
Appeal Decision

Site visit made on 29 July 2019

by Roy Curnow MA BSC(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th August 2019

Appeal Ref: APP/X1165/W/19/3227147
20 Horace Road, Torquay TQ2 8AS

- 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 and Mrs Mark Pratt against the decision of Torbay Council.
 - The application Ref P/2018/0887, dated 14 August 2018, was refused by notice dated 7 December 2018.
 - The development proposed is erection of attached house, with parking and garden.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was submitted in outline. The application form indicates that approval was sought for access, appearance, layout and scale. I have treated the plans submitted with the application accordingly, using them only in respect of the matters for which approval is sought.
3. Following a referendum, the Torquay Neighbourhood Plan (TNP) was adopted in June 2019. Therefore, it forms part of the development plan and its policies carry full statutory weight. Both parties were invited to make further comment in the light of this change. The Council did not do so, though the appellant did. His comments have been taken into account in my decision.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the character and appearance of the area; and
 - the living conditions of future occupiers having regard to outdoor amenity space.

Reasons

Character and Appearance

5. Horace Road is narrow, with its flanking dwellings generally set out in short terraces on either side. They are set fairly close to the carriageway, only separated from this by footways and small front gardens. The land falls across the road, with the result that houses on the upper side are set well above the level of the carriageway and those on the lower side are set below it. The

layout of development has resulted in the road having a fairly enclosed character and appearance.

6. This enclosed nature is relieved by gaps between the terraces, which play an important role. As the Inspector said in an earlier appeal¹ relating to land at 29 Horace Road, in addition to the aesthetic role of the gaps they also allow for increased amenity space for each dwelling. The gaps on the lower side of the road are particularly important in the street scene, as they provide extensive views out across the valley to the countryside in the distance and provide some respite from the road's otherwise enclosed nature.
7. 20 Horace Road lies on the lower side of the road, at the end of a short terrace. In addition to its small front garden, the gap to the side provides No 20 with a generous side garden as well as its rear garden. It is proposed to erect an end-of-terrace dwelling on this land which, using the change in levels, would provide accommodation over three storeys. The principle of the proposal and the design and appearance of the proposed dwelling are all acceptable, as has been agreed by the Council.
8. However, the result of the proposed development would be that the gap between No 20 and 21 Horace Road would be markedly reduced. Although land to the side of No 21 and a shared drive would remain between the proposed dwelling and No 21, I would not describe this as a meaningful and substantive gap.
9. Notwithstanding that gaps along the road are not consistent in size or set at regular intervals, there is still a rhythm to the pattern of development. The manner in which these substantial gaps open as one moves along the street is an important feature of the street scene and the diminution of this one, would have a significantly harmful effect on the street scene.
10. In this regard, I have taken account of the approved extension to 29 Horace Road, a decision seemingly taken after the appeal I have referred to. Although I do not have the full details of that decision, that property lies on the higher side of the road and, as I have said above, my view is that the gaps on the lower side of the road have added importance. To my mind, the development at No 29 does not provide justification for allowing this appeal.
11. Whilst many of the requirements of the Urban Design Guide² (UDG) have been followed in the submitted scheme, I do not find that it accords with its elements relating to responding positively to the streetscape to reinforce the street. Although there is creativity in provision of car parking for both resultant dwellings, the manner in which it would wrap around almost all of both public faces of the proposed dwelling would give the development a cramped appearance.
12. For the above reasons, I find that the proposed development would be contrary to those terms of Policy DE1 of the Torbay Local Plan 2012-2032, adopted December 2015, (Local Plan) that require development proposals to respect the character of the built environment. Given my finding with regards to Policy DE1, the scheme is also contrary to the requirement in Local Plan Policy H1 for new housing proposals to accord with other policies in the Local Plan. The

¹ APP/X1165/A/08/2065396

² Torbay Local Development Framework 2005 – 2026, Urban Design Guide. Adopted Supplementary Planning Document May 2007

proposal is also contrary to the terms of Policy TS4 of the TNP that highlights the harm that can arise from development proposals on greenfield sites. It supports their development in certain circumstances, but these are not present here. As it does not reflect the character of the site's surroundings, it is contrary to the terms of TNP Policy TH8. These policies are consistent with the Governments' National Planning Policy Framework (NPPF). It is also contrary to the terms of the UDG.

