



Appeal Decision

Site visit made on 15 February 2022

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

an Inspector appointed by the Secretary of State

Decision date: 06 April 2022

Appeal Ref: APP/X1165/W/21/3279511

Land adjoining Maxstoke Court, Middle Warberry Road, Wellswood, Torquay, Devon TQ1 1RP

- 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 Mrs Penny Knapman against the decision of Torbay Council.
 - The application Ref P/2020/0419, dated 5 June 2020, was refused by notice dated 3 February 2021.
 - The development proposed is a single storey two bedroomed detached dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey two bedroom detached dwelling at Land adjoining Maxstoke Court, Middle Warberry Road, Wellswood, Torquay, Devon TQ1 1RP, in accordance with the terms of the application Ref: P/2020/0419, dated 5 June 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have used the description of development in the banner heading above to reflect that as provided at section E of the appeal form, in the interests of accuracy and consistency.

Main Issues

3. The main issues in this appeal are:
 - Whether the proposed development would preserve or enhance the character or appearance of the Warberries Conservation Area (the Conservation Area),
 - Whether the proposed development makes adequate arrangements for vehicle parking provision and bicycle storage; and,
 - The effect of the proposed development on living conditions of future residents of the appeal scheme with regards to access and arrangements for waste and recycling.

Reasons

Conservation Area

4. In accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special

attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area in reaching this decision.

5. The Conservation Area covers much of the Warberry Hill area of Torquay. The Conservation Area is characterised by sizeable villas from the mid-19th Century that stand in spacious and mature grounds. As such, its significance lies, in part, in the way in which it continues to demonstrate a phase of affluent development around the town at that period. Maxstoke Court was built around 1851 and is part of a group of similar substantial villas set within generous grounds.
6. The appeal site, which retains its appearance as being garden land associated with Maxstoke Court, and the large garden areas at the neighbouring villas contribute to a significant sense of spaciousness. The appeal site thereby makes a positive contribution to the character and appearance of the Conservation Area, and it is noted that the Conservation Area Appraisal identifies Maxstoke Court as a key building which makes a significant contribution to the townscape.
7. The appeal proposal is for a flat roofed single storey dwelling with large elements of glazing on its southern elevation. The proposed dwelling would be built into sloping land with the appeal site occupying a significant portion of the land which previously formed part of the garden area associated with Maxstoke Court. A proposal for a single storey dwelling of similar design, albeit larger in terms of footprint and height, was dismissed at appeal¹ (the Recent Appeal) in December 2017.
8. Nonetheless, consistent with the findings of the Inspector in the Recent Appeal, by reason of the steeply sloping nature of the land, the low profile of the proposed dwelling which would be built into that sloping land and presence of trees and other vegetation at the site, the proposed dwelling would not be prominent or visible in views from within the wider surrounding Conservation Area and so would not intrude unduly into the sense of the appeal site being part of the garden to Maxstoke Court.
9. In terms of its position and layout, the appeal scheme would result in the visual division of the land to the rear of Maxstoke Court, with the proposed dwelling being sited out of alignment with the adjacent villas which occupy sloping plots of similar size between Middle Warberry Road and Lower Warberry Road. As such, the appeal proposal would be at odds with the historic pattern of development in that it would result in two properties, Maxstoke Court and the appeal proposal, having curtilages that would be appreciably smaller than typical of the area.
10. Notwithstanding the above, the submissions indicate that the appeal site has been in separate ownership to Maxstoke Court for in excess of ten years. As such, the Appellant has put it to me that a fence could be constructed at the boundary between the site and the car park serving Maxstoke Court under permitted development rights and would result in the site appearing to be visually separated from Maxstoke Court. I am satisfied that if the appeal proposal is not permitted, given the separate ownership, there is every likelihood that such fencing would be constructed at the site in order to provide

¹ Appeal Reference: APP/X1165/W/17/3180976

security. I therefore attribute significant weight to the construction of such a fence as a fall-back in the determination of this appeal.

