



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: 12th November 2019

Appeal Ref: APP/X1165/W/19/3224748

101 Braddons Hill Road East, Torquay, Torbay TQ1 1HF

- 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 OJ Developments Limited against the decision of Torbay Council.
 - The application Ref P/2018/1135, dated 12 November 2018, was refused by notice dated 7 January 2019.
 - The development proposed is a single new dwelling with associated garden and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal was lodged prior to the publication of the most recent version of the Government's National Planning Policy Framework, (February 2019). However, I am satisfied that both parties have had a chance to comment on its comments and I have taken it into account.

Main Issues

3. The main issues are:
 - (i) whether the proposal would preserve or enhance the character and appearance of the Torbay Harbour Conservation Area (THCA);
 - (ii) the effect of the proposed development on flood risk;
 - (iii) the living conditions of future occupiers, with particular regard to garden space/external amenity space provision; and the effect of the proposal on the living conditions of the occupiers of 103 Braddons Hill Road East with particular regard to convenience of access to parking; and
 - (iv) the effect of the proposed development on highway safety.

Reasons

Character and Appearance

4. The appeal site is a narrow lane that runs southwest from the lower part of Braddons Hill Road East, between Numbers 101 and 103 in this road. It was formerly an access to a commercial site, which has been developed for housing. It lies close to the heart of the town, within the THCA, a designated heritage asset. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty on decision-makers to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

5. This duty is reflected amongst the terms of Policy SS10 of the Torbay Local Plan 2012-2030, adopted December 2015 (the Local Plan). Paragraph 193 of the National Planning Policy Framework (the Framework) sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
6. The Torquay Harbour Conservation Area Character Appraisal, September 2004, (the Appraisal), describes the character and appearance of the THCA, dividing it into a number of character areas. Each of these differs but contributes to the character and appearance of the THCA as a whole. The site lies within Character Area 4 'Braddons Hill Road East & Lower Torwood'.
7. The Appraisal describes the character area as being characterised by a number of indifferent mid-late 20th century housing developments and an industrial depot and a massive multi-storey car park. However, there are two grade II listed buildings close to the site – a church and the Torquay Museum on Babbacombe Road. Furthermore, a map of 'Historic Buildings' that was submitted by the appellant with a copy of the Appraisal, describes the blocks in which Nos 101 and 103 lie as "other key buildings and building groups of architectural importance or which make a significant contribution to the townscape".
8. I saw that although there are some buildings in this part of the CA that add little to its character and appearance, or even detract from it, overall this is an area that is defined by the quality of the architecture of the listed buildings and other key buildings. Although fairly narrow and under-utilised, the lane provides a valuable space between the larger period properties that flank it.
9. It is proposed to erect a dwelling towards the end of the lane away from Braddons Hill Road East. It would be relatively long and narrow, taking up the width of the lane. It would have accommodation over two floors, that at first floor level being set within its roof space. It would present a gable towards the road that would be largely rendered, with a small flat roofed porch finished in aluminium panelling. It is described as having an innovative design, providing a modern interpretation of local architecture.
10. Due to its very small-scale and position towards the end of the lane, the proposed dwelling would sit in stark and harmful contrast to the large period properties, set close to the road, amongst which it would be seen. The proposed dwelling would appear as a cramped form of development that would be crammed into this very limited site. Its design would, therefore, appear at odds with the prevailing form of development on Braddons Hill Road East. Although being set back from the public vantage point on Braddons Hill Road East, it would be clearly seen from there and would not be so discreet as to mitigate these shortcomings.
11. For the above reasons, I find that the proposal would fail to preserve or enhance the character or appearance of the CA. It would therefore fail the statutory test and be contrary to the terms of Local Plan Policies SS10 and DE1. Amongst its terms, the latter requires development proposals to be well-designed and respect and enhance Torbay's special qualities.
12. The proposal would have a negative effect on the significance of a designated heritage asset but would result in "less than substantial" harm in the words of

paragraph 196 of the National Planning Policy Framework, (the Framework). Nevertheless, such harm needs to be given considerable importance and weight.

13. As set out in the Framework, where a proposal would result in less than substantial harm to the significance of a designated heritage asset this harm should be weighed against the public benefits of the proposal. In this respect, the appellant sets out that this scheme would provide a dwelling, on previously developed land in a sustainable location where there is an acknowledged shortage in the supply of housing land. Although these are all factors that weigh modestly in support of the proposed development, they would not, in my view, outweigh the harm that I have identified.

Flood risk

14. The site lies within Flood Zone 1, which is at low risk of flooding. However, Local Plan Policy ER1 sets out that the whole of Torquay is in a Critical Drainage Area (CDA) and that a Flood Risk Assessment (FRA) is required for all development proposals.
15. Drainage from sites within the CDA must be limited to greenfield run-off rates for the 1 in 10-year storm event, with attenuation so that there is no risk of flooding to adjacent properties for the critical 1 in 100-year storm event plus 40% for climate change. The required FRA would need to show how this could be achieved on the site.
16. As the submitted FRA was for a different form of development that is not comparable to the appeal proposal and, therefore, not relevant. A FRA should demonstrate how a scheme would be resilient to flood risk for its lifetime as well as showing how it would not increase flood risk elsewhere. The evidence appears to be insufficient to demonstrate this in respect of the appeal proposal, which is thus contrary to policy ER1.
17. The Council's drainage engineer did not object to the principle of the proposed use of surface water running to infiltration and thence to the main sewer system. I am told that a connection could be made via the adjacent residential development, and that this is an issue that could be controlled through the use of a condition.
18. On the basis of the information before me, notwithstanding that the site currently has an impermeable surface, I cannot conclude that it would be possible to provide the necessary degree of attenuation before discharge to the main system. Given this doubt, such a condition would fail the test of reasonableness, set out in paragraph 55 of the Framework. In this case, the Council and nearby landowners might be prejudiced were I to attach such a condition, without knowing whether it was feasible to provide a system that could reach the required standard. In the circumstances, it would also be likely to fail the test of precision.
19. Given the above reasoning, and in the absence of a FRA, it has not satisfactorily been shown that flood risk in the CDA would be addressed by the proposed development. Therefore, it is contrary to the terms of Local Plan Policy ER1.

