



Appeal Decision

Site visit made on 3 May 2022

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2022

Appeal Ref: APP/X1165/W/21/3288353

24 North Rocks Road, Churston With Galmpton, Paignton TQ4 6LF

- 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 Ms I. Carlino against the decision of Torbay Council.
 - The application Ref P/2020/0543, dated 11 June 2020, was refused by notice dated 7 June 2021.
 - The development proposed is a new bungalow.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against Torbay Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant has submitted revised drawings indicating the repositioning and lowering of the proposed bungalow together with the provision of a hedge along the western boundary of the appeal site.
4. It is normally inappropriate to evolve a proposal through the appeal process but amended plans can be accepted if no party would be prejudiced by such a course of action. In this case the amendments are very minor and I am satisfied that the Council and other interested parties have had sufficient opportunity to review them. Thus, no party would be prejudiced by me accepting the revised plan.

Main Issues

5. The main issues in this appeal are:
 - Whether the appeal site would provide a suitable location for housing having regard to the development strategy for the area;
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on the health and vitality of off-site trees; and
 - The effect of the proposal on the South Hams Special Area of Conservation (SAC).

Reasons

Location

6. The Policy Map to the Brixham Peninsula Neighbourhood Plan 2012-2030 which was made in June 2019 (NP) excludes the appeal site from the Galmpton-Broadsands settlement boundary. The establishment of settlement limits in Policy E2 of the NP supports Policy C1 of the Torbay Local Plan 2012-2030 adopted December 2015 (LP) which seeks to prevent the loss of open countryside or the creation of urban sprawl where urban areas and surrounding settlements merge to the detriment of their special character.
7. Policy E2 of the NP states that development outside settlement boundaries will need to comply with Policy C1 of the LP. Policy C1 sets out the forms of development which may be permitted outside settlement boundaries which, specifically with regards to housing, includes self-build affordable housing. The appellant states that the appeal proposal would be an affordable way for them to get into the housing market. However, I have nothing before me to suggest that the proposal would comply with the definition of affordable housing in the glossary of the National Planning Policy Framework (the Framework) and therefore I give this limited weight. The appeal proposal would not comply with any of the criteria in Policy C1 of the LP and would therefore be contrary to Policy E2 of the NP.
8. Sheet 30 of the LP indicates that the appeal site is within a Strategic Delivery Area where Policy H1 of the LP permits proposals for new homes subject to consistency with other policies in the LP and neighbourhood plans. As I have found a conflict with the NP, the proposal is at odds with Policy H1. In any event, Section 38 (5) of the Planning and Compulsory Purchase Act 2004 requires that where a policy contained in a development plan conflicts with another policy in the development plan, the conflict must be resolved in favour of the most recent policy.
9. The appeal site also lies within one of the defined 'settlement gaps' which are open areas, drawing in views of distant landscapes. Policy E3 of the NP seeks to prevent the coalescence or merging of settlements by not permitting development which visually or actually closes the gaps between urban areas. The NP clearly indicates that in relation to the appeal proposal, this relates to protecting the view across Broadsands beach into Broadsands Barrow. From the eastern side of the railway, there are clear and uninterrupted views down towards Broadsands beach.
10. However, the appeal site is located on the western side of the railway embankment such that it has no visual or physical relationship with the view between Broadsands beach and Broadsands Barrow. Neither can be seen from one another due to the raised embankment of the railway line truncating views from one to the other. The appeal proposal would not result in a development which visually or actually closes the gap between urban areas and therefore I find no conflict with Policy E3 of the NP.
11. In conclusion, the development of the appeal site would not conflict with the Council's strategy of preventing the coalescence or merging of settlements. Nevertheless, it would conflict with Policies H1 and C1 of the LP and E2 of the NP and the spatial strategy in the development plan taken as a whole, which is a carefully drafted and considered statement of policy. Accordingly, the

proposal would harmfully undermine the objectives of the strategy and thus the relative certainty that should flow from a planning system that is genuinely plan led.

