



Appeal Decision

Site visit made on 1 June 2022

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2022

Appeal Ref: APP/P1133/W/22/3292625

Rivendell, Teignmouth Road, Bishopsteignton, Devon TQ14 9PL

- 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 Peter Brunt against the decision of Teignbridge District Council.
 - The application Ref 21/01315/OUT, dated 2 May 2021, was refused by notice dated 18 August 2021.
 - The development proposed is the construction of a single storey detached bungalow designed to meet the current and future needs of a young family with a disabled child requiring additional needs. Open plan internal layout with 3-bedrooms. Works to include the construction of building, a new entrance from the public highway, access drive and parking hard-standing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application has been made in outline with access, layout and scale of development to be determined at this stage. Matters of landscaping and appearance are reserved for future consideration. The scheme includes detailed drawings of the appearance of the proposed dwelling and I have had regard to these details as to what the appellant has in mind for the development.

Main Issues

3. The main issues are:
 - whether or not the development plan would support the proposed dwelling in this location,
 - the effect of the proposal on highway safety with particular regard to whether or not the proposed access would provide adequate visibility from and of emerging vehicles onto Teignmouth Road,
 - the effect of the proposal on the character and appearance of the area, and
 - whether or not adequate arrangements would be made for the disposal of surface water.

Reasons

Development plan policies

4. The site is the most westerly plot amongst this group of dwellings located between Bishopsteignton and Teignmouth. The site includes the dwelling,

Rivendell, which is set on elevated land back from the road, areas of garden and the adjoining paddock. Vehicular access is achieved along the rear drive with a pedestrian access via steps to Teignmouth Road, the A381.

5. The evidence indicates that the site lies outside any defined settlement for planning purposes. In these circumstances the land is considered to fall within the open countryside and is subject to the requirements of Policy S22 of the Teignbridge Local Plan 2013-2033 (the Local Plan).
6. The proposal is not accompanied by a planning obligation that would restrict the occupation to those in local affordable housing need, although I appreciate that the accommodation would benefit a local family with more affordable accommodation and I consider this in the overall planning balance later. The proposed dwelling would, therefore, not fall within any of the categories of dwellings identified within criterion (a) of Policy S22 as being acceptable within the open countryside. Consequently, there is conflict with this policy which forms part of the strategy that guides the location of new development.
7. The evidence indicates that the site also falls within the Undeveloped Coast. Policy EN2 of the Local Plan sets out the policy criteria for the types of development that are considered acceptable in principle in such locations. The provision of an additional dwelling within the Undeveloped Coast, that does not require a coastal location and is not connected with agriculture or forestry, would not be policy compliant.
8. The appellant has drawn attention to the development of another dwelling within the Undeveloped Coast that has taken place recently¹. However, the evidence does not explain the detailed policy and planning circumstances that led to that approval and there are no material planning issues of such weight in this case that would demonstrate why this scheme should be considered policy compliant in terms of its location within the Undeveloped Coast.
9. For the reasons explained above, the proposed dwelling would not be supported by the development plan in this location. In particular, the development would not comply with Policies S22 and EN2 of the Local Plan which, amongst other things, help define the types of development which may be considered acceptable in the open countryside.

Highway safety

10. The scheme involves the provision of a new vehicular access onto the A381, Teignmouth Road, which is a primary county route restricted to 40mph. Along this section of the road the footway appears to have narrowed, possibly because of vegetative growth from the adjoining hedge and bank. This hedge is reasonably tall and positioned towards the rear of the footway. The adjoining paddock is at a higher level than the road such that the proposed access from the road into the paddock area would need to be fairly steep.
11. At my site visit, the road was quite busy and, while only a snap shot in time, I have no reason to believe that this was not typical of other occasions. Furthermore, the Highway Authority has explained, in summary, that there has been one serious personal injury collision outside a property nearby, and one fatal accident at the junction of Old Teignmouth Road, which have been reported to/by the police between 1 January 2016 and 31 December 2020. In

¹ Bellosguardo, Teignharvey, TQ12 4RS

these circumstances where there has been such incidents, I consider that I need to take a precautionary approach when considering if a safe and suitable vehicular access has been demonstrated by the proposal.

