
Appeal Decision

Site visit made on 23 March 2021

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practicing)

an Inspector appointed by the Secretary of State

Decision date: 13 April 2021

Appeal Ref: APP/X1165/W/20/3264637

Quarry, Waterside Road, Churston with Galmpton, Paignton TQ4 6LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr A Billings against the decision of Torbay Council.
 - The application Ref P/2019/0617, dated 5 June 2019, was refused by notice dated 9 June 2020.
 - The development proposed is three new dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

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

Preliminary Matters

3. The application was made in outline with all matters reserved for later consideration. I have considered the appeal on that basis.

Main Issues

4. The main issues in this appeal are:
 - The effect of the proposed development on the Urban Landscape Protection Area; and,
 - The effect of the proposed access on highway safety.

Reasons

Urban Landscape Protection Area

5. The appeal site is an area of undeveloped land located adjacent to the Dartmouth Road. The evidence before me indicates that the site is part of a former limestone quarry and, from observations made on my site visit, I find that the undeveloped open nature of the site makes a significant positive contribution to the urban environment and to the character and appearance of the surrounding area. By reason of its position adjacent to and elevated above the level of Dartmouth Road, the appeal site is highly prominent in views from the public realm.

6. Whilst acknowledging that layout is a matter reserved for later consideration, the appeal scheme would result in three dwellings occupying space within the site, with additional areas to be formally laid out for access, parking and turning. Furthermore, residential occupation would be likely to result in additional amounts of domestic paraphernalia.
7. The evidence before me confirms that the appeal site is located in an area which is designated as an Urban Landscape Protection Area (ULPA). Policy C5 of the Torbay Local Plan (December 2015) (the Local Plan) provides that development within ULPAs will only be permitted where it does not undermine the value of the ULPA as an open or landscaped feature within the urban environment and where it would make a positive contribution to the urban environment and enhances the landscape character of the ULPA.
8. Whilst the Appellant's submissions are noted with regards to the likely density and scale of the proposed dwellings and in respect of additional landscaping, the appeal scheme would, by reason of the size of area of the appeal site and given the quantum of proposed development and the likely resulting spread of domestic paraphernalia, substantially alter the character and appearance of the site, significantly eroding the considerable positive contribution that the appeal site makes to the ULPA and to the character and appearance of the surrounding area. In this respect, the appeal proposal would undermine the value of the ULPA as an open feature within the urban environment. Additional landscaping would further diminish the quality of the open space.
9. I acknowledge that the appeal site is located within an urban area and that development has been recently approved close to the appeal site and within ULPAs. Whilst that may be the case, the nearby recent developments adjacent to the site are not prominent within public views and I have only limited information regarding the level of contribution that other sites, which have been permitted for development, make to the relevant ULPAs.
10. In light of the above, and having considered all of the submissions and evidence before me, in my view the appeal scheme would significantly undermine the value of the ULPA as an open feature within the urban environment and thereby would have an unacceptable adverse effect on the character and appearance of the surrounding area. The appeal proposal would therefore conflict with Policy C5 of the Local Plan and would fail to accord with paragraph 170 of the National Planning Policy Framework (the Framework) which, amongst other matters, requires that development should contribute to and enhance the local environment by protecting and enhancing valued landscapes.

Highway Safety

11. The Council maintains that it has not been demonstrated that the appeal proposal could deliver the requisite vehicular access to the site and which would ensure safe movement of vehicles and pedestrians. The Council have put it to me that the submitted plans indicate that access to the site would be taken from Waterside Road and achieved by crossing over land which, the evidence indicates, is not in the ownership or control of the Appellant, and which is currently being developed following recent planning approval¹. The Council have further put it to me that it has not been demonstrated that the

¹ Local Planning Authority References: P/2016/0822 and P/2016/0824

- access would be of sufficient width to allow for safe vehicle manoeuvres and that it has not been demonstrated that the gradient of the access or parking provision would accord with local standards.
12. With regards to parking provision, it is noted that the scheme is in outline with layout to be determined at a later stage. Whilst the Council's concerns are acknowledged, and notwithstanding my above conclusions regarding the effect of the appeal scheme on the ULPA, in my view there would be sufficient opportunity to provide adequate parking provision, in accordance with the development plan requirements, at the site as part of the final layout of the proposed development. Consequently, I find no conflict with Policy TA3 of the Local Plan in respect of parking provision. Furthermore, given the size of the appeal site, there would also be sufficient opportunity to provide turning spaces for larger vehicles manoeuvring within the site.
 13. With regards to the width and gradient of the access, the Council have referred me to the Highways Development Control Standing Advice for Minor Development Applications and the Council's Highways Design Guide for New Developments. In respect of the gradient of the access, the guidance confirms that this should have a maximum gradient of 1:8. The Appellant has provided details regarding the likely gradient of the access and in light of all the evidence and information I find that the access could be constructed in accordance with the gradient requirements as set out in the Design Guide.
 14. In respect of the width of the access, the advice provides that, given the likely length of the access road, a minimum width of 5 metres is recommended. From the evidence and submissions before me, it appears that the access would have a width of 3.6 metres but with the potential to increase that width to 4.25 metres. The access would be unlikely to be used intensively, given the scale of the proposed development, and given that the access has the potential to be widened to 4.25 metres to provide passing places, which in my view would be necessary to ensure safe movement of vehicles, I find that the width of the access would not result in harm to pedestrian or vehicle safety.
 15. As noted above, the access would be achieved by crossing over land which is not in the ownership of the Appellant and the Council maintain that the access cannot be delivered. However, it is clear from the submissions that the Appellant maintains that a right of way exists over that land and considers that the construction of a dwelling at that site in accordance with the abovementioned planning permissions, would amount to interference with that right. The submissions confirm that the claimed right of way is the subject of current and ongoing litigation.
 16. The Appellant contends that a negatively worded or Grampian condition could be applied to any grant of planning permission in relation to the appeal scheme and which would ensure that the proposal could not be built until and unless access over that adjoining land was secured. In this respect the Council have put it to me that given the uncertainty regarding the abovementioned litigation, there is insufficient evidence that such a condition could be satisfied before the expiry of the time limit imposed by any planning permission.
 17. Planning Practice Guidance provides that a negatively worded condition, such as the one suggested by the Appellant, should not be used where there are no prospects at all of the action in question being performed within the three year time limit for implementing a planning permission. In this instance, whilst it is

