



Appeal Decision

Site visit made on 18 January 2022

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

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Appeal Ref: APP/X1165/W/21/3282088

67 Rea Barn Road, Brixham TQ5 9ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mrs Mary Dustan against Torbay Council.
 - The application Ref P/2021/0107, is dated 28 January 2021.
 - The development proposed is the erection of single-storey side and rear extension with pitched roof and widening vehicle access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of single-storey and rear extension with pitched roof and widening vehicle access at 67 Rea Barn Road, Brixham TQ5 9ED in accordance with the terms of the application, Ref P/2021/0107, dated 28 January 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. In the interests of clarity and precision, I have amended the description of development used in the banner heading above.
3. The submissions indicate that the Appellant has submitted this appeal on the basis of non-determination of the planning application. The Appellant has not provided a written appeal statement. In this appeal, the Appellant has provided copies of submitted plans and drawings which appear to have superseded earlier versions. In the determination of this appeal, I have considered the latest revisions of those plans and drawings, and which appear to have been before the Council as part of the planning application.
4. The Council have provided suggested conditions in the event that the appeal is allowed and has submitted copies of a number of policies of the development plan. In this instance the development plan comprises the Torbay Local Plan (December 2015) (the Local Plan) and the Brixham Peninsula Neighbourhood Plan (June 2019) (the Neighbourhood Plan).

Main Issue

5. In light of the above matters, the main issue in this appeal is whether or not the proposed development would comply with the provisions of the development plan.

Reasons

6. As noted above, the submissions in this appeal are very limited. Nonetheless, I have been provided with copies of policies which form the development plan and, accordingly, I shall assess the proposal in light of the development plan policies provided to me by the Council and determine this appeal on the basis of the limited information before me.

Design

7. Policy DE1 of the Local Plan concerns design and provides that development should be well-designed, respecting and enhancing Torbay's special qualities and further specifies the design considerations proposed development should comply with in respect of function, visual appeal and quality of public space. Policy DE5 of the Local Plan specifically concerns domestic extensions and, amongst other matters described below, provides that such extensions must not result in adverse effects on the character and appearance of the host dwelling or on the street scene. Policy BH5 of the Neighbourhood Plan provides that new development should demonstrate good quality design and respect the character and appearance of the surrounding area.
8. In this instance, the plans submitted by the Appellant indicate that the proposal is for a single storey extension with a pitched roof which wraps around the side and rear elevations at the appeal property. The plans further indicate that the scheme includes the proposed widening of access.
9. Based on the observations made on my site visit, I find that the proposed single storey extension would appear subservient in terms of scale to the host dwelling and would reflect the design and scale of other examples of such extensions found within the surrounding area. The proposal would not dominate the host dwelling or the neighbouring properties and would not be detrimental to the character and appearance of the area. In my view and by reason of the inclusion of similar scaled domestic extensions close to the site, the scheme would not have a harmful effect on the street scene.
10. Further to the above, the proposal would result in the widening of access onto the driveway. In this regard, the proposed access would more closely reflect the width of access points found within this section of Rea Barn Road.
11. For the above reasons and subject to conditions which required the use of materials to match the host dwelling, I find no conflict with Policies DE1 or DE5 of the Local Plan. For the same reasons, the proposal would comply with the requirements of Policy BH5 of the Neighbourhood Plan.

Parking Provision

12. Policy TA3 of the Local Plan requires that development includes appropriate provision of car and cycle parking spaces, and further confirms that extensions to houses must not result in the net loss of parking provision below the standards set out in Appendix F of the Local Plan unless in town centre locations with good travel infrastructure where alternatives may be considered. Policy DE5 of the Local Plan also confirms that domestic extensions will only be permitted where the extension would not result in the loss of parking, including garage space, where no suitable alternative exists to serve the property.

