



Appeal Decision

Site visit made on 14 November 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2023

Appeal Ref: APP/X1165/W/23/3316516

The Paddock, Teignmouth Road, Maidencombe TQ1 4SX

- 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 Andrew Rowe, AR Land & Planning, against the decision of Torbay Council.
 - The application Ref P/2021/1297, dated 26 November 2021, was refused by notice dated 14 December 2022.
 - The development proposed is outline permission for up to 6 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with only details of access to be determined at this stage. Matters of appearance, landscaping, layout and scale are reserved for future consideration (the 'reserved matters'). I have therefore treated any references to reserved matters, on the plans or in other documentation, as illustrative.
3. I have taken the description of development in the banner heading above from the application form. However as '(all matters reserved apart from access)' is not an act of development, I have removed this element.
4. The Council's Decision Notice indicates that it made its decision on relevant plans which included 226584/PD01 Rev E. However, the appellant suggests that amended and further plans were submitted, namely 226584/PD01 Rev G, 226584/PD01.1, 226584/SK02, to the Council on the 14th December 2022. It is unclear if these plans were before the Council when their decision was made.
5. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. The change within the plans relate to the footway and carriageway narrowing and an existing tree location.
6. Notwithstanding the timing of the submission of these plans, all parties have had the opportunity to comment on the amended plans as part of the appeal process and I do not consider that any party would be prejudiced by my acceptance of them. I have therefore determined the appeal based on the amended and additional plans.

Main Issues

7. The main issues in this appeal are:

- the effect of the proposal on highway safety;
- whether the proposal would provide a suitable location for housing, having regard to the accessibility of local services and facilities; and
- the effect of the proposal on the character and appearance of the area.

Reasons

Highway safety

8. The appeal site features an existing access onto the A379 which is within a 30 miles per hour (mph) zone. The road has regular streetlights on one side but lacks dedicated cyclist provision and the surrounding footway provision is sporadic. The opposing side of the highway features a boundary bank and mature trees directly abutting the road, whilst the appeal site side features a mix of stone walling and mature tree planting set back from the highway. To the north, boundary planting, including a tree which I am informed is the subject of a Tree Protection Order¹ (TPO tree), directly abuts the highway. At the time of my site visit the road was moderately trafficked by a mix of light and heavy vehicles.
9. There is disagreement between the parties as to if the TPO tree, which is a prominent and significant visual feature in the area, is within Council controlled land. Although I note plans within the evidence indicating this to be the case, the Council have maintained this is not so. Notwithstanding, the access design has been through various revisions in order to find an acceptable solution and the latest access proposal before me (226584/PD01 Rev G) retains the TPO tree. The proposal would result in a narrowing of the carriageway to 5.8m, and whilst does provide for a footway link to the wider footway network and nearby public bus stops, this is severely restricted in width at a pinch point created by the retention of the TPO tree.
10. Other dwellings in the wider area do not benefit from continuous footway provision, as noted in the appellant's Transport Appeal Statement (TAS). However, notwithstanding if this is the case elsewhere, I observed that walking on the highway adjacent the appeal site is particularly unattractive to pedestrians due to the quantum and nature of the vehicular traffic. Whilst any additional footway provision would be utilised by existing residents in the vicinity, the proposal would result in an increase in pedestrians utilising the A379 at this location. The extremely narrow width of the proposed footway at the pinch point would bring pedestrians, particularly those with push chairs, prams or mobility scooters, into direct conflict with vehicular traffic due to a need to step onto the carriageway.
11. Furthermore, the proposed reduced width of the vehicular carriageway would prevent vehicles from positioning themselves further away from any pedestrians that may well be on the vehicular carriageway. Therefore, even taking into account the 30mph speed limit and potentially reduced speeds due to narrowing, and the limited distance that pedestrians may be required to step

¹ 2016.005

onto the vehicular carriageway, such potential conflict would, in my view, result in a significant highway safety concern.

