
Appeal Decision

Site visit made on 8 October 2019

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Appeal Ref: APP/X1165/W/19/3226831

Land to rear of Broadway, Dartmouth Road, Brixham TQ5 0LH

- 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 A Davis of ADPAD against the decision of Torbay Council.
 - The application Ref P/2018/0837/MRM, dated 10 August 2018, was refused by notice dated 23 January 2019.
 - The development proposed is described as for reserved matters relating to P/2015/0097 (development of up to 10 dwellings and associated infrastructure with all matters reserved other than access.) Tenth unit only.
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Decision

1. The appeal allowed and planning permission is granted for reserved matters relating to P/2015/0097 (development of up to 10 dwellings and associated infrastructure with all matters reserved other than access.) Tenth unit only at Land to rear of Broadway, Dartmouth Road, Brixham TQ5 0LH, in accordance with the terms of the application, Ref: P/2018/0837/MRM, dated 10 August 2018, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr A Davis of ADPAD against Torbay Council. This application is the subject of a separate Decision.

Procedural Matters

3. I have amended the original description of development to reflect that provided within the Council's decision notice and as stated at section E of the appeal form in the interests of accuracy and consistency.
4. The revised National Planning Policy Framework (the Framework) was published in February 2019 and, as such, references to the Framework in this decision therefore reflect the revised Framework as published in February 2019.

Main Issues

5. The main issues are:
 - Whether or not the proposed development would provide adequate living conditions for future residents with particular reference to overshadowing; and

- Whether or not the proposed development would provide adequate living conditions for future residents with particular reference to noise and disturbance.

Reasons

Living Conditions - Overshadowing

6. The eastern boundary of the appeal site is located adjacent to Dartmouth Road, with the site being positioned southeast of a Grade II Listed Building at the Weary Ploughman Public House. The site is bounded to the southeast by the dwelling known as Broadway, with playing fields associated with Churston Grammar School bordering the site to the west.
7. Within the north eastern section of the appeal site is located a group of trees comprising a mixture of species. Trees within this group are subject to a Tree Preservation Order. As part of the proposed introduction of ten residential units to the site, Unit 10 would be positioned close to this group of trees.
8. It is maintained by the Council that the appeal proposal would result in inadequate living conditions for future residents of this proposed unit due to the potential overshadowing effects of the nearby group of trees and that, consequently, there would be pressure to lop, top or remove these protected trees by future residents of this unit.
9. However, following the Council's refusal to grant permission for the proposal and during the course of the appeal, the appellant has provided an aboricultural report produced by Aspect Tree Consultancy Ltd which demonstrates that, by reason of the orientation and location of Unit 10 south and west of the tree line, the relevant protected trees would not overshadow this dwelling and therefore would not impact on the living conditions of future residents.
10. Furthermore, the appellant's aboricultural report maintains that by a cycle of regular pruning of certain trees, the living conditions of future residents with regards to amenity space would be preserved, by ensuring that there is adequate separation distance between the trees and the proposed residential unit. The appellant's aboricultural report further concludes that an Aboricultural Method Statement be agreed with the Local Planning Authority prior to commencement of the development.
11. In this regard, I conclude that, on the basis of the evidence before me, the proposal would not result in harm to the living conditions of future residents with reference to overshadowing. Furthermore, I conclude that following approval of an Aboricultural Method Statement, adequate separation distance between the group of trees and the proposed residential unit would be maintained by pruning and that therefore it would be unlikely that there would be pressure to lop, top or remove the protected trees.
12. Accordingly, the proposal would not conflict with Policies DE1 and DE3 of the Torbay Local Plan (2015) (the Local Plan) which, amongst other things, seek to ensure that development integrates with existing trees and that development provides a good level of amenity for future residents.

Living Conditions – Noise and Disturbance

13. The proposed Unit 10 would comprise a dwelling at first floor level with parking for vehicles being located underneath the proposed residential accommodation. In this regard, it is maintained by the Council that due to the accommodation being positioned above these car parking spaces, and by reason of the proposed siting of a further car parking space adjacent to this residential unit, there would be harm to the living conditions of future residents due to noise and disturbance from vehicles.
14. In this respect, I conclude that, by reason of the accommodation being located at first floor level and therefore away from the sweep of vehicle lights entering and exiting the relevant parking spaces, the living conditions of future residents would not be harmed with regards to disturbance caused by vehicle lights. Furthermore, the evidence before me confirms that the likely number of vehicle trips to and from the site would be low and that there are other examples of such arrangements where car parking spaces are located beneath residential accommodation within the wider surrounding area. Consequently, and by reason of the combination of these factors, I conclude that there would be no significant harm in relation to living conditions of future residents with regards to noise and disturbance.
15. Finally, in this regard, the Council's Officer Report indicates that such car parking arrangements would demonstrate that the proposal would represent overdevelopment of the site. However, in my view I consider that the proposed parking arrangement would be acceptable and would make good use of the space which is available.
16. For the above reasons, the proposal would not conflict with Policy DE3 of the Local Plan which requires that development be designed to provide a good level of amenity for future residents. Furthermore, the appeal proposal would not conflict with Policy DE1 of the Local Plan which, amongst other matters, seeks to ensure that developments are designed to make best use of space.

Other Matters

17. Within the Council Officer's Report, reference has been made to Policy E7 of the Brixham Peninsula Neighbourhood Plan 2012-2030. Whilst not referred to in the Council's Decision Notice, I have had regard to this policy but conclude that, for the same reasons given above in relation to the main issues, the proposal would be unlikely to result in pressure to remove or lop the protected trees. Consequently, the proposal would comply with the provisions of policy E7 of the Neighbourhood Plan which aims to protect landscape features such as the protected trees.
18. In addition to the above, the Officer's Report refers to the proposed use of artificial slates on the roof of the proposed Unit 10 which would not be consistent with the use of natural slate elsewhere throughout the development of the appeal site. In this regard, I conclude that in the interests of ensuring that the quality of design is consistently maintained throughout the site, it would be reasonable that all the dwellings within the appeal site would use natural slate on their respective roofs. In this instance such measures can be adequately controlled through conditions as described below in this decision.

19. Further to the above, the appeal site is located close to a Grade II Listed Building. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard is had to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest it possesses. In this regard, The Council's Officer has concluded that the proposal would not harm the significance of the Grade II Listed public house, and I have no reason to disagree with this assessment.

Conditions

20. I have considered the planning conditions suggested by the Council in light of paragraph 55 of the Framework and the advice in the Planning Policy Guidance. In addition to the standard three year period implementation condition, which is a statutory requirement, it is necessary, in the interest of certainty and precision, to define the plans with which the appeal scheme should accord. I further find it reasonable to include conditions requiring details of any landscaping, boundary treatments and roof materials be approved by the Local Planning Authority, in the interests preserving the character and appearance of the surrounding area.
21. Further to the above, in the interests of protecting the environment and preserving the character and appearance of the surrounding area, I also find it reasonable and proportionate to include a condition requiring that an Arboricultural Method Statement be submitted and approved by the Local Planning Authority prior to commencement of development and that storage of refuse and recycling materials be provided in advance of occupation of the proposed development. The wording of the pre-commencement conditions have been agreed by the appellant.

Conclusions

22. For the reasons given above, the appeal succeeds and planning permission granted subject to the conditions identified.

A Spencer-Peet

INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.
- 2) The development hereby approved shall in all respects accord strictly with drawing numbers: 619-002, 619-057, 619-070, 1191-0500, 1191-0700, 1191-0701, P2018-0837-1 received by the Local Planning Authority on 10 August 2018 and tree report: 04116 AIA received by the Local Planning Authority on 12 September 2018.
- 3) Prior to the commencement of development, a detailed Arboricultural Method Statement, which shall include a tree protection plan, shall be submitted to and agreed in writing by the Local Planning Authority. Development shall be undertaken in accordance with the approved details.
- 4) Prior to commencement of development, details of the proposed roofing materials to be used in the construction shall be submitted to and agreed in writing by the Local Planning Authority. Development shall be undertaken in accordance with the approved details.
- 5) The development shall not be occupied unless and until there has been submitted to and approved in writing by the Local Planning Authority full details of a hard and soft landscaping scheme including details of boundary treatments. These works shall be carried out as approved. Any trees or plants which, within a period of five years from the completion of development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.
- 6) Prior to the first occupation of the development hereby permitted, provision shall be made for the storage of refuse and recycling awaiting collection according to details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.
- 7) The dwelling hereby approved shall not be occupied or brought into use until the parking spaces and manoeuvring area detailed on the approved plans has been provided in full. These elements shall thereafter be retained for the use of the associated dwellings for the life of the development.