

Appeal Decision

Site visit made on 15 June 2020

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2020

Appeal Ref: APP/P1133/W/20/3245707

2 Harts Close, Teignmouth TQ14 9HG

- 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 K Tooley against the decision of Teignbridge District Council.
 - The application Ref 19/01816/FUL, dated 29 July 2019, was refused by notice dated 2 December 2019.
 - The development proposed is for a new dwelling to side garden.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's Officer Report indicates that the appeal proposal is subject to the requirements of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) due to its proximity to designated nature conservation sites. In relation to this matter, the Council submitted its Appropriate Assessment of the planning application and the appellant submitted a Unilateral Undertaking (UU) with the appeal relating to a financial contribution to mitigate the effect of the proposed development on the designated nature conservation sites. I have determined the appeal on this basis, based on the submitted documents and evidence before me, and I cover the matter in more detail, as a main issue, below.

Main Issues

3. The main issues are the effect of the proposed development on:
 - designated nature conservation sites;
 - the character and appearance of the surrounding area; and
 - the living conditions of adjoining occupiers, with particular regard to overlooking and outlook.

Reasons

Designated sites

4. The appeal site is located within 10 kilometres of the Dawlish Warren Special Area of Conservation (SAC) and the Exe Estuary Special Protection Area (SPA) and Ramsar site. The evidence before me indicates that additional housing within 10 kilometres of these designated sites adds to the existing issues of damage and disturbance arising from recreational use at the sites. Alone

and/or in-combination with other residential development in the area, the proposed development would therefore be likely to have a significant effect on these sites. Accordingly, under the Habitats Regulations, Appropriate Assessment of the implications of the project for the designated sites in view of their conservation objectives is required.

5. The qualifying features of the Exe Estuary SPA and Ramsar site include Annex I¹ species (aggregations of non-breeding avocet and grey plover), migratory species (aggregations of non-breeding dunlin, black-tailed godwit and brent goose, and wintering populations of grebe and oystercatcher) and its assemblage of over 20,000 waterfowl over winter. The habitats of the site which support the notified species include muddy shores and saltmarsh communities. The qualifying features of the SAC include Annex I² habitats (shifting dunes along the shoreline, fixed dunes with herbaceous vegetation and humid dune slacks, and their associated communities) and the Annex II² species petalwort. The conservation objectives for the sites seek to ensure that the integrity of the site is maintained or restored as appropriate, with the SPA and Ramsar site contributing to the aims of the Wild Birds Directive and the SAC contributing to achieving favourable conservation status of its qualifying features. In summary, this includes maintaining or restoring the population and distribution of both sites' qualifying species/features and the extent, distribution, structure, function and supporting processes of the habitats which qualify in their own right and which the qualifying species rely.
6. The available evidence indicates that without mitigation it would not be possible to ascertain that the residential accommodation proposed would not adversely affect the integrity of the designated sites through the indirect effects of increased recreational impacts on their interest features. However, the Council's Appropriate Assessment sets out that the effects of development can be mitigated by: developers providing a financial contribution to mitigation measures delivered by the South East Devon Habitat Regulations Partnership; and through a proportion of Community Infrastructure Levy (CIL) income being spent on delivering Habitats Regulations Infrastructure to attract recreational use away from Dawlish Warren and the Exe Estuary.
7. The evidence before me indicates that the securing of the necessary financial contribution through a legal agreement, combined with the additional CIL funding, would be sufficient to mitigate the effects of the development on designated sites and would be necessary to make the development acceptable. Confirming this, Natural England's consultation response on the planning application sets out that mitigation measures, if implemented, will be effective and reliable in preventing harmful effects on the designated sites for the duration of the proposed development. Provided that the necessary mitigation measures are secured to ensure their implementation, Natural England indicate that Appropriate Assessment can ascertain that there will therefore be no adverse effect on the integrity of the designated sites in view of their conservation objectives.
8. In addition to the CIL contribution covered by the Council's CIL, the financial contribution necessary to mitigate the effects of the appeal proposal is £800.

¹ Of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (the Wild Birds Directive).

² Of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive).

The appellant's UU seeks to secure that this amount is provided prior to the commencement of development. However, the UU submitted with the appeal has not been signed. The UU before me is therefore not a properly executed deed. Furthermore, it does not include the appellant's title to the land nor a site plan to clearly identify the land. On this basis, I cannot be certain that the required financial contribution would be secured if planning permission were granted. Consequently, and as the competent authority undertaking Appropriate Assessment of the appeal proposal, I cannot ascertain that it would not adversely affect the integrity of the designated sites.

9. In the light of a negative assessment on the implications on designated sites, the Habitats Regulations require consideration as to whether there are any alternative solutions and if not, whether there are any imperative reasons of overriding public interest. While no alternative solutions have been put forward for my consideration, the provision of one additional dwelling is not sufficient to amount to imperative reasons of overriding public interest. The Habitats Regulations indicate that permission must therefore not be granted.
10. For the above reasons, I find that the appeal proposal would harm designated nature conservation sites. It would therefore not accord with the Habitats Regulations. It would also be inconsistent with the provisions in the National Planning Policy Framework (Framework) in relation to conserving and enhancing the natural environment.

