1128/W/24/3349941

worded. I acknowledge that the terms of the policy, and how firmly it favours or sets its face against a development, is a relevant factor in determining compliance with the Development Plan as a whole.

12. However, in my view, the intention of Policy H3 and its supporting justification clearly seek to restrict new homes in Salcombe to principal residency. It states that new unrestricted market homes will not be supported *at any time*. NP paragraph 6.6.4 refers to a principal residency *requirement*, whilst paragraph 6.6.7 refers to a policy to *control* the further development of second homes.
13. In contrast, in the appellant's interpretation, the policy would only apply where development required 'boosting' because of other harm or conflict. I have little evidence to suggest that this was the intention of the policy or its objectives, or those of the NP overall, and such a restricted application would not be consistent with the stated aims of the policy. As intended by the appellant, the four flats would be occupied without a principal residency condition. In light of my findings above, this would conflict with Policy H3. This was the position of the appellant in the 2024 appeal.
14. The appeal development before me would comply with other Development Plan policies relating more generally to housing, employment and other matters. That said, Policy H3 is specific to new housing in Salcombe and is thus more directly relevant to the appeal development.
15. Policy SALC H2 also supports housing within Salcombe, but within allocated sites which do not include the appeal site. Its explanatory text widens its support to infill sites, as here. However, this is contingent on the type of housing responding to local housing needs, evidenced by the latest Housing Need Survey. I have little to suggest that this is the case.
16. Moreover, Policy SALC H2 makes no reference to the principal residency requirement, and so does not conflict with or pull in a different direction to Policy H3. Consequently, as a matter of planning judgement, the conflict with Policy H3, and the absence of a principal residency condition, would in my view conflict with the Development Plan, read as a whole.
17. The unrestricted flats would represent only a very small proportion of the stock within Salcombe. Even if the condition were not imposed, the flats could still be occupied as principal residences, perhaps by those seeking more flexibility. Their occupiers would also still generate social and economic contributions. Nor would the change result in the loss of any existing dwellings.
18. Even so, the fact remains that the appeal development, if unrestricted, would worsen the imbalance between principal residences and second/holiday homes in Salcombe. Moreover, Despite the specific circumstances of this case, to effectively allow the removal of the condition without good reason would risk undermining the efficacy of Policy H3. This would make it difficult for the Council to resist subsequent proposals to remove similar conditions, particularly within Salcombe. The result of this would be to risk further worsening the imbalance, resulting in significant additional deterioration of the vitality of the town. Together, these factors amount to harm, to which I attach very significant weight.

### *Marketing*

19. NP Objective 5 states that the principal residence policy does not use price controls or local connection criteria, though clearly its operation does affect prices. Policy H3 makes no provision for its requirements to be relaxed on the basis of marketing evidence. That said, such evidence is a material consideration as a potential signal of demand.
20. The appeal flats have been marketed for around four years, both off-plan and once completed. Other than price, the methodology of the marketing exercise is not disputed. The flats have been advertised with guide prices said to be reflective of similar flats locally, such as those at 1 to 5 Island Place. The guide prices for the appeal flats were between 20-25% lower for the waterside apartments, compared to what the appellant estimates would be their unrestricted value, and 30-35% lower for the roadside flats. Interest has been found to be very limited. This is said to be because of the risks of investing, given the restrictions of the condition, potentially making future re-sale difficult.
21. The accommodation has extensive glazing, possibly making it more suitable for holiday use, or for older persons. However, there is no suggestion that this would prevent principal use altogether, and any disadvantages to its design for this use would need to be reflected in the price.
22. Principal residence conditions have been imposed on a large number of new dwellings granted permission in the District since 2019. These may not yet all have been built-out, but I was made aware of no other similar problems, or successful applications or appeals, for removal of these conditions. Such conditions are a relatively new concept, making properties affected by them difficult to value, but this only demonstrates the importance of a flexible marketing exercise.
23. The marketed guide price would not prevent potential occupiers from making a lower offer. That said, it would have a strong influence on the level of interest. Given the policy conflict, it is for the appellant to demonstrate lack of demand. There is no dispute that the flats would sell at some price. If the condition results in their value being much less than it would otherwise be, then this simply reflects demand with the constraints imposed by Policy H3. I am not convinced that an even lower value would result in the flats not being considered 'open market'.
24. An analogy has been drawn with employment land, where the Development Plan policy and associated Supplementary Planning Document does refer to marketing as a way of demonstrating demand. Examples have been provided where marketing for periods shorter than at the appeal site has been accepted by the Council. However, I have few details of the comparative price levels at which these other sites were marketed, limiting useful comparison.
25. Despite being a rural District, only two examples have been provided where agricultural occupancy conditions were removed following marketing. These involved a greater comparative reduction than for the waterside flats, and both marketing exercises were undertaken many years ago. I have few details of the relevant policy framework or background, but the circumstances appear to be very different to those before me. I do not therefore find them convincing comparators.

