

Appeal Decision

Site visit made on 25 January 2017

by J F Powis BA (Hons) MSc MRTPI

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

Decision date: 24 March 2017

Appeal Ref: APP/X1165/W/16/3163196

Land adjacent to playground at Lancaster Drive, Paignton, Devon TQ4 7RP

- 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 Keith Morgan of Eco Friendly Homes South West Ltd against the decision of Torbay Council.
 - The application Ref P/2016/0398/PA, dated 5 April 2016, was refused by notice dated 9 June 2016.
 - The development proposed is a detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For reasons of clarity, the site address set out above is taken from the Council's decision notice.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the character and appearance of the area, having regard to its effect on protected trees; and,
 - the living conditions of future occupiers of the dwelling, with particular reference to the availability of light.

Reasons

The Effect on Character and Appearance

4. The appeal site is a parcel of undeveloped land within a residential area of Paignton. Fronting onto Lancaster Drive, the site sits between a pair of relatively recently constructed detached houses and a children's play area incorporating a good quality public green space.
 5. Within the boundary of the appeal site is a mature oak tree subject to a Tree Preservation Order. The oak tree is substantial in size and located toward the front of the site. I note that subsequent to the Council's decision in respect of the appeal development, consent has been given to crown-lift the tree to 4 metres above ground level.
 6. The protected oak tree is an attractive specimen and provides an important natural feature amongst the built form of the surrounding estate development. Sitting at the bottom of the slope of Lancaster Drive and on the outside of a
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gentle bend in the road, the tree is prominent in the local street scene. It is one of only a small number of mature trees along the road frontage. As such, it makes a substantial and positive contribution to the visual amenity of the area.

7. The appeal proposal comprises a detached four bedroom dwelling with an integral garage which would be sited at a roughly equivalent setback from the road to the existing adjacent dwelling. The protected oak tree would be retained. The main elevations of the dwelling would be sited just outside the span of the tree, although part of the driveway and a section of the path running along the front and side of the house would fall within it.
8. I have had regard to the conclusions of the appellant's Arboricultural Impact Assessment that the dwelling could be erected without detriment to the long-term health of the protected tree. Whilst I acknowledge that the proposed 'housedeck' foundation design and other special construction methods could safeguard the tree's root system and mitigation measures could be secured via condition to protect the tree during the construction phase, I nonetheless have concerns about the long-term effects of the close relationship between the tree and the proposed dwelling.
9. Given the height of the tree at some considerable distance above that of the proposed house, and its close proximity to the building, including the paths and driveway, it is likely to raise concerns about safety for future occupiers, for example in relation to falling branches in high winds and potential damage to property. As a consequence the appeal proposal, if permitted, would be likely to lead to future pressure to lop or fell the protected tree. In light of the tree's important contribution to the wider street scene, including the adjacent public open space, this would be highly undesirable.
10. I therefore conclude that the proposed development would cause unacceptable harm to the character and appearance of the area, having regard to its effect on the protected oak tree. As such, the proposal would be contrary to Policies H1, C4 and SS9 of the Torbay Local Plan 2012-2030 (LP), which amongst other things seek to create high quality living environments and safeguard protected trees from direct or indirect harm.

The Effect on Living Conditions

11. The proposed dwelling would sit immediately to the north of the protected oak tree and in close proximity to it. The tree's considerable height and wide crown spread mean that it rises far above the height of the proposed house and would span an extensive proportion of the width of the house. Consequently, natural daylight from a southerly aspect to the internal spaces of the house would be severely restricted by the presence of the oak tree.
12. I note that the internal layout of the accommodation has been rearranged following an earlier application and further windows have been added in to the western side elevation with a view to maximising the amount of light reaching the principal habitable rooms on the ground floor. Whilst the windows on the western elevation, which has a relatively open aspect over the adjacent public open space, would provide some additional daylight to the kitchen and dining areas, this is not sufficient to compensate for the significant overshadowing of the front elevation of the house. Furthermore, the availability of light to the lounge and dining area at the rear of the house would be limited by the

northerly aspect of their main window and door openings and the relatively close proximity to the existing row of tall trees along the rear boundary of the site. I understand that at least one of these is protected although I have not been provided with full details in this regard. The bedrooms would only be served by windows on the south and north elevations.

13. Having regard to all of these matters, the protected oak tree would be so close to the south-facing elevation of the house and so large as to harmfully restrict the availability of natural light to the dwelling. As a result, the internal spaces of the house would be heavily shaded, making it feel unduly gloomy and dark inside. This would have an unacceptably oppressive effect on future occupiers of the house and would result in a poor quality of living accommodation overall.
14. The main garden space would be situated to the north and west of the house. The northern part of the garden would be relatively shaded by its aspect and position between the house and the existing row of trees along the rear boundary, although I accept that this would be broadly comparable to the rear garden of the adjacent dwelling. The availability of light to the side lawn would be severely restricted by the presence of the oak tree, which would overshadow the garden for a considerable part of the day. However, subject to the height of any side boundary treatment to be erected, the side garden area would receive daylight from its open westerly aspect, particularly later in the day, sufficient to create an acceptable external amenity space.
15. Notwithstanding this, I conclude that the proposed development would provide unacceptable living conditions for the future occupiers of the dwelling, with particular reference to the availability of light. As a result, I find conflict with Policy DE3 of the LP which requires that all development is designed to provide a good level of amenity for future occupiers. It would also be at odds with paragraph 17 of the National Planning Policy Framework insofar as it seeks to ensure a good standard of amenity for all future occupiers of land and buildings.

Conclusions

16. For the reasons given above I conclude that the appeal should be dismissed.

J F Powis

INSPECTOR