11. In this regard, whilst the proposal would result in the division of the garden at Maxstoke Court and would thereby be at odds with the historic pattern of development in this area, the fall-back position for the construction of a fence would equally result in any physical or visual connection between the site and Maxstoke Court being lost.
12. However, given that it would not be subject to consideration by the Council, the fence that may be erected under permitted development could have a functional and striking appearance that would be dominant in views from within Maxstoke Court, resulting in a pronounced and unsympathetic division of the space to the rear of that villa. I recognise that a boundary treatment would be required between the new house and Maxstoke Court. However, although the development would still be dividing the curtilage of Maxstoke Court, given that the proposed dwelling would be so unobtrusive and with a soft boundary treatment dividing the site from the Maxstoke Court building, there would be more of a sense of a large curtilage remaining around Maxstoke Court than if the fence provided under permitted development rights, was constructed.
13. As noted above, I am in no doubt that there is every likelihood that the fall-back position would be constructed at the site, and I judge that the erection of such a fence would have a greater adverse effect on the character and appearance of the Conservation Area than the appeal scheme. Given the reduced scale of the proposed dwelling and mindful of the provision of a proposed wide boundary planting tree buffer to be secured by planning condition, the proposed dwelling would not be visible from within the Maxstoke Court building, and by reason of the significant weight to be given to the fall-back position, I find that the Conservation Area's appearance would be preserved in accordance with the requirements of local and national planning policy.
14. The boundary wall which separates the site from Lower Warberry Road is a historic feature which contributes positively to the character and appearance of the Conservation Area. The appeal scheme proposes repairs to that wall which could be secured by planning condition if the appeal was allowed.
15. It is noted that there have been concerns regarding the condition of that wall since the determination of the Recent Appeal. However, there is no substantive evidence of deliberate neglect, and the repair of that wall would help ensure that the appeal scheme preserves the character and appearance of the Conservation Area. While it is acknowledged that a small section of hedge would need to be removed to facilitate any repairs, additional planting secured by planning condition would be sufficient to overcome that concern.
16. The proposed development would comply with Policies DE1 and SS10 of the Torbay Local Plan (December 2015) (the Local Plan) and Policy TH8 of the Torquay Neighbourhood Plan (June 2019) (the Neighbourhood Plan) which, together and amongst other matters, requires that development integrate successfully, respecting the character of the built environment including areas and buildings of historic interest. Whilst the Council's decision notice includes reference to conflict with Policy DE5 of the Local Plan, that policy concerns domestic extensions and, therefore does not apply in relation to the proposed development for an additional new dwelling.

Car Parking and Bicycle Storage Provision

17. Further to other matters, Policy DE3 of the Local Plan confirms that development should provide satisfactory provision for off road parking and bicycles. Policies TA1 and TA2 of the Local Plan, amongst other things, require development to incorporate appropriate levels of car parking and satisfy the transport needs of the development. Policy TA3 of the Local Plan requires parking to be provided in accordance with Appendix F of the Local Plan, with Appendix F of the Local Plan confirming that two spaces should be provided per residential dwelling.
18. Policy TH9 of the Neighbourhood Plan requires that housing developments meet the Local Plan guideline parking requirements unless it can be shown that there is not likely to be an increase in on-street parking arising from the development, or that the development is within the town centre and an easy walk of a public car park available to residents.
19. The Council raises concerns regarding the lack of off street parking provision and no dedicated space for bicycles, which would provide a potential alternative for travelling by private motorised vehicle, has been provided by the appeal scheme.
20. With regards to bicycle storage, the plans submitted in support of the planning application include an area to the side of Maxstoke Court car park which is indicated as being for cycle stores. Whilst I acknowledge the Council's concerns, in my view there would be sufficient space within the proposed development to provide that storage area, with the layout of a storage area for bicycles being secured by a planning condition requiring that details be approved by the Council.
21. However, and even in the event that bicycle storage space was provided, the lack of off-street parking provision would result in the appeal scheme failing to strictly accord with the provisions of Policy TA3 of the Local Plan and Policy TH9 of the Neighbourhood Plan.
22. The appeal scheme is proposed to be a car free development. Whilst the site is not within the town centre it is located close to a bus stop which, the evidence before me indicates, provides a reasonably frequent service during the day. However, and even if dedicated bicycle storage is provided, by reason of the size of the proposed dwelling and given its out of town centre location, in my view it is likely that future occupants would use private motor vehicles to access wider services and facilities within the area. Consequently, the appeal scheme would be likely to result in some increase in on-street parking at this location.
23. It was noted on my visit, which was conducted during the afternoon, that there was some capacity for on street parking close to the site within Lower Warberry Road. This is consistent with the comments made by the Council's Highway Officer. However, given the width of this road, parking would only be available on just one side of Lower Warberry Road, and I am in no doubt that the demand for parking is likely to increase at the end of the working day when it could become more difficult to find a parking space. Whilst alternative modes of transport may be available for future occupants, the appeal scheme would be likely to result in increased levels of on-street parking for long periods.