12. The plans do not clearly identify the visibility splays from the access that could be provided in relation to the hedge and extent of the adopted highway and, if required, how much of the hedge may need to be cut back or removed. At the present time the works to the hedge appear fairly limited. There is no cross sectional drawing through the access to show the slope and the effect that this may have on the likely visibility for emerging vehicles. The plans appear to show that parts of the bank adjoining each side of the proposed access would be angled back. However, this area and the associated works are not shown within the red lined application site, nor any land within the potential visibility splays. I have taken into account the appellant's highway comments and note that the Highway Authority do not object in principle to an access. However, I agree with the Highway Authority, in their response at the application stage, that more information is needed before it can be determined whether a safe and suitable vehicular access could be provided to the site.
13. This outline application seeks approval of the means of access at this stage. The Planning Practice Guidance explains that where details have been submitted as part of an outline application, they must be treated by the local planning authority as forming part of the development for which the application is being made and conditions cannot be used to reserve these details for subsequent approval. Accordingly, it is necessary to determine the application and the access details on the basis of the submitted information.
14. In the light of the above analysis, I conclude that it has not been demonstrated that the proposed access would provide adequate visibility to and of emerging vehicles onto Teignmouth Road. A safe and suitable vehicular access for the development has not been shown and therefore there would likely to be an unacceptable impact on highway safety. It follows that the scheme would not comply with Policy S1 of the Local Plan which, in this respect, seeks that schemes perform well against a number of criteria, including road safety.

Character and appearance

15. This section of Teignmouth Road has a run of dwellings elevated above the level of the road and the road frontages of these plots are bounded by reasonably tall stone clad walls. This stretch of the walls and the visible presence of some of the properties gives a fairly built-up feel to this section of the road. It contrasts with some of the more verdant surroundings along other parts of Teignmouth Road.
16. The dwellings along most of this section of Teignmouth Road, where the plots are fronted by the walls, are set fairly well forward towards the road and this reflects a pattern of development in this area. However the end two dwellings, including Rivendell, are set back further in their plots. This allows more space within their frontages to the road side. In these circumstances, the construction of the proposed modest sized dwelling within the front garden area would site a dwelling forward in the plot and would not be untypical of the position and visibility of some of the other buildings along this section of the road. It would have a satisfactory garden area which would also allow space for suitable landscaping to be agreed at the reserved matters stage.

17. The proposed dwelling would be sited mainly behind the stone clad wall section of the garden and would not harmfully extend development into the area fronted by the hedge, with its more rural character. In terms of the access, on the basis of the plans before me, which appear to show the removal and alteration of limited sections of the hedge, it would appear that this change would be visually acceptable.
18. Consequently, subject to appropriate details at the reserved matters stage including landscaping, I do not consider that the construction of a dwelling in the proposed location would be out of character with the local pattern of development and could successfully integrate with the surrounding buildings in this area. It follows that I conclude that the proposed dwelling, subject to appropriate reserved matters details, would not harm the character and appearance of the area. Accordingly, in this respect the scheme would comply with Policies S1 and S2 of the Local Plan which seek, amongst other things, that development integrates with and, where possible, enhances the character of the adjoining built and natural environment.

Surface water drainage

19. The application form indicates that surface water would be dealt with by means of a soakaway. There is no clear site specific details to indicate that the ground conditions would prevent such an approach to drainage. There appears to be sufficient land available to position a soakaway within the site. Infiltration testing, including at the Building Regulations stage, would help ensure that a scheme would be fit for purpose. There seems no clear reason to believe that a system, if designed and constructed appropriately, would not adequately deal with surface water and the development should not lead to flooding outside the site, including the road.
20. In these circumstances, there is not the justification at this outline stage to seek more details on surface water drainage. There is a reasonable prospect that a workable scheme would be achievable and this would be appropriately addressed by a planning condition in any approval. Such a condition could require details to be submitted and agreed by the Council prior to the construction of the system. This would safeguard the position and accord with the Planning Practice Guidance which explains that where it is justified, the ability to impose conditions requiring submission and approval of further details extends to aspects of the development that are not fully described in the application.
21. Accordingly, I conclude that, subject to details submitted pursuant to a planning condition, there is a reasonable prospect that adequate arrangements would be made for the disposal of surface water and consequently there would be no undue risk of flooding. The scheme would therefore comply with the requirements of Policy EN4 of the Local Plan which sets out the approach to minimise flood risk.

Other Matters

22. The site is located within 10km of the Exe Estuary Special Protection Area and Ramsar site and the Dawlish Warren Special Area of Conservation. The Council has explained that a financial contribution is required for mitigation measures to offset in-combination recreational impacts on these internationally important wildlife sites. The appellant has indicated that the payment has been made and

thereby in all likelihood this would provide the necessary mitigation. However, given my overall conclusion, I have not had to consider this matter further and undertake an appropriate assessment.

