
Appeal Decision

Site visit made on 25 October 2016

by R J Jackson BA MPhil DMS MRTPI MCMi

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

Decision date: 2 December 2016

Appeal Ref: APP/P1133/W/16/3150998

Land at Aller Road, Kingskerswell, Devon TQ12 5AN

- 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 Chris Howard Group against the decision of Teignbridge District Council.
 - The application Ref 15/02526/MAJ, dated 7 September 2015, was refused by notice dated 28 April 2016.
 - The development proposed is residential development comprising 9 open market 3-bed dwellings and 4 affordable 2-bed dwellings with provision of new pavement to public highway.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Chris Howard Group against Teignbridge District Council. This application is the subject of a separate Decision.

Procedural matters

3. The appellant submitted various amended plans and additional information to the Council during the application process. These amended the application so that while the proposal remained for thirteen dwellings in total, the mix between open market and affordable housing changed so that there would be nine open market and four affordable houses. The Council made its decision based on this mix and I have used it in the description of the proposal in the heading. This led to the decision being based on the Site Plan drawing number 793.05 Revision M and associated other drawings.
 4. Shortly before the Council made its decision on the application the then applicant sought to further amend the application based on Site Plan drawing number 793.05 Revision N and other associated drawings and provided additional information on various matters. The appellant maintains that this amendment and additional information overcomes a number of the reasons for refusal, with the others being resolved through the Planning Obligation referred to below.
 5. It seems to me that these amended plans and additional information do not make a substantial difference to the proposal. The design is similar to the previously amended scheme and the Council and other interested parties have
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had the opportunity of making comment on it at the appeal stage. I will therefore use these plans and the additional information.

6. The appeal was accompanied by a Planning Obligation by way of Unilateral Undertaking under Section 106 of the Town and Country Planning Act 1990 (as amended) to Teignbridge District Council dated 10 October 2016 to deal with affordable housing and a Traffic Regulation issue. I will discuss this later this decision.

Main Issues

7. The main issues are:

- the effect on the character and appearance of the area, including whether the affordable housing is appropriately integrated into the market housing;
- whether the proposed development would give rise to satisfactory living conditions for the occupiers of Plots 12 and 13 in terms of overbearing effect;
- the effect on the setting of The Barn Owl public house as a Grade II listed building;
- the effect of the development on flooding in the local area;
- whether the proposal allows for the proper development of the adjoining land which forms part of the same development plan allocation; and
- whether the proposal makes appropriate provision for affordable housing and highway improvements.

Reasons

Character and appearance

8. The appeal site has an area of approximately 0.35 ha and forms the southeastern part of a site allocated for residential development under the terms of Policy KK3 of the Teignbridge Local Plan 2013 – 2033 (the TLP) which was adopted in 2014. It lies between Torquay Road¹ (the former A380) and Aller Road. The site rises across its width to a steep bank forming the embankment of Torquay Road, and along its length so that a short distance to the southeastern end of the site Aller Road and Moor Park Road join with Torquay Road at grade. At the time of my site visit the embankment to Torquay Road was being planted.
9. Aller Road is relatively narrow. The boundary of the appeal site with Aller Road is made up, apart from an entrance gate, by a hedgerow, although quite tall, and various trees. There are a number of trees in a group in the extreme southeast corner of the site. Opposite the appeal site on Aller Road at the eastern end is Lyngrove Court. Lyngrove Court consists of two-storey flat roofed development set around two sides of a courtyard. Further to the west are a number of properties which face Aller Road and these are characterised by rendered walls and tiled roofs and individual entrances. Beyond these further down the hill, and not opposite the appeal site, are a number of

¹ On the application drawings this is referred to as Newton Road. The two roads are continuous, being the former A380, and I will use 'Torquay Road' for simplicity as I have not been advised at what point the nomenclature changes.

industrial uses, and the Barn Owl Public House on the same site of Aller Road as the appeal site.