24. Notwithstanding that no off street parking spaces are provided within the appeal scheme, the Appellants have put it to me that there is an existing parking space within Maxstoke Court which, if necessary, could be tied to the appeal site and the proposed development by means of a planning obligation. However, I have not been provided with any such planning obligation and, consequently, there is no suitable or enforceable mechanism before me that would secure that parking space for the appeal scheme.
25. For the above reasons, the appeal proposal would conflict with Policies DE3, TA1, TA2 and TA3 of the Local Plan and would fail to accord with the requirements of Policy TH9 of the Neighbourhood Plan with regards to the number of off street parking spaces to be provided.

Living Conditions

26. Amongst other matters described above, Policy DE3 of the Local Plan seeks to ensure that development provides a good level of amenity for occupants and that proposals do not unduly impact on the amenity of nearby residents, and that this includes satisfactory provision for storage of bicycles and containers for waste and recycling. Policy W1 of the Local Plan confirms that, as a minimum, all developments should make provision for appropriate storage, recycling, treatment and removal of waste likely to be generated and that residential units should provide adequate space within the curtilage for waste and accessible kerbside recycling bins and boxes.
27. As noted above, there is sufficient space within the site to provide dedicated storage for bicycles, the details for which could adequately be secured by condition. Irrespective of the positioning of an area for bicycle storage within the appeal site, I do not find that arrangements for storage or collection of bicycles would be inappropriate or would result in unacceptable living conditions for future residents of the appeal proposal.
28. I also note the concerns regarding pedestrian access to the proposed dwelling. However, I find that stepped access points were not uncommon within this area of Torquay and, in my view, would not result in significant adverse effects with regards to the living conditions of future residents. I therefore find no harm in relation to access to the proposed dwelling.
29. Nonetheless, I do however share the Council's concerns regarding the proposed location for storage of waste and recycling containers. In the event that bins were to be located adjacent to the parking area which serves Maxstoke Court, future occupants of the scheme would be required to move their waste bins and recycling up to approximately 45 metres to a collection point on Lower Warberry Road, via a steep and stepped pathway. Whilst I note that the main parties disagree as to whether future residents of the appeal scheme would have a right of access through Maxstoke Court, even in the event that waste and recycling containers were to be collected from Middle Warberry Road, that would still require that future residents transport such containers up a very steep slope and for some distance in order to place them for kerbside collection.
30. Consequently, irrespective of whether kerbside collection would be from Middle or Lower Warberry Road, the proposed position of the waste and recycling storage area would be inconvenient and given the sloping nature of the site and distance involved, it is likely, especially during periods of inclement

weather, that there would be longer-term presence of bins on the highway beyond that necessary for collection. This would be likely to have an adverse impact on the character and appearance of the area, the street scene and on the living conditions of nearby residents.

31. For the above reasons, taking into account the distance involved and the inclined nature of the appeal site, as a matter of fact and degree, I do not consider the proposed location of the waste and recycling containers storage area would be sited to enable all future residents to conveniently manoeuvre waste bins to a kerbside collection point.
32. However, the Appellant has put it to me that adequate waste storage can be provided within the site and that, if necessary, such containers can be positioned at the bottom of the site close to Lower Warberry Road. In this regard, I find that there would appear to be sufficient space within the site to locate the storage area close to the proposed pedestrian access onto Lower Warberry Road and that subject to a planning condition that required details of the position and layout of such an area submitted to the Council for approval, would, in my view, be adequate to overcome the concerns and harm identified above.
33. In summary of this main issue, subject to the inclusion of a suitable planning condition that required details and layout of an area for storage of waste and recycling containers be approved by the Council, I find that the appeal scheme would not have an adverse effect on the living conditions of future residents and that, accordingly, the appeal proposal would comply with the aims and objectives of Policies DE3 and W1 of the Local Plan.
34. Further to the above, the Council have put it to me that there is an additional concern that development of the site would result in a loss of external amenity area for occupants at Maxstoke Court. However, the evidence indicates that the appeal site has been in separate ownership for in excess of ten years and consequently has not formed part of the external amenity area for Maxstoke Court residents for a considerable period of time. As such, even in the event that the appeal is dismissed, I am not satisfied that that area would or could be used as private garden amenity area for existing or future residents at Maxstoke Court.

Other Matters

35. Interested parties raise additional objections to the appeal scheme on the grounds of impacts on the living conditions of a resident at Maxstoke Court and in respect of ecological concerns. These are all important matters and I have taken into account all of the evidence before me.
36. In terms of ecological concerns, the appeal scheme was supported by an ecology report which makes recommendations regarding measures to be taken to protect wildlife during and after construction and that while a large portion of existing vegetation at the site would be retained, further substantial amount of planting is proposed. Consistent with the conclusions of the Council's Officer, and subject to appropriate planning conditions described below, I do not find that the proposal would result in harm with regards to ecology.
37. In terms of the effect of the proposal on the living conditions of a resident at Maxstoke Court, as explained in their written submissions there are health

concerns which would arise from noise and disturbance created during construction. This resident's health condition is a protected characteristic and I have, therefore, had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010.