12. The Council have also raised concerns that the proposal fails to demonstrate safe visibility splays, as well as the potential to cause congestion on a busy route. In the case of the latter, I note the traffic data stated within the TAS, which although dating from 2019, provides an overview of traffic flow at the appeal site. Early access design solutions incorporated narrowing features resulting in a significant reduction in carriageway width and priority signage to single way working via a pinch point on both sides of the carriageway. However, the proposal before me, whilst incorporating a narrowing of the carriageway to 5.8m, does not involve a priority solution, which given the traffic quantum could result in congestion.
13. The TAS provides details of other road narrowing schemes which it is stated have a greater traffic flow than the A379. Although the information of the other schemes before me is limited in terms of their equivalence to the current proposal, I have no substantive evidence before me as to why the proposed reduced width, in this particular location given existing traffic flows, would result in congestion.
14. Although the proposed highway entry plan submitted with the application did not show the full extent of the visibility splays, an updated plan, which utilises the topographical survey, indicates that visibility of 70m in each direction is achievable within highway land or that within the application site.
15. Consequently, the proposal would provide sufficient visibility and it has not been demonstrated that it would result in congestion on the highway. However, the proposal would result in the potential for conflict between pedestrians and vehicles, to the detriment of highway safety. In so far as they relate to this main issue, the proposal conflicts with policies TA1 and TA2 of the Torbay Local Plan 2012-2030 (LP). These policies seek, amongst other things, to provide and enhance pedestrian infrastructure to a safe standard, improve road safety, minimise conflict between road users. The proposal would also conflict with the provisions of the National Planning Policy Framework (Framework) which notes that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Location

16. LP Policy TA1 encourages development that is designed so that the use of cars is reduced wherever possible and residents have adequate access to employment, retail and community facilities within safe walking and cycling distance and via close proximity to bus stops, served by frequent bus services.
17. The appeal site, whilst being outside of any defined settlement or village envelope is on a main bus route, and whilst close to Maidencombe and some scattered facilities such as bars and restaurants, the closest main services and facilities are found approximately 1 mile away at Watcombe. However, there is no continuous footway to provide direct access to these services and facilities and as such, occupants would be deterred from walking.
18. Bus stops are in close proximity, being approximately 100m (southbound) and 170m (northbound) from the site. The bus route 22 provides regular daytime

services to the main surrounding settlements including Teignmouth, Dawlish, Babbacombe, Torquay and Paignton beyond.

19. Notwithstanding, as I have found in the previous main issue, the proposal does not include an appropriately safe footpath to the nearest bus stops. Given potential highway safety issues with reaching the bus stops, future occupiers would be deterred from utilising this transport option. They would therefore be more reliant on the use of a car to access services and facilities, and any local employment opportunities.
20. The Framework indicates that in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Given the reliance on the private car and owing to the relative proximity of the larger settlements further along the A379, it is reasonable to assume that occupants would instead choose to drive to larger settlements, which offers a full range of services and facilities where linked trips could be made in one location. I therefore cannot be certain that the proposal would support the services in rural settlements such as Maidencombe or Watcombe.
21. Another appeal decision is cited by the appellant which is stated to be further away from local services. However, although the full details of the other case are not before me the Inspector in that decision noted that the site was within the village envelope of Maidencombe. This limits the equivalence of the other case to the current proposal which, although located between existing residential dwellings and not isolated for the purposes of the Framework, is outside the designated village envelope. Moreover, the current appeal proposal has its own circumstances and I have determined it on its own merits.
22. My attention has been drawn to a number of other planning permissions granted for housing nearby. As I have only been supplied with minimal details of the Council's considerations of these permissions, the equivalence is limited. However, further details have been provided in respect of the permission at the adjacent site². The original planning permission was considered under a differing Policy context and the Officer's Report indicates that the proposal related to the demolition of a restaurant, catering facility and bed and breakfast, as opposed to a greenfield site. Therefore, there were significantly differing planning considerations than the appeal currently before me.
23. Policy THW5 of the Torquay Neighbourhood Plan 2019 (NP) is cited within the Council's reasons for refusal. However, this Policy seek to ensure developments are located on or near public transport routes, which notwithstanding highway safety concerns previously outlined, is the case with the appeal site.
24. Nevertheless, overall due to the lack of safe access to the bus stops, and continuous footway to local services and facilities making walking unattractive, I conclude the proposal would not provide a suitable location for housing, having regard to the accessibility of services and facilities. The proposal would therefore conflict with LP policies TA1 and TA2 and NP Policy TTR2. These policies, amongst other things seek to locate development in accessible locations and ensure that the most sustainable and environmentally acceptable modes of transport are promoted as an integral part of developments. The proposal would also be contrary with the provisions of the Framework in relation to accessible transport and housing in rural areas.

