



Appeal Decision

Site visit made on 4 April 2022

by Neil Pope BA(HONS) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2022

Appeal Ref: APP/X1165/W/21/3287683

Land at Brends Orchard, Edginswell Lane, Torquay, Devon, TQ2 7JF.

- 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 H Harle against the decision of Torbay Council.
 - The application ref. P/2021/0809, dated 1/7/21, was refused by notice dated 30/9/21.
 - The development proposed is a residential development of five dwellings (two self-build inclusive).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In submitting the application that is now the subject of this appeal an application form for outline planning permission (with access only not reserved) was completed. Following receipt of the application, full details/plans were sought and obtained by the Council but an amended application form was not requested. The Council has confirmed that it determined the application as a full/detailed submission. I shall determine the appeal accordingly.
3. As I noted during my visit, the appeal site lies within the settings of six adjacent Grade II listed buildings¹. The provisions of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are engaged.
4. Interested parties have drawn my attention to access works at the entrance to the appeal site. Photographic evidence has also been submitted which shows a section of roadside (traditional stone) wall (attached to the Grade II listed calf house immediately adjoining the site) removed. The removal of this section of roadside wall would almost certainly require listed building consent. I am unaware of any accompanying listed building appeal and there is no information before me to indicate that any such application has been made.
5. I note from the planning application form that the proposal includes "*a new or altered vehicle access proposed to or from the public highway*". I also note from the application form that no building or works have already been carried out. As this is a full application and the provisions of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are engaged, I shall assess the impact of the access works, including those to the roadside wall, as part of my considerations. However, this does not obviate the need for a separate application for listed building consent in respect of these works.

¹ These comprise a former threshing barn, a likely calf house, linhay, Edginswell Farmhouse and a shippon/stable to the south and south east of the site, as well as Edginswell Hall to the north west of the site.

6. As part of the appeal, the appellant has submitted a Statement of Common Ground. Whilst this has not been signed by either party, I understand that it is agreed other than the Council's argument that an obligation, under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended), would be necessary to ensure that the proposed road layout was adopted by the Local Highway Authority and to ensure that no ransom strip occurs within the site. I return to this as an 'other matter' below.
7. I note from the planning officer's report that the Council cannot demonstrate a five year housing land supply and it considers that the 'tilted balance', which is set out within the National Planning Policy Framework (the Framework), applies. The 'tilted balance' would apply if any harm to the significance of the designated heritage assets would be outweighed by public benefits.

Main Issues

8. The three main issues are: firstly, whether the proposal would preserve the settings of the six Grade II listed buildings adjacent to the site² and, if not, whether this would be outweighed by any public benefits; secondly, the effect upon the character and appearance of the area and; thirdly, the likely effect upon highway safety and the free flow of traffic along the local highway network, having particular regard to the proposed car parking provision for proposed plots nos. 3, 4 and 5.

Reasons

Planning Policy

9. The development plan includes the Torbay Local Plan 2012 to 2030 (LP) and the Torbay Neighbourhood Plan (NP). The most important policies to the determination of this appeal are: LP policies SS2 (future growth areas), H1 (new homes), DE1 (design), SS10 (historic environment), TA2 (highway safety/congestion), TA3 (parking requirements) and; NP policies TH6 (Edginswell Future Growth Area – connectivity), TH8 (established architecture), TH9 (parking facilities) and TS2 (Master Plans).
10. My attention has also been drawn to the provisions of the Torquay Gateway (Edginswell) Masterplan Supplementary Planning Document (SPD) that was adopted in 2015. Indicative drawings within this SPD identify the appeal site as part of an area suitable for *some 'Village' expansion to Edginswell in a sympathetic 'Hamlet Character'* and with a connecting cycle/footpath link through the site to other development proposed within this part of Torbay.

Settings of Listed Buildings

11. This 0.325 ha appeal site lies at the north eastern end of Edginswell Valley and forms part of the hamlet of Edginswell. This sloping site was formerly an orchard and used in association with a thriving cider making business, most likely based at Edginswell Farmhouse³. All of the fruit trees on the site have since been removed and an adjoining area of land to the north has been developed as a small scheme of housing⁴. Further south along the valley, development is under way as part of the Torquay Gateway.

² I shall also consider whether the removal of the section of roadside wall preserves the Grade II listed calf house or any features of special architectural or historic interest which it possesses.

³ A Grade II listed former shippon/cider house, now in residential use, lies further east along Edginswell Lane.

⁴ Known as Edginswell Orchard.

