



Appeal Decision

Site visit made on 16 December 2019

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2020

Appeal Ref: APP/X1165/W/19/3237090

Builders Yard, Blagdon Road, Blatchcombe, Paignton TQ3 3YA

- 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 R Davis against the decision of Torbay Council.
 - The application Ref P/2018/0850, dated 14 August 2018, was refused by notice dated 17 June 2019.
 - The development proposed is erection of new commercial buildings for use in association with Lawful use as a builders yard following the demolition of the existing buildings.
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Decision

1. The appeal is dismissed.

Application for costs

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

Main Issues

3. The main issues are:
 - Whether the location of the development would be acceptable having regard to the policies of the Development Plan;
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on highway safety;
 - The effect of the proposal on the biodiversity value of the area and a protected species, namely bats; and
 - The effect of the proposal on protected trees.

Reasons

Location of development

4. The appeal site benefits from a certificate of lawful use under Section 191 of the Town and Country Planning Act 1990 for its use as a sui generis builders yard. The reference of the certificate is P/2015/0072 and it is dated 14 July 2015. This certificate establishes a lawful fallback for a commercial use of the site, notwithstanding its countryside location.
5. The proposal seeks to introduce a greater extent of undercover storage/parking and an office and welfare block, albeit all to be used in

association with the use of the site as a builder's yard. Whilst the Council suggest that its legal team has verbally confirmed that the proposal would result in a change of use, the evidence points to a likely intensification and diversification of the use of the site within the same use class. In any case, this would not introduce an entirely new commercial use into the countryside given the lawful fallback.

6. Consequently, there is no conflict with Policy C1 of the Torbay Local Plan 2012 – 2030 (adopted 2015) (Local Plan) or Policy PNP1 of the Paignton Neighbourhood Plan (adopted 2019) (NP).

Character and appearance

7. The appeal site is a small parcel of land, broadly triangular shaped and with higher ground to its northern side. It is largely surrounded by hedgerows with trees, which offer a degree of screening from the roadside and in views from the wider surroundings. The haphazard collection of existing buildings on the site are small, single storey and are in a generally run-down condition.
8. The proposal seeks to replace the existing buildings with three new buildings, all single storey, albeit each with a larger footprint than the building it would replace. The arrangement of the buildings on site would also differ from the current configuration, with a large parking and turning area in the central space.
9. During my site visit I noted that excavations were in the process of taking place and that there were numerous level changes within and adjacent to the site that would need to be accommodated. Despite this, there is limited contextual information within the submitted plans to show how the buildings would be accommodated in relation to ground levels, or the need, or otherwise, for any retaining features.
10. The plans do however indicate that in certain places, the hardsurfacing and buildings would be in particularly close proximity to the hedgerow boundaries. This would result in the site appearing cramped, if indeed the proposal would fit in the manner suggested owing to the various level changes and potential need for retaining features.
11. The proposal presents an opportunity to remove the existing buildings which are in a poor condition and rationalise the buildings to improve the appearance of the site. However, there is insufficient evidence to be satisfied that the present proposal would satisfactorily accommodate the larger buildings and associated hard landscaping without unacceptable harm to the character and appearance of the area. It would involve permanent change to the site's characteristics with a greater collective mass of buildings, the impacts of which need careful consideration given the limited size of the site and the importance of its hedgerow boundaries. In such circumstances, I do not consider that the harm to the character and appearance of the area would be likely to be minimal, notwithstanding that the site benefits from a lawful use as a builders' yard.
12. The appellant's statement also indicates that the existing access would be widened to 6 metres. Given the modest extent of hedgerow removal required to facilitate this degree of widening, this would not result in undue harm or a noticeable increase in visibility of the site. However, it may be necessary to

remove further sections of hedgerow in order to improve visibility. If this were to be the case it would add to my concerns as the hedgerows enclosing the site are distinctive landscape features and their protection is key to preserving the area's character and appearance. Whilst additional landscaping would have a role to play, it would be unlikely to be adequate to ensure the maintenance of the area's characteristics.

13. For all the above reasons the proposal would harm the character and appearance of the area, contrary to Local Plan Policy DE1 and NP policy PNP1 which, amongst other things, seek to protect local identity and encourage well-designed development.