Living Conditions

13. Local Plan Policy DE3 requires development proposals to provide a good level of amenity. With regards to external amenity/garden space, paragraph 6.4.2.14 of its supporting text sets out that, as a guideline, a minimum area of 55sqm would be required. The TNP, in its Policy THW4, requires at least 20sqm that excludes car parking. Therefore, I find that the proposed garden would be of an appropriate size.
14. Whether a proposal can provide sufficient garden space is only part of the requirement, however. There is still the requirement for the proposed space to provide a good level of amenity. A degree of overlooking is to be expected in an urban location and presently the gardens serving the existing dwelling provide its occupants with a reasonable level of privacy.
15. The proposed dwelling would look directly towards the existing dwelling's rear garden area, where good levels of privacy would be expected to meet the requirement of a 'good level of amenity'. Boundary walls and fences at lower ground level would preclude overlooking at this and ground floor levels. Save for one which would be obscure glazed, ground and first floor windows in the proposed dwelling would be set to the side away from the boundary with the existing dwelling. However, as a result of the proposed layout, they would be directly in line with part of the garden proposed to serve the existing dwelling and would allow an uninterrupted view into it. This would lead to both an actual and perceived lack of privacy to its users. This would not equate with the requirement for a 'good level of amenity' and is symptomatic of the cramped nature of the proposal.
16. For these reasons, my finding on this main issue is that the existing dwelling would not be provided with a garden that would provide a good level of amenity. The development would therefore be contrary to the terms of Local Plan Policy DE3 and its Policy H1(4) that requires the creation of high-quality living environments, which includes the protection of the amenity. Again, these policies are consistent with the terms of the NPPF.

Other Matters

17. The proposed dwelling, which would lie in an accessible location, would meet the Council's internal space standards and would be built to high thermal standards. It would be provided with parking in accordance with the development plan. In addition, the proposal would allow the existing dwelling's thermal qualities to be upgraded. I have taken these factors into account in my assessment, as I have that the site is not liable to flooding, is not located in a designated wildlife, townscape area or an area where dwellings in gardens would be resisted. However, whether taken individually or cumulatively, do not outweigh the harm that I have identified, above; neither would these be

overcome through the use of a condition requiring a shorter than normal time for the commencement of development.

18. Although policies in the development plan and the NPPF provide some support for the proposal, this does not outweigh the terms of its terms, and those of the development plan, that I have identified as pulling in the opposite direction.

Planning Balance

19. Planning law³ sets out that “if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise”.
20. In this case, I have found that the proposed dwelling would cause harm to the character and appearance of the area and would not provide appropriate living conditions to the occupants of the existing dwelling, contrary to policies in the development plan.
21. The terms of the Government’s National Planning Policy Framework are an important material consideration. Its paragraph 11 states that decisions should apply a presumption in favour of sustainable development. For decision-taking, paragraph 11(d) states that this includes approving development proposals where the policies which are most important for determining the application are out-of-date. Footnote 7 to the Framework states that this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The Council agrees that this is the case, here.
22. Paragraph 11(d)(ii) goes onto say that this presumption should not be applied where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. This is an important material consideration, given the Government’s objective of “significantly boosting the supply of homes”.
23. The provision of a single dwelling, which would be in a sustainable location, would only have a small beneficial effect in terms of the Council’s overall supply of homes. Furthermore, it would provide some limited benefits in terms of employment and support for local services. However, I find that these limited benefits would be significantly and demonstrably outweighed by the adverse impacts that would result from the proposed development.

Conclusion

24. For the reasons given above, and having taken all other matters into account, the appeal is dismissed.

Roy Curnow

INSPECTOR

³ S38(6) Planning and Compulsory Purchase Act 2004