12. The heritage interest (significance) of the Grade II listed 18th and 19th century farm buildings, 17th century Edginswell Farmhouse and 19th century Edginswell Hall is derived primarily from their special architectural and historic qualities. These include the cob and local sandstone rubble walls of the simple hipped roof⁵ farm buildings, the rendered walls and gable slate roofs of Edginswell Farmhouse and Edginswell Hall, the plan-forms of these buildings and the close physical relationship and layout of the agricultural buildings relative to Edginswell Farmhouse. The agricultural buildings and Edginswell Farmhouse form a particularly pleasing group of traditional Devon rural buildings.
13. The settings of these six listed buildings have changed over time. This includes the development at Edginswell Orchard and the planned changes that are/will progress further north east along Edginswell Valley. Nevertheless, as I noted during my visit, the largely unspoilt, green open qualities of the appeal site are an integral part of the remaining countryside to the south and west of these designated heritage assets.
14. The appeal site forms part of the historic landscape setting to these six adjacent listed buildings and has a historic functional link to many of them. The qualities of the site that I have identified above assist in affording an appreciation and understanding of the rural context of these buildings and their associations with agricultural activities. It makes a positive contribution to the significance of these designated heritage assets.
15. Photographic evidence also indicates that the section of roadside wall that previously extended across part of the frontage of the site was a traditional feature that provided a pleasing sense of enclosure to the adjoining listed former calf shed, as well as to this part of Edginswell Lane. This wall also appears to have contained some important historic fabric and made a positive contribution to the significance of this adjoining listed building.
16. The proposed two storey detached dwellings⁶ would be served from a central access road⁷ with a 'hammer head' vehicular turning facility towards the middle/south western part of the site. The dwellings would have a mix of hipped and gable roofs⁸ clad in natural slates, with weatherboarding and roughcast rendered walls. New sections of wall would be built behind the entrance radii and some fruit trees would be planted around the entrance and to the side of the access road.
17. I recognise the attempt⁹ made by the appellant's architect to incorporate some locally distinctive features into the finish of the proposed buildings and the proposed reinstatement of a section of roadside wall. However, the extent of the new buildings, hard surfaced areas, as well as the wide new access road that would carve through the centre of the site, would seriously erode the green, unspoilt open qualities of the site. Moreover, the layout of the new estate road with semi-detached and detached houses, together with the entrance radii, low roadside walls and the arrangement of the fruit trees¹⁰, would have a suburban character that would contrast awkwardly with the adjacent listed buildings.

⁵ Clad in corrugated iron sheets.

⁶ Plots 1 and 2 would have linked garages.

⁷ Approximately 6 metres wide at the entrance (with 6m radii) and 4.8m wide further into the site.

⁸ Plots 1, 2 and 3 would have gable roofs and plots 4 and 5 would have hipped and gable roofs.

⁹ I note the appellant's frustration with the Council in being unable to provide "design direction".

¹⁰ The planting arrangement would be very different to the spacing and 'grid formation' of a traditional orchard.

18. The proposed development would erode the historic landscape setting of the adjacent listed buildings and, in so doing, diminish the ability to appreciate and understand the rural context of these designated heritage assets and the site's historic functional link to them. There is also a harmful loss of a section of historic fabric/roadside wall. I disagree with the appellant's assessment that the development would have a negligible impact on the settings of the listed buildings. The proposal would fail to preserve the settings of these six neighbouring Grade II listed buildings.
19. In the context of the Framework, the proposal would result in less than substantial harm to the significance of these Grade II listed buildings. If there is a sliding scale within this category of harm the proposal would be somewhere towards the middle/lower end. However, less than substantial harm to a designated heritage asset does not amount to a less than substantial planning objection. Great weight should be given to an asset's conservation. The harm that I have identified weighs very heavily against granting permission. This must be weighed with the public benefits of the proposal.
20. The SPD allows for some limited growth at Edginswell as part of the Torquay Gateway and the Edginswell Illustrative Masterplan shows some housing on the appeal site. I do not know what, if any, heritage impact assessment/evidence accompanied the SPD in respect of this site. In all probability, any housing on the appeal site would be likely to result in some degree of harm to the significance of the six above noted listed buildings.
21. Whilst not a 'fall back' position available to the appellant, it is difficult to ascertain what scale of harm the Council envisages to these designated heritage assets in realising the aims and objectives of its SPD. That said, the Illustrative Masterplan is only indicative. It is also very far from certain that the appeal proposal is the only viable or least harmful scheme¹¹ for developing the site in accordance with the Council's intentions/adopted SPD.
22. The proposed development would increase the choice and supply of housing within Torbay, including self-build, and would help to address the shortfall in supply. These matters weigh heavily in support of an approval. The proposal would also support the construction industry and increase Council Tax receipts. These additional public benefits lend some very limited weight to the appellant's argument for granting permission. On the assumption that the development secured a public cycle/footpath link through the site¹² then this further public benefit carries moderate weight in the heritage/planning balance.
23. When all of the above are weighed together, I find, on balance, that the failure to preserve the settings of the six Grade II listed buildings adjacent to the site (and the loss of historic fabric from a section of roadside wall) would not be outweighed by the public benefits of the development. The proposal conflicts with the provisions of LP policy SS10.

