



Appeal Decision

Site visit made on 14 November 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2023

Appeal Ref: APP/X1165/W/23/3317476

Langley Manor, Teignmouth Road, Torquay TQ1 4SY

- 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 Dominic Green against the decision of Torbay Council.
 - The application Ref: P/2021/1206, dated 24 October 2021, was refused by notice dated 26 September 2022.
 - The development proposed is construction of seven dwellings with details of access and landscaping.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Mr Dominic Green against Torbay Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application was made in outline with details of access and landscaping to be determined at this stage. Matters of appearance, 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.
4. The application was determined on the basis of a revised description due to amendments to the proposal during the application process. I have therefore used the description within the appeal form in the banner heading above, although as '(Outline) [Description amended 20 June 2022]' are not acts of development I have removed these elements.

Background and Main Issues

5. The Council's decision notice, whilst confirming the application was refused, lacked reasons for the refusal. Since the appeal has been made, the Council has confirmed this was due to an administrative error and has provided the full reasons that they have refused planning permission for. These reasons accord with the reasoning within the Officer report. The appellant has had the opportunity to respond to these. Therefore, they would not be prejudiced by my taking these into account and forming the main issues. With these reasons for refusal in mind, I consider the main issues to be:
 - Whether the proposal would provide a suitable location for housing, having regard to the accessibility of local services and facilities;

- The effect of the proposed development on the character and appearance of the area;
- The effect of the proposal on highway safety;
- Whether the proposal would provide satisfactory living conditions for the occupiers of Ashleigh Cottage, with regard to outlook and overlooking, and future occupiers of the proposal with regard to overlooking, outlook and external space;
- The effect of the proposal on protected species; and
- Whether the proposed development demonstrates adequate drainage arrangements.

Reasons

Location

6. Policy C1 of the Torbay Local Plan 2012-2030 (LP) states that in open countryside, away from existing settlements, and in rural areas surrounding the three towns of Torbay, development will be resisted where, amongst other things, this would lead to the loss of open countryside or creation of urban sprawl. The appellant's Design and Access Statement notes that the site was in the original curtilage of Langley Manor. Historic mapping appears to show structures on the land, but these have since been demolished and at the time of my site visit mobile homes were within the site.
7. Whilst the appeal site is near the settlement of Watcombe and I observed contained static mobile homes at the time of my visit, it is outside of the built-up area or any designated settlement boundary. Therefore, despite being located within the former gardens of Langley Manor, the site is within 'open countryside' for the purposes of the LP.
8. LP Policy C1 does not promote piecemeal development or sporadic housing in the open countryside. Furthermore, the proposal does not fall into any of the categories of development listed in LP Policy C1 as being acceptable in principle outside of settlement boundaries.
9. I observed that occupiers of the proposed dwellings would need to travel some distance, both along a country lane and then the A379 to access services and facilities. The route lacks a continuous footway or dedicated cycling provision. In combination with the topography, and the nature of the A379, which I observed to be a moderately busy road utilised by both light and heavy vehicles, it is not conducive to walking or cycling to nearby services and facilities.
10. The appellant's Transport Statement dated 23 May 2022 (TS) notes that the nearest bus stops are 50 metres from the junction of Rock House Lane and the A379. This bus stop which is on the east side of the A379 serves bus route 22, which provides a daytime service to Babbacombe, Torquay and Paignton beyond. However, although there is a footway to the bus stop along the A379, I observed this is of variable width and not continuous to the appeal site. This would result in future occupiers having to walk on the narrow carriageway along Rock House Lane, and for a short distance onto the A379. Furthermore, future occupiers would have to cross the A379 to access or return from the bus

stop on the western side of the A379, which lacks a dedicated safe pedestrian crossing, deterring future occupiers from utilising this bus service.

11. Given the above, I find that future occupiers would be dependent upon the private car to access both services and facilities, and any local employment opportunities. I conclude the proposal would not provide a suitable location for housing, having regard to the accessibility of services and facilities. The proposal would conflict with LP policies C1, SS3 and SS13. These policies, amongst other things seek to locate housing to settlements to support sustainable communities and provide a balanced approach to improving economic, social and environmental conditions. The proposal would also be contrary with the provisions of the National Planning Policy Framework (Framework) in relation to accessible transport and housing in rural areas.