10. Policy KK3 sets out a number of criteria that any development should meet. These are that the whole approximately 1.5 ha allocation site should provide at least 30 homes with a target of 30% affordable homes. It is stated that it should be a well designed and laid out site, respecting the existing character of the area and the setting of the listed Barn Owl public house. It should also provide a comprehensive plan for the site including a links between Aller Road and Moor Park Road, and a development of a high design quality to create landmark buildings as the gateway to the village along the A380.
11. The highway network to the north of the appeal site has been recently been extensively remodelled with the construction of the South Devon Link Road (the SDLR). This has reduced the amount of land which may be available for residential development. I have been provided with a copy of a plan showing a planning permission that has been granted for a new car park for the Barn Owl public house. This is located on part of the allocation site.
12. The proposed layout would be predominantly made up with frontage development set a short way back from Aller Road, although two dwellings, Plots 1 and 2, would be set off a small cul-de-sac towards the western end of the site. Although set relatively closer to Aller Road than the properties on the opposite side this pattern of frontage development would generally reflect the prevailing pattern of development on Aller Road and in the near vicinity more widely.
13. The Council criticises the design of the individual properties as being essentially the same as one another. Although development in Aller Road is made up of individually designed properties this is reflective of their construction over a period of time. While individual designs would be more reflective of development in Aller Road, using a similar design aesthetic would be in keeping with other development in the near vicinity. Subject to appropriate materials, which could be secured by condition, the individual properties are of a design and scale which would be appropriate to the area.
14. Similarly, although the affordable housing would be at one end of the row, in architectural terms the buildings would follow the same overall design approach as the market housing. While not having garaging, and thus distinguishable to the eagle eyed, market housing often does not have garaging and it would not be possible to determine that the affordable housing was in this tenure for this reason.
15. Policy WE4 of the TLP requires that affordable and market dwellings should be intermixed within the site, avoiding concentrations of affordable housing in any part of the site. Although the affordable housing would be located at one end, the policy does not require 'pepper potting', that is individual properties mixed within the overall layout. Given the overall Policy KK3 allocation is for up to 30 dwellings, there is likely to be affordable housing elsewhere within the overall allocation site. I am therefore satisfied that the affordable housing would be appropriately intermixed with the market housing over the whole allocation. This is a different consideration to whether there would be satisfactory living conditions for the occupiers of these dwellings, which I consider below.

16. As set out above Policy KK3 of the TLP requires development to create landmark buildings as the gateway to the village along the A380. It is not clear whether this reference to the A380 refers to the 'old' A380, Torquay Road, or the 'new' A380, the SDLR. Given the distance to the new A380 to the west it is more likely to refer to Torquay Road as this provides the entrance, or gateway, to Kingskerswell. The development of the remaining part of the allocation would be reached first on the approach to the village from the north. This would allow the remaining part of the allocation to deliver any appropriate landmark buildings.
17. Therefore the proposed layout and design of the houses would be in keeping with the character and appearance of the area, with the affordable housing appropriately integrated into the market housing. The proposed development would therefore comply with Policies WE4, S2, EN2A and the relevant part of Policy KK3 of the TLP in that, in addition to the reasons set out above, it would integrate with the character of the adjoining built environment and would be sympathetic to the landscape character of the area. It would also comply with paragraph 58 of the National Planning Policy Framework (the Framework) in that it would establish a sense of place responding to local character reflecting the identity of local surroundings.

Living conditions

18. The Council has expressed objections to the quantity and quality of the garden space for the various properties, particularly Plots 12 and 13. I have not been provided with any standards for the provision of garden or outdoor space for dwellings and would accept that individual occupiers will seek different quantities. However, it seems to me that any dwelling should have an amount of outdoor space commensurate with the size of the dwelling to allow for sitting out and, for example, the drying of clothes. In addition, it should not be so enclosed so the occupiers suffer from an overbearing effect.
19. The Council has referred, in particular, to Plots 12 and 13 and the relationship with Torquay Road. Torquay Road is at a higher level than the appeal site with a slope across the appeal site. The 'proposed section through Aller Road & elevation of No 13' on drawing 793.10 Revision E shows that the landform would be remodelled with what appears to be some sort of retaining feature, and a Devon Bank created on the same level as and adjacent to Torquay Road approximately 1 m high.
20. The outdoor space for Plot 12 continues behind Plot 13 with the outdoor space for Plot 13 being to its side. Combining the retaining wall and the Devon Bank would result in a total height approximately 3.5 m tall only a short distance from the rear elevation which would enclose the area to the rear and side of Plots 12 and 13 to an unacceptable extent. However, I am satisfied that there would be sufficient separation to the group of trees at the eastern end of the site so that the occupiers of Plot 13 would not be unacceptably enclosed by those trees.
21. Overall, the proposal would not give rise to acceptable living conditions for the occupiers of Plots 12 and 13. This is an element of the design. As such the proposal would be contrary to Policy S2 of the TLP in that would not create well designed private spaces which are attractive. It would also be contrary to paragraphs 17 and 56 of the Framework in that it would not secure a good standard of amenity for all future occupants of land and buildings meaning that

the layout is not a good design which is a key aspect of sustainable development.

