



Appeal Decision

Site visit made on 29 November 2019

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Appeal Ref: APP/X1165/W/19/3235527

15 Ormonde Cottage, Newton Road, Torquay TQ2 5DB

- 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 Ms Foreman against the decision of Torbay Council.
 - The application Ref P/2018/1213, dated 30 November 2018, was refused by notice dated 18 February 2019.
 - The development proposed is for 12 No. 2 Bedroom Townhouses.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the Council's decision on the planning application, the Torquay Neighbourhood Plan (TNP) passed the referendum stage and the adopted version of the TNP has been submitted with the appeal. For the purposes of decision making, the TNP therefore now forms part of the development plan. The main parties had the opportunity to comment on the relevance of the TNP to the appeal proposal in their appeal statements. In reaching my decision, I have taken the comments received into account and have had regard to the TNP.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the surrounding area and the setting of the Torre Conservation Area (CA);
 - the effect of the proposed development on flood risk;
 - the effect of the proposed development on highway safety;
 - whether the living conditions of the occupants of the proposed dwelling would be acceptable, with particular regard to outside space and vehicle parking; and
 - whether the proposed development makes adequate contribution towards the provision of affordable housing.

Reasons

Character and appearance

4. The appeal site is situated in an elevated and prominent position above Newton Road and opposite the Torre CA. A relatively large wall runs along the frontage.

The site previously contained a detached dwelling at one end, set forward of the adjoining property. The surrounding area generally contains a mixture of semi-detached and detached pitched-roof properties set in relatively spacious plots. Given the proximity to the boundary of the Torre CA, the site is within the setting of the designated heritage asset, which contains various large, Victorian villas near to the site. The significance of the CA stems, in part, from these generally elegant, well-proportioned buildings which, although some may have been altered, extended and lost some original features, contribute positively to the character and appearance of the CA and the locality.

5. The wider area contains a variety of building sizes, types and forms, including terraces and flat-roof properties. However, while some examples are not a significant straight-line distance away, such as the Torre Marine Development to the east, they are mostly on different roads with different characters, and are not visible from the site's immediate context. Accordingly, they do not form part of the site's visual setting and the character and appearance of its locality.
6. Due to topography and the site's elevated nature, the development would be a notable feature in the locality. Although responding to the linear nature of the plot, its terraced form and the limited spacing around and between the buildings would create a cramped environment. The terraces would also not relate well to the immediate surroundings and would therefore not integrate with the streetscene.
7. The flat roof would be behind a parapet and may not be particularly visible from directly in front of the site. It has been proposed in order to reduce the size and bulk of the roof with regard to the living conditions of adjoining occupiers. Nevertheless, it would be evident from both directions along Newton Road, particularly given the development's elevated and set forward position. Accordingly, the flat roof would be relatively notable and would be experienced as an incongruous feature that does not reflect its surroundings.
8. The dwellings would have a traditional design and features would take cues from surrounding buildings. However, their relatively narrow widths would exacerbate the development's cramped appearance and conflict with the well-proportioned and more spacious appearance and setting of built form in the locality. Accordingly, the development would be read as an incongruous addition that would fail to respect the character and appearance of the surrounding area and detract from the setting of the Torre CA and its significance as a designated heritage asset.
9. The proposed terraces would be slightly lower and set slightly further back than the now demolished dwelling and the previously approved four flats on the site. However, extending across the majority of the plot, the development would have a significantly greater overall mass and scale and would cover a much greater extent of the site with less spacing and visual relief between built form. Comparisons between them and development are therefore not particularly relevant.
10. For the above reasons, I conclude that the proposed development would harm the character and appearance of the surrounding area and the setting of the Torre CA. I therefore find that it conflicts with Policies DE1 and SS10 of the Torbay Local Plan 2012-2030 (TLP) and TNP Policy TH8. Amongst other aspects, these require well-designed development that integrates with the existing streetscene, contributes to local character, reflects the identity of its surroundings, and sustains and enhances designated heritage assets.
11. The Council also alleges a conflict with TLP Policy H1 with regards to this matter. However, my attention has not been drawn to any words in this policy – which

covers the provision of new homes in the district – that are relevant to this main issue. The policy has therefore not been determinative in my decision.