26. On the evidence before me, despite the lengthy marketing campaign, it cannot be ruled out that a lower guide price might reveal additional interested parties who would comply with the principal residency condition.

### *Viability*

27. I am told that use of the flats for rent, such as to principal residents, would not be viable. This is because such rent would not cover the costs of repayment of a development finance loan, taken out to fund the costs of building the development. The appellant's April 2025 Financial Viability Appraisal (FVA) is that the Residual Land Value (RLV) of the development is considerably below the Benchmark Land Value (BLV) ascribed, and so the scheme is already unviable, with a very large deficit. This is said to be because of the failure to sell the residential units, which has in turn decreased achievable sales values, and increased costs due to marketing, sales and finance.
28. Viability can be an important planning consideration, and I understand that the NP and Policy H3 was not subject to viability appraisal. Nevertheless, at application stage, viability is normally only relevant in respect of financial contributions, for future proposals. Examples have been provided of appeals<sup>5</sup> where as-built build costs were taken into account in establishing viability, but these relate to unlawful development, and in respect of contributions to affordable housing. As such, they are not directly comparable to the situation before me.
29. The PPG<sup>6</sup> makes clear that realisation of risk does not in itself necessitate further viability assessment or trigger a review mechanism, and that such mechanisms are not a tool to protect a return to the developer. However, to my mind, the appellant's FVA seeks effectively to do just that. Furthermore, the PPG<sup>7</sup> requires BLV to be established on the basis of the existing use value, whereas in this case the development already exists, making such comparison of little practical purpose.
30. In any case, the Framework requires that all viability assessments should reflect the recommended approach of the PPG, including standardised inputs. Despite this, the FVA includes many site-specific but non-standard items such as adjudication fees and abortive planning appeal fees. On the evidence before me, the professional fees and finance costs far exceed the normal amounts. The information provided in the FVA is not sufficiently detailed to allow for full interrogation.
31. At a very late stage, the appellant submitted a summary of an additional appraisal, said to remove costs associated with the appeal and using increased values from the initial launch. It states that RLV still falls below BLV. However, substantive details of the revised appraisal are not before me, making further investigation impossible. For the reasons given above, I give the appellant's viability evidence very little weight.
32. I do not accept the contention that the planning system entitles developers to expect a reasonable return from development, or that the need for a return justifies non-compliance with planning policy. The 2024 appeal Inspector gave moderate

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<sup>5</sup> APP/A5840/C/22/3306846 and APP/E5330/C/23/3332209

<sup>6</sup> Paragraph: 009 Reference ID: 10-009-20190509

<sup>7</sup> Paragraph: 013 Reference ID: 10-013-20190509



positive weight to the scheme before him because of the effect of the timing of the NP on the appellant. The appellant may not have been aware of such a potential restriction at the time that the single dwelling scheme application was made in 2017.

33. However, the evidence before me is that he was aware that the original four flats scheme would be restricted, but considered that this would still be viable<sup>8</sup>. The development continued to be pursued and built out. Whilst unfortunate, I therefore consider that the timing of the NP does not warrant unrestricted accommodation here. For the reasons given above, I am not persuaded that viability justifies non-imposition of a principal residency condition.

### **Other Considerations**

34. Following publication of the new Framework and Standard Method Local Housing Need figures, it is common ground between the Council and the appellant that housing needs in the District are substantially higher than the adopted housing requirement. It was also agreed that some Development Plan policies are deemed out of date as a result. In written submissions, the Council and the appellant disputed whether the tilted balance of Framework paragraph 11 applies in this instance.
35. However, at the Hearing, the Council confirmed that it cannot demonstrate a five-year housing land supply, with only around 2.5 years' worth of supply, and that the tilted balance does apply to this case. As such, it is necessary for me to determine whether the adverse impacts of the unrestricted accommodation would significantly and demonstrably outweigh the benefits inherent in the appeal development, to assist the Council in addressing its undersupply, as set out in Framework paragraph 11. The provisions of Framework Paragraph 14 do not apply, because the NP is more than five years old.
36. I have found conflict with NP Policy H3, and that this conflict carries very significant weight. Against that, the appeal development involves commercial uses and four flats. There is no dispute that few if any other units have been built in Salcombe since 2019 and new unrestricted flats would reduce the pressure for such accommodation in the town. They would provide social and economic benefits, even if unrestricted. The Framework at paragraph 85 places significant weight on the need to support economic growth and productivity.
37. Even so, the commercial unit and the flats now exist. The main reason that the flats are not occupied is because of the marketing strategy, which I have found has not sufficiently explored all potential opportunities. The business unit, which the flats would have cross-subsidised, has been occupied and so its economic benefits have already been realised. The same is true, for example, of the effects of the development on the Conservation Area and the National Landscape.
38. As such, the additional benefits of the unrestricted accommodation, over and above the as-built situation, are minimal, and essentially amount to financial advantages to the appellant. I therefore give them only limited positive weight.
39. Notwithstanding these findings, the only dispute between the parties relates to the principal residency condition, with the appeal development being otherwise agreed