Character and appearance

12. The appeal site has a clear physical, functional and visual relationship with the existing development on North Rocks Road. The raised railway embankment to the east of North Rocks Road is a substantial barrier to the spread of further development. The provision of a dwelling on the appeal site, adjacent to the garage block and new dwelling under construction would physically complete the development of North Rocks Road without intruding into the land which is clearly rural in character to the east of the railway line.
13. The adjacent woodland has a strong presence in the street scene and provides an important transitional gap from the urban character of North Rocks Road to the rural character of the countryside on the other side of the railway line that I identified above. The appeal site has been cleared and a close boarded fence has been erected along the boundary with the road and the adjacent footpath. As such, I do not find that it displays rural character.
14. The existing development on North Rocks Road comprises of a mix of dwellings and bungalows, many of which have established hedges along their front boundaries such that only the roof is visible from public view. In addition, with the exception of the block of four garages, the existing buildings on the eastern side of the road do not have a frontage with the road. In this regard, I find that the proposed positioning of the proposed bungalow, with a hedge along the roadside boundary, would not be at odds with this.
15. The appeal proposal would be located on the outside of a bend in the road and would be higher than the dwelling approved on adjacent site. However, the gradient of North Rocks Road together with the positioning of number 2 North Rocks Road in a forward position on the inside of the bend means that the appeal property, with a lower ridge line would not be dominant in the street scene from an easterly direction. In addition, the appeal proposal would be viewed in the context of the garages and approved dwelling and set against the backdrop of the established woodland from a northerly direction.
16. Taken together, I find that there would be no conflict with Policy DE1 of the LP which seeks to ensure that new development respects and enhances the special qualities of the area and Policy BH5 of the NP which requires good quality design which respects the character and appearance of the surrounding area. In addition, I find no conflict with Paragraphs 124 and 130 of the National Planning Policy Framework (the Framework) insofar as they relate to the efficient use of land and ensuring that developments are sympathetic to their surroundings.

Trees

17. The appeal site is located adjacent to a woodland which is protected by a Woodland Tree Preservation Order. The submitted arboricultural report identifies the closest significant tree as being a category B sycamore with a root protection area radius of 7.2m positioned approximately 6m from the road and 5.5m from the fence surrounding the appeal site. In addition, the canopy of the tree spreads 6-7 metres over the south west corner of the appeal site.

The development of the appeal site could therefore affect the health and vitality of the tree.

18. In this regard, the arboricultural report suggests that appropriate mitigation in the form of a repositioning of the proposed bungalow would adequately protect the tree from the effects of development and prevent an unreasonable relationship between the two. On the evidence before me, I see no reason to take a different view. The revised block plan ¹ shows the repositioning of the proposed bungalow and in the absence of evidence to the contrary, I am satisfied that the appeal proposal would comply with Policy C4 of the LP insofar as it seeks to retain, protect and prevent harm to existing trees and paragraph 131 of the Framework which seeks to retain existing trees.

South Hams Special Area of Conservation (SAC)

19. The appeal site is located with the Sustenance Zone and Landscape Connectivity Zone of the South Hams Special Area of Conservation (SAC) for the greater horseshoe bat. The SAC has been designated to protect habitats and to ensure the favourable conservation status of its population of greater horseshoe bats. The Sustenance Zone is an area within 4km of the roost which provides foraging habitats for the bats and the Landscape Connectivity Zone is the area which provides a complex network of commuting routes used by the bats to provide connectivity between the designated roosts.
20. Therefore, although the appeal site lies outside the SAC, it is necessary for me, as the competent authority, to consider whether the proposal is likely to have a significant effect on the designated features of the SAC either alone or in combination with other plans and projects.
21. My attention has been drawn to the South Hams Special Area of Conservation (SAC) Greater Horseshoe Bats Habitats Regulations Assessment Guidance dated October 2019 produced in conjunction with Natural England. This indicates that proposals impacting on foraging habitat and commuting routes in Sustenance Zones may have a likely significant effect on the SAC greater horseshoe bat population. This can include the loss of habitat and increased illumination through internal, external and vehicular lighting sources. Foraging habitat includes amongst other things, the edges of broadleaved woodlands where prey such as moths, beetles, flies and wasps can be found.
22. Both the ecological survey dated 2017 and the later update of November 2021 acknowledge that it is highly likely that commuting bats use the railway corridor as a flyway for navigation. Given that the appeal site is located adjacent to the railway corridor and on the edge of the woodland I cannot rule out increased disturbance to a commuting route and foraging habitat from illumination of the site and it's surroundings as a result of a new dwelling.
23. Whilst the individual effect of a single new dwelling will often be modest, the cumulative effects of multiple smaller schemes may be far more significant. Adopting a precautionary principle, I find that there is a risk of a likely significant effect and as such, I am required to conduct an Appropriate assessment (AA) in relation to the effect of the development on the integrity of the SAC. I have consulted with Natural England their comments have been forwarded to the main parties.

