



Appeal Decision

Site Visit made on 16 November 2020

by David Wyborn BSc(Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2020

Appeal Ref: APP/X1165/W/20/3256346

Land adjacent to 130 Teignmouth Road, TORQUAY, Devon TQ1 4EX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval to details required by a condition of a planning permission.
 - The appeal is made by Mr JG & Mrs BG Thomas against the decision of Torbay Council.
 - The application Ref P/2016/0464/RM, dated 19 April 2016, sought approval of details pursuant to condition 1 of a planning permission P/2012/0968, granted on 10 May 2013.
The application was refused by notice dated 17 January 2020.
 - The development proposed is a proposed pair of semi-detached houses and garages inclusive of off road parking/turning.
 - The details for which approval is sought are: access, appearance, landscaping, layout and scale.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Outline planning permission was granted in 2013 for two dwellings with all matters reserved. This permission was subject to a Section 106 Agreement under the Town and Country Planning Act 1990. This application seeks agreement to all the outstanding reserved matters.
3. The reserved matters application was submitted in 2016 and there were revised plans submitted during the processing of the application. I have determined the appeal based on the revised plans which include the garage spaces on the ground floor level of the development, under the living accommodation.

Main Issues

4. In respect of consideration of the reserved matters which have been submitted, the main issues are:
 - the effect of the proposal on the character and appearance of the area, including the Windmill Hill Woods Urban Landscape Protection Area,
 - whether the development would satisfactorily address any issues in relation to potential flood risk,
 - whether the development would provide adequate living conditions, having regard to internal and external spaces, and
 - the effect of the proposal on protected trees.

Reasons

Character and appearance

5. This part of Teignmouth Road has a mix of residential and commercial properties with a wide variety of styles, materials and appearances. The buildings are generally positioned adjoining the reasonably wide, gently sloping and curving road. Set back from both sides of the road there are rock faces. In most places, the rock has been quarried back so that it is nearly vertical and buildings are sited on level areas near the base of the rock face. In some more limited areas, the rock slope is treed and still angles down towards the road. In these latter areas, the form and appearance of the treed slope contributes positively to the street scene and the character of the area.
6. The appeal site lies at the base of one of these sloping rock areas with trees a little way up the slope. There is a modest sized, reasonably level area between the base of the slope and the footway. The higher slopes above the rock face in this area and the slope down towards the site, including a section of the appeal site which fronts the road, are designated within the Windmill Hill Woods Urban Landscape Protection Area in the Torbay Local Plan 2012-2030 (adopted 2015) (the Local Plan).
7. Adjoining the site there is a terrace of 4 dwellings. These are raised up above the level of the footway and positioned behind a stone wall. These terrace buildings, with their cottage-like appearance and proportions, are a pleasant feature within the road. Their raised height above the footway is not readily apparent because of the front stone wall and established planting at both ends of the terrace. As a consequence, the terrace appears visually to be two storey buildings, although there are rear dormers in the roof space.
8. The proposed dwellings would be set further along the road and are designed to reference the adjoining terrace. The ridge heights would be very similar to the adjoining terrace. The ground floor would provide garaging space with two storeys above and additional space in the roof. With the garaging under the living accommodation, the pair of dwellings would effectively be three storey buildings. It is not clear whether it would be possible to landscape the area to the southern side of the new building to reduce the impact of the three storey form. The landscaping submissions which are presented as part of these reserved matters are limited in this respect. Based on the proposal before me, this southern side elevation would be reasonably exposed from adjoining parts of the highway and the three storey form of the building would not sit sympathetically with the more modest cottage-like appearance of the adjoining terrace.
9. The northern side elevation of the proposed building would be open to view within the road because of the need to provide access to the garaging space. With the removal of the hedging behind the present boundary wall to allow for vehicle sight lines and the space required for manoeuvring, this side elevation would be particularly conspicuous.
10. This northern side elevation would appear visually as quite a tall structure on the site. The combination of the three storey form of the side elevation, the flat roofed seating area and railings, the irregular scatter of windows to the side

gable and the side cheek to the quite sizeable rear dormer¹, would not result in an attractive architectural composition. This elevation would partly be seen, when approaching the site from the north, in the same view as the adjoining terrace. For the reasons explained, the proposed side elevation would cause the development to stand out as conspicuously out of place compared with the cottage-like appearance of the adjoining buildings and this would harm the character and appearance of the street scene.

