

Appeal Decision

Site visit made on 28 February 2017

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 31 March 2017

Appeal Ref: APP/X1165/W/16/3162815

Spa View, Lower Warberry Road, Wellswood, Torquay TQ1 1QS

- 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 Ian Doyle against the decision of Torbay Council.
 - The application Ref P/2016/0776/PA, dated 20 June 2016, was refused by notice dated 2 September 2016.
 - The development proposed is new dwelling in ground of site.
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Decision

1. The appeal is allowed and planning permission is granted for a new dwelling at Spa View, Lower Warberry Road, Wellswood, Torquay TQ1 1QS in accordance with the terms of the application, Ref P/2016/0776/PA, dated 20 June 2016, subject to the conditions set out in the attached Schedule.

Preliminary matter

2. The appellant submitted a revised landscape plan and an amended site layout plan with the appeal. These were in response to the concerns raised by the Council as part of its reasons for refusal. I have considered these revised plans under the principles established by the Courts in *Wheatcroft*. I am satisfied that they do not change the nature of the scheme to such a degree that to consider them would deprive those who should have been consulted on the change, the opportunity of such consultation. I have therefore determined the appeal on the basis of these revisions.

Main Issue

3. The main issues are the effect of the proposed development on:
 - (i) the character and appearance of the surrounding area, including the Warberries Conservation Area (CA);
 - (ii) protected trees;
 - (iii) the living conditions of occupiers of neighbouring properties with particular regard to outdoor amenity space and those of future occupiers with particular regard to outdoor amenity space, emergency access and the storage of waste and recycling; and
 - (iv) whether the proposal makes adequate provision for surface water drainage.
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Reasons

Character and appearance

4. The appeal site forms part of a narrow and elongated plot which I understand previously hosted a substantial Victorian Villa at its head with an extensive garden to the rear. It is located within the CA which the Warberries Conservation Area Appraisal ("the Area Appraisal") indicates is characterised by imposing Victorian Villas set in spacious garden plots. However, as the Area Appraisal acknowledges, it also contains the most prominent of the later 20th Century additions, which have, to some extent, eroded the character of the surroundings. Nevertheless, it is the 19th century Italianate style villas which provide the main reason for the conservation area designation.
5. The Council is concerned that the erosion of this spacious plot through ad hoc development would damage the character and appearance of the CA. In support of this, it points to the development within neighbouring gardens which was carried out prior to the area's designation. Furthermore, it objects to the proposal on the basis that it would extend beyond the footprint of the original villa, would unacceptably erode the garden setting and would appear highly visible in views of the wooded slopes.
6. Policy DE1 of the Torbay Local Plan 2012-2030 (LP) seeks to ensure that new development is well-designed and sets out a number of considerations against which proposals will be assessed. These include, amongst other things, whether they acknowledge local character, integrate well with the surrounding context and protect important local and long distance views.
7. Furthermore, LP Policy SS10 requires new development to sustain and enhance those areas and other features which make an important contribution to Torbay's built heritage. This includes all designated and undesignated heritage assets including conservation areas. It sets out a list of criteria against which proposals will be assessed including the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas, while allowing sympathetic development within them.
8. The appeal site already benefits from extant permission for the erection of 9 apartments ("the Approved Scheme"), the construction of which is well under way. These apartments are located at the very top of the site occupying part of the original footprint of the former villa. The proposal would involve the construction of an additional dwelling deeper into the plot, increasing the footprint of the original villa. However, I note that the proposed dwelling would be constructed of materials which would integrate well with both the Approved Scheme and its wider surroundings. The existing trees and new planting included would provide a reasonable level of screening and the inclusion of a 'green roof' would further limit its visibility within the surrounding landscape.
9. While I recognise that the incremental effect of cumulative changes can pose a danger, longer distance views of the site would see the proposed dwelling appearing subservient to the more prominent apartment building of the Approved Scheme. Furthermore, while I acknowledge that it would erode the garden setting which previously made a positive contribution to the character of the CA, the loss of the original villa and its replacement with a large modern development has considerably reduced the contribution this site makes. On

balance, I consider the impact on the wider CA would be no greater than that of the Approved Scheme.

10. Consequently, I find the proposal would not appear out of character with the surrounding development or erode the contribution this site makes to the wider CA. As such, I do not find it in conflict with LP Policies DE1 or SS10 and conclude that the character of the Warberries CA would be preserved.

Impact on protected trees

11. The site is subject to a Tree Preservation Order and I understand it originally contained a number of mature trees which positively contributed to the spacious and verdant setting of the original villa. Although these have been gradually reduced over time, there are still a considerable number along the eastern boundary and the proposed garden area to the south – which together provide a good amount of screening and ensure that the site does not appear prominent on the hillside.
12. It is evident from the appellant's arboricultural evidence that, with suitable tree protection measures put in place during the construction period, the proposal would not pose a direct threat to existing trees or have any significant impact on their Root Protection Areas (RPA). However, the Council has raised concerns regarding the limited amount of unshaded amenity space that would remain for use by the occupiers of the development and those of the Approved Scheme, increasing the pressure to fell the trees located towards the south of the site due to poor light levels and limited views.
13. I do not agree with that assessment. While the trees located along the southern part of the site provide a reasonable amount of screening, their canopies would cover less than half of the remaining garden area – which, in view of its size would still provide a reasonable amount of unshaded space. Accordingly, I do not consider there would be unacceptable levels of shading in this area or that the proposal would increase the pressure to prune or fell existing trees.
14. Furthermore, while I note that the addition of new planting would increase the overall amount of canopy coverage in this area, these trees are not yet on site and I can see no reason that an amended scheme for landscaping could not be agreed which would ensure that light levels in this area were preserved without materially altering the site's overall relationship with its surroundings.
15. Moreover, while I note the Council's concerns regarding the impact of the proposed development on the new planting along the western boundary secured as part of the Approved Scheme, the appellant's arboricultural reports indicate that suitable amelioration measures can be included which will help mitigate the impact on these trees. I have no reason to conclude otherwise and it appears to me that this is also a matter that can adequately be addressed as part of an amended landscaping scheme.
16. Consequently, I do not consider the proposal would result in an increased pressure to fell or prune the trees or would jeopardise the new planting along the western boundary. As such, I find no conflict with LP Policies DE1 or C4 which, amongst other things, seek to retain and protect existing trees and ensure that they are incorporated into new development wherever possible.

