
Appeal Decision

Site visit made on 20 August 2019

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 9th September 2019

Appeal Ref: APP/P1133/W/19/3226606

Trinity Lodge, Buckeridge Road, Teignmouth, Devon TQ14 8LZ

- 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 Bunny Homes against the decision of Teignbridge District Council.
 - The application Ref 18/01383/FUL, dated 2 July 2018, was refused by notice dated 20 December 2018.
 - The development proposed is demolition of the existing building and replacement with six dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of the existing building and replacement with six dwellings at Trinity Lodge, Buckeridge Road, Teignmouth, Devon TQ14 8LZ in accordance with the terms of the application, Ref 18/01383/FUL, dated 2 July 2018, subject to the conditions in the Schedule below.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural Matter

3. A signed S106 agreement (the S106) dated 6 June 2019 between the Council, the owner and the lender has been submitted with the appeal. I address this matter in detail below.

Main Issues

4. The main issues are the effect of the proposed development on the character and appearance of the area, and whether adequate provision for affordable housing would be made as part of the scheme.

Reasons

Affordable Housing (AH)

5. Policy WE2 (Affordable Housing Site Targets) of the Teignbridge Local Plan 2013-2033 (LP) states that all open market housing sites with a capacity of more than 4 dwellings will provide, within the Teignmouth settlement limit, 25% AH. Sub-paragraph d) of WE2 states that sites on which the provision of AH would not be an efficient use of resources or would be otherwise

inappropriate, a contribution towards AH provision elsewhere in the District will be required.

6. In this case, as set out in the Council's Committee Report, the Council requires – as per the table in paragraph 4.7 of the LP – the provision of one AH unit, which apparently equates to an off-site contribution of £87,977. It is implied (in the Housing Enabling Officer's comments in the Report) that an off-site contribution rather than on-site AH provision, would be acceptable in this case because of the sloping nature of the site and the consequent necessity for steps in the dwellings whereas the priority need is for AH units that are step-free and accessible to ambulant disabled people. The S106 secures this off-site contribution to AH to be paid to the Council prior to occupation of the first dwelling on the site.
7. The Council's case rests on its refusal reasons because it has provided no statement of its case at appeal and its Committee Report recommended approval. Its second refusal reason states that the wider site has been artificially sub-divided. The wider site includes the car park of the former children's nursery in Trinity Lodge, situated immediately to the north east of the appeal site. The car park is also owned by the appellant company and was the subject of a separate planning application for 4 dwellings, which the Council also decided to refuse at its Committee meeting on 18 December 2018, as set out in the Minutes (LPA Ref 18/01384/FUL).
8. It is clear from my site visit that the two sites were previously used together by the nursery and are physically linked by a paved and lit footpath. I note that in the Minutes under 18/01384/FUL it is stated the Planning Officer confirmed that AH would be provided off-site, as per the application for this site, notwithstanding that a scheme proposing only 4 dwellings does not fall within the thresholds of Policy WE2. The table in paragraph 4.7 sets out a requirement for 2 AH units for 10 dwellings. It is unclear to me whether 2 units would be provided for the two sites in total.
9. But the only explanation I have from the Council is what has been provided to me in its Committee Report on this application. The Report explains that the above contribution for 1 AH unit would be secured by the S106, which is the requisite requirement. Although the two sites were linked by a footpath, they were clearly completely separate originally, are not actually contiguous (apart from the footpath) and are subject to separate access arrangements. In the absence of any clear explanation as to why the AH provision is insufficient, I can only accept the Report's conclusion that the S106 contribution is acceptable in this case.
10. I say this against the background of current policy in paragraph 63 of the National Planning Policy Framework (NPPF), which states that provision of AH should not be sought for residential developments that are not major (i.e. 10 dwellings or more) other than in designated rural areas. I acknowledge the appellant's argument in this regard, but the LP was only adopted in 2014 and the threshold in Policy WE2 must have been justified when the LP was examined. Development plan policies should not be set aside without adequate justification. No evidence has been provided by the appellant to justify that the need for AH in the District has lessened and that the threshold in Policy WE2 is now therefore inappropriate. Consequently, I uphold the need for this AH contribution in the S106.

