



Appeal Decision

Site visit made on 19 September 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2023

Appeal Ref: APP/X1165/W/23/3319311

Land on the South Side of Totnes Road, Collaton St Mary, Paignton, Devon TQ4 7PT

- 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 A Davis against the decision of Torbay Council.
 - The application Ref P/2022/0754, dated 22 June 2022, was refused by notice dated 30 September 2022.
 - The development proposed is erection of 9 dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. My formal decision uses the description of development as set out on the application form as neither party has provided written confirmation that the revised description on the decision notice has been agreed.
3. I note that the address for the appeal site on the application form is incomplete. I have therefore used the address on the appeal form in the banner heading above.
4. The site is located within close proximity to the South Hams Special Area of Conservation (SAC). I will return to this matter below.

Main Issues

5. The main issues are:
 - the effect of the proposal on the character and appearance of the area,
 - whether the living conditions of future occupiers of the proposed development would be acceptable, with particular regard to pedestrian access, and the provision of the parking and storage areas,
 - the effect of the proposal on flooding with particular regard to the management of surface water, and
 - the effect of the proposal on highway safety, and
 - the effect of the proposal on protected species and the integrity of the South Hams Special Area of Conservation (SAC).

Reasons

Character and Appearance

6. The appeal site is located on the approach to Collaton St Mary from the west, off the main A385 Totnes Road. On approach to the site, the area is characterised by loose-knit development generally at a low density and comprising mainly detached single and two-storey dwellings and buildings of differing designs in sizable plots with substantial frontage landscaping.
7. The appeal site forms a small break in built development between existing dwellings. It is grassed, generally open and rises up from the roadside with a strip of planting dissecting it.
8. The appeal proposal comprises the construction of nine dwellings, each over three floors with rooms within their roofs to maximise the use of the available space. The dwellings are three storeys at the front and two storeys at the rear to take account of the topography. There would be a row of seven dwellings separated from a pair of dwellings by two parking spaces and a turning head. The dwellings would be accessed off a single access serving an internal road to the front of the dwellings. Due to the sloping nature of the site, the rear gardens would be at first floor level accessed from the frontages via steps to the side of the dwellings.
9. The three-storey nature of the dwellings and their narrow tall form does not reflect the prevailing built form which comprises wider footprint bungalows and two-storey dwellings. The height of the dwellings would be emphasised by their position on rising land behind the access road and associated frontage parking resulting in a prominent form of development. This would be at odds with the character and appearance of buildings in the locality which are generally less prominent and screened by landscaping such that they do not draw attention to themselves. Moreover, the prominence of the buildings would be further emphasised by their repetitive design and close positioning in an area comprising a variety of designs within spacious plots. As a result, and despite some very narrow glimpsed views between the buildings to the rising land behind, the proposal would not make an appropriate design statement on the approach to the settlement.
10. I have taken into account the possibility of the wider area changing character going forward as a result of the sites location within a 'Future Growth Area' under Policy SS2 of the Torbay Local Plan, The Plan for Torbay:2012 to 2030 (LP) and inclusion of the site within the Collaton St Mary Masterplan Area as detailed within the Collaton St Mary Masterplan Supplementary Planning Document (February 2016) (SPD). However, Policies SS2, C1 and H1 of the LP, and Policies PNP19 and PNP24 of the Paignton Neighbourhood Plan 2012-2030 (June 2019) (NP), require that development within these areas reflect and protect the landscape character of the area, consider landscape impacts and are consistent with other policies in these documents. In addition, the SPD locates the majority of new development further to the west of the site a significant distance away, such that the site would not be viewed in relation to the majority of that development. The proposal therefore fails to integrate with the existing character of the area.
11. The appellant has brought my attention to the development approved at the nearby 'Former Motel Site', one of the development sites within the SPD.

However, and although I have limited details of the proposal and its planning history, I note that the density of the proposal was subsequently reduced with all 3-storey buildings omitted to better reflect the character and appearance of the area. In addition, the appeal site is viewed more closely in association with the lower density row of bungalows to its western boundary. This scheme is therefore not comparable to the appeal proposal which I have considered on its individual merits.

12. Landscaping to the site frontage would be likely to take time to establish and be unlikely to fully screen the full extent of the buildings and access from all surrounding viewpoints. It would not therefore adequately screen the development or mitigate the harmful visual impact of the proposal.
13. I note the site is not allocated as green space within the NP and that there is no dispute between the parties regarding harm from the loss of any significant trees or hedgerows on the site and I find no reason to disagree. However, these matters are neutral in my consideration and do not outweigh the visual harm I have identified above.
14. In conclusion, the proposal would result in harm to the character and appearance of the area. As such, it would be contrary to Policies SS2, SS8, SS11, DE1, C1, PNP1, PNP1(c) and PNP24 of the NP and the National Planning Policy Framework (the Framework). Amongst other things, these seek development that reflect the landscape character of the area, conserve or enhance the distinctive landscape character and visual quality of a particular area, create a high quality built environment, create an enhancement of local identity, be well-designed and respect street frontages and built form, be in keeping with the surroundings respecting scale, design, height and achieve well-designed places.
15. The first reason for refusal on the decision notice also references LP Policies NC1, C1 and C4, NP Policy PNP19 and the SPD. However, in light of the lack of harm to biodiversity or trees and hedgerows, and inclusion of the site within the Masterplan Area, in accordance with its strategy, the illustrative Masterplan and the Phasing of development, I find no direct conflict with these policies or the SPD.

