



Appeal Decision

Site visit made on 5 January 2022

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2022

Appeal Ref: APP/X1165/W/21/3281163

205 Dartmouth Road, Paignton TQ4 6LG

- 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 and Mrs Taffinder against the decision of Torbay Council.
 - The application Ref P/2021/0267, dated 5 March 2021, was refused by notice dated 22 July 2021.
 - The development proposed is an outline application for a new 1 no. 4 bed 7 persons dwelling with access from Broadsands Bend and with some matters reserved.
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Decision

1. The appeal is dismissed.

Applications for costs

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

Preliminary Matters

3. The application was submitted in outline with appearance, layout and scale considered at outline stage and access and landscaping to be considered as reserved matters at a later stage.

Main Issues

4. The main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on the living conditions of neighbouring occupiers in terms of outlook and daylight; and
 - The effect of the proposal on the South Hams Special Area of Conservation (SAC).

Reasons

Character and Appearance

5. The appeal site is located in a low level garden area at the rear of 205 Dartmouth Road, accessed from Broadsands Bend. A predominantly residential area with bungalows, dormer bungalows and dwellings, some with steeply pitched roofs and others with shallow pitch roofs results in Broadsands Bend having a mix of housing styles. There are also a number of flat roof features including dormer windows, garages and forward projections. These features

can also be seen on the host dwelling which sits up above the site and is therefore prominent on the approach to the site from Broadsands Bend.

6. The proposal utilises the existing sloping topography of the site to provide a split-level dwelling. The combination of flat and shallow pitch roof elements to the appeal proposal and its overall scale, height and massing would result in a dwelling which would have elements of design which correspond with the general character and appearance of properties on Broadsands Bend.
7. The appeal proposal is undoubtedly modern and clearly in contrast to the appearance of the majority of housing in the area. However, this does not mean that modern design is inherently incongruous or that development proposals must replicate what has gone before. Paragraph 130 of the National Planning Policy Framework (the Framework) states that decisions should ensure that developments are sympathetic to local character while not preventing or discouraging appropriate innovation or change.
8. I accept that on plan, the appeal site is markedly smaller than its neighbouring counterparts in Broadsands Bend. However, plot sizes are not uniform. The appeal property would be set back from the street frontage to the same extent as others in the road and would provide on-site parking and turning. The Council confirms that the proposal provides an internal floorspace in excess of the nationally described space standard and a level outdoor amenity space which significantly exceeds the requirement of 55 square metres set out in Policy DE3 of the Torbay Local Plan 2012-2030 adopted December 2015 (LP). As a result, I do not find that the proposal would appear cramped nor that the site would be overdeveloped. I am satisfied that allowing this appeal will not detract from the local area but will add to the general mix of development in the area.
9. As such I find that the proposal complies with Policy DE1 of the LP and Policy BH5 of the Brixham Peninsula Neighbourhood Plan 2012- 2030 adopted June 2019 (BPNP) and paragraph 130 of the Framework insofar as they seek good design that respects the character and appearance of the surrounding area.

Living Conditions

10. The appeal site is located to the south of an existing property, 20 Broadsands Bend, which is set up and back from the road. It has three windows on the side elevation facing the appeal site.
11. The appellants have not provided a detailed sun path analysis of the proposal. However, section drawings ¹ were submitted with the application which indicate the relationship between number 20 and the appeal proposal. I note that the positioning of the three windows in the southern elevation of number 20 are shown to be 'indicative' but would appear to largely correspond with what I observed during my site visit.
12. The proposed dwelling would be set well down below the window at first floor level in number 20. The ground floor windows of number 20 would be obscured to a limited extent by the appeal proposal. However, the positioning of the appeal dwelling together with its height, shallow pitch roof and the presence of an existing established hedge between the appeal site and number 20 all result

¹ Drawing number: (42)01 Rev 2 dated 26 April 2021

in a development which would not reduce the outlook from the property or daylight to the property to a harmful extent.

13. I conclude that the appeal proposal would have an acceptable impact on the living conditions of the occupiers of 20 Broadsands Bend and as such I do not find any conflict with Policy DE3 of the LP which seeks to ensure that developments do not unduly impact upon living conditions for existing residents nor paragraph 130 of the Framework which seeks to provide a high standard of amenity for existing users.

