

Appeal Decision

Site visit made on 9 March 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 April 2022

Appeal Ref: APP/P1133/W/21/3277778

Car Park accessed off of Buckeridge Road, Teignmouth TQ14 8LZ

- 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 Mr Stephen Shute of Bunnyhomes against the decision of Teignbridge District Council.
 - The application Ref 20/01252/MAJ, dated 14 July 2020, was refused by notice dated 26 February 2021.
 - The development proposed is application for 12 apartments on the site of the Trinity School former car park.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A completed S106 Planning Obligation was received on 5 April 2022 providing for either two affordable dwellings or payment of an off-site affordable housing contribution. It also provides for a separate financial contribution towards habitat mitigation measures in relation to the potential effects on the Dawlish Warren Special Area of Conservation and the Exe Estuary Special Protection Area. I return to these matters below.

Main Issue

3. The main issues are:
 - the effects of the proposal on the living conditions of neighbouring occupiers, with particular regard to overlooking; and
 - whether the proposal would be provided with a safe means of access and egress.

Reasons

Context

4. The site comprises part-green vegetated space and part-loose gravel-covered area between and to the north of a number of large, detached dwellings. The Trinity School lies on rising ground further to the north and is also separated by a large intervening belt of mature trees which are protected by a Tree Preservation Order. Access to the site is from a private, unsurfaced lane to the north, which in turn is accessed from Buckeridge Road to the west. Site levels generally decrease in a southerly direction, with the neighbouring dwellings and gardens to the south set lower than the level of the site. A stream runs through the middle of the site and enters a culvert at the southern boundary.

5. The surrounding area is predominantly residential and made up of large, detached villas or villa-style buildings containing apartments. Further to the south, there are similar villa-style Victorian and Edwardian terraced dwellings. There are some examples of some garden plots in the surroundings having been infilled with more modern two storey dwellings or dormer bungalows.
6. The proposal seeks permission to construct two apartment blocks with flat roofs, each containing six apartments over three storeys. There would be some parking incorporated within the building at ground floor level from the unmade access lane. The buildings would be largely orientated to face south, with limited windows in a northerly direction towards the protected trees.
7. In terms of the contemporary design approach of the scheme, the walls would be largely red brick alike many surrounding buildings, and would be broken up by introducing soldier course banding at the top of the brick panels with recessed panels and projecting corbelled brickwork linking the windows. Both of the second storeys would be set back from the south elevation and would be finished in slate grey standing seam metal cladding. Projecting balconies are also proposed on the south elevation.

Living conditions

8. The reason for refusal alleges impacts in respect of overlooking of neighbouring occupiers from windows and balconies. The Council acknowledge in its evidence that there are no standards within the Teignbridge Local Plan (adopted 2014) (Local Plan) in respect of distances that should be achieved between facing windows, but as a general rule of thumb, a minimum of about 20 to 22 metres is usually required. Another established rule of thumb is for distances in excess of 20 to 22 metres to be required where ground levels would result in facing windows within a development being higher than existing neighbouring dwellings, as is the case with the appeal site.
9. A large number of supporting documents provide detail on the distances between the proposed elevations and neighbouring dwellings, the modelled views from facing windows and the necessity for, and location of obscure glazing in certain areas to minimise overlooking. I have considered this evidence and refer to each of the neighbouring properties in turn below.
10. Oakbeer House – Block A would be positioned so as to overlap with about half of the rear elevation of Oakbeer House. Whilst boundary features could be installed to limit the intervisibility between the ground floor level and the rear windows and garden of Oakbeer House, the balcony at first floor level and roof terrace at second floor level would look towards the site at a particularly close distance of around 17.1m.
11. The computer generated images (CGIs) appear to show that the provision of obscure glazing to parts of windows in Apartment 3 and a 1.1m terrace wall for Apartment 5 would be necessary to limit overlooking by occupiers within the respective rooms themselves. However, these measures would not prevent uninhibited overlooking at close range towards the rear of Oakbeer House and its garden from the balcony or terrace when occupiers were standing up or positioned close to their protective boundary features.
12. No 5 Ferndale Road – The facing elevation of Block A would be situated around 18.3m from the closest part of the rear elevation of No 5 Ferndale Road, and

around 21.5m to the furthest part. The CGIs show that there would be a reliance on obscure glazing for certain windows in Apartment No 4 and a 1.1m terrace wall and glazed balustrade for Apartment 6 to prevent overlooking towards No 5 Ferndale Road. However, again, these measures would afford little privacy to the occupants of No 5 Ferndale Road if anyone were stood close to the balcony or roof terrace edges, as they would be capable of doing.