12. In harming the setting of the Torre CA, I find that the appeal proposal would, in the words of the National Planning Policy Framework (Framework), result in less than substantial harm to a designated heritage asset. In such circumstances, the less than substantial harm should be weighed against the public benefits. The development would provide some public benefits including adding to the area's housing stock, which is in short supply. It would therefore help to address the Council's lack of a five year housing supply, and I give significant weight to this. However, given the scale of the development, the extent of the benefits would be relatively modest and do not outweigh the great weight given to the conservation of designated heritage assets.

Flood risk

13. The site has a high risk of surface water flooding and is located within a Critical Drainage Area. The Flood Risk Assessment indicates that, due to topography and ground conditions, surface water would be disposed of via discharge to a combined sewer at a controlled rate to be approved by the water company.
14. TLP Policy ER2 seeks to minimise the generation of increased run-off and Policy ER1 sets out that development should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere. The supporting text to ER1 provides further detail, indicating that the appeal proposal should achieve greenfield performance for surface water discharge into the combined sewer of up to a maximum 1 in 10 year discharge. It also sets out that all surface water should be managed safely in conditions up to a 1 in 100 event plus an allowance for climate change.
15. It has been put to me that a planning condition could be used to secure a detailed drainage design at the site and I recognise that South West Water did not object. However, without any details indicating that an acceptable drainage performance could be achieved, there is no certainty that the development would not increase the risk of flooding elsewhere. Accordingly, and given the site has a high risk of surface water flooding and is within a Critical Drainage Area, it would not be reasonable to leave all drainage matters to a condition.
16. My attention has been drawn to another site in the district where a planning condition secured drainage details. However, the evidence before me indicates that some drainage details were submitted as part of the planning application for that scheme and, as set out in the associated Officer Report, the Council required further drainage details before granting planning permission. This example does not therefore lead me to a different conclusion. Consistent with that scheme, I note that the Council's spatial planning engineer also indicated that details setting out how this appeal proposal would achieve the required drainage performance must be supplied before the grant of planning permission.
17. For the above reasons, I conclude that the proposed development would not minimise the generation of increased run-off, maintain the prevailing water flow regime on-site, including an allowance for climate change, nor ensure that the risk of flooding is not increased elsewhere. Accordingly, I find that it conflicts with TLP Policies ER1 and ER2.

Highway Safety

18. The site fronts Newton Road, which is a relatively large and busy highway and is identified by the Highway Authority as a key strategic route. Newton Road is on a

main bus route and has some unrestricted on-street parking spaces, including immediately outside the site. The site is reasonably close to Torre train station and Brunswick public car park. At approximately 200 metres away, the boundary of Torquay town centre, as defined in the development plan, is also nearby.

19. Amongst other aspects, TLP Policies TA1 and TA2 require development to incorporate appropriate levels of car parking and satisfy the transport needs of the development, while Policy TA3 sets out that development is expected to meet the guideline requirements of Appendix F of the TLP. For the proposed dwellings, this is two parking spaces per unit. On this basis, the development should provide 24 off-street parking spaces. The supporting text of Policy TA3 indicates that the Council's parking standards incorporate consideration of the need to balance the promotion of a range of non-car transport options and the likelihood of residents owning and using cars. However, the supporting text also sets out that the Council will take a site-specific approach and that there is flexibility with regards to the guideline parking requirements.
20. My attention has been drawn to TNP Policy TH9. Amongst other things, it requires that housing developments meet the TLP guideline parking requirements unless it can be shown that there is not likely to be an increase in on-street parking arising from the development or that the development is within the town centre and an easy walk of a public car park available to residents.
21. The site is accessible by a range of transport modes and given its proximity to the boundary of the town centre, it is relatively close to various services and facilities. Accordingly, occupiers of the new dwellings would not be reliant on the private car for all of their journeys. Local and national policy also seek to promote a reduction in the private car and encourage travel by other modes, and the lack of on-site parking provision may encourage lower car ownership.
22. Be that as it may, it is likely that some occupiers of the development would own a car given the size of the dwellings and that there is no mechanism to prevent them owning cars. The development would therefore be likely to lead to an increase in parking demand in the locality.
23. Although I have little substantive evidence which indicates the level of demand that would be generated by the development, it is likely to be relatively significant given the scale of the proposal and in the context of the locality. With the lack of parking restrictions in the area, the additional parking demand would also not be controllable.
24. There is little evidence before me that the surrounding highway network has significant spare parking capacity. However, due to the surrounding area's relatively built-up context and despite there being no parking restrictions on Newton Road, it seems to me that existing demand for parking is likely to be relatively high. Consequently, while the site's location suggests that a reduction in parking provision from the Council's standards may be acceptable, a complete absence of parking for the development indicates that it could, given its scale, result in increased parking demand to the point that highway safety would be harmed. Although it is suggested that this could be cost effectively mitigated to an acceptable degree, nothing has been put forward to demonstrate this.
25. With the evidence before me indicating that Brunswick car park operates on a pay and display basis, it seems to me that residents are unlikely to wish to use the car park for long periods. Its presence does not therefore lead me to a different conclusion. Although close to it, the site is also not within the defined town centre.