Character and appearance

12. The appeal site is within the grounds of Langley Manor with the locality featuring often steep, undulating topography. The wider area contains low density built form of a traditional appearance, interspersed with individual mature trees, woodland, hedgebanks and stone walls. Despite the proximity to Watcombe and other development along the A379, and the current despoiled appearance of the appeal site, the area along Rock House Lane maintains a strong rural sylvan character which is attractive in appearance.
13. I observed other developments along Rock House Lane as cited by the appellant. However, the appeal site and proposal differ in that it is prominent from the adjacent Rock House Lane, which is emphasised by the access within the boundary wall. Furthermore, due to the constrained size of the site and the requirement for appropriate parking provision for the quantum of dwellings proposed, the proposal would result in substantial built form in close proximity to Rock House Lane. There are larger three storey buildings, such as Maidencombe House nearby. However, this building fronts the A379 and is set back from the highway and therefore also significantly differs from the appeal site and the character of Rock House Lane.
14. Whilst the proposal does not seek approval of appearance, layout and scale, the illustrative plans provide a good indication of the massing and scale of built form which would result. Such significant built form adjacent the highway would appear incongruous when seen in conjunction with the more modest neighbouring Ashleigh Cottage and rural character of Rock House Lane.
15. Furthermore, individual trees within the appeal site are subject to a Tree Preservation Order (TPO), whilst the adjacent woodland is also covered by an area TPO. Due to their size and prominence, these trees make a significant positive contribution to the character of the wider area. Due to its close proximity, massing and siting on rising topography above the TPO trees and woodland, the proposal would diminish the significant visual contribution of them to the area. The details of landscaping provide additional planting and screening, particularly to the southern boundary. Nevertheless, given the likely amount of built form, hard standing and proximity to the highway, this is insufficient to meaningfully visually integrate the proposal into the surrounding area.
16. An Arboricultural Impact Assessment (AIA), Tree Constraints Survey and Tree Protection Plan accompanied the application. The AIA confirms that one

category C tree would be removed. Notwithstanding the close proximity, the AIA also states that one veteran sweet chestnut tree on the eastern boundary will require ground protection during construction and the use of piled foundations to reduce any possible impact of the development on the tree's roots. The remaining retained trees can be adequately protected during this development by the erection of the recommended fence protection.

17. Noting the outline nature of the application there is unsurprisingly a lack of detailed foundation design. Nevertheless, given the conclusions of the AIA, I see no reason why, subject to the imposition of an appropriate planning condition, the proposal could not be constructed in a manner that would protect the root areas of the TPO trees, or indeed other nearby trees. However, the proposal is likely to be in extremely close proximity to the tree canopies of T2 and T3 given the probable quantum of built form. I am therefore unable to discount that there would be additional pressure for tree works both during construction to accommodate built form, and from future occupiers to provide suitable living conditions in terms of light and outlook. Such works would further diminish the contribution of the trees to the character and appearance of the area.
18. Consequently, I conclude that the proposal would have an adverse effect on the character and appearance of the area. The proposal would conflict with LP policies C1 and DE1, and Policy TH8 of the Torquay Neighbourhood Plan 2019 (NP). 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, there would be conflict with the provisions of the Framework that seeks to ensure well designed places that are sympathetic to their surroundings.

Highway safety

19. The appeal site features an access onto Rock House Lane, which is a narrow rural lane within a 30 miles per hour zone. Rock House Lane joins the A379 via a narrow and steeply cambered junction which is at an oblique angle to the A379.
20. The TS notes visibility will be provided of 2.4 metres x 43 metres in both directions by the existing wall fronting the site being set back. Given the character of the highway at the access, such a visibility splay would be appropriate. In terms of the junction with the A379, the TS details visibility of 85m to the north, and 110m to the south. I observed this to be a reasonable estimation of the visibility. Notwithstanding the camber and alignment of the junction, given vehicular speeds along the A379 as well as modest likely movements generated by the proposal, I do not find that the increased use of the junction would result in significant highway safety concerns.
21. A swept path analysis has been provided to demonstrate that the access would be suitable for large vehicles. The analysis does not show how such vehicles could turn and exit the site in a forward gear as well as providing the associated vehicular parking as required within the LP Appendix F, particularly given the quantum of development. Given the sloping topography and narrow width of highway, vehicles reversing out of the access could lead to conflict with other users of the highway, thereby harming highway safety as well as preventing on site refuse collection.