The setting of the Barn Owl

22. The Barn Owl Public House is located some distance to the west of the appeal site along Aller Road and at a lower level. It previously was a dwelling when known as Aller House. It dates from the seventeenth century, but with subsequent alterations in every century up to and including the twentieth when it was converted to a public house.
23. The Framework defines 'significance' as the value of a heritage asset to this and future generations because of its heritage interest. This interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.
24. The listing description of the Barn Owl public house makes clear "The interest of this building lies chiefly in the complete good quality late C17 plaster ceiling whose existence is disguised by the considerably altered exterior", and in that context this proposal would not affect this aspect of its significance. However, this is not the only element of the significance and the setting also needs to be considered.
25. The appellant has submitted a Historic Significance Assessment. This indicates that buildings associated with the listed building when it was a house are in closer proximity to the listed building and would not be affected by the proposal. The appeal site was 'allied' with the public house building in history, but does not form part of its curtilage or immediate setting. The Council's main objection relates to the loss of the hedgerow along Aller Road.
26. The appeal site is some distance along and separate from the Barn Owl and its immediate environs, and the hedgerow would only be removed for the appeal site frontage meaning that the hedgerow to the west of the appeal site would remain as part of the appeal proposal. There is also a slight curve to Aller Road so with the change in levels there would only be a slightly opening up of the view of the southern elevation of the Barn Owl. In terms of the Framework this would lead to less than substantial harm to the significance of the Barn Owl as a designated heritage asset and would be at the lower end of this harm.
27. Paragraph 134 of the Framework makes clear that where a development will lead to less than substantial harm this should be weighed against the public benefits of the proposal. In addition under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) special regard shall be given to the desirability of preserving the setting of a listed building.
28. The appellant indicates that the Highway Authority has sought the removal of the hedgerow to facilitate the development, and this has not been disputed by the Council. However, it is not clear whether the whole length of the hedgerow adjacent to Aller Road would need to be removed, including the currently remaining section to the west of the appeal site, for any development of the appeal site or allocation site. A different requirement may apply if the access point on any development were in another location.

29. The proposed public benefits of providing the additional housing, including affordable housing, some distance from the listed building, particularly with the retention of the hedgerow between the appeal site and the listed building, on an allocated site would more than outweigh the harm to the setting of the listed building even giving special attention to desirability of preserving the setting of the listed building.
30. As such the proposal would comply with Policies S2, EN5 and KK3 of the TLP in that it would integrate with the adjoining built environment, particularly affected heritage assets, protect the area's heritage and respect the setting of the listed Barn Owl public house. It would also comply with paragraph 134 of the Framework in that the public benefits would outweigh the very limited harm to the setting of the listed building.

Flooding

31. The supporting text to Policy KK3 of the TLP indicates that there have been several instances of the site being affected by flooding from surface water run-off related to the nearby quarries and local residents have provided photographs showing this. The policy continues that the design for the site should take this into account and include appropriate measures to avoid any potential flood risk from surface water.
32. Following the application decision the Devon County Council Flood and Coastal Risk Management Team wrote on 10 May 2016 to confirm that the volumes of surface water attenuation were acceptable but there were outstanding issues relating to the location of proposed attenuation storage system and its discharge point.
33. The appellant asserts in its final comments that there is agreement between the appellant, Devon County Council Highways and South West Water that South West Water will take over the foul and surface water systems with this being secured by agreements under the Water Act.
34. Given the lower level of the appeal site when compared with the quarry to the north it is imperative that the site is resilient to flood risk and does not increase flood risk elsewhere. While I appreciate that South West Water will not enter into an agreement under the Water Act until planning permission has been granted, I would expect to see evidence of some sort, for example communications between the parties, to show that agreement is likely. Such evidence has not been forthcoming and consequently I cannot be satisfied that the proposal is not at an unacceptable level of risk to flooding.
35. As such I am not satisfied that the development would not have an adverse effect on flooding in the local area. Therefore the proposal is contrary to Policies EN4 and S2 of the TLP in that I cannot be sure that proposal would have adequate drainage disposal arrangements and that the location and scale of the Sustainable Drainage Systems are appropriate. It would also be contrary to paragraph 103 of the Framework in that I cannot be satisfied on the basis of the information in front of me that the proposal would be appropriately flood resilient and resistant.

