



Appeal Decision

Site visit made on 18 April 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2023

Appeal Ref: APP/X1165/W/22/3299600

Land off Northfields Lane, Brixham TQ5 8RD

- 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 Richard Haddon against the decision of Torbay Council.
 - The application Ref P/2021/1238, dated 10 November 2021, was refused by notice dated 8 April 2022.
 - The development proposed is described as “the client of whom is the freeholder of the Holiday homes site wishes to split the land of interest from the holiday accommodation land to create a sustainably located new open market residential dwelling which addresses Northfields Lane. The proposed new dwelling will be a single-storey structure with a combination of flat and mono-pitched roof forms along with private gardens and dedicated on-site parking.”
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. No address for the appeal site was entered on the planning application form, therefore I have used the address listed on the decision notice and appeal form in the banner head above.
3. While the Council’s decision does not refer to specific properties, from my site visit and the representations received, it is clear that the most relevant neighbouring properties are 172 Northfields Lane (No 172) and chalets 16 and 17 (Nos 16 and 17) of the Fishcombe Cove Holiday Homes (FCHH).

Main Issues

4. The main issues are the effect of the proposed development on:
 - the living conditions of occupiers of Nos 16 and 17 of the FCHH and No 172, with particular regard to privacy and outlook, and whether the future occupiers of the proposed development would be likely to experience acceptable living conditions, with particular regard to privacy; and
 - the character and appearance of the area, with particular regard to the natural beauty of the South Devon Area of Outstanding Beauty (AONB) and trees.

Reasons

Living conditions

5. The proposed development comprises a single-storey dwelling on part of the FCHH site, located between No 17 and No 172. It would be positioned close to the fenced boundary with No 172 which itself is located very close to the fence, thereby leaving a small gap between the existing and proposed properties. There are two medium-sized windows located on the side elevation of No 172, positioned at a height which allows views over the existing boundary fence. These serve a living space within the property and would face directly towards the new dwelling at close quarters. The elevation immediately facing No 172 would have only a single small window and minimal detailing to break up its plain appearance. A further element, containing high-level windows would protrude above it. Overall, given its close siting, the result would be an intrusive and oppressive feature which would significantly harm the outlook from the living space served by the side windows at No 172.
6. Whilst the recently cut hedgerow along this boundary would provide some screening to the proposed dwelling, this would take time to mature and maintain at a sufficient height. In any event, any boundary treatment of a sufficient height to screen the proposed dwelling would be closer to the neighbouring property and therefore could itself be oppressive. Although another window is located on the rear elevation of No 172, the reduction in outlook would be unacceptable and, consequently, would cause harm to the living conditions of occupiers of the property.
7. The openings on the side elevation of the proposed dwelling closest to No 172 would be limited to one small, frosted glass window to a shower room. Even if this window was capable of being opened, acceptable levels of privacy for occupiers of No 172 would be provided.
8. Although No 16 is located at a lower level to the rear of the site, a screening wall has been constructed around the patio area accessed off the main living space. This wall blocks views into the outside space from the appeal site and also into the internal living space, despite the amount of glazing on this elevation of No 16. Therefore, the proposed development would not result in an unacceptable standard of privacy for the existing occupiers of No 16. Similarly, as the medium-sized window to the side elevation of No 17 has obscured glass and the proposed dwelling would be set way from this boundary, with two car parking spaces between, there would not be an unacceptable loss of privacy to occupiers of No 17.
9. To the rear of the appeal site, the proposed development includes the lowering of the ground for the rear garden. Whilst views from this space towards No 172, and vice versa, would be possible, they would be predominantly restricted by the existing boundary fence and, in the case of views from No 172, limited to an oblique angle. Moreover, a condition requiring other boundary features could provide additional mitigation had I been minded to allow this appeal. As such, future occupiers of the proposed development would be likely to experience acceptable living conditions, in respect of privacy.
10. Nevertheless, I conclude that the proposed development would unacceptably harm the living conditions of occupiers of No 172, with particular regard to outlook. It would be contrary to Policy DE3 of the Torbay Local Plan (the Local

Plan) which requires new development to be designed so that it does not unduly impact upon the living conditions of neighbouring and surrounding uses.

