



Appeal Decision

Site visit made on 13 June 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2023

Appeal Ref: APP/X1165/W/22/3310948

Land adjoining 16 Clifton Close, Paignton

- 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 N Hiscocks, Cornerstone Homes (SW) Ltd against the decision of Torbay Council.
 - The application Ref P/2022/0555, dated 15 June 2022, was refused by notice dated 28 July 2022.
 - The development proposed is construction of 2 houses including associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is accompanied by amended plans which omit a ground floor and hallway/staircase window to both proposed dwellings that were incorrectly shown on the original plans. In addition, the amended plans show a first-floor double bedroom amended to a single bedroom to both dwellings, and an updated relationship with No.16 Clifton Close.
3. Although these plans have not been subject to public consultation, they have been commented on by the Council and by third parties and as a result accepting them at this stage would not deprive those who should have been consulted the opportunity of such consultation. Having regard to the principles of Wheatcroft¹, I have therefore taken this evidence into account, and have considered the appeal on the basis of the amended plans.
4. The description of development in the banner heading above is taken from the application form as neither party has provided written confirmation that a revised description has been agreed.

Background and Main Issues

5. The Council have confirmed in their Appeal Statement that by reason of the amended plans showing a first-floor bedroom reduced in size to a single bed space, the new arrangement provides adequate gross internal areas as set out in the Nationally Described Space Standards. I have no reason to disagree. As a result, the amended plan addresses the first reason for refusal on the decision notice and there is no need for me to consider this matter further.

¹ Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

6. On this basis the main issues for the appeal are:

- whether the proposal would lead to an unacceptable loss of open space; and,
- the effect of the proposal on the living conditions of the occupiers of No.16 Clifton Close, with particular regard to sunlight.

Reasons

Loss of open space

7. A considerable number of residents responded to the Council to say that the grassed site provides an area of local amenity/green space for informal play by children, use by dog walkers and as a wider community space for adults. They further stated that the land has functioned as such for a number of years. These comments are supported by the further comments received in response to the appeal. It is therefore clear that the site is valued as open space by members of the local community despite the availability of much larger areas of open space nearby at Primley Park and Primley Woods.
8. The site is not part of a strategic or local open space network and not specifically designated as open space through a local or neighbourhood plan policy. It is in private ownership and left undeveloped following the construction of the dwellings forming Clifton Close. The area has been managed, is open in nature without any boundary fencing or access restrictions with a bench available for people to use.
9. Policy DE3 of the Torbay Local Plan, The Plan for Torbay: 2012-2030 (LP) states that new homes should be developed at a density which makes good use of land, whilst avoiding town cramming and the loss of open space. This is to ensure that development is designed to provide a good level of amenity and not unduly impact upon the amenity of neighbouring and surrounding users. I take the reference to the loss of open space in Policy DE3 as being different to garden and outdoor space as this is separately referenced within the policy.
10. Although in terms of recreation the site is of limited value due to its small size and open grassed nature, it is easily accessible from the surrounding roads due to the local footpath links, and as I have already found has value in open space terms to local residents. I must therefore find there to be conflict with Policy DE3, despite the lack of formal designation and presence of other open space in the area.
11. The National Planning Policy Framework (the Framework) states that existing open space should not be built on unless an assessment has been undertaken that clearly shows the land to be surplus to requirements, the loss would be replaced, or the development is for alternative provision. As none of these criteria apply in this instance, the proposal is also contrary to paragraph 99 of the Framework.
12. The appellant's case is in essence that the site is not formally designated, is in private ownership, is undeveloped/left over space and not large enough for meaningful use with alternative provision nearby. However, Policy DE3 of the LP does not require open space to be designated or developed, in public ownership or support its loss where there is alternative provision nearby. Moreover, local residents have clearly demonstrated its value and use as open

space. As a result, these matters do not overcome the conflict with the development plan.

13. The appellant has offered to pay a financial contribution to mitigate the loss of the open space. However, in the absence of a mechanism to secure the contribution, and as I have not been provided with a development plan policy justifying such contributions, this does not mitigate the harm I have identified above.
14. I therefore conclude that the proposal would lead to an unacceptable loss of open space and would therefore conflict with Policy DE3 of the LP and the Framework.

Living conditions

15. The amended plans submitted as part of the appeal show an increased distance between the side of the proposed dwellings and the side of No.16 Clifton Close.
16. Within the side elevation of No.16 Clifton Close is a ground floor window to a kitchen and first floor window serving a landing. There is an existing boundary fence to the side of No.16 separating their side and rear garden from the appeal site.
17. No.16 would be raised slightly above the proposed dwellings with the kitchen and landing windows very roughly positioned in line with the rear elevation of the closest proposed dwelling. The position of this proposed dwelling would not exactly mirror the distances between properties elsewhere in the street and would result in some loss of sunlight to the windows in the side of No.16 early in the day due to its orientation roughly to the south-east. However, by reason of the distance from the windows to the side elevation of the closest proposed dwelling, raised nature of No.16 and the proposed dwelling being set forward within its plot allowing direct sunlight to reach the side of No.16 later in the day, the proposal would not result in an unacceptable loss of sunlight. Moreover, the first-floor window does not serve a habitable room with the kitchen also served by a rear opening minimising the harm from the loss of sunlight to the dwelling in the morning.
18. Therefore, I conclude that the development would not substantially harm the living conditions of the occupiers of No.16 Clifton Close, with particular regard to sunlight. The proposal therefore accords with Policy DE3 of the LP which, amongst other things, states that all development should be designed to provide a good level of amenity, not unduly impact upon the amenity of neighbouring users with regard to the impacts of light and existing living conditions.

Other Matters

19. It is clear from the reasons for refusal that the principle of development is acceptable. The design of the dwellings, provision of adequate car parking, lack of harm to highway safety, living conditions of future and neighbouring occupiers, ecology, trees, flood risk and drainage are neutral factors in my consideration. As are, the lack of objections from the Environmental Health Officer, suitable garden size and suitable bin and cycle provision. There would be benefits to the supply of housing, the local economy from the build and occupation of the property, efficient use of land and its low carbon energy

efficient construction in a location well served by services and facilities. However, given the scale of the scheme, these benefits would be small.

20. The development results in the unacceptable loss of open space contrary to the local development strategy. The relevant policies are largely consistent with the Framework where it states that existing open space should not be built on unless there is a surplus of supply, the loss would be replaced, or the proposal is for alternative provision. Therefore, the proposed development would be contrary to the development plan as a whole and I give significant weight to the conflict with Policy DE3 of the LP.
21. The Council cannot demonstrate a five-year supply of deliverable housing sites. Consequently, because of the provisions of footnote 7, paragraph 11 d) ii. the Framework should be applied. The appeal proposal would provide a number of benefits, including providing much needed housing which would contribute quickly towards the supply and mix of housing in the area, benefit the local economy from construction works and future occupiers using local services and facilities, be of a low carbon energy efficient design, and provide additional open market accommodation with good accessibility to services and facilities making an efficient use of land. However, given the scale and nature of the development, the benefits would be limited. In contrast, I have found that the appeal proposal would result in significant harm through the loss of open space. Accordingly, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.
22. I have been made aware of planning permission (ref: P2021/1373) having been granted by the Council for a proposal where it was considered that the adverse impacts from development would not significantly and demonstrably outweigh the benefits. However, I have limited information in relation to this, note it was for a considerably greater number of dwellings, and I am required to consider the current appeal on its merits. As a result, this decision does not alter my findings above.

Conclusion

23. For the reasons given above I conclude that the proposal conflicts with the development plan taken as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, the appeal is dismissed.

C Rose

INSPECTOR