13. No 11 Ferndale Road – There are dormer windows at third floor level facing towards the site in the rear of No 11 which appear to serve a kitchen. The CGIs from Block B, Apartment 8 living room model the proposed relationship between the living room and those rear windows at approximately 20 - 21m away. Due to the level differences between the site and No 11, this relationship would be an intimate one and would allow overlooking. The effects from the living windows of Apartments 9 and 10 would also result in an uncomfortable invasion of privacy, despite the reliance on partial obscure glazing. The views from the balconies of Apartments 9 and 10 and roof terraces serving Apartments 11 and 12, whilst largely shielded from within the interiors of the Apartments, would be clear and unobstructed to occupiers standing up and would result in close range views of rear windows of No 11 Ferndale Road.
14. No 13 Ferndale Road – There would be far fewer windows looking towards No 13 Ferndale Road within Block B, but there would still be an unenclosed side edge of the roof terrace serving Apartment 12 which would allow overlooking of windows at close quarters.
15. Though it appears that balconies and terraces were designed to try and borrow from the spaces between the neighbouring dwellings to achieve an outlook, the close proximity, elevated level of the appeal site and the high numbers of windows and external sitting out areas facing towards neighbouring dwellings and gardens, would be harmful to the living conditions of the respective occupiers through direct overlooking and also the perception of being overlooked. In my view, the use of obscure glazing, slatted privacy screens and boundary features would not sufficiently mitigate this harm. Whilst I accept that some degree of mutual overlooking is typical in urban areas, the proposal would amount to far more than a generally accepted level of intervisibility.
16. For the above reasons, the proposal would harm the living conditions of neighbouring occupiers, with particular regard to overlooking, and would thus conflict with, in particular, Local Plan Policy S1 which seeks to ensure that proposals perform well against a range of criteria, giving consideration to the impacts on the residential amenity of occupiers of existing and committed dwellings, particularly privacy, security, outlook and natural light.

Access and Egress

17. The appellant's evidence includes the updated Highways Technical Note (HTN) (Advanced Consulting, May 2021) and the updated Road Safety Audit (RSA) (June 2021). This evidence base broadly establishes that walking or cycling journeys could replace some trips by car in view of the site's close proximity to town, with busses and trains also available within walking distance. There would also be a footpath connection to the eastern boundary of Trinity Lodge which would direct pedestrians to town along a safer route with footways. These aspects are not disputed by the Council.