Character and appearance

11. Located within a steeply sloping residential setting, the appeal site forms the side garden of 2 Harts Close. The west side of the Close contains a series of semi-detached properties located within generally similar sized plots and with a similar scale, design and appearance. However, No 2 is in a notably larger plot than the adjoining semi-detached properties and the site is situated at the end of the row on the corner. The surrounding area also includes a variety of built form located in varying sized plots and including detached and semi-detached bungalows and two-three storey properties with a mixture of designs, styles and orientations. I observed on my site visit that the site is visible from various points in the locality, including at the top of the rise where Harts Close turns the corner and at the junctions with Deer Park Drive and Deer Park Avenue. Given this and its location, it is therefore read within the wider and more varied context of the surrounding area and does not only relate to the similar properties on the west side of the Close.
12. Although the proposed development would be set within a different sized plot and would have a slightly lower ridge height and lesser depth than the row of adjoining semi-detached properties, the differences would not be significant. Its reduced height and depth would prevent it from appearing as a dominating and cramped feature and would read as an appropriate response to the site's setting, including the sloping topography and its corner and end-of-row position. The modest-sized detached dwelling would also be experienced within the varied plot sizes and form, scale and design of built form in the locality, and would suitably reflect this context and integrate with it.
13. During my site visit I did not observe other properties in the locality with similar canted layouts to the proposed dwelling. Although it would therefore appear as an unusual feature in the locality, the dog leg would nevertheless read as a suitable solution to the plot's shape and the proposed dwelling's

position on the sloping corner of Harts Close. Its design would therefore be experienced as sufficiently reflecting its circumstances and the proposed development would make effective use of the site without appearing as an incongruous addition.

14. The proposed bin store would be situated adjacent to the highway. However, it would be located behind the boundary wall and the appellant has indicated that it would be constructed as a timber store. It would therefore not be particularly visible from the public realm and the discreet presence of a timber store, positioned behind the boundary wall with the highway and next to the shared boundary with No 2, would not unacceptably affect the surrounding built environment or the streetscene.
15. For the above reasons, I conclude that the proposed development would not harm the character and appearance of the surrounding area. I therefore find that it accords with Policies S1, S1A and S2 of the Teignbridge Local Plan 2013-2033 (2014) (TLP). Amongst other aspects, these set out the Council's approach to sustainable development and require development to: be of a high quality design which responds to the characteristics of the site and its context; integrate with the character of the adjoining built environment and make effective use of the site; and perform well against various criteria including the maintenance or enhancement of the character and appearance of the surrounding area. The proposal would also be consistent with the provisions in the Framework in relation to achieving well-designed places.

Adjoining occupiers

16. The proposed dwelling would be situated above 48-54 Deer Park Avenue. However, topography means that this is a common characteristic of the locality, with the row of semi-detached properties on the west side of Harts Close all rising above those on Deer Park Avenue. I observed on my site visit that 2 and 4 Harts Close also have three-storeys facing Deer Park Avenue whereas the new dwelling would only have two-storeys facing in that direction and would have a lower ridge height and lesser mass.
17. The proposed dogleg would bring the development closer to the properties on Deer Park Avenue. However, only part of the new dwelling would extend towards the shared boundary with those properties, the extent of the projection would not be significant and a large proportion of the new dwelling would be situated behind the common rear building line of the adjoining properties on Harts Close. The orientations and positions of the properties on Deer Park Avenue and the relatively small part of the new dwelling that would extend towards them, combined with the reasonable separation distances, would also serve to reduce the effect of the proposed development.
18. Despite its elevated position, it seems to me that the appeal proposal would therefore not appear as a dominating feature that would unacceptably affect the outlook of Nos 48-54. Given the site is situated to the east of Nos 48-50 and the greater set-back of Nos 52-54, it would also not significantly affect the amount of daylight and sunlight reaching them.
19. The new dwelling would have a relatively large sitting room window and balcony which would broadly face in a northerly direction, including towards Nos 52-54. However, those properties are well set-back from the site and I observed on my site visit that the main view from the proposed window and

balcony would be to the side of No 54 and towards the adjoining highway. It seems to me that the elevated position of the proposed dwelling would mean that the main views from the window and balcony would also be to the sloping landscape in the surrounding area and beyond the nearby properties and immediate vicinity of the site. Furthermore, the recessed nature of the window would limit views from the living room while the walls of the inset balcony would serve to limit side views.

20. On this basis, the proposed development would not result in unacceptable overlooking of Nos 52-54. This is also a residential area with several dwellings located in relatively close proximity. As such, a certain degree of mutual overlooking would not be unusual.
21. For the above reasons, I conclude that the proposed development would not harm the living conditions of adjoining occupiers, with particular regard to overlooking and outlook. I therefore find that it accords with TLP Policies S1, S1A and S2. Amongst other aspects, these require development to: perform well against various criteria including the residential amenity of existing dwellings; and have a design that responds to the site's characteristics and context and which creates inclusive layouts which promote well-being. The proposal would also be consistent with the provisions in the Framework in relation to achieving a high standard of amenity for existing users.

Other matters

22. It has been put to me that the site is previously developed land. However, the Framework's definition of previously developed land excludes land in built-up areas such as residential gardens. Given the built-up nature of the locality, the site cannot therefore be classed as previously developed and the Framework's provisions relating to such land are therefore not applicable.
23. However, the development would provide a new dwelling and make effective use of the site, which is located in an accessible location within the settlement boundary of Teignmouth. I have found that it would also neither harm the character and appearance of the surrounding area nor the living conditions of adjoining occupiers and would not therefore conflict with the TLP Policies listed in the Council's Decision Notice.
24. Be that as it may, I have not been able to ascertain that the development would not have an adverse effect on the integrity of nearby designated sites. Accordingly, these matters do not indicate that development that conflicts with the Habitats Regulations should be permitted.
25. A number of neighbours have raised other concerns in relation to the development, such as its effect on highway safety, local wildlife habitat, drainage/flooding and land stability. However, given my conclusions on the main issues and that the appeal is dismissed, there is no need for me to address these in further detail.

Conclusion

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

Tobias Gethin

INSPECTOR