

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: 26 May 2017

Appeal Ref: APP/K1128/W/16/3162947

Land at Sx 866 628, Moorview, Marldon, Paignton, Devon TQ3 1PL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr William Gilbert against the decision of South Hams District Council.
 - The application Ref 34/1946/15/O, dated 31 July 2015, was refused by notice dated 30 June 2016.
 - The development proposed is described as 'the construction of 2 bungalows on a residual piece of urban land in Marldon's built up area boundary'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with appearance and landscaping reserved for future consideration. I have dealt with the appeal on this basis, treating those aspects of the application plans as illustrative. For reasons of clarity, the site address set out above is taken from details provided on the decision notice, appeal form and application form.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the living conditions of the occupants of nos.6 and 8 Moorview, with particular reference to noise and disturbance; and,
 - highway safety, with particular regard to whether the site would provide adequate access for emergency vehicles.

Reasons

Living Conditions

4. The appeal site is an irregularly shaped parcel of land to the rear of existing properties on the north-eastern side of Moorview and the north-western side of Totnes Road. The proposed development involves the construction of two bungalows. Access to the site would be via an existing track that runs between the modest bungalows at nos.6 and 8 Moorview. The Council's first reason for refusal relates to the noise and disturbance effects of the increased use of the access track on the occupants of nos.6 and 8 Moorview.
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5. The track runs the full depth of the two properties and opens out to the appeal site at the rear of their gardens. Vehicles accessing the proposed dwellings would need to enter the track to the front of the bungalows and travel down the side of both properties and their gardens before reaching the designated parking and garage areas within the site.
6. The side elevation of the bungalow at no.6 Moorview sits approximately 2m from the access track. The property has two windows on this side elevation, at least one of which appears to serve a habitable room, as well as a window on the rear elevation in close proximity to the track. Due to the sloping topography of Moorview, the dwelling at no.6 sits slightly above the level of the access track and looks down onto it from the side and rear.
7. Passing vehicles would be in close proximity to the internal living accommodation of no.6, generating considerable noise and vibration effects for occupants of the rooms along the north-western side of the bungalow. Furthermore, there is high potential for noise, vibration and disturbance to users of the rear garden from vehicles travelling to and from the appeal site. As a result, I consider that the quality of the internal living areas and external amenity space of no.6 would be materially undermined by the proposed development.
8. The occupants of no.8 Moorview would experience similarly effects, although the bungalow sits slightly further from the access track, with the intervening space used as a parking area. At the time of my visit, works to the garage serving no.8 appeared to have been recently completed. These works appear to have brought the side elevation of the garage directly adjacent to the access track as opposed to its more set back position as shown on the submitted plans.
9. The form of the new garage, together with the built compound of an existing electricity sub-station at the end of the track, would provide a degree of shielding from the noise and disturbance effects for users of no.8's garden and rear conservatory. Nonetheless, the property's side elevation has an external door, obscure glazed window and clear glazed window facing toward the access track and the property sits slightly below the level of the track. Consequently, occupants of the internal spaces along the south-eastern side of no.8 would be likely to experience adverse noise and vibration effects as a result of the additional vehicle movements generated by the proposal.
10. The number of vehicles using the access track could be expected to be relatively low, given that it would serve only two bungalows and is located in an area where access to some local facilities may be possible on foot. The track is of restricted width which would necessitate low speeds of travel. These factors would limit the frequency and magnitude of noise events experienced by the occupants of nos.6 and 8. Nonetheless, I consider that in light of the close relationship between the track and the full depth of the two properties, the vehicle movements would create a considerable intrusion into the occupants' private domestic spaces, perceptibly eroding their living conditions.
11. The area surrounding the appeal site is of a predominantly residential character and the level of noise and disturbance generally accepted in this edge of village location is relatively low. The layout of the established built form along Moorview includes some examples of recessed garages and car ports to the

side of properties meaning that an element of vehicle movements close to the side of dwellings is accepted in the area.

12. However, I consider there to be an important distinction between the disturbance effects of movements relating to a resident's own vehicles and those of their neighbours, over which they have no control. Moreover, the access track in the case of the appeal development would run not only to the side of other dwellings but also along the entire length of their rear gardens, which are important private amenity spaces in their own right. As a result, I find that the proposed access arrangements would give rise to an unacceptable increase in noise, vibration and general disturbance for the occupants of the immediately neighbouring properties compared with the current use of the land.
13. I have been referred to the layout of an approved residential scheme to the south-west of Moorview which the appellant submits incorporates comparable relationships between vehicular movements and the sides of dwellings to those proposed in the appeal development. Whilst taking account of the evidence submitted in this regard, I also note that internal roads within the cited scheme are considerably wider than the proposed access track, allowing more flexible and generous circulation space for vehicles. I do not have full details of the design of that scheme but, given its comprehensive nature, would expect that there were opportunities to minimise window and door openings on the more sensitively-sited elevations to protect occupants from the noise and disturbance effects of passing vehicles. As a result, I do not consider that the approved scheme is directly analogous to the appeal development and it therefore carries only modest weight in my assessment.
14. Taking all of the above matters into consideration, I conclude that the proposed development would cause unacceptable harm to the living conditions of the occupants of nos. 6 and 8 Moorview, with particular reference to noise and disturbance. Consequently, the proposal would be contrary to Policy DP3 of the South Hams Local Development Framework: Development Policies Development Plan Document (adopted July 2010) (DPD), which seeks to ensure that new development avoids unacceptable noise and disturbance impacts upon the occupiers of nearby properties.

