
Appeal Decision

Site visit made on 3 August 2020

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2020

Appeal Ref: APP/P1133/W/20/3253205

Land adjacent to 6 Mulberry Street, Teignmouth, Devon TQ14 8EJ

- 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 Gerald Tranckle, Hannon Homes Ltd, against the decision of Teignbridge District Council.
 - The application Ref 19/01476/FUL, dated 15 July 2019, was refused by notice dated 20 March 2020.
 - The development proposed is for the construction of a pair of semi detached two storey dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a pair of semi detached two storey dwellings at Land adjacent to 6 Mulberry Street, Teignmouth, Devon TQ14 8EJ in accordance with the terms of the application, Ref 19/01476/FUL, dated 15 July 2019, and subject to the conditions set out in the schedule to this decision.

Application for costs

2. An application for costs was made by Mr G Tranckle of Hannon Homes Ltd against Teignbridge District Council. This application is the subject of a separate Decision.

Procedural Matters

3. 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 an updated 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 the basis of the submitted documents and evidence before me and I cover this matter in more detail, as a main issue, below.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the character and appearance of the surrounding area;
 - the living conditions of adjoining occupiers; and

- designated nature conservation sites.

Reasons

Character and appearance

5. The appeal site, unused and somewhat overgrown at the time of my site visit, is situated adjacent to the semi-detached property at 6 Mulberry Street and in between the terraced buildings on Parson Street and Westcliff Heights. Although Teignbridge is a relatively small seaside town, the area surrounding the site is relatively built-up and contains, amongst other aspects, a variety of terraced and semi-detached properties and some blocks of flats. As shown on the location plan, garden areas and plot sizes are generally constrained by the tight knit nature of the surrounding built environment. Having identified that dwellings were present on the appeal site in the past, the Council considers that the site is brownfield land.
6. The proposed pair of semi-detached dwellings would have a similar form, scale and ridge height as the adjoining properties at 5-6 Mulberry Street. They would reflect the general layout and position of those properties and be situated in similar sized plots to them and other built form in the locality. Accordingly, the appeal proposal would sufficiently integrate with and reflect its surroundings and not appear as a cramped, incongruous feature.
7. Although the proposed development would result in the erection of two houses on a currently open site which contains some soft landscaping, the surrounding area is characterised by its built-up setting and the evidence before me indicates that the site previously contained dwellings. It seems to me that the appeal proposal would therefore make efficient use of urban brownfield land and, given its context, would neither enclose the streetscene to an unacceptable extent nor read as an unexpected feature in the locality. That the appeal proposal may be larger than the previous dwellings on the site does not lead me to a different conclusion.
8. 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 S1A, S1 and S2 of the Teignbridge Local Plan (2013-2033) (TLP). Amongst other aspects, these set out the Council's approach to sustainable development and require development to: integrate with the character of the adjoining built environment; and to perform well against various criteria including the maintenance or enhancement of the character and appearance of street scenes. The proposal would also be consistent with the provisions in the National Planning Policy Framework (Framework) in relation to achieving well-designed places.

Living conditions

9. Given the built-up nature of the surrounding area and the size and location of the site, the proposed dwellings would be situated in relatively close proximity to surrounding residential properties and their gardens. Due to topography, the proposed development would also be sited above some nearby properties, including those on Parson Street to the east and Mulberry Street to the south.
10. However, the Mulberry Street properties to the south are over approximately 20 metres away and are also separated from the site by the railway line. Although the side elevation of unit 2 would have several windows incorporating

Juliette balconies facing towards 1b, 11 and 16 Mulberry Street, the proposed development would therefore not result in significant overlooking.

11. With a back-to-back distance of approximately 13 metres, the degree of separation to 43-45 Parson Street would be relatively limited. However, the relationship between the proposed dwellings and Nos 43-45 would be similar to that between the existing semi-detached properties at 5-6 Mulberry Street and the terrace on Parson Street. I observed on my site visit that topography would mean that views of the rear gardens of Nos 43-45 from the first-floor rear windows of the proposed dwellings would be relatively limited, while the boundary treatment shown on the proposed block plan would further reduce views of Nos 43-45. The proposed floor plans also show that two of the four proposed first-floor rear windows would serve non-habitable rooms. On this basis, the extent of overlooking from the proposed development to Nos 43-45 would neither be unacceptable nor significant. Given the limited height of the proposed dwellings, the separation distances and the orientation in relation to Nos 43-45, the development would also not significantly reduce the amount of light and sunlight reaching those properties.
12. Situated to the east of 1 Westcliff Heights, the proposed development would be located near to two flank windows in that property. However, as the proposed dwellings would not be situated entirely in front of those east-facing windows, I am satisfied that the appeal proposal would not result in direct overlooking or significant loss of outlook and light for the occupiers of No 1.
13. This is a residential area with accommodation located in relatively close proximity. As such, a certain degree of mutual overlooking and some restriction on natural light and sunlight from surrounding built form would not also be unusual. Accordingly and for the reasons above, I am satisfied that the proposal would not result in an unreasonable loss of privacy, light and outlook.
14. For the above reasons, I conclude that the proposed development would not harm the living conditions of adjoining occupiers. I therefore find that it accords with TLP Policies S1A and S1 with respect to the requirement for development to perform well against, amongst other aspects, the residential amenity of existing dwellings. It would also be consistent with the provisions in the Framework relating to providing a high standard of amenity for existing users.