13. The evidence indicates that part of the proposed extension would occupy space to the side of the appeal dwelling which, at the time of my visit, appeared to provide a parking space for a vehicle. Nonetheless, based on the very limited information before me, there does appear to be additional space at the front of the appeal site for the provision of a parking space to replace that which would be lost as a result of the proposed development. Whilst the Appellant has not provided details of the layout for the two on-site parking spaces which are required to serve the appeal property, such matters can be adequately secured by a planning condition.
14. I observed on my site visit that there were bus stops conveniently located close to the appeal site. As noted above, suitable provision of the required number of parking spaces to serve the appeal property is to be located to the front of the appeal dwelling. Whilst I acknowledge that a very small area of garden space would be given over to parking at the front of the appeal property, the additional space to be provided for the required parking spaces would result in a development which reflects the appearance of the access and parking spaces provided at the neighbouring properties and, consequently, would not result in any harm to the street scene or to the character and appearance of the surrounding area.
15. For the above reasons, and subject to a planning condition which requires details of the proposed layout of the on-site parking spaces be provided to and approved by the Council, I find no conflict with Policies TA3 or DE5 of the Local Plan.

Living Conditions

16. In addition to the requirements described above, Policy DE3 of the Local Plan seeks to ensure that development be designed to provide a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring and surrounding uses. Policy DE5 of the Local Plan also provides that domestic extensions must not cause harm to the amenity of nearby properties.
17. Based on the information before me and on observations made on my visit, I find that the appeal scheme would not have an overbearing impact on the living conditions of future occupants of the appeal property or on residents at 69 Rea Barn Road with regards to outlook. The plans provided indicate that sufficient useable external amenity space would be retained at the appeal site for future and existing residents. Sufficient space within the site is available for the required provision of refuse storage, with the exact details regarding the storage arrangements to be secured by planning condition.
18. In terms of overlooking and loss of privacy, no new glazed openings are proposed on the eastern elevation of the host dwelling and the scheme would result in the window which appears to serve a landing at the appeal dwelling, being reduced in size. The Council, in the event that the appeal was allowed, have suggested a planning condition which would require the abovementioned landing window to be fixed shut and incorporate obscured glass. However, the appeal proposal would not increase opportunities for overlooking and would rather reduce the size of the existing landing window on the eastern elevation. In this respect, given the scale of the proposed window and the separation distance between the respective dwellings, it is not necessary or reasonable to

include a condition that requires that window to be obscured glazed and fixed shut.

19. For the above reasons, and in the absence of any evidence or submissions to the contrary, I find that the proposed development would not have a harmful impact of the living conditions of neighbouring residents or on the living conditions of future occupants of the appeal property. The appeal scheme would therefore comply with Policy DE3 and DE5 of the Local Plan.

Biodiversity and Ecology

20. Policy NC1 of the Local Plan concerns biodiversity and geodiversity and, amongst other matters, provides that development should positively incorporate and promote biodiversity features proportionate to their scale. Policy SS8 of the Local Plan concerns the natural environment and provides that all development should have regard to its environmental setting and should positively contribute to the conservation and enhancement of the natural assets and setting of Torbay.
21. The Council have not provided any information or details in respect of the impact of the proposed development on these important matters. Nonetheless, the Appellant has provided a bat and nesting bird survey in support of the planning application. The Appellant's survey confirms that there is no evidence of the presence or use of the site by bats or nesting birds and concludes that the development would not result in harmful impacts on wildlife. The report further recommends a biodiversity enhancement measure through the installation of two swift nest boxes.
22. The Appellant's survey further includes details of the appeal site's location within the Sustenance Zone of the Berry Head Special Area of Conservation for Greater Horseshoe Bats (the SAC). The survey concludes on this point that the development will not cause disturbance to greater horseshoe bats; will not result in the loss of any commuting features or foraging habitat for this species; and will not affect the integrity of the SAC. The appeal scheme is minor development which seeks to replace existing hardstanding with the proposed ground floor extension. In light of the information provided by the Appellant and given the nature of the proposal, in the absence of any evidence to the contrary being provided by the Council I find at the screening stage that likely significant effects of the integrity of the SAC can be ruled out.
23. For the above reasons, and subject to the provision of the recommended bird nesting boxes which can be secured by condition, I find no conflict with Policies NC1 or SS8 of the Local Plan.

Flood Risk

24. Policy ER2 of the Local Plan seeks to minimise the generation of increased run-off. Policy ER1 of the Local Plan sets out that development should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere.
25. The planning application is supported by a Flood Risk Assessment which indicates that surface water will be disposed of by means of infiltration using soakaway or other sustainable drainage system, to be designed in accordance with BRE 365 for the critical 1 in 100 year storm event plus 40% climate change. This aspect of the proposed development could be satisfactorily

addressed by the inclusion of a planning condition, and which would ensure compliance with Policies ER1 and ER2 of the Local Plan.