acknowledged that matters of litigation can take time to resolve and that there would be the possibility of any judgement being appealed and which would result in some further delays, the 'no prospects at all' requirement for the use of a negatively worded planning condition sets a very high bar. In this instance, whilst I concur that the time taken for resolving such matters can be considerable, it cannot be said that the action in question has *no prospects at all* of being performed within the required timeframe. I therefore conclude that such a condition, which also included the additional requirement that the access be of a certain width, could be applied in the event that the appeal was allowed.

18. In light of all of the above reasons, I find that it has been sufficiently demonstrated that the proposed development could deliver the requisite vehicular access to the site to ensure safe movement of vehicles and pedestrians. Whilst I acknowledge the submissions made in respect of potential alternative access to be taken from Dartmouth Road, I have considered this appeal based on the planning application which concerned and proposed that access would be from Waterside Road. The Planning Appeals Procedural Guide provides that if an applicant believes that amending their application proposals will overcome the Local Planning Authority's reasons for refusal, they should normally make a fresh application.
19. The appeal proposal taking access from Waterside Road would not conflict with Policies DE1, DE3, TA1 or TA2 of the Local Plan which, amongst other matters requires that development provides access to a safe standard. For the same reasons the appeal scheme would comply with Policies BH5 and BH8 of the Brixham Peninsula Neighbourhood Plan which, amongst other things, requires that access to new development should comply with the adopted standards. Furthermore, the appeal scheme would accord with those parts of the Framework which concern highway safety.

Other Matters

20. I acknowledge the extensive history for the appeal site and the particulars of the sale of the land to the Appellant. I also acknowledge that the site was previously allocated for housing in an earlier iteration of the Brixham Peninsula Neighbourhood Plan. However, whilst these matters are noted, the site is not allocated for housing in the current adopted Brixham Peninsula Neighbourhood Plan and, for the above reasons, would conflict with the development plan when taken as a whole.

Planning Balance and Conclusion

21. It is common ground between the main parties that the Council are currently unable to demonstrate a five year housing land supply. In the absence of a five year supply of housing, the Framework provides that relevant policies for the supply of housing should not be considered up to date, and further states that where the development plan is out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. Although I find no harm arises in terms of access and highway safety, I have found that the proposed development would be contrary to those policies of the Local Plan and would fail to accord with the provisions of the Framework with

regards to the significant adverse effect on the ULPA and to the character and appearance of the surrounding area, as detailed above. For this appeal, I have found the policies of the Local Plan to be generally consistent with the relevant aims of the Framework and I therefore attach substantial weight to them in the determination of this appeal.

23. In the context of assessing the three objectives of sustainable development identified in the Framework, the appeal scheme would provide economic benefits in terms of employment opportunities during the construction phase and through the spend of future residents within local businesses.
24. The proposal would provide social benefits in terms of the contribution towards housing supply with the proposal being located within an area which provides convenient access to a wide range of services and facilities. In terms of environmental benefits, it is acknowledged that the proposal could provide biodiversity enhancement subject to conditions and that potentially invasive species of plants could be removed from the quarry. Whilst I note the contention that the appeal site represents previously developed land (PDL), in my view and based on the evidence before me and from observations made on my site visit, the appeal site does not accord with the definition of PDL as provided within the Framework.
25. Whilst the benefits of the appeal scheme, as put to me by the Appellant, are materially positive in nature, overall I find that the benefits that the proposal would bring are very limited by reason of the scale of the proposed development. In this instance, as noted above, I have attached significant weight to the proposed development's adverse impact on the ULPA and the character and appearance of the surrounding area and the resulting conflict with the policy of the Local Plan. Drawing all these matters together, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As a consequence, the proposal would not constitute sustainable development, and this weighs heavily against the scheme.
26. For the reasons given above, the appeal scheme would not comply with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict. I therefore conclude that the appeal should be dismissed.

A Spencer-Peet

INSPECTOR