Living conditions of future occupiers

16. The appeal proposes an integral garage and two parking spaces of 4.8m x 2.4m serving each of the dwellings.
17. There is no dispute between the parties that the number of parking spaces, with 1 electric car charging point per dwelling would be adequate to serve the development. I have no reason to disagree. However, a number of the external spaces are proposed directly adjoining dividing boundary walls which given the narrow width of the parking spaces, creates the potential for the walls to restrict the opening of doors and discourage the use of the spaces. Furthermore, given the absence of separate footpaths serving each of the dwellings and lack of uninterrupted pedestrian access to the dwellings and their garages, this would be likely to discourage the use of parking spaces. This would result in parking on the access road potentially restricting access to other dwellings and their parking spaces.

18. Whilst bin and cycle storage are proposed within a dedicated building within the rear gardens of the dwellings, they would be accessed via steps leading up to the rear gardens/store via a narrow path. This would make access to, and movement of, the bins and cycles unattractive. Whilst there may be space within the integral garage behind the ground floor WC to store bins and cycles, the lack of uninterrupted pedestrian access to, and through, the garage with a parked car would not make this an attractive alternative. As a result, the proposal would not adequately encourage the use of cycles and would be likely to result in bins being stored to the front of properties further restricting pedestrian access and car parking.
19. I note the Torbay Highway Design Guide (2021) in relation to shared drives states a requirement for a minimum carriageway width of 4.8m and that turning areas should be in accordance with Manual for Streets. Although I have not been provided with swept path analysis to demonstrate that cars would be able to access and egress the parking spaces in a single movement, in light of the limited number of dwellings proposed to be served off the shared drive, its 4.8m width, and likely low speed of vehicles, there would be no significant harm to the living conditions of future occupiers or any highway safety issue should more than one manoeuvre be required to access or egress the car parking spaces.
20. Although I find the width of the road and access to the proposed parking spaces suitable, in light of my findings above, it follows that I conclude that the living conditions of future occupiers of the proposed development would not be acceptable, with particular regard to pedestrian access, and the provision of the parking and storage areas. As such, the proposal fails to comply with Policies SS11, H1, DE1, DE3 and TA3 of the LP, and paragraph 130 of the Framework. Amongst other things, these require that development proposals meet the needs of residents and enhance their quality of life, create high quality living environments, be well-designed, permeable and accessible to all users, provide a good level of amenity for future residents, provide appropriate provision of car and cycle parking, with a high standard of amenity for future users.
21. The third reason for refusal on the decision notice references NP Policy PNP1(c). However, in relation to living conditions the policy only references noise, air and pollution and therefore is not relevant to this case.

Flood risk

22. The Drainage Statement accompanying the application is dated 5 October 2021 and clarifies that at that outline stage no intrusive site investigation had been undertaken with minimum infiltration rates used and simulated calculations carried out to determine storage volumes.
23. In light of the date of the Drainage Statement, the availability of full details of the proposal, and the steep gradient of the site, a full assessment of the detailed proposal and associated drainage risks is required in order to demonstrate that the proposal would not unacceptably increase the risk of flooding elsewhere.
24. The submitted Geotechnical Report and associated trial holes indicate a need for different infiltration rates and need for trial pits in the location for any proposed soakaway and permeable paving. In light of the above, and likely need to re-design the drainage strategy, drainage layout, and potentially the

resulting site layout, I do not find it reasonable or appropriate to ensure provision of the necessary details via a suitably worded condition should I be minded to allow the appeal.

25. Accordingly, I cannot conclude that the proposal would not cause harm to flooding with particular regard to the management of surface water. As such, the proposal is contrary to Policy ER1 of the LP and Policies PNP1(i) and PNP24 of NP, and paragraph 167 of the Framework. Amongst other things, these seek to ensure that development is safe for its lifetime, maintains or enhances the prevailing water flow regime on-site, keeps water out of the combined sewer network at source, does not cause any risk of flooding to existing properties, and ensure flooding is not increased elsewhere.