Character and Appearance

11. Buckeridge Road is steeply sloping at this point, as are many of the streets in the vicinity. The site itself is steeply sloping southwards at its southern end. The area is predominantly residential characterised by a variety of ages and designs of houses, as well as by Trinity School immediately to the north. To the east and north west are a variety of Victorian/Edwardian large villas including the immediate neighbour at Oakbeer House. The neighbour to the north on the road frontage is a modern block of flats known as Convent Lodge, next to the car park of the former nursery. To the south is the Victorian/ Edwardian Grosvenor Terrace, separated by a narrow access lane from the site.
12. The proposal is to erect two rows of 3 townhouses facing north-south onto a central courtyard giving access to integral garages and parking areas from a widened existing access point. The upper row of 3 detached houses would occupy approximately the position of Trinity Lodge, the existing building, which would be demolished to make way for them; they would be about 2m apart. The lower row would be a terrace of 3 houses. Due to the slope of the land the upper row of houses would be 2½ storeys facing north and 3 storeys facing south. The lower terrace would be 2 storeys facing north onto the courtyard and 3 storeys facing south.
13. Both rows of houses would be designed such that the top floors in each dwelling would contain the principal living area, the living room/kitchen/dining area as one large open plan space, with the bedrooms on the lower two floors. It is clear from the elevation drawings that the top floor of the dwellings' south elevations would also have full-height glazing.
14. The principal habitable room windows of the neighbour at 9 Grosvenor Terrace face north towards the site and the owner of this house is concerned that there will be overlooking of his windows from the second floor living area of proposed Units 1-3 and from their full width balconies at this level. However, there would be at least 21m between these two sets of windows and such a distance is widely regarded as being acceptable in residential areas. As such, even if the whole of the substantial tree screen to the southern boundary of the site were to be cut down, I consider the distance between these sets of windows to be sufficient to prevent any significant loss of privacy to the owner/occupier of 9 Grosvenor Terrace.
15. The proposed dwellings would be modern in appearance, with areas of brick, render and feature composite panelling as well as large areas of glazing on their southern elevations. But, apart from the reference in the first refusal reason to the unacceptable scale, massing, detailed design, layout and material palette, it is unclear why the Council considers these issues to be grounds for refusal given that its Committee Report says the opposite. I can see no reason to oppose the contemporary design of the proposed dwellings, given the mix of design in the locality.
16. The sloping nature of the site and Buckeridge Road would allow the proposed 3-storey development to fit into the street scene and surrounding area because there is adequate separation between proposed Units 1-3 and Grosvenor Terrace. The northern row of houses would occupy approximately the same footprint and be about the same height as the existing building on the site. The proposed scheme maximises development of an existing urban brownfield site, which is what it should do. Any concerns about the details of the proposed

materials can be adequately addressed by a suitable condition reserving the approval of such details.

17. For these reasons I conclude that the proposed development would not harm the character or appearance of the area. It would therefore comply with Policies S1 and S2 of the LP, which together require development to integrate with the character of the area and make the most effective use of sites.

Conditions

18. The Council has only provided the summary conditions in its Committee Report, which are unjustified by any reasons. I have looked at these and consider the conditions listed in the Schedule below to be necessary and otherwise meet the requisite tests for conditions in the NPPF and Planning Practice Guidance for the reasons given in the Schedule.

The S106

19. As well as providing for the off-site AH contribution the S106 also provides for the payment of a Habitat Mitigation Contribution of £4,800 prior to commencement of development towards measures to ensure that the Exe Estuary Special Protection Area and Dawlish Warren Special Area of Conservation (which are within 10km of the site) are protected from any adverse recreational impacts arising from the residents of the new development or their pets.
20. Although it is slightly unclear what exactly these measures are and how the above figure has been calculated, I note that the appellant does not dispute the need for it. Such mitigation measures are normal to ensure the protection of SPAs and SACs and I see no reason to question the validity of this amount. For the reasons given I conclude that the two financial contributions comply with Regulation 122 of the *Community Infrastructure Regulations 2010*.

Conclusion

21. For the reasons given above I conclude that the proposed development would be sustainable development, would consequently comply with LP Policy S1A and the appeal should therefore be allowed.

Nick Fagan

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
Reason: To comply with statute.
- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings: all 1735A-PL: 001A, 002F, 003F, 004G, 005C, 006C, 007C, 008G, 009G, 010G, 011G and C-GA-100 Rev P2.
Reason: In the interests of precision.

- 3) No development shall take place where (following risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development or relevant phase of development is occupied.

Reason: To protect future residential occupiers against contamination.

- 4) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development or relevant phase of development is resumed or continued.

Reason: To protect future residential occupiers against contamination.

- 5) The works, including demolition and site clearance, shall proceed in strict accordance with the precautions and measures described in the preliminary ecological appraisal report and mitigation and enhancement measures shall be provided as described in this report.

Reason: To safeguard and enhance the ecology of the site.

- 6) No external lighting shall be installed on, or in association with, the new building, except for low-intensity, PIR motion-activated lights on a short timer (maximum 2 minutes), directed/cowled downwards and away from the site boundaries. The luminaries should produce low-intensity, UV-free light, with a warm colour temperature (3,000K or less) unless otherwise agreed.

Reason: To protect the living conditions of neighbours by restricting unnecessary light spillage outside the site.

- 7) Prior to first use samples or details of the materials to be used on the external surfaces of the buildings including a sample panel of the bricks to be used on the south elevation terrace hereby approved shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To preserve the character and appearance of the area.

- 8) Parking facilities for each unit shall be provided and shall thereafter be permanently retained for the parking of vehicles in accordance with the approved plans prior to first occupation of each unit.

Reason: To prevent any danger to highway safety and congestion on adjoining roads.

- 9) Refuse and recycling facilities with the exception of collection days shall be stored either in the garage of each unit or where available in the rear garden in the interests of visual amenity.

Reason: To prevent pests and ensure the amenity of the area.

- 10) Prior to first occupation of any of the dwellings full details of hard and soft landscaping works including boundary treatments and an implementation and management plan, shall have been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the character and appearance of the area.

- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions or enlargements to the roof of any of the dwellings shall be erected other than those expressly authorised by this permission.

Reason: To prevent overdevelopment of the site and adverse impact on the living conditions of residential neighbours.

- 12) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors;
- ii) loading and unloading of plant and materials;
- iii) storage of plant and materials used in constructing the development;
- iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- v) wheel washing facilities;
- vi) measures to control the emission of dust and dirt during construction;
- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- viii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

Reason: To prevent adverse impact on the living conditions of neighbours.

End of Conditions