11. While the front elevation may be more appropriate in design terms, this would not compensate for the incompatible form, appearance of bulk and prominence of the side elevations within the road.
12. Accordingly, I conclude that the reserved matters details in respect of appearance, landscaping, layout and scale would harm the character and appearance of the area. It follows that the scheme would not meet the policy requirement to make a positive contribution to the urban environment and enhance the landscape character of the Windmill Hill Woods Urban Landscape Protection Area. Consequently, the proposal would conflict with Policies DE1 and C5 of the Local Plan and Policy TH8 of The Torquay Neighbourhood Plan which seek, amongst other things, to integrate development with the existing street scene.

Flood Risk

13. The site lies on the edge of Flood Zone 3 and therefore, in principle, has a high probability of flooding, although the evidence indicates that the boundary does not reflect the raised nature of the appeal site. The Environment Agency has confirmed that the site also falls within a critical drainage area because it explains that the nature of the catchment is small and steep, and that flooding onset could often be rapid with very little notice.
14. As part of the site is within Flood Zone 3, and the site is restricted by the rock slope and its shape, it is unlikely to be possible to locate the dwellings entirely outside this Zone. Nevertheless, I am not persuaded that it is a necessary requirement to now undertake a sequential or exception test in this case as the principle of the development for two dwellings has been established by the outline permission.
15. The Environment Agency explain that, despite the large storm tanks and culvert improvements upstream, there was still flooding in 2012 in the area, although the risks were reduced. In this case, the Environment Agency consider that while surface water in the event of a flood would be mainly constrained to the highway it could also be channelled into the development if floor levels were at the same level as the highway.
16. I have carefully considered the submissions and the Flood Risk Assessment submitted by the appellant. I understand the knowledge the appellant has of the site and wider area over many decades. However, while the site does not have a history of flooding the Environment Agency judge that the area is still at risk of flooding, especially taking into account the effects of climate change, and therefore it should not be assumed that flooding will not occur in the future.

¹ I appreciate that rear dormers such as this form part of the adjoining terrace, but it is the combination of factors in this case which causes the visual harm.

17. The level of the first, second and roof floorspace as proposed would ensure that these parts of the living space would be above any likely flood waters. However, the garage space within the building would be incorporated on the ground floor, or basement as described on the plans. In all likelihood, this would be at a level similar to the levels of the adjoining highway. The Flood Risk Assessment does not provide a detailed levels plan or a comprehensive and technical assessment based on potential flood levels to meet the technical requirements of the Environment Agency. Without detailed evidence to demonstrate otherwise, the Environment Agency are concerned that the garages could flood and that this could cause damage to that part of the property and anything stored within that space. Furthermore, the Environment Agency consider that people accessing or egressing the site would be at risks during a flood event.
18. I attribute substantial weight to the submissions from the Environment Agency and its judgement that the site is at risk of flooding if the levels of parts of the building were comparable with the level of the adjoining highway. The proposal, in the form of the garage accommodation, would appear to provide a similar level within the site as the highway. The layout of the scheme would, therefore, not provide an optimal solution to prevent flood waters entering the building and potentially damaging that part of the building and any contents.
19. I am not satisfied that attaching conditions in any approval to require such matters as flood resilient construction techniques and flood warning and evacuation plans would be a reasonable response when the design and related levels that are proposed would not minimise the potential for flooding as a matter of principle.
20. As a consequence, I conclude that a precautionary approach is justified and that, on the evidence before me, the design and layout of the scheme would not be arranged to minimise the risk of the building flooding in the future. The reserved matters details would not, therefore, comply with Policy ER1 of the Local Plan which notably requires development must be safe for its lifetime, taking account of its future use, function and government projections of how the risk of flooding may change in response to climate change.

Living conditions

21. Policy DE3 of the Local Plan requires that all development should be designed to provide a good level of amenity for future residents or occupiers. In terms of internal accommodation the policy requires that adequate floorspace should be provided in residential development to achieve a pleasant and healthy living environment. The supporting text refers to the dwelling space standards set out in the Nationally Described Space Standard. The Council Planning Report concludes that the proposed three bedroom, three storey dwellings would be significantly substandard when compared with the national standard. I have not been presented with clear and detailed evidence to dispute the Council's conclusion that the space standards would not be met in this case.
22. I attach limited weight to the argument that the accommodation may be more spacious than the adjoining cottages and that the reduced cavity walls and other elements to the design may maximise the internal space. This is because with the provision of new dwellings there does not appear to be a substantive and conclusive reason why they cannot be designed to meet with the appropriate space standards as set out in the Local Plan. Consequently, the

scheme with the layout and design as proposed would conflict with the development plan in this respect.