18. From the evidence, it appears that the site has been in informal use as a car park in association with the former Trinity Nursery School. It is also alleged that a planning permission to formalise this use for up to 15 cars was granted but not subsequently implemented.
19. Around the junction to the site, Buckeridge Road has a fairly steep gradient, is relatively narrow and is absent of central markings and footways. The simple priority junction of the site access with Buckeridge Road is constrained in width by an existing retaining hedge on one side, and by a property, 'Convent Lodge' on the other. Due to the siting of these features relative to the road, their height, the narrowness and slight curvature of the road itself, emerging visibility is poor in both directions.
20. There are also a small number of dwellings that already utilise the access point. A number of their representations elucidate the difficulty of use of the junction and the existence of two road mirrors also serves to highlight the same. As personally experienced, it is necessary to emerge from the junction with great caution, or 'peep and creep', so as to avoid conflicts with passing cars on Buckeridge Road. Despite these factors, there is an absence of formal recent accident data related to the junction.
21. Submissions by the appellant highlight that the traffic count on Buckeridge Road showed 1,292 two-way trips across a typical weekday. It has been predicted that the proposal would generate 31 two way trips over a 12 hour period which would equate to around an increase of 2.4% per weekday relative to the existing flows on the network. The data also showed 85th percentile speeds of around 29mph in each direction. This typical speed necessitates visibility splays for the junction of the site of 43m in both directions.
22. The highway consultee refers to substandard visibility at the access, indicating that the extent of current visibility is limited to the tangent point of the junction in the southbound direction, or 16.3m to the centre line. In a northbound direction, visibility is only achievable to the tangent point of the junction. These fall far short of the necessary 43m visibility splays and would only be suited to traffic speeds far below the 85th percentile speeds of 29mph. I am of the view that the existing visibility is substandard when considered in the context of the proposal to add vehicular movements from 12 additional households, which would be a greater intensity of use than before or at the present time.
23. In response to these concerns, a 'build out' was proposed within the southbound carriageway on the higher side of the junction. This would result in southbound drivers being positioned further away from the junction on passing the site, enabling drivers emerging from the site to protrude into the carriageway to increase visibility.
24. The RSA notes that the plan does "*not indicate how far into the carriageway the give way for the private access will protrude in order for visibility distances to be achieved*". It is clear from the plan that there is a reliance on drivers protruding into the carriageway to achieve 41 metres to the north, and 41.7 metres to the south. However, the visibility splay to the south (for northbound drivers) closely adjoins the hedgerow of Convent Lodge which constrains visibility far more than is apparent on the plan and would do so to a greater extent during the summer months and if regular maintenance were not undertaken. Therefore, in my view, there is a likelihood that the visibility splay would be far less than 41.7 metres, even with the build out in place.

25. The build-out would increase the likelihood of southbound drivers moving into the middle of the carriageway to go around the build-out, but the extent of their visibility of oncoming drivers would be limited, again more than is apparent from the plan, by features including the road curvature and hedgerow of Convent Lodge. This lack of adequate visibility would add to the complications and safety risks arising from the installation of the build out. These added risks are sufficient for me to conclude that the build out would not result in an improvement to highway safety or make the access/egress to the development safe. Rather, I consider that the build out would have such marginal visibility benefits for drivers emerging from the site that such would be outweighed by the anticipated extra conflicts that would arise specifically therefrom, separate of any consideration to the likely behaviour of cyclists navigating around it.
26. Whilst I note that there have been some past intimation that a scheme of four dwellings would be acceptable in highway terms, and that highway safety concerns appear to have been raised after the pre-application stage, my decision is based on the merits of the scheme currently before me. Therefore, in view of the above, the proposal would not be provided with a safe means of access or egress, in conflict with Policy S1 of the Local Plan which seeks to ensure that new developments perform well with regard to numerous criteria, including road safety and congestion. For similar reasons, the proposal would also be contrary to the National Planning Policy Framework, paragraph 111, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Other Matters

27. The appeal site is within influence of the Dawlish Warren Special Area of Conservation and the Exe Estuary Special Protection Area. Residential development in this location, considered either individually or cumulatively with other schemes, could have significant effects on the features of interest of the protected sites from increased recreational use and other domestic activity. The parties do not dispute that this can be mitigated through contributions and the appellant has submitted an agreement to seek to secure the contribution.
28. However, as the circumstances that could have led to the granting of planning permission are not present, it is not necessary for me to ascertain the appropriateness and delivery of potential mitigation measures within an Appropriate Assessment. As such, I have not taken this matter further.

Planning Balance and Conclusion

29. Insofar as it would harm the living conditions of neighbouring occupiers and fail to provide safe access and egress for future occupiers, the proposal conflicts with the development plan, when considered as a whole.
30. The public benefits of the scheme include the provision of 12 new dwellings on a well-located site within Teignmouth, which would be beneficial to those seeking to access new housing. The affordable housing component would also help to meet a locally identified need. Additional economic benefits would also be generated throughout the construction phase and following occupation with additional demands from future occupiers for local goods and services. I attribute these benefits moderate weight.

31. However, even if I were to consider the reuse of the land as previously developed alongside these benefits, they are not of sufficient collective weight to outweigh the identified harms or indicate that a decision should be taken other than in accordance with the development plan.
32. For the above reasons, the appeal is dismissed.

Hollie Nicholls

INSPECTOR