Nature Conservation

14. The Council have identified that the appeal site lies within the Sustenance Zone and Landscape Connectivity Zone of the designated greater horseshoe bat roost in the Berry Head to Sharkham Point SSSI. This is one of five roosts which together comprise the South Hams Special Area of Conservation (SAC) designated to protect habitats and to ensure the favourable conservation status of its population of greater horseshoe bats. The Sustenance Zone is an area within 4km of the roost which provides foraging habitats for the bats and the Landscape Connectivity Zone is the area which provides a complex network of commuting routes used by the bats to provide connectivity between the designated roosts. Therefore, although the appeal site lies outside the SAC, it is necessary for me, as the competent authority, to consider whether the proposal is likely to have a significant effect on the designated features of the SAC either alone or in combination with other plans and projects.
15. My attention has been drawn to the South Hams Special Area of Conservation (SAC) Greater Horseshoe Bats Habitats Regulations Assessment Guidance dated October 2019 produced in conjunction with Natural England. This indicates that proposals impacting on foraging habitat and commuting routes in Sustenance Zones may have a likely significant effect on the SAC greater horseshoe bat population. This can include the loss of habitat and increased illumination through internal, external and vehicular lighting sources. Foraging habitat includes amongst other things, tall and thick hedges, scrub and orchards where prey such as moths, beetles, flies and wasps can be found. Given that the appeal site is an area of uncultivated garden, I cannot rule out the loss of potential foraging habitat for greater horseshoe bats as a result of the proposed development, nor can I rule out increased disturbance to a potential foraging habitat from illumination of the site as a result of a new dwelling.
16. The application and subsequent appeal have not been accompanied by any form of ecological assessment of the appeal site, nor mitigation strategy (by way of a planning obligation or otherwise). Whilst I note the appellants' concern that this was not requested of them during the Council's determination, the onus is principally on an applicant to substantiate their case. There is nothing before me to indicate that the requirement for appropriate assessment work is not specified in the Council's local list of information requirements. Setting that aside, paragraph 99 of Government Circular 06/2005 'Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system', explains how 'it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted...'.

17. Acknowledging that the scheme is in outline, I nevertheless have no objective assessment which indicates that the appeal proposal would not lead to a likely significant effect on the designated features of the SAC either alone or in combination with other plans and projects. Whilst the individual effect of a single new dwelling will be inherently modest, the cumulative effects of multiple smaller schemes may be far more significant. Adopting a precautionary principle in respect of my findings above, I find that there is a risk of a likely significant effect and as such, I am required to conduct an Appropriate Assessment (AA) in relation to the effect of the development on the integrity of the SAC.
18. The Planning Practice Guidance (PPG) states that an AA 'must contain complete, precise and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed plan or project.' In the absence of any such document indicating the effect of the appeal proposal in relation to sustaining the habitats and the levels of population of greater horseshoe bats, and measures that would assist in avoiding or reducing those effects, I cannot rule out an adverse effect to the integrity of the South Hams SAC.
19. I have considered whether there are any imperative reasons of overriding public interest but the provision of a single dwelling is not sufficient to amount to overriding public interest. Consequently, having regard to the Habitat Regulations, and to the duty on me to have regard to conserving biodiversity, permission must not be granted.
20. I conclude that the proposed development would fail to maintain the integrity of the SAC, contrary to Policies SS8 and NC1 of the LP and E8 of the BPNP together with paragraph 174 of the Framework which seek to safeguard, conserve and enhance protected sites, species and habitats.

Other Matters

21. The Council cannot demonstrate a five year housing land supply and I acknowledge that the scheme has some benefits in terms of housing provision (and in respect of economic and social benefits). However, those benefits would inherently be limited and neither the support in the development plan for new housing, nor that in the Framework, is at the expense of ensuring all development takes appropriate account of ecology. Moreover, as I have identified that the impact of the proposed development on the greater horseshoe bat provides a clear reason for refusing the development proposed, paragraph 11 d) ii) of the Framework is not engaged.

Conclusion

22. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alison Fish

INSPECTOR