Character and Appearance

24. The unspoilt, green open qualities of the appeal site form an attractive part of the countryside around Edginswell and are an integral part of Edginswell Valley.

¹¹ The Illustrative Masterplan does not appear to show any intended/alterd vehicular access into the site on land adjacent to the listed calf house or any loss of important historic roadside wall. It is also unclear if the intention is to plant fruit trees on part(s) of the site and, if so, in what form/layout.

¹² The appellant has agreed to this but there is dispute between the main parties over how this should be secured. I shall return to this particular matter as part of the third main issue.

Housing development on the appeal site would erode these qualities and the countryside setting of Edginswell. This would have an adverse effect upon the character and appearance of the area.

25. However, this valley has been identified within the development plan as being appropriate for accommodating necessary major growth. As noted above, the SPD and illustrative masterplan for the area also identify the appeal site as suitable for some new housing. Some adverse effect upon the character and appearance of the area is therefore inevitable in order to meet the housing requirements of Torbay, as set out within the development plan.
26. In releasing land such as the appeal site for housing, the development plan and the SPD also require new housing to be designed to a high standard, developing a distinctive character and, in the case of the appeal site, be sympathetic to the "Hamlet character". I have already found above that some elements of the proposal would have a suburban character. This would not be sympathetic to the distinctive qualities of Edginswell or its "Hamlet character".
27. The style and design of the proposed houses, including the height, scale and bulk, would not be too dissimilar to the Edginswell Orchard development alongside. It is not unreasonable for the appellant, especially given remarks made on her behalf in respect of an absence of design direction from the Council, to take this as a measure of what the Council is seeking to achieve.
28. It is beyond my remit to provide design guidance. Nevertheless, the style and design of the proposed houses would have little, if anything, in common with the distinctive qualities and the identity of the neighbouring traditional buildings. The access road also appears somewhat excessive/'over engineered' and with limited space for any meaningful 'replacement' tree planting. The proposal would detract from the character and appearance of the area.
29. I recognise the pressures on scarce public sector resources. Nevertheless, the Framework also encourages local planning authorities to work proactively with applicants and to engage in good quality pre-application discussions. As the appeal scheme is the appellant's third (unsuccessful) attempt to secure an approval, such engagement is important in respect of this sensitive site.
30. I conclude on the second main issue that the proposal would have an adverse effect upon the character and appearance of the area and would be at odds with the objectives of LP policies DE1 and the provisions of LP policy H1.9 and NP policy TH8. The failure to secure a design that would be sympathetic to the "Hamlet character" would result in an element of conflict with NP policy TS2.

Highway Safety / Free Flow of Traffic

31. The proposed development would include off-road parking and garage spaces for all of the proposed dwellings. I note from the highway officer's response that the total number of spaces to be provided would exceed the quantum recommended in the Council's parking standards.
32. The proposed site layout/access road would continue to the south western end of the appeal site. However, I note from the illustrative masterplan that vehicular access through the site to other planned housing in Edginswell Valley is not required. The proposed estate road is not intended as a through route for motor vehicles. The volume of motorised traffic along this estate road is likely to be very low and vehicles are likely to be slow moving.

33. Any deficiencies regarding the size of the proposed parking spaces for plots 4 and 5, or the location of the parking space for plot 3 would be very unlikely to result in any significant congestion or interruption to the free-flow of traffic along the local highway network. The manoeuvring of vehicles into these spaces¹³ would be unlikely to pose a serious risk to highway safety interests.
34. There is no cogent evidence to demonstrate that the proposed development would compromise highway safety interests or interrupt the free flow of traffic along the local highway network. The proposal accords with LP policies TA2, TA3 and NP policy TH9.

Other Matters

35. Connectivity along the Edginswell Valley is an important component of the SPD and for achieving a successful overall development for this identified Growth Area. As noted above, the appellant agrees with the Council that a cycle/pedestrian link should be provided through the appeal site. However, there is dispute between the main parties as to whether or not this matter should be dealt with by way of a planning condition or a section 106 obligation.
36. I note the Council's argument that the proposed estate road should be adopted and that no ransom strip should occur within the appeal site that could frustrate the provision of the intended cycle/pedestrian link through the site. It would be unfortunate if this link did not materialise. The Framework, amongst other things, advises that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.
37. If the intended cycle/pedestrian link was not provided through the appeal site this would frustrate important planning objectives. However, I see no reason why a suitably worded planning condition could not be used to secure the provision of this important facility. Such a condition would enable the development, in so far as it relates to a cycle/footpath link, to satisfy the provisions of LP policy SS2 and NP policies TS2 and TH6.

Overall Conclusion

38. My findings above in respect of highway matters and the cycle/pedestrian link do not overcome or outweigh the harm that I have found in respect of the first two main issues. I therefore conclude that the appeal should not succeed.

Neil Pope

Inspector

¹³ I note the appellant's tracked path analysis demonstrates that the parking space for plot 3 would not be unsafe.