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<sup>8</sup> Appellant's supporting statement.

as acceptable. Consequently, as discussed at the Hearing, it is open to me to grant a fresh planning permission but including the principal residency condition.

### **Conditions**

40. The Council has provided a list of conditions, which I have assessed and where necessary amended, having regard to the advice in the PPG, and because development is now complete. For the reasons already given, it is necessary for the principal residency condition to be imposed, as previously worded.
41. A condition identifying the approved plans is necessary for certainty. In the interests of the privacy of the occupiers of nearby properties, a condition is required preventing additional openings on the Island Street elevation of the development. Retention of the external materials, and of a specified bin storage area, is necessary for the character and appearance of the area.
42. To ensure the functioning of the highway network, a condition requiring retention and availability of the car parking areas is required. Ongoing provision of the Electric Vehicle Charging Points, the photovoltaic panels, cycle storage and lift access are necessary for carbon reduction, air quality and public health, and in respect of the lift, for accessibility reasons. To maintain and enhance the vitality of the town centre, it is necessary to restrict use of the commercial area to Use Classes B8 and E. Continued provision of flood resilience and the evacuation plan is necessary to avoid risks from flooding.
43. Retention of the Noise Mitigation Scheme, and appropriate operation of plant and machinery would ensure that the living conditions of nearby occupiers are maintained. For similar reasons, it is necessary to prevent the installation of additional plant and machinery without consent. Retention of the Surface Water Drainage Interceptor, and of the permeable pavement with drainage/filter below are necessary to protect the environment, protected species and the living conditions of nearby occupiers.
44. The provision of shutters is necessary to avoid adverse effects on biodiversity and dark skies within the National Landscape. I understand that these have not been provided, and so will need to be installed prior to first occupation of the flats. The retention of light-reducing film over specified triangular glazing is necessary for the same reasons, as is a condition preventing the installation of additional external lighting on the northern elevation.
45. As the appeal development is practically complete, there is no requirement for previously imposed conditions relating to any unexpected contamination found during development, or for a construction-phase Health, Safety and Environment plan. Similarly, I understand that connection to South West Water mains has already been undertaken and so this condition is also unnecessary.

### **Planning Balance and Conclusion**

46. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the Development Plan, unless material considerations indicate otherwise. I have found that the appeal development, if unrestricted, would conflict with the Development Plan as a whole.

47. Given the harm that I have identified, I consider that the adverse impacts of granting permission, without a principal residence condition, would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. However, with a principal residency condition imposed, the benefits would outweigh the harm.
48. I therefore conclude that the residential units should be restricted, such that they can be occupied only as a principal residence. Accordingly, I shall allow the appeal on this basis.

*O Marigold*

INSPECTOR



## **APPEARANCES**

### **FOR THE APPELLANT**

George MacKenzie MA (Oxon)	Counsel, instructed by the appellant
Wendy Hopkins MRTPI	Brodie Planning Associates
Mark Saunders MA (Cantab.), MRICS, FCIArb	Acorn Rural Property Consultants
Rob Csondor BSc (Hons), MA, PG Dip, MRTPI, MRICS	RCA Regeneration (3 June only)
Megan Hill BSc (Hons), MSc	RCA Regeneration (3 June only)
Andy Manningham-Smith	Appellant

### **FOR THE LOCAL PLANNING AUTHORITY**

Rowan Clapp	Counsel, instructed by SHDC (3 June only)
Charlotte Howrihane MRTPI	Senior Planning Officer
Adrian Noon	Principal Planning Officer