Living Conditions

Future Occupants of the Proposed Dwelling

20. The rear garden area that is proposed to serve the dwelling would be modest in size. However, I am of the view that it would be suitable in size to serve this single bedroom property. Furthermore, the Council accepts that the proximity of open spaces and beaches would be beneficial to future occupants and would provide compensation for its size.
21. In addition, although there would be high buildings close to it, without any substantive evidence to demonstrate otherwise, the dwelling would be likely to receive a good amount of sunlight and daylight. Nor do I find that walls would result in a harmful degree of enclosure to the garden.
22. Whilst vehicles would have to reverse along the lane, this would not be a contrived access. I do not find that the Council has substantiated its concerns in this regard and find that the access arrangements would be suitable to serve the dwelling.
23. For the above reasons I find that the proposed dwelling's garden and means of vehicular access would be appropriate and would not have an adverse effect on the living conditions of future residents. The scheme would, therefore, accord with the terms of Local Plan Policy DE3 that require development proposals to provide a good level of amenity for future residents.

Existing Occupants of No 103

24. There is a garage to the rear of No 103, which is accessed via the lane. The Council's concern that its users would lose room to manoeuvre when accessing or exiting the garage as a result of the parking space proposed in this scheme. I have limited evidence before me on this matter. However, the red line on the proposed drawings indicates that the appellant owns the lane and its statement sets out that whilst there is a right of way to and from the garage at No 103, there is no such right beyond it. As a result, it is the appellant's contention that users of the garage could presently be stopped from using that part of the lane to manoeuvre. The Council does not refute this and I have no reason to either.
25. On this basis, I find that the proposal would not have any greater impact on the convenience of access for users of the garage than would be the case if the access beyond the garage were to be stopped up. It would not therefore have any greater effect on the amenities or living conditions for these users of the garage.
26. On this issue, for the above reasons I find that the proposal would not unduly impact upon the amenity of the occupants of No 103 in accordance with the terms of Local Plan Policy DE3.

Highway safety

27. The Council's Highways Standing Advice states that on-site turning provision will be required where an access is, amongst other things, onto a classified road. Its Highways Officer advised that Braddons Hill Road East is identified as a classified highway. Amongst the overall aims of Local Plan Policy TA2 is that development proposals should ensure an adequate level of highway safety.

28. The appellant has provided a copy of the decision notice approving a planning application for the "change of use of land and works to form domestic car parking space" (Council reference P/2016/0458). Although I have not received a copy of the plans, as this has been referred to in the 'Relevant Planning History' section of the Officer's report, it is likely that it relates at least part of the appeal site. Although the period for the commencement of that development has passed, the Council has not countered the appellant's assertion that this permission remains extant.
29. There was no turning area included within that approved scheme. I note that the Officer's report into that application concluded that for reasons relating to its historic use, it was considered that it would be difficult to defend a refusal of planning permission. I also note that the report refers to the relevance of Local Plan Policy TA2 in that decision.
30. Notwithstanding that the Council's Highways Standing Advice post-dates the decision on planning permission P/2016/0458, I find that the above factors carry significant weight. This is especially the case with the 'fall-back' position represented by the development approved under that planning permission, which is still extant.
31. Given the above, I find that the proposed development would not have a harmful effect on highway safety and that it would accord with the terms of Local Plan Policy TA2.

Other Matters

32. The Council's decision does not refer to harm to the setting of the Grade II listed church and museum, within which the site lies. Notwithstanding this, section 66(1) of the Planning and Listed Buildings Act 1990, Act requires me to pay special regard to the desirability of preserving their settings. The proposed dwelling would be close to these buildings and set a higher level than them. However, as a result of its small scale and traditional form it would not have an adverse effect on their settings. In this respect, I have also had regard to the close proximity between these listed buildings and the recent residential development on land to the southwest of the appeal site.
33. Although the appellant submitted amended plans, given my finding on the proposed garden space I need not consider these. The appellant also drew my attention to other developments where planning permission had been granted. However, the Ellesmere Road case seems to relate to the erection of a replacement building and that at Hoxton Road is not in a conservation area. Neither is therefore directly comparable to this appeal proposal and, in any event, each proposal has to be assessed on its individual merits.

Planning Balance and Conclusion

34. I have found that the proposed development would fail to preserve the character and appearance of the THCA and that there would be no public benefits that would outweigh the less than substantial harm to the significance of this designated heritage asset. I have also found harm in respect of flood risk. I have, however, found that the proposal would provide adequate living conditions for any future occupiers and would not harm those of the existing users of the garage, the occupiers of No 103.

35. As the Council cannot demonstrate a five year housing land supply, the terms of Paragraph 11 of the Framework, which sets out the presumption in favour of sustainable development, are pertinent. For decision making, this means that where policies are out of date, which according to Footnote 7 includes where the Council cannot demonstrate a five year supply of deliverable housing sites, planning permission should be granted unless: the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Footnote 6 of the Framework identifies that its policies relating to designated heritage assets are ones that protect areas or assets of particular importance. On the basis of my findings, the application of these policies, in addition to the harm I have found in respect of flood risk, provides a clear reason for refusing planning permission for the development proposed.
36. Accordingly, for the reasons set out above, and having taken all other matters into account, the appeal is dismissed.

Roy Curnow

INSPECTOR