22. The surrounding footway provision is sporadic. The TS refers to the visibility splay to the west of the entrance serving as a pedestrian route enabling easy access to the A379. However, the splay would be of insufficient length or width to provide a safe connecting footway. Such a lack of connecting footways, particularly given the quantum and nature of vehicular traffic on the A379 and the camber and alignment of the Rock House Lane junction, would bring pedestrians into direct conflict with vehicular traffic to the detriment of highway safety.
23. The appellant has stated that during detailed design phase, access and highway concerns would be resolved along with the submission of a waste collection strategy. However, given that access is a detailed matter before me, this is a matter that is required to be resolved at this stage. I am not satisfied that sufficient information has been provided to me that indicates an appropriate access is achievable. I am therefore concerned that any planning permission granted might be negated by the lack of safe and suitable access.
24. Consequently, I find that it has not been demonstrated that the proposal would not have a harmful effect on highway safety. The proposal conflicts with LP policies TA2 and TA3. These policies seek, amongst other things, to provide and enhance pedestrian infrastructure to a safe standard, improve road safety, minimise conflict between road users and provide appropriate provision of car parking. The proposal would also conflict with the provisions of the 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.

Living conditions

25. The appeal site is constrained by its size, topography and surrounding trees and planting. Therefore, notwithstanding the indicative nature of the proposed outline plans, I consider that given the proposed number of dwellings, the proposed plans provide a reasonable indication of the likely spatial relationship with neighbouring properties and future garden areas associated with the proposal.
26. Windows of the neighbouring house Ashleigh Cottage are indicated to be around 10 metres from the rear elevation of the nearest proposed dwellings. Screening is currently provided by mature planting. Even so, given the proximity there would nevertheless be some overlooking.
27. Although it could be possible for additional planting to offer some further screening, this would likely result in a more harmful impact upon the living conditions of the existing occupiers of Ashleigh Cottage, who would have their outlook compromised further not only through the presence of new dwellings, but also through potentially higher boundary treatments.
28. Furthermore, the close proximity of the planting to the rear of the proposal, and indeed garden areas, could lead to future pressure to remove screening in the long term to provide an acceptable outlook and light, further harming privacy of the neighbouring occupiers. Given the constraints of the topography of the site, proximity to planting and likely amount of built form limiting useable space, I also find that the proposal has not demonstrated that it would provide appropriate outdoor garden area for the intended occupiers.

29. Ultimately, although the plans are indicative and there may be sufficient distance to prevent overlooking between future occupiers of the proposed dwellings, I consider that there would be some harmful impact to the privacy and outlook of occupiers of Ashleigh Cottage, and the proposal does not demonstrate appropriate outdoor garden areas, or outlook for the intended occupiers without reduction of surrounding vegetation. As such the proposals would be contrary to LP Policy DE3 which seeks for development to provide suitable living conditions for future and existing occupiers. The proposal would also conflict with the provisions of the Framework which also seeks development to provide a high standard of living conditions for existing and future users.