Highway Safety

26. The appeal site is proposed to be accessed via a new access further along Totnes Road with visibility splays of 4.5m x 120m.
27. The Council raise no concerns with regard to the visibility splay other than to make reference to a note on the appellants original Highways Engineering Layout plan (ref: 1725/0700/P1) stating that an additional survey is required to confirm the extent of the visibility splay. This note has been removed from the updated Highways Engineering Layout plan (ref: 1725/0700/P3) although the Councils concern remains.
28. As observed at my site visit, the appeal site is located on the outside of a slight bend to Totnes Road with very good visibility available in both directions. I have limited information before me detailing the survey work envisaged by the note on the original plan, and no Personal Injury Collision data to demonstrate that the proposed access and visibility splays would be dangerous. In light of the presence of a number of similar accesses to Totnes Road within close proximity to the site, good visibility at the proposed access, and presence of an existing access to the site, I do not find that the proposal would cause harm to highway safety with regard to visibility at the proposed access.
29. With regard to the existing access, the updated Highways Engineering Layout plan confirms that it would be removed and closed off. Suitable details of this, including timing, could be controlled by condition should I be minded to allow the appeal.
30. The Council states that as part of the development a new bus lay-by and associated facilities would be required to align with the Torbay Bus Service Improvement Plan. However, I have not been provided with compelling evidence to justify the requirement for a new bus lay-by and associated facilities as a result of this modest development, particularly given the presence of existing bus stops close to the site on both sides of Totnes Road and presence of an existing bus lay-by on the opposite side of the road. In addition, I have not been provided with adequate evidence detailing the justification for, or detailing the measures that would be required to comply with the Torbay Bus Improvement Plan.
31. I have dealt with matters of refuse storage above, but in relation to refuse collection the application is accompanied by a Vehicle Swept Path Analysis plan (ref:1725/0700/P2) demonstrating how a refuse vehicle would be able to adequately access and turn within the site.

32. In light of the above, I conclude that the proposal would not harm highway safety. The proposal would therefore not conflict with Policies SS11, TA1 and TA2 of the LP or paragraph 110 of the Framework. Amongst other things, these seek to create well connected, accessible and safe communities, provide vehicular and pedestrian access to a safe standard, including satisfactory standard of visibility and ensuring safe and suitable access to the site can be achieved for all users.

Protected species and integrity of the South Hams SAC

33. The appeal site lies approximately 9km south east of the South Hams SAC comprising of a network of cliffs, caves, slopes, screes and ravines. The SAC is protected via the Habitats Directive, which is incorporated into domestic statute via the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SAC, either alone or in combination with other plans and projects.
34. The SAC is designated in order to protect the population of Greater horseshoe bats and prevent damage to bat roosts and commuting routes. Loss, damage or disturbance of these features can degrade the integrity of the overall roost network and bat populations.
35. Considering the survey evidence provided by the appellant demonstrating limited use of the site by bats, lack of suitable habitat for bats on the site and the site not forming an important pinch point for commuting, I find that the sites value for protected species is likely to be very limited. Consequently, I am satisfied that likely significant effects to the ecological integrity of the SAC would be avoided. An Appropriate Assessment is therefore not required.
36. In light of the above, I conclude that the proposal would not have a harmful impact upon protected species or the integrity of the South Hams SAC. As such, it would not be contrary to Policy NC1 of the LP. Amongst other things, this seeks to ensure that internationally important sites and species are protected.

Other Matters

37. I have had regard to the location of the site within an area allocated for growth and within the SPD area and agree with the appellant and Council that the principle of residential development on the site in a sustainable location close to a range of services and facilities is acceptable. I also acknowledge the lack of harm to the living conditions of neighbouring occupiers. However, these matters do not outweigh the harm I have identified above.
38. I have considered the Torbay Local Plan Update 2022-2040: A Landscape to Thrive Housing Site Options Consultation Policies (Regulation 18) (October 2022) and the proposed allocation of the site for an estimated 8 additional homes. Whilst this provides some further support for the principle of residential development on the site, I have limited details in relation to its current stage of production, note it is a consultation document, and as such give it limited weight in my consideration. Moreover, the possible allocation of the site for development does not outweigh the concerns raised above and conflict with other LP and NP policies.

39. I have also had regard to the green infrastructure, biodiversity net gain improvements, use of energy efficient measures within the proposal and lack of harm to heritage assets, air quality or designated landscapes. Nonetheless, as this is required by local and national planning policies, they are neutral in my consideration.
40. The development would be contrary to the local development strategy. The relevant policies are largely consistent with the Framework where it states that planning decisions should reflect the character of an area, safeguard the environment, provide a good standard of living conditions for future occupiers and prevent the risk of flooding. Therefore, the proposed development would be contrary to the development plan as a whole and I give significant weight to the conflict with these policies.
41. 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 housing of a small scale on a small site likely to be constructed by local builders and constructed quickly, improve choice and competition in the market place, increased growth and spending and use of local services and facilities as a result of the new dwellings helping to sustain local businesses and wider associated employment and business services, construction and associated employment/local labour opportunities. In addition, it would be an efficient use of land, generate New Homes Bonus, Council Tax receipts, Community Infrastructure contributions and would contribute towards the supply and mix of housing for local people in the area.
42. However, given the scale and nature of the development, the benefits would be moderate. In contrast, I have found that the appeal proposal would result in significant harm to the character and appearance of the area, the living conditions of future occupiers and the lack of harm to flood risk has not been adequately demonstrated. 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.

Conclusion

43. Although I have found no harm in terms of highway safety, the proposal would harm the character and appearance of the area, harm the living conditions of future occupiers and the lack of harm to flood risk has not been evidenced. In my view, they are the prevailing considerations, and the proposal should be regarded as being in conflict with the development plan, when read as a whole. There are no material considerations, including the Framework, that would outweigh that conflict. Therefore, the appeal is dismissed.

C Rose

INSPECTOR