Designated sites

15. 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.
16. The qualifying features of the Exe Estuary SPA and Ramsar site include Annex I¹ species (aggregations of non-breeding avocet and grey plover), migratory

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).

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 each 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.

17. 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 towards 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.
18. The securing of a financial contribution through a legal agreement, combined with additional CIL funding, would therefore 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 the mitigation measures will, if implemented, 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.
19. In addition to the CIL funding, the financial contribution necessary to mitigate the effects of the appeal proposal is £1752. The appellant's UU secures the provision of this amount prior to the commencement of development. The Council has not raised any concerns with the UU and their Appropriate Assessment confirms that the mitigation means that the development would not adversely affect the designated sites. The Council has also confirmed that financial contributions for mitigation measures secured through legal agreements and the CIL are used for the intended purpose, as evidenced in the South East Devon Habitat Regulations Executive Committee's financial reports and business and delivery plans, and the Council's related monitoring reports.
20. From the evidence before me, I am satisfied that the financial contributions arising from the UU and the CIL would provide sufficient mitigation and that the

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).

mitigation would be secured and implemented in a proper and timely manner. On this basis and following consultation with Natural England, I am able to ascertain, as the competent authority undertaking Appropriate Assessment, that the integrity of the designated sites would not be adversely affected by the development. Consequently, I find that the proposal would accord with the Habitats Regulations. I am also satisfied that the UU is necessary to make the development acceptable in planning terms, is directly related to it and is fairly and reasonably related to it in scale and kind.

Other matters

21. I recognise that the Parish Council recommended refusal of the planning application and that it be determined by Teignbridge Council's Planning Committee, and that after a site visit, the Planning Committee voted to refuse planning permission by a large majority, with all local councillors with knowledge of the area voting to refuse it. Be that as it may, based on the submitted evidence and my site visit observations, I have found that the proposed development would be acceptable in relation to the main issues and alleged harm set out in the Council's Decision Notice.
22. A number of other matters have been raised by interested parties and I have taken them all into account. Some of the issues, such as concerns relating to structural and ground stability matters, are dealt with separately and commonly covered by other legislation, while issues such as property values are not planning matters. Those related to planning include past uses of the site, other development in the area, overcrowding, foul and surface water drainage, the health of adjoining occupiers, and parking and access issues including with regards to construction works and subsequent use of the proposed dwellings. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed. Some of these matters, such as drainage and construction works, are also covered by the conditions detailed below.

Conditions

23. I have had regard to the planning conditions that have been suggested by the Council. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance (PPG). I have made such amendments as necessary to comply with those documents, for clarity and consistency, and to ensure that details are submitted to the Council where relevant.
24. In addition to the standard time limit condition, I have in the interests of certainty imposed a condition requiring that the development is carried out in accordance with the approved plans and submitted documents. A condition requiring the submission of a sample roof slate is reasonable and necessary in order to ensure that the external appearance of the development would be appropriate in relation to its surroundings. Given the site's history, a condition covering the finding of unexpected contamination during construction is necessary to ensure that any such contamination is, as identified in the submitted contaminated land assessment, adequately mitigated.
25. A condition covering archaeological works is necessary and reasonable because the site is located within an area of identified archaeological potential within the

historic core of the town. A condition covering drainage is necessary to ensure that a satisfactory drainage system is provided and maintained. A condition covering construction management is also necessary given the constrained nature and access of the site and surrounding area and the proximity of residential properties.

26. The PPG indicates that conditions removing permitted development rights should only be used in exceptional circumstances. However, the constrained nature of the site and its proximity to surrounding residential uses indicates that in this instance such a condition is necessary and reasonable in order to protect the living conditions of adjoining occupiers.

Conclusion

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

Tobias Gethin

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the application form and the following documents and approved plans: Contaminated Land Assessment (desk top study), received by the Council on 31 July 2019; Drawing No 3 Rev B (existing and proposed elevations); Drawing No 4 Rev A (proposed layouts + elevations); Drawing No 2 Rev B (block + location plan); and email from Peter Sheldon dated 16 December 2019 advising of drainage details.
- 3) No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.
- 4) No development shall take place until the detailed design of the proposed permanent surface water drainage management system has been submitted to and approved in writing by the Local Planning Authority. Once approved, the surface water drainage management system shall be installed and maintained in accordance with the approved details.
- 5) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall specify details of: the hours of construction works (including hours of site deliveries, parking of vehicles of site operatives and visitors); loading and unloading of plant and machinery; facilities for the storage of plant, machinery and materials used in the construction of the development; the erection and maintenance of security

hoardings; wheel washing facilities; measures to control the emission of dust and dirt during construction; and a scheme for the recycling/disposal of waste resulting from the construction works. The development shall be carried out in accordance with the approved details.

- 6) Prior to any development above ground, a sample of the slate to be used in the roof of the dwellings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the development shall be carried out in accordance with the approved details.
- 7) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended until an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how contamination shall be dealt with, has been submitted to and approved in writing by the Local Planning Authority. Development shall not thereafter proceed unless in strict accordance with the measures identified in the approved remediation strategy and verification plan. Prior to occupation of any part of the development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no roof enlargements/extensions or single- or two- storey extensions to the dwellings hereby approved shall be erected other than those expressly authorised by this permission.

END OF SCHEDULE