Living Conditions

17. LP Policy DE3 requires all new development to be designed to provide a good level of amenity for future and neighbouring occupiers. It provides a number of criteria against which proposals will be assessed. These include the provision made for useable outdoor space as well as that for the storage of bicycles and containers for waste and recycling.
18. The proposed dwelling would include private amenity space within its own curtilage. Likewise, I understand that the apartments comprised within the Approved Scheme benefit from private terraces which would accord with the minimum amounts suggested in the explanatory text of Policy DE3. Nevertheless, the Council has raised concerns regarding the loss of some of the communal amenity space set aside for use by future occupiers.
19. While I accept that the communal area would be reduced, it would nevertheless retain a significant amount of communal space which would be easily accessible to its intended users. This, in addition to the proposed private amenity areas included for both the proposal and the Approved Scheme, would, in my view, provide sufficient outdoor amenity space to meet the needs of the future residents.
20. Furthermore, while I note the Council's concerns regarding the levels of shading in this area, as discussed above, while partially shaded, it is not extensively so. I am satisfied that this area would be useable and provide a welcome feature to its intended users, augmenting the private outdoor amenity provision included within both schemes.
21. The Council has also raised concerns regarding the siting of the proposed dwelling in relation to bin storage and access for emergency vehicles. However, I note that the plans indicate that provision for bin storage is made to the west of the proposed dwelling while the appellant's swept path analysis indicates that an emergency vehicle would be able to gain access to all parts of the site. This has not been challenged by the Council and in the absence of any further explanation, I do not consider these concerns to provide sufficient reason to justify withholding planning permission for the development proposed.
22. Consequently, I do not consider the proposal would be detrimental to the living conditions of occupiers of either the Approved Scheme or the proposed dwelling and, as such, find no conflict with LP Policy DE3.

Drainage

23. LP Policy ER1 seeks to ensure that new development is not at risk of flooding and does not increase flooding elsewhere. Furthermore, in recognition of Torbay's designation as a Critical Drainage Area it requires all new development to provide a basic Flood Risk Assessment (FRA) as well as more detailed FRA's in a number of defined circumstances. Paragraph 6.5.2.15 of the explanatory text provides further guidance indicating that on site, all surface water discharges from new development should be safely managed in conditions up to the 1 in 100 event plus an allowance for climate change ("the Required Level").
24. A basic flood risk assessment accompanied the application which indicates that surface water will be disposed of via a soakaway. Furthermore, as part of this appeal an additional Flood Risk and Drainage Strategy (FRDS) has been

provided which indicates that by utilising permeable paving to infiltrate the rainfall on the areas surrounding the dwelling, and by providing an attenuated discharge to the nearest sewer for any runoff that may arise from the roof, surface water drainage can be safely managed in conditions up to the Required Level.

25. In the absence of any robust evidence which challenges these conclusions, I have no reason to conclude otherwise. While I note that specific calculations were carried out in relation to the Approved Scheme and that the construction of a new dwelling may alter those drainage calculations, I can see no reason that this cannot be dealt with by means of a condition.
26. Accordingly, for the reasons set out above, I do not consider the application would be in conflict with LP Policy ER1.

Other matters

27. In reaching my decision I have had regard to the concerns expressed by neighbouring occupiers. However, I have seen nothing which would indicate that the proposal would result in water egress into their property.

Conditions

28. I have had regard to the conditions suggested by the Council. In addition to the standard time commencement condition, I regard a condition requiring the proposal to be carried out in accordance with the approved plans as necessary in order to provide certainty. I also consider a condition requiring revised drainage details on the wider site as necessary in order to ensure that the Council's critical drainage requirements are met.
29. Similarly, for the reason set out above, I consider an amended landscaping scheme to be appropriate. However, in view of the amount of arboricultural information already submitted, including the RPA of existing trees, I do not consider an Arboricultural Implications Study necessary in this instance.
30. A number of these conditions need to be discharged before work commences on site as these relate to matters which need to be resolved on a fully coordinated basis.

Conclusion

31. For the reasons set out above, I conclude that the appeal should be allowed.

Rory Cridland

INSPECTOR

SCHEDULE

Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
PL1 (existing site plan); PL2 (proposed site plan dated 23-9-16); PL3 (proposed plans); PL4 (proposed elevations), PL5 (proposed site section); and 1606//01 B (landscape plan).
- 3) No development shall commence until further details regarding surface water drainage have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details so approved.
- 4) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development as well as details of any replacement or proposed planting.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) Before the development is first occupied a schedule of landscape maintenance for a period of 10 years shall be submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation. Maintenance shall be carried out in accordance with the approved schedule.