38. Whilst I note the information supplied by the nearby resident, it was apparent during my site visit that the sound of other nearby construction and the noise from adjacent roads was audible from within the Maxstoke Court car park and from the appeal site. I have great sympathy with the Maxstoke Court resident's position. However, to my mind there would be opportunity to consider the noise and disturbance that may occur by a Construction Management Plan, secured by planning condition and which required approval by the Council, that would limit any adverse effects of noise and disturbance during development of the appeal site.

Planning Balance

39. The Council is presently unable to demonstrate the required supply of deliverable housing sites, with the evidence before me suggesting that the Council only has 2.9 years of housing land supply. This constitutes a considerable and significant shortfall in the supply of housing land.
40. Paragraph 11(d) of the National Planning Policy Framework (the Framework) provides that where there are no relevant development plan policies, or the policies most important for determining the application are out-of-date (including housing, where the Local Planning Authority cannot demonstrate a five year supply of deliverable housing sites), 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.
41. Whilst I have not found any harm in respect of the living conditions for future residents, including in respect of access, and that the appeal scheme would preserve the appearance of the Conservation Area, for the above reasons the scheme would fail to provide adequate car parking provision. However, the weight to be attached to the under provision of off-street parking spaces is limited, given that it would be possible for future residents to access some services and facilities without necessarily being heavily dependent on use of private motor vehicles and, whilst it can be said that the proposal would be likely to result in increased levels of on-street parking, by reason of the scale of development and consistent with the conclusions of the Council's Highways Officer, there would be no severe impact on highway safety.
42. The appeal scheme would make a contribution, albeit a limited one, to the supply of housing in an area where there is a significant and considerable shortfall in housing land supply. The proposal would provide limited economic benefits during the construction phase. The proposed development would include substantial levels of new tree and hedge planting and a surface water pond which, together, would provide limited environmental benefits in terms of potential biodiversity gain.
43. In summary of the above considerations, I find that the cumulative benefits associated with the proposal would be limited by reason of the scale of development. However, for the reasons given above, the harm arising from the under provision of off street parking would also be limited. Consequently, I find

that the harm arising from the appeal scheme would not significantly or demonstratively outweigh the benefits of the appeal scheme when assessed against the provisions of the Framework when taken as a whole.

Conditions

44. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance and the Framework. 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.
45. In the interests of protecting the character and appearance of the Conservation Area, conditions regarding materials, trees and hedges, boundary treatments, landscaping and wall repair, are necessary and reasonable. In the interests of controlling the future appearance of the proposed dwelling and the site which makes a positive contribution to the Conservation Area, a condition removing permitted development rights for any subsequent enlargement, additions and alterations, fences, access to the highway and provision of buildings incidental to enjoyment of the dwellinghouse, is justified in this instance.
46. In the interests of living conditions of existing and future residents, conditions requiring approval of refuse and recycling bins, bicycle storage and a pre-commencement condition for a construction management plan are reasonable and necessary. In order to ensure no adverse effect on biodiversity, conditions that control external lighting that the proposed development accord with the recommendations of the ecological appraisal, is necessary. A condition that the development be carried out in accordance with the submitted flood risk assessment is necessary in the interests of managing flood risk.
47. Where necessary, and also in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance. The wording of pre-commencement conditions have been agreed by the Appellant.

Conclusion

48. For the reasons given above, the appeal succeeds and planning permission is granted subject to the conditions identified.

Mr A Spencer-Peet

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun within three years of the date of this permission.
- 2) The development hereby approved shall in all respects accord strictly with drawing numbers: 3943(01)01 Site Location Plan, 3943(12)01 Proposed Site Plan, 3943(22)01 Proposed Various, 3943(12)02 Proposed Roof and Landscape Plan and 3943(32)01 Proposed Elevations East and West received by the Local Planning Authority on 2 May 2020 and drawing number: Proposed Layout Conduits received by the Local Planning Authority on 21 November 2016.
- 3) In accordance with the submitted flood risk assessment (Pitman Associates Ltd, 0183-B) received 16 July 2020, surface water drainage shall be provided by (rainwater harvesting and attenuation and controlled discharge into a highway drain or public sewer at a rate of 1.5l/s and maintenance of that system) which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 40% for climate change unless an alternative means of surface water drainage is submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development.
- 4) No development shall take place until a site-specific Construction Management Plan has been submitted to and been approved in writing by the Council. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, & dust.