Highway safety

14. The access to the appeal site is gated but is narrow and well recessed, making it a largely unnoticeable feature forming part of the hedgerow. I note that the number of vehicular movements associated with the existing lawful use of the site is uncontrolled. However, the site is not particularly spacious and its capacity to accommodate vehicles will increase as a result of the proposal.
15. The plans detail the widening of the site's access to 6 metres and this improvement is intended to ease the access to and manoeuvrability of vehicles within the site. The proposal may well negate the need for cars to park on the highway. However, there is an acceptance that the proposal would increase the number of associated vehicular movements, even if that would not result in the material change of use of the site.
16. The national speed limit applies to the adjoining rural road. Owing to the topography and the alignment of the road, visibility for drivers emerging from the appeal site is constrained, particularly in a northerly direction. The Council's Highways Officer considers that visibility splays of 215 metres should be provided. However, such do not appear achievable within land owned by the appellant. Whilst the speeds with which cars pass the site may be below 60 mph due to the narrowness and curvature of the road, the appellant has not provided any evidence to support such an assertion. In the absence of such information it is not possible to be satisfied that visibility would be acceptable so as not to result in unacceptable risk to driver safety.
17. For all of these reasons, the proposal would prejudice highway safety and therefore conflicts with Local Plan Policies TA1 and TA2 which, amongst other things, seek to improve road safety and ensure an adequate level of accessibility and safety.

Protected species and biodiversity effects

18. The proposal would involve the removal of a small part of the roadside hedge to improve the access. However, I consider that this would be negligible and unlikely to cause any material harm to biodiversity. There would, however be the potential for further hedgerow removal to provide improved visibility. Whilst this is proposed to be less than the 10 metres required to trigger the need for a biodiversity survey, a greater length of hedgerow may need to be removed for reasons of highway safety.
19. A key concern of the Council in respect of biodiversity is the potential effects on the Strategic Flyway and Buffer of the South Hams Special Area of Conservation (SAC) which supports a population of Greater Horseshoe Bats.

20. The submitted 'Wildlife and Geology Trigger Table' suggests that no buildings are to be demolished as part of the proposal which would have otherwise triggered the need for the submission of a biodiversity assessment. Clearly the proposal does involve the demolition of three buildings contrary to this claim. Given the intended siting of the buildings and hardsurfacing, there may also be indirect pressures on existing trees and hedgerows which may affect the biodiversity value of the area and SAC. A biodiversity assessment has not been submitted. I do not therefore consider that sufficient information has been provided to be satisfied that harm would not arise to biodiversity or that appropriate mitigation could be provided. It would not be appropriate to seek to address this issue by planning condition until such potential effects are identified.
21. In the circumstances, and taking a precautionary approach, the proposal would harm the biodiversity value of the area and a protected species, contrary to Local Plan Policy NC1 which states that all development should positively incorporate and promote biodiversity features.

Protected trees

22. From the submitted evidence, the appeal site falls within the Blagdon Valley Tree Preservation Order (TPO) area (area A.9) which was confirmed in 1975. The appeal site is largely enclosed by hedgerow trees on three sides, although the existing small-scale buildings are situated in close proximity to some of these.
23. The appeal proposal would introduce development, including new hardsurfacing within close proximity of the hedgerow trees. Owing to the topography of the site and its surroundings, the root systems of the trees are likely to be beneath the areas of the site that would be hardsurfaced, above which the new buildings would be situated. Notwithstanding the existing lawful use of the site, in the absence of information on how the proposal would be developed without harm to the protected trees, the proposal would prejudice their future health and undermine their contribution to the character, appearance and biodiversity value of the area. Whilst a condition may be used to ensure the implementation of tree protection measures, it is necessary to ensure that such measures are capable of being implemented in the first instance in relation to the position of trees and proposed buildings and features.
24. The proposal would thus conflict with Local Plan Policy C4 which aims to ensure that new development retains and protects existing hedgerows, trees and natural landscape features wherever possible.

Planning balance and conclusion

25. I note that the appellant considers that the proposal would accord with Local Plan Policy SS3 which enshrines the presumption in favour of sustainable development as set out in the National Planning Policy Framework (the Framework). I also note that Aspiration 1 and Policy SS5 of the Local Plan seek to secure economic recovery and success, with support to be offered for employment proposals that sustain and increase job numbers. Whilst the proposal would facilitate the growth of an existing local business in accordance with the economic objectives of the Development Plan and

Framework, it would do so at the expense of the environmental objectives of the same.

26. The proposal would allow an enhanced use of an existing developed site and would result in economic and social benefits. However, these factors do not amount to material considerations that outweigh the conflict with the Development Plan and Framework, when considered as a whole.

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

Hollie Nicholls

INSPECTOR