23. I have taken into account the letters of objection from local residents and that Bishopsteignton Parish Council raise no objection to the development. I have considered the main issues raised in these representations above.

Planning Balance and Conclusion

24. The scheme would provide a small boost to housing supply in the area. The accommodation would be sited within reasonable walking and cycling distance of Teignmouth and there are bus stops located close to the site. The position of the dwelling would, therefore, be in a fairly good location to allow future occupants the option to access services and facilities without the need to rely on the private vehicle. There would be a benefit to the social and economic well-being of the area with the construction and subsequent occupation of the dwelling.
25. The dwelling would be sited within the garden of an existing property. As the location would be in the open countryside, the proposal can therefore be considered to make good use of previously developed land. It would also make effective use of the site and increase the density of development without harming the character and appearance of the area. These are all matters which would accord with the policy approach of the National Planning Policy Framework. However, as only a single dwelling would be delivered I attribute these benefits limited weight in support of the proposal.
26. I have had special regard to all the information that explains the need for the development. It would support the particular requirements of the intended family who would occupy the building, helping to meet their housing needs and especially those of their child. The accommodation would be close to the existing dwelling where those occupants would be able to assist, as required. I have particular sympathy for the background information that has been set out and the efforts to provide suitable accommodation.
27. The personal circumstances that I have summarised above, and which are set out in more detail in the evidence, are material planning considerations, and they weigh in favour of the scheme.
28. The unit would provide a more cost effective dwelling because the land is available to the appellant. The evidence indicates that house prices in the area are high and that the accommodation in this case could be provided on a more affordable basis. However, it would not be an affordable unit restricted to local people through a planning obligation and would therefore not meet those policy requirements. I also note that there are some references to self-build in the submissions but again this does not appear to be formally tied up as part of the proposal and, therefore, is a matter that can be attributed only limited weight.
29. On the other hand, I have found that the scheme would not comply with the strategy for the location of development and it has also not been demonstrated that a safe and suitable highway access could be provided. In these circumstances I consider that the scheme would not comply with the development plan when considered as a whole. The identified harm and policy conflict is a matter that should be attributed substantial weight against the

scheme. That the scheme would not harm, although also not enhance, the character and appearance of the area, and that a surface water drainage scheme could be agreed as part of a planning condition in any approval, are neutral in the overall analysis.

30. The benefits of the scheme are not without merit. In particular I am conscious that Article 3(1) of the United Nations Convention on the Rights of the Child provides that the best interests of the child shall be a primary consideration in all actions by public authorities concerning children. No other consideration can be inherently more important than the best interests of the child, that is, the need to safeguard and promote their welfare. However, the importance or weight given to the best interests of the child and any other considerations will always depend on the circumstances of the case and that their interests can be outweighed by other factors when considered in context.
31. In this case, and keeping the best interests of the child at the forefront of my mind, I consider that the cumulative benefits of the scheme, in particular because of the personal circumstances, would be significant. However, the objections to the scheme are also matters of substantial weight. The conflict with the development plan and its strategy for the location of housing, and the lack of demonstration that a safe and suitable access could be provided, thereby leading to potential serious consequences for users of the highway, are matters that collectively are of such significance that they would outweigh the benefits of the scheme. Planning conditions and/or details at the reserved matters stage would not address the concerns and conclusions that I have reached.
32. Accordingly, it follows that the scheme would not accord with the development plan when considered as a whole and material considerations do not indicate a decision should be made otherwise.
33. One of the proposed occupiers of the dwelling has protected characteristics in terms of the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. I have also considered the rights of the proposed occupiers under the Human Rights Act 1998, including the right to respect for private and family life. This is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial. I have taken into account the personal circumstances of the appellants in my considerations and do so again specifically in this conclusion having due regard to the requirements of the PSED and in terms of human rights.
34. The refusal of planning permission would be likely to lead to the appellants continuing in, or not having, accommodation which is suitable or appropriate for their needs. Dismissing the appeal would interfere with the proposed occupier's rights. However, the interference of these rights would be justified in this case, in the public interest and in a proportionate way. In particular it would be in relation to the legitimate aim of according with the policies of an adopted Local Plan and highway safety. The protection of the public interest, in relation to these matters, cannot be achieved by a means that would be less interfering with the proposed occupiers rights. In these circumstances, dismissal of the appeal would be proportionate and the appropriate course of action.

35. In the light of the above analysis, I conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR