



Appeal Decision

Site visit made on 15 August 2023

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 September 2023

Appeal Ref: APP/X1165/W/23/3315431

The Firs, 64 Oldway Road, Paignton, Torbay TQ3 2TB

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr John Huteson against the decision of Torbay Council.
 - The application Ref P/2022/0425, dated 1 April 2022, was refused by notice dated 1 August 2022.
 - The development proposed is the construction of two new 3/4 bedroom dwellings in the rear garden of 64 Oldway Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application has been submitted in outline with all matters, comprising access, appearance, layout, scale and landscaping, reserved for future consideration. I have dealt with the proposal on that basis, treating details such as those on the proposed site plan and proposed section plan for illustrative purposes only and as an indication of the dwellings that would likely be erected on the site.
3. The Council's third reason for refusal relates to the potential impact the development would have on trees. I note that the trees have been felled. The appellant indicated they received advice that the trees could have fallen in high winds. As the trees have been felled, I consider this should not be considered as a main issue and there is no conflict with Policy C4 of the Torbay Local Plan (TLP).

Main Issues

4. The main issues are:
 - the effect of the development on the character and appearance of the area; and
 - whether or not the development proposed would provide satisfactory living conditions for future occupants, with regard to outlook and light.

Reasons

Effect on the character and appearance of the area

5. The Firs is within a residential area of Paignton and the appeal site is located at the rear of the property on a lower ground level. The predominant housing types in the immediate local area are single and two storey dwellings.

- Although, I note that there is a three storey building containing retirement housing, Richmond Court, on the opposite side of the road to the site.
6. The site is bordered by a high stone wall that extends along the entire length of the boundary with Oldway Road. I consider that the wall, which is constructed from the local stone and is a prominent feature in the street scene, makes a positive contribution to the local area. High boundary walls are a common feature along the road near the site and make an important contribution to the character and appearance of the area.
 7. The illustrative plans show that a large section of the stone wall would be removed to facilitate the access to the proposed dwellings. Additionally, significant engineering works are likely to be required to provide a more level parking area to the front of the houses.
 8. The removal of a large section of the stone wall would have a negative impact on the street scene as it would see a significant partial loss of a prominent and positive feature on Oldway Road. The amount of digging out required, together with the substantial retaining structures and indicated scale of development, which would be overtly visible from Oldway Road, would see the introduction of dominant and incongruent development on this stretch of the road.
 9. I acknowledge that there is a three storey development on the opposite side of the road, but that built form is set significantly further back from the road, and as stated by the Council, there is a stepping down in building height closer to the road.
 10. I understand that the local stone that the boundary wall has been constructed from can weather and weaken over time. I viewed one of the local stone walls of Oldway Mansion and noted that it is currently braced with scaffolding and behind protective fencing. I also acknowledge that some of the other properties along the road may have demolished a stone wall and erected a block wall with red coloured render in its place. However, these matters would not justify development requiring the removal of a substantial section of a wall that contributes to the character and appearance of the area.
 11. For these reasons, I conclude that the two proposed dwellings would result in significant harm to the character and appearance of the area. Consequently, the proposal conflicts with Policy DE1 of the Torbay Local Plan and Policy PNP1(c) of the Paignton Neighbourhood Plan (PNP), which collectively seek, in part, for development to be well designed, in keeping with its surroundings and relate to the surrounding built environment in terms of its scale, height and massing. It would also conflict with Chapter 12 of the National Planning Policy Framework (the Framework) that seeks development to be visually attractive and to maintain a strong sense of place.

Living conditions

12. The illustrative site plan indicates that the two dwellings would be erected towards the rear of the site with the parking area occupying the majority of the site's frontage. Given the number of dwellings proposed, together with the shape of the site, it is likely that the dwellings would be sited in a similar position to that shown on the site plan.

13. The site is on sloping land, with raised decking to the rear. That is shown as being proposed to be removed, although the means to secure its removal is unclear. As a result, I have assumed that the decking would remain.
14. The section plan indicates that the dwellings would be sufficiently separated from the raised decking to prevent an issue arising in relation to outlook from, and light passing into, the dwellings themselves. Furthermore, the dwellings could be designed so that the main outlook is in the opposite direction from The Firs.
15. The size of the gardens for the dwellings indicated on the plans would significantly exceed the policy requirement for outdoor space. The outdoor areas would wrap around the dwellings, providing amenity space away from the rear site boundary and the decking. These areas of the garden would provide the main outlook from the gardens. Furthermore, the positioning of the gardens in relation to the proposed, and other, built form would allow a satisfactory level of light to enter the outdoor space. There would be no overshadowing from trees.
16. For these reasons, I conclude that the illustrative plans show that the intended future occupiers of the proposed dwellings would be provided with a satisfactory level of living conditions. The proposal therefore complies with Policy DE3 of the Torbay Local Plan, which sets out that new residential development will need to have particular regard to outlook, and that provision must be made for useable amenity space, including gardens and outdoor amenity areas.

Other Considerations

17. The proposal would make a positive contribution to housing supply by providing two family houses within walking distance of services and facilities, including a school, with associated social and economic benefits. However, the contribution of two dwellings to meeting the shortfall of deliverable housing in Torbay and the associated benefits are limited.
18. The site currently comprises part of a large garden that I understand is hard to maintain and is no longer required for the family of the appellant. The appellant has also drawn my attention to a bungalow that has been constructed near to the appeal site. However, I have been provided with little information on the background and planning context of that site. In any event, I need to consider this case on its own individual merits.
19. The appellant has referred to pre-application discussions that took place prior to the submission of the application and has described receiving positive advice. However, the outcome of such discussions is not binding on future decision makers. I note that neighbours may be supportive, but this only carries limited weight.

Planning Balance

20. The Framework does not change the statutory status of the development plan as the starting point for decision making. I have found that the proposal is not in accordance with Policy DE1 of the TLP and Policy PNP1(c) of the PNP, due to the harm to the character and appearance of the area. Whilst it does not conflict with other policies relating to living conditions of future occupiers, such as Policy DE3 of the Torbay Local Plan and it may comply with other policies,

that conflict means it conflicts with the development plan as a whole. Proposed development which conflicts with the development plan should be refused unless other material considerations, including the Framework, indicate otherwise.

21. The Council accepts that it cannot currently demonstrate a five-year housing land supply. As a result, in accordance with Paragraph 11 of the Framework, the policies most important for determining the application are deemed to be out-of-date, including Policy DE1 of the TLP and Policy PNP1(c) of the PNP. In these circumstances, Paragraph 11(d) of the Framework states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. Consequently, I find that the adverse impact of the proposed development arising from the harm to the character and appearance of the area would significantly and demonstrably outweigh the benefits, set out within the other considerations including the contribution to housing supply and that the existing large garden is no longer required by the appellant and hard to maintain, when assessed against the policies of the Framework as a whole.

Conclusion

23. For the above reasons, and having regard to all other matters raised, the proposal would conflict with the development plan, when taken as a whole. There are no other considerations, including the provisions of the Framework, which outweigh this finding. Accordingly, I conclude that the appeal should be dismissed.

K Reeves

INSPECTOR