² P/2011/0361 & P/2016/0053

Character and appearance

25. The site is outside of a settlement boundary and therefore within designated open countryside as defined by LP Policy C1. Amongst other things, Policy C1 states that in such locations development will be resisted where it would lead to the loss of open countryside or create urban sprawl.
26. The site is identified within the appellant's Landscape and Visual Impact Assessment (LIVA) as being within the Breccia Hills & Coast Devon Landscape Character Area and Torbay Landscape Character Type 1 – Rolling Farmland. This is a rolling well farmed landscape with an irregular pattern of field boundaries and occasional hilltop woodland. Although the appeal site exhibits a number of these characteristics, surrounding residential development, some of which is modern in appearance and prominent, notably reduces the rurality of the immediate area, resulting in a semi-rural character.
27. On approach to the appeal site on the A379, the appeal site has a clear visual relationship with the existing surrounding residential development which comprises of a mix of dwellings of differing scale and both traditional and contemporary appearance. The appeal site is seen as a gap within residential ribbon development. Although the site does contribute to the semi-rural character when seen travelling along the A379, the proposal, subject to reserved matters, would not be at odds with the prevailing ribbon development of the street scene.
28. The appeal site is also visible from near and distant viewpoints from the west as being on a hillside, where it provides a greater contribution to the rolling farmed landscape. Despite this, the appeal site is the upper part of a field which would again be seen in conjunction with the adjacent residential development. The lower part of the field is outside of the appeal site and therefore would be retained. This would provide a visual transition between residential development as seen along the upper parts of the hillside, and the rural landscape below and beyond. Indicative plans and design code indicate that the quantum of development could be successfully accommodated on the site, and subject to appropriate detailed design, layout and landscaping, would not significantly diminish the character of the area.
29. Overall, whilst a development in this location would inevitably result in a change in character and appearance of the site, I find that the extent of effects on the landscape would not be significant. The landscape in this particular location, noting its close spatial relationship with adjacent built form, has the capacity to accommodate the proposal without unacceptable levels of harm, individually and cumulatively, which broadly accords with the LVIA findings.
30. Consequently, the proposal would not have an adverse effect on the character and appearance of the area. Insofar as they relate to this main issue, the proposal would accord with LP policies C1 and DE1, and NP policies TH8 and TH12. These policies seek, amongst other things, to ensure that new development is of good quality design which respects the character and appearance of the surrounding area. In addition, I find no conflict with the provisions of the Framework ensuring that developments are sympathetic to their surroundings.

Other Matters

31. The TAS refers to an 'alternative option' to deliver a footway provision involving a financial contribution for future highway safety improvements. However, even if I were to consider that the alternative option would overcome the identified harm, and the obligation would accord with the tests as outlined within paragraph 57 of the Framework, no mechanism is before me to secure the contribution.

Planning Balance and Conclusion

32. The proposal would result in a detriment to highway safety and would not provide a suitable location for housing, having regard to the accessibility of services and facilities, which is contrary to LP policies TA1 and TA2 and NP Policy TTR2. The policies that the scheme conflicts with are broadly consistent with the Framework. As such, and due to the degree of harm I have identified, I give the conflict with these policies substantial weight. The proposal conflicts with the development plan as a whole.
33. The Council are unable to demonstrate a five or three year supply of deliverable housing sites. Therefore paragraph 11 of the Framework is engaged. Paragraph 11 states that where relevant policies are out of date, 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, or the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
34. The provision of up to 6 dwellings would make a limited contribution towards addressing the Council's housing supply deficit, which I afford moderate weight in favour of the proposal. The proposal would also result in job creation and associated support of facilities and services in the wider area during the construction period, and economic and social benefits as a result of their future occupation. Such benefits are moderate given the scope and scale of the proposal. The Ecological Impact Assessment also states a net-gain in biodiversity is achievable which, although, noting reference to 10% in the appellant's appeal statement, isn't quantified. I therefore afford this benefit limited weight.
35. I have identified that the proposal would not harm the character and appearance of the area, however a lack of such harm would only be a neutral factor. Furthermore, even if I were to agree there was no harm with regard to future and neighbouring occupiers living conditions or ecology, such a lack of harm would also be a neutral factor.
36. I have identified significant harm to highway safety and the location of the proposal having regard to accessibility of services and facilities. Consequently, the social and environmental objective of sustainable development would not be achieved. When assessed against the benefits and the Framework taken as a whole, even with the lack of housing supply, I conclude that the adverse impacts of the appeal proposal significantly and demonstrably outweigh the benefits. As a result, I find that the appeal proposal is not a sustainable form of development.

37. For the reasons given above, I conclude that the proposal would conflict with the development plan as a whole, and there are no material considerations, including the Framework that would outweigh that conflict. Therefore, the appeal is dismissed.

S Harrington MA MRTPI

INSPECTOR