The plan should include, but not be limited to:

- Procedures for maintaining good neighbour relations including complaint management.
- All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours: 08:00 Hours and 18:00 Hours on Mondays to Fridays and 08:00 and 13:00 Hours on Saturdays and; at no time on Sundays and Bank Holidays.
- Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- Mitigation measures as defined in BS 5528: Parts 1 and 2 : 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.
- Control measures for dust and other air-borne pollutants.

The development shall be implemented in accordance with the approved details.

- 5) Prior to the commencement of above-ground works of the development hereby permitted, details of colour, type and texture of all external materials, including hard-surfaced areas, to be used in the construction of the proposed development shall be submitted to and approved by the Local Planning Authority. The development shall, thereafter, be implemented in accordance with the approved details.
- 6) (i) Any work carried out to trees and hedges to be retained on site or close to the boundary of the site shall be with the written approval of the Local Planning Authority. Such work will be to British BS 3998: 1989 as a minimum standard.
- (ii) The development hereby approved shall not commence, and no materials shall be brought onto site, until the trees and hedges to be retained on adjoining sites are protected by fencing as per BS 5837: 2005. This will either be chestnut pale fencing or a scaffold structure 2.4 metres high supported durable man-made sheeting (either plywood or OSB of an exterior grade). Chestnut pale fencing will be to BS 1722: Part 4: 1989, as a minimum standard. This will consist of 1.200 mm pales, wired together as per standard, supported on three line wires, secured to fencing posts to a minimum standard of: 1800 mm long, 7 mm (3") top, driven 500 mm into the ground. In addition, straining posts, 1800 mm long by 100 mm (4") top, strutted where a change of direction occurs, will be installed at all ends and corners, at changes of direction, or acute changes of level, and at intervals no exceeding 50 m in straight lengths of fence. The fence will be installed upright, with all posts firmly bedded in the ground and line wires tensioned and shall be maintained in such a condition throughout the duration of the development.
- (iii) The fence shall be installed no closer to the trunk of the retained tree/hedge than the edge of the canopy or a distance equivalent to half the height of the tree/hedge, whichever is the greater.
- (iv) The area beneath the tree/hedge and between the trunk of the tree/hedge and the fence will be kept clear and undisturbed at all times. No materials shall be stored within the fenced area; the levels of the land within the fenced area shall not be altered, and no seepage of oils, fuels or chemicals (including cement and cement washings) which may be harmful to trees and hedges shall be allowed onto the fenced area.
- (v) No trenches for service runs, or any other excavations shall take place within the fenced area.
- (vi) No soil or other surface material shall be removed from the fenced area except by written permission of the Local Authority. Where such a permission is granted, materials shall be removed manually, without powered equipment, taking adequate precautions to prevent damage to tree or hedge roots.
- 7) Prior to any above ground construction of the development hereby permitted details of the proposed boundary treatment for the north boundary shall be submitted to and agreed in writing by the Local Planning Authority. The boundary treatments shall be provided in accordance with approved details and shall be retained thereafter.

- 8) Prior to the first occupation of the development hereby permitted the works included in the Wall Repair Schedule (referenced P2020-0419-29) to the south boundary wall on Lower Warberry Road shall be completed in materials that match those of the existing stone wall.
- 9) Prior to the first occupation of the development hereby permitted details of the proposed refuse and recycling bin enclosure and their locations on the site shall be submitted to and agreed in writing by the Local Planning Authority. The bin enclosure shall be provided in accordance with the approved details prior to first occupation and retained thereafter.
- 10) Prior to the first occupation of the development hereby permitted details of the proposed bicycle storage facility for two cycles shall be submitted and agreed in writing by the Local Planning Authority. The cycle storage facilities shall be provided in accordance with the approved details prior to first occupation and retained thereafter.
- 11) Prior to the first occupation of the development hereby approved, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include:
 - (i) Planting to replace any hedging on the south boundary that is lost as a result of the wall repairs and
 - (ii) planting for the strip along the northern boundary of the site

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. The approved hard landscaping details shall be provided within 8 weeks of the development being brought into use and shall be retained for the life of the development.
- 12) The development hereby permitted shall be implemented in accordance with the recommendations of the Preliminary Ecological Appraisal (referenced SWE, 201-2 (PEA) received on 22 January 2021).
- 13) Prior to any above ground development on the site a scheme for external lighting of the development shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and retained in that condition thereafter.
- 14) Notwithstanding the provisions of Classes A, B, C and E of Part 1 and Classes A and B of Part 2 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-

enacting that Order with or without modification), no enlargements, improvements or other alteration shall take place to the approved dwelling and no outbuildings or boundary walls and fences shall be installed unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.