
Appeal Decision

Site visit made on 27 September 2016

by Andrew Owen BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 October 2016

Appeal Ref: APP/X1165/W/16/3149592

1 Southfield Road, Clifton with Maidenway, Paignton TQ3 2SL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr G Chilvers against the decision of Torbay Council.
 - The application Ref P/2015/0840/MPA, dated 19 August 2015, was refused by notice dated 19 February 2016.
 - The development proposed is formation of 12 no. 2-bed flats with pedestrian/vehicular access.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. Two plans, Nos 1082.01R1 and 1082.03R1, were submitted with the appellant's final comments, but no reference was made to them elsewhere in the comments. Also, though dated January 2009, they were not listed as application drawings on the decision letter and were not submitted alongside the appeal. As such I cannot be sure that the Council or any interested party have had opportunity to comment on them. Moreover, as they are not referred to by the appellant, I am unsure as to their purpose. Accordingly I have had no regard to them in my considerations.

Main Issues

3. The main issues are:
 - (a) whether the development would provide satisfactory living conditions for future occupiers of the development and occupiers of the neighbouring properties with respect to private outdoor amenity space;
 - (b) the effect of the proposal on highway safety;
 - (c) whether the proposal would result in downstream flooding;
 - (d) whether the proposal should provide a contribution to affordable housing and local infrastructure and if so whether an appropriate mechanism for securing such contributions has been provided;
 - (e) the effect of the proposal on the character and appearance of the Old Paignton Conservation Area.
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Background

4. There is a long planning history on this site for flatted development. Both parties refer to a development, which they agree is similar to that currently proposed, which was dismissed at appeal¹ on 15 January 2008. More recently planning permission Ref P/2012/0516 was granted in September 2012 which approved an extension to the time limit for the implementation of planning permission Ref P/2009/0281 which granted consent, in June 2009, for 12 No. 2-bedroom flats with vehicular and pedestrian access. The majority of the plans before me in this appeal are copies of those plans approved in 2009.

Reasons

Living conditions

5. The proposed flats would be largely positioned on an existing amenity area which serves a block of 11 flats. It is steeply sloped and mostly overgrown, though the upper part does appear to be maintained, indicating some, albeit limited, use by the residents. The proposal would provide amenity space to serve the proposed flats and the existing block of flats.
6. Policy DE3 of the Torbay Local plan (TLP) advises that a minimum of 10 square metres of useable amenity space per apartment will be required. I have no details of the size of the proposed amenity area, however due to the topography of the site, the vast majority of this space would be very steeply sloped and would have a very limited usefulness. The restricted worth of the existing amenity area does not justify the proposed amenity space, particularly as that proposed would serve a greater number of flats.
7. As such, the amenity space would not be adequate to meet the needs of the future occupiers of the development and the existing occupiers of the flats. Satisfactory living conditions for these occupiers would not be provided, and therefore the development would fail to accord with Policy DE3 of the TLP which aims to ensure developments provide a good level of amenity.
8. I acknowledge that the amenity space would be the same as that which was proposed and approved by the previous planning permission. However the TLP has been adopted since the time of the last planning permission and I must consider the appeal against the policies of the current development plan.

Highway safety

9. The distance behind parking space numbers 10, 11 and 12 is three metres. National guidance within Manual for Streets (MfS) suggests that a distance of six metres should be provided to enable safe and convenient access into and out of the spaces. Though a shorter distance may be appropriate where traffic speeds and volumes are low I have no evidence before me to suggest three metres would be acceptable. Also the identified disabled space is no larger than a regular parking space. MfS advises that disabled spaces should allow for room for wheelchair users to gain access from the side and that the bays should be wide enough to protect people from moving traffic. The space identified on the plan would fail to do this. Consequently these four spaces would not be able to be safely used.

¹ APP/X1165/A/07/2054606

10. I acknowledge that the parking layout is identical to that which was approved by the previous planning permission. However, from the evidence before me, I consider the parking provision would not be acceptable as it would fail to meet the required standards. Accordingly the development would have a shortfall of parking which could lead to residents having to park on nearby streets. This additional pressure for on-street parking in the vicinity of the site, the availability of which is limited, would affect the efficient operation of the highway and be harmful to highway safety.
11. I accept that the provision for some of the spaces to have charging points for electric cars is a matter that could be addressed by a planning condition.
12. The proposed access would utilise the existing point of access onto Southfield Road which serves the existing flats, but would realign the access road up to the flats. The access road would be shorter and steeper than at present and would have a gradient of 1:7. The Council's Highway Design Guidance (HDG) was adopted in 2015. It advises that private drives serving up to 5 dwellings should have a maximum gradient of 1:8, however for roads serving a greater number of properties, such as in this case, no minimum gradient is specified. Accordingly the proposal would not conflict with the HDG in this regard.
13. In respect of the opportunity for waste collection vehicles to adequately turn within the site, this layout has already been considered appropriate by virtue of the previous planning permission at the site, and I have no evidence before me, including the contents of the HDG, to suggest the access requirements for waste vehicles has changed or that the turning space would no longer be acceptable.
14. In summary, although the design of the access road and the proposed turning space would not be unacceptable, this does not outweigh my concerns in respect of the proposed parking. As such the development would be contrary to Policies TA1, TA2 and TA3 of the TLP which require developments to provide satisfactory parking and accessibility.