### **INTERESTED PARTIES**

Cllr Christine Phillipson  
Cllr Judy Pearce  
Cllr Mark Long  
Jasper Casper

### **DOCUMENTS HANDED IN DURING THE HEARING**

1. Draft legal submissions of Mr MacKenzie
2. Speaking Note of Mr Saunders
3. Brewery Quay Profit or Loss accounts
4. Copy of Appeal Decision APP/K1128/W/18/3215145
5. Full copy of Salcombe Neighbourhood Development Plan

## Schedule of Conditions

- 1) The 4 residential units hereby permitted shall not be occupied other than by:
  - (i). a person or persons as their principal home;
  - (ii). persons living as part of a single household with such a person or persons;
  - (iii). persons who were living as part of a single household with such a person or persons who have since died;
  - (iv). non-paying guests of any of the persons listed in (i) – (iii).

The occupant(s) shall at any time supply to the Local Planning Authority such information as the Authority may reasonably require in order to determine that this condition is being complied with, within one month of the Local Planning Authority's written request to do so.
- 2) The development hereby approved shall in all respects accord strictly with drawing numbers: 1115-LP01, 1115-P01 A1, 1115-P02, 1115-P11, 1115-P12 B, 1115-P13 B, 1115-P14 B, 1115-P15 A, 1115-P16 A, 1115-P17 A, 1115-P18, 1115-S20, 1115-S21, FFLs as per agent email dated 22/5/20.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting this Order) no openings other than those authorised by this permission shall be inserted in the Island Street elevation of the development hereby permitted.
- 4) The external materials used in the development shall be retained in accordance with the details agreed by the Local Planning Authority on 8th June 2022 (application reference 1046/22/ARC).
- 5) The approved and installed bin storage shall remain available for this use for the lifetime of the development. No bin storage, over and above that in the areas shown on the plans hereby approved, shall occur.
- 6) The parking areas and access to them as built shall be retained free from development and obstruction for the lifetime of the development.
- 7) The Electric Vehicle Charging Points agreed by the Local Planning Authority on 8th June 2022 (application reference 0948/21/ARC) shall be retained as such for the lifetime of the development.
- 8) Notwithstanding the provisions of the General Permitted Development Order, the areas identified for commercial use on drawing number 1115-P02 shall only be used in accordance with uses classes B8 and E of the Town and Country Planning (Use Classes) Order 2020 (as amended) or in any provision equivalent to that Class in any Statutory Instrument revoking or re-enacting that Order.
- 9) The flood resilience details, agreed by the Local Planning Authority on 8th June 2022 (application reference 0948/21/ARC) and installed, shall be retained as such for the lifetime of the development.

- 10) The Flood Evacuation Plan (2206) agreed by the Local Planning Authority on 12th October 2023 (application reference 3813/22/ARC), shall be retained in the approved form and made available for all future occupants of the site.
- 11) The Noise Mitigation Scheme agreed by the Local Planning Authority on 15th March 2022 (application reference 4270/21/ARC) shall be retained as such for the lifetime of the development.
- 12) Plant and equipment at the site shall be operated in accordance with the approved Noise Impact Assessment agreed by the Local Planning Authority on 12th October 2023 (application reference 3813/22/ARC) and maintained in accordance with manufacturer's guidance for the lifetime of the development.
- 13) The Surface Water Drainage Interceptor Details, reference 2431-BJB-SW-XX-DR-S 0001-PO1 and agreed by the Local Planning Authority on 12th August 2021 (application reference 0948/21/ARC) shall be retained for the lifetime of the development.
- 14) Prior to first occupation of the residential units, the shutters shown on the approved plans, and approved under the external materials condition above, shall be fully fitted and remain as such for the lifetime of the development.
- 15) The light-reducing film covering the full width of the triangular glazing to the North and South elevations of the second floor (third storey) shall be retained for the lifetime of the development.
- 16) The Photovoltaic panels installed shall remain and be maintained to be fully operational for the lifetime of the development.
- 17) No additional external lighting shall be added to the Northern elevation of the building or site.
- 18) The cycle storage shown on the approved plans and installed shall remain in situ and available for the lifetime of the development.
- 19) Notwithstanding the provisions of the General Permitted Development Order, no plant or machinery or structures shall be erected on site unless full details have first been submitted to and approved in writing by the Local Planning Authority.
- 20) The permeable pavement with drainage/filter layer below installed in accordance with the details agreed by the Local Planning Authority on 12th August 2021 (application reference 0948/21/ARC) shall be retained as such for the lifetime of the development.
- 21) The internal lift as shown on the approved plans shall remain and be maintained to be fully operational for the lifetime of the development.

## **End of Conditions**