23. In terms of external amenity space, Policy DE3 of the Local Plan indicates that there should be provision for useable amenity spaces, including gardens and outdoor amenity areas.
24. I have taken into account the appellant's commentary on this matter². However, the plans before me are not well advanced with the identification and detailing of the outdoor amenity areas. It seems that there may be some space to the rear of the dwellings but this could be limited in size and compromised in attractiveness by the adjoining slope. The raised terrace area would appear to be shared and would be open to some views from the adjoining road. It would, therefore, unlikely to be a private area and could be affected by the noise and influence of traffic on the adjoining road. I am not satisfied that the evidence that has been submitted demonstrates that this raised area would provide a pleasant and high quality amenity space. The need for parking and turning spaces to meet the requirements for highway safety would take much of the land to the northern side of the dwellings and leave little space in this part of the site for external amenity area.
25. Consequently, I am not satisfied that the reserved matters submissions demonstrate that the outdoor amenity space would be adequate for future occupiers of the proposed dwellings.
26. In the light of the above analysis, I conclude that the design, layout and landscaping of the scheme does not demonstrate that adequate living conditions would be provided, having regard to both internal and external amenity spaces. Accordingly, the proposal would not meet with the requirements of Policy DE3 of the Local Plan in these respects.

Trees

27. The trees on the sloping rock face immediately behind the site are subject to a Woodland Tree Preservation Order. While each individual tree may only be of moderate importance, collectively they provide a verdant backdrop to the road and add to the quality of the area.
28. The trees are in reasonable proximity of the proposed housing. Depending on what works may be required to make level parts of the site and undertake construction work, there is the potential that trees subject to the Order could potentially be affected. There is little technical evidence regarding the protection of the preserved trees which accompanies the present reserved matters. The Council has raised objections in this respect with the present proposal, however, I have noted the advice of the Council's Arboricultural Officer at the outline stage when it was considered the works, subject to conditions, would not harm the trees and this contributed to approval in outline.
29. The development should not directly affect any tree. Furthermore, condition 4 of the outline approval requires that any works which would require in-part any removal of the cliff face at the rear of the site are required to be approved in writing by the Local Planning Authority following the submission of geotechnical

² This indicates that the appellant was waiting and willing to discuss and evolve the landscaping in discussion with the planning officer. I have had regard to the garden areas shown on previous plans.

reports and method statement. Additionally any works to the trees would require consent as they are subject to an Order. Consequently, due to this combination of factors, there would be sufficient safeguards to protect the trees during construction works and with subsequent occupation.

30. Accordingly, I conclude that there are sufficient safeguards so that the proposal would not lead to adverse impacts on protected trees and in this respect the scheme would comply with Policy C4 of the Local Plan.

Other Matters

31. The Highway Development Engineer commented in respect of the plans in 2018 that as Teignmouth Road is a strategic/classified road, vehicles should be able to exit the site in a forward gear. A turning area to the required standard would be needed and the access provided to a 6m width. Two parking spaces for each dwelling would be required. It was explained that if the applicant could achieve these requirements there would be no objection. The Council Planning Report commented that these details had not been shown and the proposal was accordingly contrary to the development plan. However, no reason for refusal was included on highway grounds. The garage provides two spaces and there could be two spaces in tandem in front of the garages, partly within the car port, with turning within the adjoining section of the site. Consequently, in the absence of a reason for refusal in respect of this matter, I am satisfied that the parking and turning requirements could be made the subject of conditions in any approval.
32. The appellant has set out a detailed commentary of his dealings with the Council during the nearly 4 year period of its processing of the application. The concerns and frustrations of the appellant during this period are understood. However, while I have noted all this background, the way in which the Council handled the application is not a matter for me to consider in the context of this appeal, which I have determined on its own merits.

Conclusion

33. The principle of two dwellings on the site has been agreed as part of the outline approval. However, the present reserved matters details fall short of demonstrating that the scheme can be accommodated successfully on the site. In particular, the form and design of the dwellings would harm the character and appearance of the area, the proposal does not demonstrate adequate safeguards against flooding and the occupiers of the units would not be provided with adequate living conditions. These are matters that cumulatively weigh substantially against the scheme and would not accord with the policy approach to development as set out in the National Planning Policy Framework (the Framework). That the proposal would not unduly impact the adjoining trees is neutral in the overall analysis.
34. The accommodation would be provided in a location with good access to services and facilities but, as only two units are proposed, there would only be a minor boost to housing supply. Consequently, the benefits of the scheme afford only minor weight. It follows that the adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

35. For the reasons given above, there are no material considerations that indicate the proposal should be determined otherwise than in accordance with the development plan. The reserved matters are therefore not considered acceptable in this case and I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR