



Appeal Decision

Site visit made on 17 August 2023

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th September 2023

Appeal Ref: APP/X1165/W/22/3310672

Land at Waterside Quarry (Plot 5), Waterside Quarry, Paignton TQ4 6NS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Adam Billings against Torbay Council.
 - The application Ref P/2021/1256, dated 16 November 2021, sought approval of details pursuant to the time limit for reserved matters condition of planning permission Ref P/2019/0520 granted on 15 July 2020.
 - The development proposed is approval of details for three dwellings (approval sought for access, appearance, layout, scale, and landscaping) in relation to outline application P/2019/0520.
 - The details for which approval is sought are access, appearance, layout, scale, and landscaping.
-

Decision

1. The appeal is allowed and planning permission is granted for approval of details for three dwellings (approval sought for access, appearance, layout, scale, and landscaping) in relation to outline application P/2019/0520 at land at Waterside Quarry (Plot 5), Paignton TQ4 6NS in accordance with the terms of the application, Ref P/2021/1256, dated 16 November 2021, subject to the attached schedule of conditions.

Background and Preliminary Matters

2. Outline planning permission has been granted under planning reference P/2019/0520 and the Council submits that the decision notice should have included a number of additional conditions. The appellant disputes this and asserts that there was an error in the minutes taken at the planning committee meeting, and that the decision notice was issued correctly. Even if this were to be the case, planning conditions can be added to a reserved matters application if directly related to those matters.
3. The appeal relates to a failure to determine the application within the prescribed period and the Council has highlighted its concerns, had it been determined. The Council submits that mitigation has not been secured through appropriately worded conditions or a planning obligation in relation to the retention of Calcareous Coastal Grassland (CCG) that is an interest feature of the South Hams Special Area of Conservation (SAC). The retained CCG also forms part of the agreed Habitat Regulations Assessment (HRA) lighting mitigation strategy for greater horseshoe bats to avoid the identified likely significant effects on the SAC.
4. Since the granting of the outline planning permission, the likely significant effects of the development on the SAC and required mitigation set out in the

previous Appropriate Assessment (AA) have not changed. It is clear that mitigation should be secured through conditions and although these were not attached to the outline permission, as mentioned above, they can be added to a reserved matters proposal.

5. The Council contend that in addition to the mitigation measures that can be secured through appropriately worded conditions, a planning obligation is also necessary to retain the CCG to prevent an alternative use of land and to conserve the ecological benefits over the lifetime of the development. The appeal site has however already been granted planning permission for residential development where the comings and goings of potential future occupiers and disturbance to this land within private gardens would be likely.
6. Consequently, it would not be reasonable to further restrict its permitted use beyond compliance with a landscaping condition through a planning obligation. No additional bird boxes are shown on the plans. However, hedgerow protection measures can be employed to provide nesting opportunities. Additionally, the proposed area of protected CCG is particularly small and therefore its loss would be unlikely to have altered the conclusions of the previously agreed AA. Consequently, in reviewing the AA, subject to appropriately worded conditions, the proposed development would maintain the integrity of the SAC.
7. As such, the proposed development would not conflict with Policy NC1 of the Torbay Local Plan 2012-2030 (LP) or Policy E8 of the Brixham Peninsula Neighbourhood Plan Policy Document Adopted June 2019 (NP) which, amongst other things, seek to conserve and enhance Torbay's biodiversity and geodiversity, through the protection and improvement of the terrestrial and marine environments and fauna and flora, commensurate to their importance.
8. Additionally, the Council considers that the proposal would harmfully affect the character and appearance of the area. The appellant has had the opportunity to comment on these matters and therefore would not be prejudiced by them forming the basis for the main issue.

Main Issue

9. The main issue is the effect of the development on the character and appearance of the area.

Reasons

Character and appearance

10. The appeal site is positioned in an urban area on rising land locally designated within Policy C5 of the LP as an Urban Landscape Protection Area (ULPA). The policy does not resist all development within the ULPA, but only supports proposals if they do not undermine its value as an open or landscaped feature, and that make a positive contribution to the urban environment, enhancing its character.
11. Whilst the Council may have intended to restrict the overall height of the development via a planning condition when granting the outline permission, it failed to do so. The proposed flat roof properties would be closer to the adjoining highway than the adjacent Waterside View development. They would also be marginally taller and of a greater footprint than the indicative plans

accompanying the outline planning permission, though would be of a similar appearance to those properties and set well back into the site. Furthermore, the development would be positioned behind proposed shrub, amenity and tree planting, which would provide a landscape led approach and consequently reduce its prominence when viewed from the street.

12. The development would be set further back from the road than the nearby street fronted Coyde properties and at a lower level than the nearest property at Waterside View. As such it would be of a scale and density somewhere between the two groups of properties either side of it. Despite their 2 storey height, the proposed massing of the modern designed properties would not therefore appear highly prominent or incongruous where the eye would be drawn to them. Consequently, the development would form a sympathetic transition of housing density that would not undermine the value of the ULPA and would make a positive contribution to the surrounding urban environment.
13. I therefore conclude that the proposal would not materially harm the character and appearance of the area. As such, the development would accord with policies DE1 and C5 of the LP, and Policy BH5 of the NP which, together in this respect, seek to promote developments that respect and make a positive contribution the character and appearance of the area, including the ULPA.

Other Matters

14. I have paid regard to representations concerning trees and the site history, though these do not affect my findings on the main issue above.

Conditions

15. The Council has suggested a number of conditions which I have considered against advice in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG). I have made such amendments and omissions as necessary to comply with those documents.
16. I have imposed a plans condition in the interests of clarity. In the interests of character and appearance and biodiversity I have included a landscaping compliance condition. I have also included conditions covering lighting, a construction and environmental management plan (CEMP), vegetation removal and the restriction of certain permitted development rights in the interests of biodiversity.
17. I have not imposed the Council's suggested landscape and environmental management plan as the payment of money should not be included in planning conditions. Furthermore, the small scale of the development and the aforementioned conditions provide sufficient landscaping protection and mitigation measures in respect of the effects of the development on biodiversity. I have not imposed the suggested construction and delivery hours condition as this is repeated in the CEMP.
18. The proposed properties would be sited away from a quarry wall face which is part of a Regionally Important Geology Site. As the proposal does not include any alteration to this rock face, there is no evidence to demonstrate that the requirement of such a survey through planning condition would meet the tests of reasonableness or necessity set out in the Framework.

19. Drainage is not a matter that is within the scope of this appeal and I therefore cannot impose the Councils' suggested condition.
20. EV charging, refuse storage and sustainable construction compliance conditions are reasonably necessary in the interest of the character and appearance of the area and a low carbon development. I have included a parking compliance condition in the interests of highway safety and have no evidence that the proposed footway would need to be removed.

Conclusion

21. For the reasons given I conclude that the appeal should succeed.

J Hills

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 1927 S1 Rev C; PL2 Rev F; PL3 Rev E; PL5 Rev D; PL6 Rev D; PL7 Rev D; PL8 Rev D; PL9 Rev D; PL10 Rev D; PL11 Rev D; PL16 Rev E.
2. Development shall take place strictly in accordance with the hereby approved 'Lighting Design Strategy May 2022 Revision E'.
3. Development shall take place strictly in accordance with the hereby approved 'Construction Environment Management Plan March 2022 Revision D'.
4. The dwellings hereby approved shall not be occupied or brought into use until the hardstanding parking areas and garages detailed on approved plan 'PL2 Rev F' have been provided in full. The hardstanding shall thereafter be permanently retained for the use of parking for the associated dwelling for the life of the development.
5. Prior to the first occupation of the dwellings hereby permitted, provision shall be made for the storage of refuse and recycling in accordance with approved plan 'PL2 Rev F'. The storage arrangements shall be retained as such for the life of the development.
6. All proposed planting as detailed within plan reference 'Landscape and Planting Specification May 2022 Revision E' shall be planted in the next planting season following the commencement of the development and completed in full prior to the occupation of the development. The landscaping scheme shall thereafter be maintained for a period of 5 years. In the event of failure of any trees/plants, planted in accordance with the approved scheme, to become established and to prosper for a period of five years from the date of the completion of implementation of that scheme, such trees/plants shall be replaced in the next planting season. The planting shall be maintained in accordance with plan reference 'Landscape and Planting Specification May 2022 Revision E'.
7. Prior to the occupation of the development hereby approved, the electric vehicle charging points detailed on approved plan 'PL2 Rev F' shall be installed and made available for use for the associated dwelling. The electric vehicle charging points shall be thereafter maintained and retained for the lifetime of the development.
8. Notwithstanding the provisions of Class H of Part 14 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order with or without modification), no installation of wind turbines shall take place to the approved dwellings, unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the local planning authority.
9. The construction of the new dwellings hereby approved shall be carried out in accordance with the details contained in the submitted 'Net Zero Carbon Energy Specification' including the installation of solar PV. All measures to limit carbon emissions shall be implemented prior to first occupation of the dwellings.
10. No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive in any given year.

