
Appeal Decision

Site visit made on 13 December 2017

by H Butcher BSc (Hons) MSc MRTPI

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

Decision date: 9th January 2018

Appeal Ref: APP/X1165/W/17/3180976

Maxstoke Court, Middle Warberry Road, Wellswood, Torquay, TQ1 1RP

- 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 & Mrs Knapman against the decision of Torbay Council.
 - The application Ref P/2016/1160/PA, dated 25 October 2016, was refused by notice dated 20 February 2017.
 - The development proposed is a single storey detached dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal would preserve or enhance the character or appearance of the Warberries Conservation Area;
 - The effect of the development on highway safety at the vehicular access to Maxstoke Court, and;
 - The effect of the development on trees and biodiversity.

Reasons

Background

3. The appeal site has a planning history which includes a number of planning applications for dwellings. The most recent being application P/2009/0599 which was subsequently dismissed at appeal (ref APP/X1165/A/09/2116974). The proposal before me is for a dwelling in more or less the same position as the above application but what was a two storey dwelling has been reduced to single storey.

Conservation area

4. The appeal site is located in the Warberries Conservation Area. It covers much of Warberry Hill and is characterised by large detached villas which occupy spacious grounds enclosed by high walls. This gives the area a very spacious and leafy character on account of the large gardens associated with these. Maxstoke Court was built around 1851 and is typical of the type of villas found in this area. Although it is not Listed it forms part of a group of four villas (the other three of which are Listed) all of which are of a similar age and layout and

- which remain largely intact. It therefore makes a positive contribution to the historic character of the conservation area. Furthermore, Maxstoke Court is identified in The Warberries Conservation Area Appraisal as being a key building which makes a significant contribution to the townscape.
5. The historic curtilage of Maxstoke Court was deep and stretched between Middle Warberry Road and Lower Warberry Road. Like the other villas in this row, Maxstoke Court sits adjacent to Middle Warberry Road and had a large, sloping garden to the south which ended at Lower Warberry Road. The proposal is to construct a dwelling on what was the main garden to Maxstoke Court. This would visually sub-divide this historic plot into two smaller plots. Furthermore, the proposed dwelling would sit out of alignment with the other properties along this section of road in an area which is predominantly garden land. As a result the proposed dwelling would be completely at odds with the historic pattern of development in this area.
 6. I acknowledge that the appeal site is now under separate ownership to Maxstoke Court. However, it retains the appearance of garden land belonging to Maxstoke Court albeit it is overgrown and untended. I also accept that wider views would be largely unaffected by the development given the local topography, the spacious nature of the site, the high walls which surround it along with existing mature landscaping, and the low level nature of the dwelling proposed which would be set into the slope of the land. Nevertheless, the proposed dwelling would be visible to residents and visitors of Maxstoke Court from the building, the remaining garden, and the parking areas, all of which are at a higher level to the appeal site and would directly overlook it. It would not, in my opinion, be possible to completely screen the development from here in a sensitive manner. In terms of views from Maxstoke Court the proposal would therefore detract from the character and appearance of the conservation area.
 7. For the above reasons the proposal would neither preserve nor enhance the character or appearance of the Warberries Conservation Area. As a result it would conflict with Policies SS10 and DE1 of the Torbay Local Plan 2012-2030 (LP) which require new development to respect and enhance Torbay's special qualities which includes buildings and areas which make an important contribution to Torbay's built setting and heritage.
 8. In terms of the advice in the National Planning Policy Framework (the Framework) paragraph 134 the harm to the conservation area would be 'less than substantial' affecting only its immediate surroundings and the Framework sets out the need to address 'less than substantial harm' in a balanced manner against benefits associated with such schemes. I address these below.
 9. The boundary wall to the site with Lower Warberry Road is an historic feature. A structural report carried out in 2008 found numerous structural defects and evidence of previous local failures and repairs to the wall in question. Whilst not in imminent danger the appellant suggests that the proposal would allow for this wall to be maintained and repaired and this would be of benefit to the appearance of the conservation area as the wall is a prominent feature. However, this is limited by the fact that there is nothing before me to secure such works.
 10. There would also be benefits to local housing supply and employment with the creation of an additional dwelling but these are modest due to the small scale

of the development. The appellant also argues that the site is currently unsightly. However, whilst somewhat overgrown, it still has the appearance of undeveloped garden land which is in-keeping with its historic association with Maxstoke Court. I therefore afford this matter minimal weight as a benefit. Taking the above points together I find that the harm to the conservation area would clearly outweigh the benefits of the proposal.

Highway safety

11. The vehicular access to Maxstoke Court from Middle Warberry Road has poor visibility largely due to its orientation with the highway, its steepness and the boundary walls here. It is also narrow and winding which makes it difficult for vehicles travelling in opposite directions to pass. This can lead to vehicles waiting in the highway, potentially causing an obstruction to traffic here. Its narrowness is also not ideal for pedestrians accessing the site from Middle Warberry Road who are vulnerable to any cars navigating this access at the same time. I experienced all of the above during my site visit.
12. I accept that Middle Warberry Road is not a busy road. The speed of vehicles along here is generally low and there is no accident history associated with the access to Maxstoke Court. Nevertheless, this does not change the existing situation with the access, and whilst only one dwelling is proposed this would still increase its use which in turn would increase the highway risks associated with it.
13. Policy TA2 of the LP is clear that all development proposals should make appropriate provision to ensure an adequate level of accessibility and safety. Given the existing conditions with the access to Maxstoke Court, which are not, for the reasons set out above, adequate in terms of accessibility and safety, the proposal would conflict with this policy. The development would therefore not be acceptable in terms of highway safety at the vehicular access to Maxstoke Court.

Trees and biodiversity

14. It is proposed that all existing trees on the site would be retained including the verging veteran tree referred to by the Council which is of significant age and likely to contain multiple micro-habitat features. The plans before me show that the dwelling would be constructed outside of the root protection areas of all existing trees. Furthermore, evidence submitted with the appeal indicates that the retention and protection of all trees on site during construction is possible. I am therefore satisfied that the proposal would not be harmful in terms of a loss of existing trees.
15. The Council refer to a replacement Horse Chestnut tree and that the development could result in pressure to prune this. However, I have not been provided with any further details such as the exact siting of this. I can therefore only afford this matter limited weight. I am, however, satisfied that the retained trees shown on the plans before me would be sufficient distance from the dwelling so as to not be at risk of future pruning or removal, and in any event, the site is covered by a Tree Preservation Order.
16. Although some of the existing vegetation will be removed to make way for the proposed dwelling additional landscaping is proposed along with a new water feature fed by surface water run-off on the site. I am therefore satisfied that

any harm by way of a loss of existing vegetation could be off-set in this manner. Full details in respect of the provision and retention of landscaping could be suitably secured by condition.

17. I therefore find no harm in terms of a loss of trees or biodiversity and as such no conflict with Policies C4 and NC1 of the LP which seek to protect existing trees (including those of historic or nature conservation value) hedgerows and natural landscape features.

Other matter

18. I have considered the effect of the development on the settings of the Grade II Listed buildings either side of the appeal site, namely Lisburne and Wellswood Manor. However, in light of the separation distances and the high level of natural screening in place I find no harm in this respect.

Conclusion

19. Whilst I have found no harm to trees or biodiversity as a result of the proposal I have found that it would neither preserve nor enhance the character or appearance of the Warberries Conservation Area. Furthermore it would be unacceptable in highway safety terms. For these reasons, and having had regard to all matters raised, the appeal is dismissed.

Hayley Butcher

INSPECTOR