Character and appearance

11. The appeal site is located within the AONB. In considering the proposed development I have had regard to Chapter 15 of the National Planning Policy Framework (the Framework) which requires that great weight should be given to conserving and enhancing the natural beauty of the area. Further, the AONB has the highest status of protection concerning these issues, reflecting the statutory purpose of the AONB. This is reiterated by Policy SS8 of the Local Plan.
12. The proposed single-storey dwelling would be located on the side of Northfields Lane predominately comprising one and one and half storey properties. On the opposite side of the lane, two-storey properties are prevalent. Due to the topography of the area rising from the rear of the site up to the lane and beyond the dwellings opposite, the greater height of the two-storey properties is accentuated. In combination with this, the lower-lying location of the existing single-storey dwellings, relative to the road, results in only the upper parts of the properties, their various roofs and boundary treatments being visible in the street scene. Upper sections of the proposed dwelling would also be visible in views from the lane and the dwelling opposite. However, the flat and sloping roof features of the proposed dwelling, combined with the similar height of the sloping roof section to No 172 would permit views towards the sea and across the AONB.
13. The siting of the front building line of the proposed dwelling would align with the immediately adjacent properties and, therefore, would not intrude on the street scene. Furthermore, the retention of the majority of the stone wall along the front boundary would screen much of the proposed dwelling and driveway, including any residential paraphernalia associated with it.
14. Although having a different architectural design to the chalet forms of FCHH, including those with flat roofs, the proposed dwelling would relate more closely to the varied architectural style of existing properties along Northfields Lane, particularly given its orientation towards and access off the lane. Additionally, the variety of materials present in the surrounding area ensures the use of natural stone, timber cladding and metal roofing would not cause harm to the character and appearance of the area.
15. In the wider setting, whilst the proposed dwelling would be visible from some of the key receptors identified within the Landscape and Visual Assessment (LVIA) submitted with the planning application, including public footpaths and from locations across the valley it would form part of the existing built-up environment. Moreover, given the backdrop created by the existing dwellings on the opposite side of the lane, the proposed development would not be easily distinguishable from its immediate neighbours in longer views. As such, the proposed development would not cause harm to the views and vistas of the AONB.
16. My attention has been drawn to the Brixham Urban Fringe Landscape Study 2011 (BUFLS) which identifies a series of 'individual compartments'. The appeal site forms part of a much wider area referred to as compartment 21: Torbay Holiday Chalets which, given its location adjacent to the beach and at a

gateway to Brixham, the BUFLS highlights is subject to pressure for housing. Nevertheless, the BUFLS does not restrict development in this location, instead identifying the potential for redevelopment to be sensitively designed to reflect the attractive coastal and AONB location. As the proposed development would not cause harm to the AONB it would fulfil this objective.

17. During my site visit, I observed a tree stump within the site boundary which, based on the evidence before me, was a mature ash tree removed as part of a TPO consent¹. I also noted that new trees had been planted within the wider FCHH property, including a eucalyptus located close to the boundary of the appeal site. Whilst the new tree planting on the FCHH site is considered by the appellant to meet the replanting condition of the TPO consent, no replacement tree is proposed for the aforementioned eucalyptus which would be removed as part of the appeal scheme. However, had I been minded to allow the appeal, a condition could have been imposed requiring a detailed landscaping scheme, including the location of any replacement trees, to be approved by the Council.
18. Consequently, I conclude that the proposed development would not cause harm to the character and appearance of the area or the natural beauty of the AONB and to trees. It would accord with policies C4, DE1 and SS8 of the Local Plan which, amongst other things, require new development to be well designed and respect the special qualities of the area and seek to protect the AONB and trees. It would also comply with policies BH5, BH6, E1, E6 and E8 of the Brixham Peninsula Neighbourhood Plan Policy Document 2012-2030. Policies BH5 and BH6 require, amongst other provisions, all new development to demonstrate good quality design and respect the character and appearance of the area, including the careful design of the roofscape. Additionally, policies E1, E6 and E8 seek to protect the natural beauty and landscape character, including the AONB, and require visual impact assessments to be prepared for some development proposals.

Other Matters

19. The appeal site is located within the South Hams Special Area of Conservation (SAC). If the circumstances leading to the grant of planning permission had been present, it would have been incumbent upon me as the competent authority to consider whether the proposed development would be likely to have a significant effect on the integrity of the SAC, in accordance with the Conservation of Habitats and Species Regulations 2017. However, as I am dismissing the appeal on one of the main issues above, I have not found it necessary to consider such matters any further as this would not alter the outcome of the appeal.
20. The appellant has raised concerns regarding the site visit undertaken during the determination of the planning application, however, the timing, processing and type of site visit undertaken, even if virtual, during this time fall outside the scope of this decision.

Planning Balance and Conclusion

21. I have concluded that the proposed development would not unacceptably harm the living conditions of the occupiers of No 16, No 17 and No 172 in respect of privacy and would not cause harm to the character and appearance of the

¹ Ref: AT/2020/0038/TD

area, including the natural beauty of the AONB and trees. However, it would unacceptably harm the living conditions of the occupiers of No 172 in respect of outlook and would be contrary to Policy DE3 of the Local Plan in this regard. I find that Policy DE3 is consistent with Chapter 12 of the Framework which states that developments should have a high standard of amenity for existing and future users. While I have found compliance with some development plan policies, I attach considerable weight to the conflict with Policy DE3 which leads me to conclude that there is a conflict with the development plan as a whole.

22. The Council has confirmed that it is unable to demonstrate a five-year supply of deliverable housing sites in accordance with paragraph 74 of the Framework. In such cases, paragraph 11 of the Framework states that where the policies which are most important for determining the application are out-of-date, planning permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Such assets include land designated an AONB (Footnote 7). As I have found that the proposed development would not cause harm to the AONB, paragraph 11dii is engaged.
23. The appeal scheme would have social and economic benefits from the construction of an additional dwelling and makes efficient use of a small site, in support of the Framework's objective of significantly boosting the supply of homes. However, this contribution would be small. Similarly, any social or economic benefits from the construction of the proposed development would be limited, as would any environmental benefits resulting from new planting and the use of solar panels. As such, I attach moderate weight to the benefits that would be brought about by the additional dwelling.
24. Weighing these modest benefits against the significant harm I have found, I conclude that the adverse impacts of the development significantly and demonstrably outweigh the benefits and the presumption in favour of sustainable development, as set out in the Framework, does not apply. The proposed development conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.
25. For the above reasons, the appeal is dismissed.

Juliet Rogers BA (Hons) MA MRTPI

INSPECTOR