Comprehensive layout

36. As set out above Policy KK3 of the TLP requires a comprehensive plan for the whole of the allocation site. The supporting text to the policy in the TLP

acknowledges that the site is in two ownerships so that it is important that the development is comprehensively planned. It continues that plans should either be drawn up together or clearly show how the layout will link to the future development of the adjacent site. The proposal shows an access road from Aller Road through the appeal site to its boundary with the remaining land of the allocation.

37. As part of the representations on the appeal the landowner of the adjoining land has written to confirm "the scheme proposals for the appeal site do not compromise the future design and development of the remaining part of the allocation" and that it is "quite satisfied that the link from the appeal site into the adjoining site is appropriately sited".
38. Subject to a condition to require the access road to be constructed as shown on the drawings I am therefore satisfied that the proposed access arrangements and layout would allow for the development of the remaining part of the allocation site. As such the proposal would comply with Policy KK3 of the TLP in this regard.

Affordable Housing and Highway Improvements

39. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (the CIL Regulations) states a planning obligation may only constitute a reason for granting planning permission if the obligation passes three requirements. This is reiterated in paragraph 204 of the Framework. These requirements are that the Obligation is necessary to make the development acceptable in planning terms, that it is directly related to the development and fairly and reasonably related in scale and kind to the development.
40. In addition to the site specific target set out in Policy KK3 of the TLP Policy WE2 of that plan indicates that all open market housing sites with a capacity of more than 4 dwellings will provide affordable housing.
41. The national Planning Practice Guidance refers to the Written Ministerial Statement of 28 November 2014 and indicates that affordable housing and tariff style contributions should not be sought from small scale and self-build development, setting a threshold of 10 units or less or those schemes which have a maximum gross internal floor space of 1,000 m². As the proposal is for 13 dwellings it lies above this threshold and I am satisfied that the provision of affordable housing is necessary to make the scheme acceptable.
42. The Planning Obligation makes provision for four of the dwellings to be affordable which is above the figure set out in the table following Policy WE2 of the TLP, which would seek three affordable dwellings, and the target of 30% in Policy KK3 of the TLP. I am therefore satisfied that the proposal makes more than adequate provision for affordable housing and therefore complies with Policies WE2 and KK3 of the TLP as set out above.
43. The Planning Obligation also makes provision that before the commencement of development it will secure a Traffic Regulation Order to secure the proposed improvements to the carriageway of Aller Road and to enable the Owner's land required for such improvements to be dedicated for highway purposes.
44. With the access point in the proposed location I would concur that Aller Road is currently of insufficient width to allow for the traffic associated with the

development and thus a scheme to widen it to an appropriate standard is necessary. However, while the Planning Obligation is written in negative form it is not possible in a Unilateral Undertaking for the County Council to be required to accept land to be dedicated to it. I therefore consider that this part of the Obligation does not meet the relevant legal tests.

45. Having said that, it would be possible by condition on any planning permission granted to require the necessary highway works to be completed prior the occupation of any dwelling and consequently the matter resolved through that mechanism.

Other matters

46. Local residents have expressed concern about the increase in traffic on Aller Road caused by the development considering that the increased width of Aller Road would not be sufficient. I note that the Highway Authority has raised no objection and given that a proportion of the traffic will turn east towards Moor Park Road I am satisfied that the proposal represents a safe and suitable access to the site in accordance with the requirements of paragraph 32 of the Framework.
47. Concern has also been expressed about the loss of ecology in the hedgerow. However, I have not been provided with any evidence that there are any protected species which would be adversely affected by the proposals, and am therefore satisfied in this regard.

Planning Balance

48. The Framework indicates in paragraphs 6, 7 and 8 that the purpose of the planning system is to contribute to the achievement of sustainable development. Sustainable development has three roles, economic, social and environmental which cannot be undertaken in isolation because they are mutually dependent.
49. In this case the principle of developing the site is not in dispute, the concern relates to the manner of that development. Within that context the proposal through its construction and subsequent occupation would provide economic benefits. Through the delivery of housing to meet the needs of the local area it would meet the social role and as the proposal would deliver more affordable housing than required under the terms of the development plan policy additional weight should be given to this element.
50. However, the proposed layout would not give rise to acceptable living conditions for the occupiers of Plots 12 and 13, and I am not satisfied that the development would not have an adverse effect on flooding in the local area. These are environmental harms. As set out above good design is a key aspect of sustainable development and indivisible from good planning. These harms outweigh the benefits of the proposal. That being the case, the proposal would not comply with the development plan as a whole.

Conclusion

51. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

RJ Jackson

INSPECTOR