Flooding

15. Drainage details were submitted during the determination of the application but were considered inadequate by the Council because the location of the trial holes did not correspond to the proposed locations of the soakaways, were not excavated to the same depth as the proposed soakaways, and only one infiltration test was carried out at each location. The latest drainage details, submitted with the appeal, provide explanations for why standard approaches were not taken in respect of these points. However there is no evidence before me to suggest the Council now consider the details to be acceptable and I cannot be confident that the drainage details and plan are sufficiently robust, to demonstrate satisfactorily that the proposal would not result in downstream flooding.
16. Therefore I must conclude that the development fails to accord with Policies ER1 and ER2 of the TLP which require developments to minimise run off and alleviate downstream flood risk. It would also conflict with paragraphs 102 and 103 of the National Planning Policy Framework (the 'Framework') which advise that development should not increase flood risk elsewhere.

Affordable housing

17. The Framework excludes private residential gardens from the definition of previously developed land. As the appeal site primarily comprises the private amenity area of a block of 11 flats, I consider the site falls comfortably within this exclusion and is not previously developed land. Instead it can be considered greenfield land. The term 'greenfield', is not defined by the Framework but logically constitutes land which isn't previously development land, sometimes known as 'brownfield'. It does not necessarily have to be a field.
18. Policy H2 of the TLP requires a contribution to affordable housing from developments of three units or more on greenfield land. The proposed development would therefore be required to make a contribution. No mechanism for securing such a contribution has been provided and therefore the proposal would fail to comply with Policy H2 of the TLP.

Infrastructure

19. A unilateral undertaking has been provided to secure contributions towards greenspace and recreation, education, lifelong learning, waste management and sustainable transport. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the 'Regulations') identifies that contributions must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind to the development.
20. The contribution to greenspace and recreation would go towards enhancing the facilities at Victoria Park, which is reasonably close to the site, including providing a new wetland area and boardwalk. Enhancing the existing park to mitigate for its increased use as a result of the development would be necessary, particularly due to the limited provision of useable amenity space on the appeal site. However the provision of a new wetland facility would not be necessary to make the development acceptable and would not be directly related to the proposal.
21. The Council advise that the contribution to education would go towards the provision of a new primary school, as the nearest existing primary school to the site is oversubscribed, and the expansion of Paignton Academy. The contribution would meet the requirements of the Regulations. However the national Planning Practice Guidance advises that for each such infrastructure project, a maximum of five contributions can be sought through planning obligations. I have no evidence to demonstrate that both these infrastructure projects have not already received five contributions from other developments.
22. The contribution toward lifelong learning would be directed towards Paignton Library. This is not a distinct infrastructure project for which pooled contributions are limited. The contributions suggested would be necessary, directly related to the development and the value suggested is reasonably related in scale to the development. Similarly the contribution towards waste management relates to the provision of bins for the flats in the development so is necessary, directly related to the development and of an amount which is reasonably related in scale to the proposal.

23. The required contribution towards sustainable transport would be utilised to improve the existing zebra crossing near the site entrance. However the amount requested appears to be based on a formulaic calculation set out in the *Planning Contributions and Affordable Housing: Priorities and Delivery SPD*, and I have no evidence to suggest that cost would reflect the cost of improving this specific item of infrastructure.
24. Consequently, although the contributions to lifelong learning and waste management would meet the Regulations, the contributions toward greenspace and recreation, education and sustainable transport would not and I am therefore unable to take them into account.

Character and appearance

25. The Old Paignton Conservation Area (CA) covers a large, mainly residential suburban part of Paignton. There is no distinctive housing style in proximity of the site, however short terraces of small houses and large 'villa' style dwellings in spacious gardens are both prevalent across the CA. The site sits at the north-western edge of the CA.
26. Though access would be achieved from Southfield Road, the development would mostly be seen in the Colley End Road street scene which is the main road that passes the site. The local topography is such that the existing flats are on land several metres above Colley End Road and appear prominently. The development would appear comparably prominent as it would be of a similar size and height to the existing block.
27. Although I do not have full details of the Inspector's decision from 2008, I note that the Inspector considered that the scheme would enhance the character and appearance of the area. The Council consider that previous scheme is only slightly smaller than the current scheme.
28. Given the limited increase in size above and beyond that considered by my colleague, I consider that the proposal, whilst not subservient to the existing flats, would be of a design and size that would be sympathetic to its setting. Moreover the development would provide the opportunity to improve an area of land which currently does not contribute positively to the significance of the wider CA.
29. Policies SS10, DE1 and DE4 of the TLP generally require development to have regard to the character of the area. Whilst I acknowledge that they have been adopted since the time of the 2012 planning permission, as I have not seen the policies in the previous local plan against which the 2012 planning application was assessed, I cannot determine if the requirements of the current policies are materially different. Notwithstanding this, the principles underlying the current policies are set out in the Framework, which was in force at the time of the 2012 approval. As such, it is not considered that the policy context has changed significantly on this issue since the time of the previous approval to the extent that the same development would now fail to accord with the development plan or the Framework.
30. Accordingly I consider the development would preserve the character and appearance of the CA. Specifically, it would accord with Policy DE1 of the TLP which requires development to be well designed, Policy DE4 of the TLP which requires development to be of an appropriate height, and Policy SS10 of the

TLP which aims to sustain the character and appearance of heritage assets including conservation areas. It would also accord with the general design guidance in the Council's Urban Design Guide SPD.

31. The Council refer briefly to an appeal decision relating to the Gleneagle Hotel in Torquay. However I have limited details of this scheme other than the reference to the development taking the opportunity to improve the character of a CA. In this case I consider the proposed development would accord with this principle.

Conclusion

32. Although I consider the development would preserve the character and appearance of the area, this does not outweigh the harm I have found in respect of all the other main issues. As such, for the reasons given above and taking account of all other considerations, I conclude that the appeal should be dismissed.

Andrew Owen

INSPECTOR