¹ Drawing no. RKRD2_BLOCK-PROP Revision C – Nov 21

24. The Habitats Regulations require that permission may only be granted after having ascertained that it will not affect the integrity of the SAC. I may give consideration to any conditions or other restrictions which could secure mitigation and so provide certainty that the proposal would not adversely affect the integrity of the site. The appellant suggests that the impact of the development on the bat population could be mitigated by the use of conditions relating to the erection of a fencing, light control measures on site and landscaping. I have not been provided with specific wording for such conditions from either the appellant or the Council.
25. However, I have no up to date bat survey results, analysis and impact assessment before me. In the absence of this and the necessary avoidance, mitigation and monitoring principles including a lighting strategy, I cannot be sufficiently certain that the suggested conditions will secure the necessary mitigation.
26. The evidence before me indicates that there is potential for disturbance to foraging habitats and commuting routes used by horseshoe bats, which has the potential to affect the integrity of the SAC. The Habitats Regulations require me to consider whether there are any alternative solutions. However, no such solutions have been put to me. I must also assess whether there are any imperative reasons of overriding public interest. The provision of a single dwelling, taking into account the merits of the case, is not sufficient to amount to such overriding public interest. Consequently, having regard to the Habitat Regulations, permission must not be granted.
27. I therefore find that the proposed development would result in significant harm to the integrity of the SAC. The proposal is also contrary to Policies NC1 and SS8 of the LP and Policy E8 of the NP insofar as they seek to protect internationally important sites and species and only permit development where it can be demonstrated that there would be no likely significant effect thereon.

Planning Balance

28. The Council cannot demonstrate a 5-year supply of housing. The Council states that it has a housing supply of 2.9 years which represents a significant housing shortfall. The appellant refers to the dwelling being needed for a young person struggling to enter the housing market. However, I have nothing before me which would secure the development as a self-build or an entry level exception dwelling as set out in paragraph 72 of the Framework. The proposal is for a single open-market dwelling such that it would make a very modest contribution to the supply of housing. It would not significantly increase the supply as set out in Framework. I have given this moderate weight.
29. I acknowledge there have been no neighbour objections, the proposal meets the standards required by other policies in the LP relating to internal space, outdoor private recreation space and parking. However, these are all matters which are neutral in the overall balance.
30. I have concluded that the appeal proposal would lie outside the settlement boundary indicated in the NP. The boundary includes the existing development in North Rocks Road but excludes the land to the eastern side of the road where there is a block of four garages, approval for a further bungalow and the appeal site. The settlement boundary would appear to make little sense on the ground, particularly given the presence of the railway line immediately to the

east which is a clear physical feature on the ground. This, together with the approval of a bungalow on the adjacent site leads me to afford limited weight to the conflict with the spatial strategy in the development plan.

31. Notwithstanding this, I have concluded that the impact of the appeal proposal on the integrity of the SAC is a matter of overriding concern and provides a clear reason for refusing the development proposed. Paragraph 182 of the Framework states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site.

Other Matters

32. The Council refer to the Torbay Council Planning Contributions and Affordable Housing Supplementary Planning Document February 2017. This, they say, would result in a requirement for financial contributions from the appeal proposal to mitigate the effects of the development on the recreational impacts on the Berry Head calcareous grassland and the enhanced management of the Torbay to Dartmouth Railway Other Site of Wildlife Interest.
33. I note that no section 106 planning obligation has been submitted in either respect. I would need to see further evidence before I was satisfied on this matter, but as it does not feature as a reason for refusal and the appeal has failed for other reasons, I have not considered this point further.

Conclusion

34. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal has failed.

Alison Fish

INSPECTOR