



Appeal Decision

Site visit made on 11 June 2019

by Roy Curnow MA BSC(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th September 2019

Appeal Ref: APP/P1133/W/19/3223565

5 Higher Coombe Drive, Teignmouth TQ14 9NB

- 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 Gardner against the decision of Teignbridge District Council.
 - The application Ref 18/01922/FUL, dated 14 September 2018, was refused by notice dated 14 November 2018.
 - The development proposed is a new dwelling in garden with new garage for existing house.
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Decision

1. The appeal is allowed and planning permission is granted for a new dwelling in garden with new garage for existing house at 5 Higher Coombe Drive, Teignmouth TQ14 9NB in accordance with the terms of the application, Ref 18/01922/FUL, dated 14 September 2018, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matter

2. The application was not refused for a reason relating to the effect of the proposal on the ecology of the Exe Estuary Special Protection Area (SPA), which is also a RAMSAR site, and Dawlish Warren Special Area of Conservation (SAC). However, this is a significant matter and I deal with it as a main issue in this appeal. As it was an issue that was raised during the processing of the application, neither party will be prejudiced by this.

Main Issue

3. The main issue is the effect of the proposed development on:
 - (i) the character and appearance of the area; and
 - (ii) the integrity of the SPA and SAC.

Reasons

Character and Appearance

4. Number 5 Higher Coombe Drive is a two-storey end-of-terrace dwelling in a residential estate, with a large garden. Due to their hillside position, dwellings in the area are set at various levels above and below the level of Higher Coombe Drive. The appeal site is formed partly from a steeply sloping bank and partly from the garden and drive to No 5, which have been terraced into it.
5. The proposed dwelling would have accommodation over three floors. A garage and an access to the dwelling would be sited at the level of the garage blocks,

- with living accommodation set over two floors rising from the level of the host dwelling's garden and drive.
6. Most of the dwelling would be set below the level of Higher Coombe Drive, from where only its roof would be clearly seen. However, given the siting of nearby dwellings, this would not be out of character with development in the vicinity of the appeal site.
 7. The proposed dwelling would not directly address Higher Coombe Drive; however, this is not unusual in the area. Numbers 7, 7a, 9, 11 and 13 Higher Coombe Drive are all set well below and away from this road and do not address it at all. The proposed dwelling would simply be seen as a further part of this mixed-level townscape.
 8. Given its design and positioning, the proposed dwelling would not read as being closely related to the garages in the blocks below. There would be sufficient vertical separation to ensure that the proposed dwelling would read much more with No 5.
 9. The loss of some of the bank between the road and the drive, and the bank between the drive and the garage blocks, would not be harmful. They do not play an important role in townscape terms and, due to their steepness, they have become overgrown and forgotten, rather than being seen as landscaped areas.
 10. The proposed dwelling would not appear as a contrived addition to the street scene. This is a scheme that responds appropriately to the site's constraints and makes best use of land in a sustainable location. The size of the site would provide an appropriate level of parking and garden provision and, as such, the proposed development would not appear cramped or overdeveloped. The resultant area of bank between the proposed house and the road could be used for landscaping by future occupiers. These are all factors that accord with the terms set out in Policy S2 of the Teignbridge Local Plan 2013-2033, adopted May 2014 (LP).
 11. Although the proposal would result in the loss of the link between No 5 and Higher Coombe Drive, via its existing driveway, it would still have a pedestrian link to the road. This is currently overgrown, but I was able to see the gap in the safety railings along the road above the site where it emerges. It would also have an alternative pedestrian route to the local road network via Rocky Lane. Furthermore, No 5 would also be provided with a vehicular access at the level of the garage blocks. It would not, therefore, suffer from a lack of connectivity.
 12. Although the built form on the lower side of Higher Coombe Drive in the vicinity of the appeal site is fairly uniform, I do not find that there is a need for the proposed dwelling to slavishly follow this. Its effect would be mitigated by its position, which is not prominent, and by the presence of dwellings of differing designs on the opposite side of Higher Coombe Drive.
 13. For the above reasons, my finding on this main issue is that the proposed dwelling would not harm the character and appearance of the area. It would, therefore, accord with the sustainable development criteria set out in Teignbridge Local Plan 2013-2033 (Local Plan) Policy S1, and its design would

respond to the characteristics of the site and its wider context in accordance with the terms of Policy S2 of this Plan.