Protected species

30. The appellant's Preliminary Ecological Appraisal dated 23 December 2021 (PEA), concludes that the proposal will not affect designated statutory or non-statutory protected sites for nature conservation and habitats affected are of low ecological importance. However, due to potential small numbers of protected species, suitable mitigation is required during site clearance and mobilisation to avoid potential harm.
31. Notwithstanding, the PEA notes that a sweet chestnut tree has a moderate to high bat roost potential, and the woodland is likely to be used by bats and potentially by greater horseshoe bats for commuting and foraging. It is noted that the PEA makes reference to the requirement for a bat survey of this tree if there could be potential impacts on the tree, including avoidance of artificial illumination. The PEA also notes that until all protected species surveys are completed, a detailed and co-ordinated mitigation strategy cannot be produced.
32. Although the proposal does not seek the removal of the sweet chestnut tree, I have previously identified that given the potential proximity of built form, there may be a pressure for tree works. Whilst I note the appellant's commitment to mitigating any potential harm, and accept that it would be difficult to provide detailed mitigation with an outline proposal, it is possible to provide more information and have a clearer perspective on the effect on bats if a further survey had been completed to accompany the proposals. Without full information, it is not possible to be confident the proposal would not have an adverse effect in this regard or that mitigation would be sufficient.
33. I note the appellant's agreement that further survey work is required and that they plan to address this issue comprehensively. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted. As it has not been adequately shown that there would not be harm in relation to this issue, then all surveys necessary should be undertaken before any planning permission (including outline proposals) are granted.
34. Accordingly, from the evidence before me, I cannot be satisfied that the appeal proposal would not harm or disturb protected species or that suitable mitigation measures could be undertaken to protect those species during construction and thereafter. The proposal is therefore contrary to LP Policy NC1 and NP Policy TE5. These policies seek, amongst other things, to conserve and enhance Torbay's biodiversity and provide an assessment of impacts upon any

existing protected species or habitats as necessary. The proposal would also conflict with the provisions of the Framework in so far as it seeks to protect, conserve, and enhance natural conservation resource by ensuring that development proposals provide mitigation works to safeguard protected species.

Drainage

35. The appeal site is located within flood zone 1 and on the edge of a Critical Drainage Area (CDA). LP Policy ER1 requires that development will be expected to maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere. Similarly, the Framework seeks to ensure that development does not increase flood risk elsewhere and it is demonstrated that requires that the development is appropriately flood resistant and resilient and it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate.
36. Given the lack of a nearby public sewer, the proposal seeks to address surface water run-off via attenuation and foul drainage via a septic tank. Although a drainage plan and storm water management specification accompany the proposal, the size of the infiltration drainage and detention basin pond are not detailed. Furthermore, there is no substantive evidence before me of any infiltration testing or results.
37. Given the reliance on infiltration, and the steeply sloping topography which combined with elevated flows could result in downstream flooding, I am not satisfied that sufficient information has been provided to me that indicates an appropriate drainage solution is achievable. I am therefore concerned that any planning permission granted might be negated by the lack of suitable drainage facilities. Consequently, and notwithstanding the Council's suggested planning condition, this is a matter which should be resolved before planning permission is granted rather than leaving it to a planning condition.
38. Therefore, the proposal does not demonstrate adequate drainage arrangements contrary to LP Policy ER1, the purposes of which I have previously outlined. The proposal would also conflict with the provisions of the Framework as outlined above.

Other Matters

39. A differing appeal¹ has been brought to my attention referred to by the appellant as 'Sladnor Park'. However, limited information of this appeal or proposal is before me although I note it relates to a significantly differing scheme (a retirement village) on a differing site. This limits the equivalence of the other case to the current proposal. Moreover, the current appeal proposal has its own circumstances, and I shall determine it on its own merits.

Planning Balance and Conclusion

40. The proposal would result in harm to the character and appearance of the area, living conditions and would not provide a suitable location for housing, having regard to the accessibility of services and facilities. Furthermore, the proposal has failed to demonstrate adequate drainage provision or that it would not

¹ APP/X1165/X/20/3257909

harm highway safety or protected species. The proposal is therefore contrary to a number of development plan policies as outlined above. 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.

41. I am informed 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.
42. The Framework advocates making efficient use of land and the provision of seven, two-bedroom 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 local 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.
43. I have identified harm to the character and appearance of the area, living conditions and that the proposal would not provide a suitable location for housing, having regard to the accessibility of services and facilities. Furthermore, the proposal has failed to demonstrate adequate drainage provision or that it would not harm highway safety or protected species. 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.
44. 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