26. The bin stores would be located within the site, behind an external entrance gate and two doors. On this basis and with little evidence to indicate otherwise, the bins would have to be left on the highway on collection day. However, the leaving out of bins for 12 dwellings would be likely to hinder pedestrian movement. With the footway running along the frontage of the site being relatively narrow, pedestrian safety would therefore be negatively affected.
27. The development does not secure space for a refuse collection vehicle. This indicates that a refuse vehicle serving the site would have to wait on the highway. However, the surrounding area is relatively built-up and I observed on my site visit that several properties are accessed off Newton Road. It seems to me that the development would therefore not result in a significant change from the existing situation with regards to a refuse vehicle collecting bins from the highway.
28. My attention has been drawn to other nearby developments with no off-street parking provision. However, those schemes involve significantly fewer proposed dwellings and are therefore not particularly comparable to the appeal proposal. It has also been put to me that the Council previously accepted the combined waste and cycle storage area and that their objection to waste collection arrangements for the appeal proposal is therefore inconsistent. Be that as it may, this is not determinative as to the acceptability of the collection arrangements for waste generated by the appeal proposal. Accordingly, I have determined the case on its own merits and on the evidence before me.
29. For the above reasons, I conclude that the proposed development would harm highway safety. I therefore find that it conflicts with TLP Policies TA1, TA2 and TA3 and TNP Policy TH9.
30. The Council also alleges a conflict with TLP Policy SS6 with regards to this matter. However, my attention has not been drawn to any words in this policy – which covers strategic transport improvements – that are relevant to this main issue. The policy has therefore not been determinative in my decision.

Living conditions

31. Setting out that all development should provide a good level of amenity for future residents, TLP Policy DE3 requires residential development to, amongst other aspects, provide useable outdoor amenity space and satisfactory provision for off-road parking. For external amenity spaces, the supporting text states that new dwellings should make provision where possible, provides a guideline of a minimum of 55 square metres for houses and includes reference to communal provision. TLP Policies H1 and TA3 require development to provide high quality living environments and appropriate provision of car parking respectively.
32. Each of the dwellings would have approximately nine square metres of private outdoor space. Although this would fall short of the Council's guideline amount for dwellings, communal garden areas totalling approximately 200 square metres would be provided. In total, a reasonable amount of outdoor space would therefore be available to occupiers of the development, and these spaces would be relatively secure and safe given the site would not be accessible to the public.
33. However, the communal garden areas between and at the ends of the terraces would be enclosed on three sides by the relatively high walls of the proposed dwellings and the higher land surrounding the site. They would also be separated into relatively small areas. Despite their south facing orientation and vistas, the communal spaces would therefore provide a poor quality outdoor environment which would not be particularly useable or appealing. It is not evident how this

could be acceptably mitigated and the presence of public open space elsewhere does not lead me to a different conclusion.