Integrity of the SPA and SAC

14. The appeal site lies within 10kms of the SPA and SAC. These are European Sites of Nature Importance and are subject to protection under the Conservation of Habitats and Species Regulations 2010. The former qualifies through its overwintering populations of Avocet and Slavonian Grebe and as a site supporting an internationally important assemblage of birds. The latter as its dune habitat supports a population of petalwort, a qualifying plant.
15. As such, Regulation 61(5) imposes a duty on me, as the 'competent authority', to consider whether any proposal may have a significant effect on such areas, either alone or in combination with other plans and projects. In 2018 the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage¹. This is a responsibility that now falls to me as the competent authority.
16. The SPA and SAC are important recreational and economic resources. They are well frequented by the public and it is likely that occupants of the proposed development would visit them. In this regard, the evidence before me is clear that the proposal, particularly when combined with other development in the area, would have a significant effect on these habitat designations through increased disturbance arising from recreational activity.
17. Policies EN9, EN10 and EN11 from the Local Plan seek to protect important habitats and species. Within this policy framework, the Council's strategy requires contributions to be made that would mitigate the adverse effects that would arise from residential development.
18. Mitigation of these impacts can take the form of access management within the European sites, or provision of substantial alternative recreation locations to draw users away from the European sites. In many cases a financial contribution per new house will be acceptable. Here, the Council through its joint strategy with neighbouring authorities has identified that a contribution of £800 would be required to mitigate the effects of the proposed development.
19. An undertaking that was made pursuant to S111 of the Local Government Act 1972 and S106 of the Town and Country Planning Act 1990 was submitted to the Council. In this, the appellant undertakes to pay the required sum before commencing the development, should permission be granted.
20. Natural England was consulted on this matter. It concluded that the proposal would result in harm to the SPA and SAC, but that, subject to this contribution being secured, this harm would be mitigated. I give its views great weight.
21. In the light of the above, I find that the undertaking would ensure that the required payment would be secured and that this would be used to mitigate the adverse effects of the development that would otherwise arise. Therefore, the proposed development would not harm the integrity of these protected habitats in accordance with the terms of Local Plan Policies EN9, EN10 and EN11.

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

Conditions

22. I have considered the conditions suggested by the Council against the terms of paragraph 55 of the Framework. The appellant had the opportunity to comment on these but has not done so.
23. In addition to the statutory time limit condition, I agree that a condition is required requiring compliance with the approved plans, in the interests of clarity. A condition relating to external finishes is required in the interest of visual amenity. However, I have omitted reference to a meter box which might not actually be required for the dwelling and, in any event, I find to be unnecessarily onerous. I have also slightly amended its wording to reflect the fact that the Council would accept samples of external materials.
24. I agree that the proposed conditions relating to the provision of parking for the existing and proposed dwellings are necessary to ensure that parking is provided for both dwellings.
25. Given the relatively small size of the site, which is not subject to any landscape or townscape designations, and that this is an application for a single dwelling, the proposed landscaping condition is not necessary. This is a matter that can be left to the dwelling's future occupants. I have not been provided with evidence, including relevant policies, to show that the Council's proposed conditions 3, 4, 7 and 8 (relating to surface water drainage, bin storage, boundary treatments and bird and bat boxes, respectively) are necessary. Therefore, I have not attached them in my decision.
26. Lastly, the Government's Planning Practice Guidance advises that conditions withdrawing permitted development rights "will rarely pass the test of necessity and should only be used in exceptional circumstances". In this instance, I have not been provided with the required justification for such a condition.

Conclusion

27. In the light of the above, and having taken all matters raised into account, I allow the appeal.

Roy Curnow

INSPECTOR

SCHEDULE OF 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: S1; PL2 Rev C; PL3 Rev C; and PL4 Rev C.
- 3) Prior to the approved dwelling reaching damp proof course level, full details of the following external features shall be submitted to and approved in writing by the Local Planning Authority:

External materials (details or samples of materials)

Eaves and rainwater goods (details)

Windows and doors (including associated reveals, cills and lintels) (details)

Any external ducting, flues and vents (details)

The development shall be carried out entirely in accordance with the approved details and/or samples.

- 4) The proposed parking bay to the existing dwelling, as shown on the Proposed Site Plan (drawing number PL2 Rev C) shall be provided prior to the commencement of construction of the new dwelling and thereafter permanently retained for the parking of vehicles for the existing dwelling at 5 Higher Coombe Drive.
- 5) Parking facilities for the new dwelling shall be provided in accordance with the Proposed Site Plan (drawing number PL2 Rev C) prior to the initial occupation of the dwelling hereby permitted and thereafter permanently retained for the parking of vehicles.

END OF SCHEDULE