Highway Safety

15. The appellant states that the access track has a width of approximately 3m, although I note the view of the Council that some sections of the track reduce to a lesser width due to the incursion of existing boundary planting along its south-eastern side. Regardless of the specific dimensions, it was clear from my visit that the track is of a restricted single carriageway width.
16. Whilst good forward visibility for users would be afforded by its straight and level nature, the track would nonetheless be approximately 34m in length. This constitutes a relatively long and narrow means of access to the proposed dwellings from the public highway with no provision for passing places.
17. The track has been used to date by commercial vehicles accessing the electricity sub-station to the rear of no.8 Moorview and by maintenance vehicles accessing the appeal site. It has been put to me that the use of the access lane by vehicles is therefore long established and without recorded incident. Whilst this is accepted, the proposed development would undoubtedly

lead to a material intensification of the track's use in terms of both the frequency and volume of vehicle movements. In particular, the change in use of the appeal site to accommodate residential development gives rise to the need to ensure the provision of safe and suitable access for emergency vehicles such as ambulances and fire engines.

18. The Manual for Streets¹, which provides technical guidance on road design, notes that a 3.7m carriageway (kerb to kerb) is required for operating space at the scene of a fire. It states that simply to reach a fire, the access route could be reduced to 2.75m over short distances, provided the pump appliance can get to within 45m of dwelling entrances.
19. Whilst it may be argued that the lane would satisfy the minimum width of 2.75m advised within the Manual for Streets, account must also be taken of the considerable length of the track in this case, which could not reasonably be described as a short distance. I am particularly mindful of the advice of the local fire department that the combination of width and length in this case would constitute an unacceptable means of access for fire and rescue service vehicles and that as such, compensatory measures would be required to be provided as part of the scheme.
20. The appellant states that it may be possible to service a fire on the site by the use of a hydrant in the street nearby. However, no information about the location of any existing hydrants has been submitted and no provision appears to have been made for the incorporation of such measures within the proposal before me. I acknowledge that the need for access to a development of this scale by large fire appliances would typically arise only rarely, however the impact of such access being unachievable could be very serious. In the absence of details to demonstrate that compensatory measures can be secured to address this matter, and having viewed the site, there is considerable doubt in my mind as to whether the appeal proposal would provide a safe and adequate means of access for all types of emergency vehicles, which could be to the detriment of highway safety.
21. The appellant contends that the proposal would not give rise to a severe traffic effect in the sense of paragraph 32 of the National Planning Policy Framework (the Framework) and therefore should not be prevented on highways grounds. However, I am mindful that the Framework's 'severity' test addresses matters of highway capacity and congestion rather than highway safety considerations in themselves. I also do not agree that the absence of an objection from the Highways Authority necessarily indicates a proposal's acceptability in terms of all highway safety impacts.
22. My attention has been drawn to the previous decision² of another Inspector to allow a single dwelling on land at Westerland Lane, to the south of the appeal site. I saw the site as part of my visit. Whilst undoubtedly narrow and bounded by high hedges, Westerland Lane was in that case an existing through-road serving six dwellings and some stables. The Inspector therefore found that traffic generated as a result of the proposal would utilise a pre-existing access arrangement which had not been demonstrated to be unacceptably dangerous. The circumstances of that case therefore differ

¹ Welsh Assembly Government, Department for Communities and Local Government and Department for Transport (2007)

² Appeal Ref: APP/K1128/W/15/3004946

materially from those of the case before me, where a significant intensification of a private access track is proposed. Moreover, I note that the main issue in that case focused on (amongst other things) the acceptability of the width of Westerland Road to the efficient functioning of the highway for all users, rather than its suitability for emergency vehicle access specifically. As such the decision attracts limited weight in my assessment.

23. I have also taken account of the appellant's analysis comparing the appeal development with the approved scheme to the south-west of Moorview in terms of accessibility by fire service vehicles. However, I do not have full details and dimensions of the approved scheme sufficient to wholly understand its performance in terms of emergency vehicle accessibility and whether compensatory measures were required to be secured in this regard. As such, I afford the analysis little weight in my decision.
24. Having regard to all of the above matters, I therefore conclude that the site would not provide adequate access for emergency vehicles to the proposed development and as such could cause harm to local highway safety. As such, I find conflict with Policy DP7(c) of the DPD, which requires that development provides safe and adequate means of access, egress and internal circulation for all modes of transport relevant to the proposal.

Other Matters

Benefits of the Proposal

25. The proposal would provide two additional dwellings within the development boundary of Marlton where the development plan is supportive in principle of residential development. These are matters that weigh in favour of the proposal. However, they are not sufficient to outweigh the harm that I have identified in respect of the main issues in this case.

The Council's Handling of the Application

26. The appellant has raised concerns about the level of engagement from officers of the Council in response to the proposed development, and the time taken to determine the application. Whilst I acknowledge the appellant's frustrations in this regard, my decision must focus on the merits of the proposal before me.

Conclusions

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

J F Powis

INSPECTOR