Other Matters

26. In addition to the policies of the development plan described above, the Council have also provided copies of Policies BH1 and BH7 of the Neighbourhood Plan within the appeal documents. Policy BH1 of the Neighbourhood Plan concerns affordable housing site allocations. The proposal is for an extension to an existing dwelling and consequently the provisions of that policy do not apply to the appeal scheme. Policy BH7 of the Neighbourhood Plan concerns sustainable construction and encourages incorporation of the latest in sustainable construction technologies within development. The Council have not provided any submissions with regards to these matters and in the absence of any evidence to the contrary there does not appear to be any conflict with Policy BH7 of the Neighbourhood Plan.

Conditions

27. In light of paragraph 56 of the National Planning Policy Framework (July 2021) and the advice in the Planning Practice Guidance, I have considered whether planning conditions should be imposed in relation to the proposed development. In addition to the standard three year period implementation condition, which is a statutory requirement, it is necessary, in the interest of certainty and precision, to define the plans with which the appeal scheme should accord.
28. In the interests of the living conditions of residents and in the interests of visual amenity, conditions that require the submission and approval of the Council in respect of refuse and recycling storage, and hard and soft landscaping at the site are reasonable and necessary. Furthermore, given that the plans submitted in support of the planning application do not include details of external materials, a condition that such materials be submitted to and approved by the Council is reasonable to ensure that the scheme does not adversely affect the character and appearance of the area or the host dwelling. A condition is also necessary to ensure that the development is carried out in accordance with the Appellant's Flood Risk Assessment and Surface Water Drainage Strategy.
29. Where necessary, and in the interests of clarity and precision, I have altered the conditions suggested by the Council to better reflect the relevant guidance. The Appellant has been provided with the opportunity to comment on the application and wording of these conditions and has not provided a response. Consequently, in accordance with Regulation 2(1)(b) of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 the Appellant is deemed to have given consent to the pre-commencement planning conditions.

Conclusion

30. For the reasons given above I conclude that the appeal should be allowed.

Mr A Spencer-Peet

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
2. The development hereby approved shall in all respects accord strictly with drawing number: Existing Plans 002 A received by the Local Planning Authority on 3 February 2021 and drawing number: Existing Elevations 003 B received by the Local Planning Authority on 2 March 2021 and drawing numbers: Proposed Plans 004 C and Proposed Elevations 005 D received by the Local Planning Authority on 17 May 2021 and drawing number: Site Location Plan & Existing and Proposed Block Plans 001 C received by the Local Planning Authority on 18 June 2021.
3. No development shall commence until details of the materials to be used in the construction of the external surfaces of the extension hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained as such thereafter unless otherwise agreed in writing by the Local Planning Authority.
4. Before the development hereby permitted is commenced, details of the siting, layout and surfacing materials of two on-site parking spaces and any other hard surfaces shall be submitted to the Local Planning Authority for approval. The development shall be carried out in accordance with the approved details and retained as such thereafter unless otherwise agreed in writing by the Local Planning Authority.
5. No development shall commence until details of soft landscaping have been submitted to and approved in writing by the Local Planning Authority for the front garden area. All planting, seeding or turfing comprised within the approved scheme shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species.
6. Prior to the first occupation of the development hereby permitted, provision shall be made for the storage of refuse and recycling awaiting collection according to details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.
7. The development shall only be carried out in accordance with the approved Flood Risk Assessment dated 23 February 2021 and the Surface Water Drainage Strategy contained within it. Prior to the extension hereby approved being brought into use the development shall provide or use an existing soakaway or other sustainable drainage system which will be

designed in accordance with BRE 365 for the critical 1 in 100 year storm event plus 40% climate change.

8. Before the first use of the development hereby approved, details shall be submitted to and approved in writing by the Local Planning Authority of the position of two Swift bird boxes with a timetable for their installation, and the birdboxes shall then be installed in accordance with the approved details and timetable and thereafter retained.