34. The proposed plans show a communal space to the rear of one of the terraces. However, it is not clear whether this area would be excavated to be level with the other proposed communal spaces or how it would be accessed if that part of the site was not excavated. I therefore place limited weight on this communal space providing a high quality environment.
35. The development would be likely to lead to an increased demand for parking in the surrounding area. I have little substantive evidence that this would necessarily result in an increase in neighbour disputes, anti-social behaviour or crime and disorder. However, the lack of off-street parking would mean that occupiers of the development would have to rely on parking their vehicles in surrounding streets. Due to the finite number of parking spaces in the vicinity of the site, the number of properties in the locality and the scale of the development, it is likely that the occupiers would often be unable to park close by. If occupiers were to regularly struggle to find space nearby and often found themselves parking some distance away, their living conditions could not reasonably be described as high quality.
36. It has been put to me that other developments in the locality have only communal gardens and limited or no private outdoor space. Although I note the submitted documents associated with the developments on Totnes Road and Lymington Road, I do not have the full details of those schemes before me. Consequently, I am unable to draw a direct comparison between them and this appeal proposal. I therefore give the examples limited weight and it is necessary to determine this appeal on its merits in any event.
37. The Council have not objected to the quality of the internal living environment of the proposed dwellings. The Officer Report also incorrectly states that the dwellings would not meet the Council's internal size standards. However, the provision of sufficient floorspace and the adequate internal living environment in each dwelling does not lead me to a different conclusion.
38. I have found that the appeal proposal would provide a safe environment and not create crime and disorder. It therefore does not conflict with TLP Policy DE1 and TNP Policy TH2, which seek that developments provide a safe environment and not create crime and disorder. However, for the above reasons, I conclude that the living conditions of occupants of the development would be inadequate, with particular regard to external amenity space and vehicle parking. I therefore find that it conflicts with TLP Policies DE3, H1 and TA3.

Affordable housing

39. TLP Policy H2 sets out that the Council will seek the provision of affordable housing, or contributions towards it, for relevant development. Although the evidence before me indicates that the main parties previously disagreed as to whether the proposed development triggered the affordable housing requirements of the TLP, the submitted documents – including the latest Design and Access Statement (dated February 2019) – indicate the appellant's willingness to provide two affordable housing units on-site and to secure these through a legal agreement. However, no such legal agreement has been submitted.
40. The evidence before me and the Framework's definition of previously developed land indicates that the whole of the appeal site cannot be described as brownfield/previously developed land. Accordingly, I am satisfied that the appeal proposal does need to provide affordable housing in order to comply with TLP Policy H2. However, without a legal agreement, the appellant's proposed provision

of two affordable housing units on-site cannot be secured. Consequently, I conclude that the proposed development would not make the necessary provision of affordable housing, contrary to TLP Policy H2.

Other matters

41. The Council cannot demonstrate a five year housing land supply. The Council's planning policies are therefore out of date according to paragraph 11d) and footnote 7 of the Framework. However, the Framework is clear that in such circumstances, 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. Designated heritage assets are included within the list of policies that protect areas or assets of particular importance and which provide a clear reason for refusing the proposed development. I have found that the development would harm the setting of the Torre CA. There is therefore a clear reason for refusing the development proposed.
42. I note that the appellant considers that the Council did not adopt a positive and proactive approach, did not provide heritage advice when requested, did not inform the appellant of the progress of the planning application or their concerns with it, and that the Council's decision is inconsistent with other decisions. However, I have limited my considerations to the planning matters before me, and I have determined the appeal on the submitted evidence.
43. My attention has been drawn to Planning Policy Statement 5 and its stated need for Councils to take account of expert advice in relation to heritage matters. Although that document has been superseded by the Framework, I am satisfied that the heritage advice the Council received was sufficient irrespective of its interim title.

Planning Balance

44. I have found that the development would harm the character and appearance of the surrounding area and the setting of the CA, would fail to ensure that the risk of flooding is not increased elsewhere, would harm highway safety, that the living conditions of occupants of the development would be inadequate, and that the required level of affordable housing would not be provided. Despite the shortfall in housing in the district and that part of the site was previously developed, these findings indicate that the development would not make effective use of land nor make optimal use of the site with regards to the Framework's provisions relating to achieving appropriate densities.
45. The development would provide 12 new energy efficient dwellings with sufficient internal floorspace. This would contribute to the supply of housing in the area. The dwellings would be located in an accessible area which is served by various facilities and services and places of work. However, the benefits of the appeal proposal do not outweigh the harm I have identified nor provide justification for development that conflicts with the development plan.

Conclusion

46. For the above reasons, the appeal is dismissed.

Tobias Gethin

INSPECTOR