



Appeal Decision

Site visit made on 23 May 2023

by C Butcher BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th July 2023

Appeal Ref: APP/X1165/W/22/3308660

Land Adjacent to Playground, Lancaster Drive, Paignton TQ4 7RP

- 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 Eco Friendly Homes South West (Mr Keith Morgan) against the decision of Torbay Council.
 - The application Ref P/2021/0024, dated 4 January 2021, was refused by notice dated 26 September 2022.
 - The development proposed is a new detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's statement indicates that the application was submitted to the Council on 9 September 2021. However, the application form is dated 4 January 2021. For the purposes of this decision, I have stated the application date as that shown on the application form.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area, with particular regard to its potential effect on a protected tree.

Reasons

4. The appeal site is located between an existing detached house and a children's playground in a residential area. There are a large number of mature trees and other vegetation, both on Lancaster Drive itself, and in the surrounding landscape that rises above the houses. This provides the area with a verdant character.
5. Towards the front of the site, there is a protected oak tree, shown as 'T1' on the relevant Tree Preservation Order dated 9 August 2010. It is a mature tree that is relatively large, both in terms of height and spread. Given its attractive appearance, and its highly prominent location immediately adjacent to the road, the tree makes a substantial contribution to the character of the immediate area.
6. As part of the proposed development, the tree would be retained. A previous appeal for a similar development proposal was dismissed in January 2017¹. The

¹ Case reference: APP/X1165/W/16/3163196

appeal before me differs from that design by siting the proposed dwelling further back from the road. While this would ensure that the canopy of the tree would not overhang the house, it would still be in relatively close proximity to it. In addition, several branches would overhang a small part of the driveway at a relatively low height.

7. On the basis of the evidence before me, I am satisfied that the tree would allow sufficient light to reach the front windows of the house. However, I consider that the proximity of the tree to the house and driveway would result in safety concerns for future occupiers. This could, for instance, be related to falling branches in bad weather and potential damage to the house and parked vehicles. In addition, I have no substantiated evidence before me to demonstrate that the tree would be unlikely to survive on site for many years to come. It is therefore quite possible that these safety concerns could be exacerbated if the tree continues to grow, and the canopy extends towards the house and further out over the driveway. As a result of these considerations, the proposed development would likely lead to future pressure to lop or fell the protected tree. While these works would require the Council's approval, the safety concerns I have identified would likely make it difficult for such an application to be refused. Given the substantial contribution that the tree makes to the character of the immediate area, any lopping of its branches, or the felling of the tree, would clearly result in a serious and unacceptable level of harm.
8. The Arboricultural Impact Assessment sets out the measures that could be taken to ensure that the health of the tree, including its roots, would not be affected during construction. I am satisfied that this evidence is sufficient, and that mitigation measures could have been secured through suitably worded conditions had I allowed the appeal.
9. However, this does not alter my concerns about the potential for future harm arising after the house has been occupied. As a result, I conclude that the proposed development would harm the character and appearance of the area, having particular regard to its effect on T1. It is therefore in conflict with Policy C4 of the Torbay Local Plan 2012 to 2030 (Local Plan) which seeks to prevent development that would seriously harm protected trees, either directly or indirectly. It is also contrary to Paragraphs 131 and 174 of the National Planning Policy Framework.

Other Matters

10. The appellant has stated that the proposed dwelling would be of a design that is sympathetic to local character and therefore conforms with Policy DE1 of the Local Plan. While that might be the case, this is not a matter that is disputed by the Council, and it is not an issue that overcomes the harm that I have identified.
11. A neighbour has commented that the appeal site is currently used for anti-social behaviour and that its overgrown nature negatively impacts their property. I have no substantive evidence to confirm that this is the case, and in any event, these issues do not overcome the identified harm.
12. The officer report refers to the absence of a five year land supply and so paragraph 11d of the Framework applies.

13. The proposal would make a contribution to housing land supply; however, due to the scale, I can only afford this very limited weight. I have identified that the proposal would result in harm to the character and appearance of the area, with regard to the protected tree. Consequently, I consider that the adverse impact of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Furthermore, the proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, which outweigh the identified harm and associated development plan conflict.

Conclusion

14. For the reasons given above, the appeal is dismissed.

C Butcher

INSPECTOR