



Appeal Decision

Site visit made on 30 January 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th February 2024

Appeal Ref: APP/X1165/W/23/3326265

Mouse Cottage Brim Hill, Maidencombe, Torbay, Torquay TQ1 4TR

- 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 James Simpson against the decision of Torbay Council.
 - The application Ref P/2023/0170, dated 15 February 2023, was refused by notice dated 27 April 2023.
 - The development proposed is demolition of a one-storey two-bed detached house, for replacement with new build contemporary two-storey four-bed detached house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 and is a material consideration in planning decisions. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes albeit that the numbering of paragraphs has changed. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context.

Main Issues

3. The main issues are the effect of the proposed development on (i) the character and appearance of the area; (ii) flood risk; and (iii) living conditions of the occupiers of Home Orchard, with particular regard to outlook.

Reasons

Character and appearance

4. The appeal site lies immediately adjacent to the Maidencombe Conservation Area (CA) and is within its setting, where great weight should be given to its conservation. The significance of the CA derives from its historic and distinctive setting of the original hamlet. This nestles in a sheltered hollow, amid the dramatic coastline and small fields. The appeal site is eminently visible from a lane adjoining one of these small fields.
5. Older thatched properties and some late 19th century villas are scattered across a relatively open landscape. For the most part, these properties are incidental to the landscape. Despite its proximity to more built up areas, much of the character of the CA hinges upon its ability to retain the strong sense of geographical isolation and historic continuity.

6. The appeal building is part of a group of later 20th century development of varying designs. These are outside the CA and are described in the Council's CA Character Appraisal August 2005 as being somewhat intrusive. In that context, the appeal proposal would replace a small bungalow of limited architectural merit. It is however of an unassuming and modest scale, nestling into the landscape, rather than being at odds with it. The existing building is within a cluster of detached and larger properties with pitched roofs. These properties tend to be positioned within larger plots than the appeal site. Spacious gaps between these properties, including the appeal site are a prevailing characteristic of the immediate area and provide open views of the wider CA and undeveloped coast.
7. Although the proposed property would be of a similar height to the ridge of the existing bungalow, it would incorporate a flat roof, large chimney element and a timber screened external terraced on built up ground. These design features would significantly increase the overall bulk and massing of built form when compared with the existing bungalow. Furthermore, the narrow plot would be largely consumed by the increased footprint of the development, which would harmfully reduce the spacious gap between properties.
8. The proposed materials including a green roof, timber and stone would go some way towards softening the appearance of the property. However, although there are other nearby properties positioned close to the lane, the aforementioned design features would generate an uncomfortable, untypical and imposing presence when viewed from this lane.
9. Whilst it is recognised that well designed places do not need to copy their surroundings, the proposed rear elevation would include large proportions of glazing across an uncharacteristically wide block of built form. This elevation would not appear lightweight in its design and would have an outlook directly over a small field within the CA. As such, regardless of other intrusive or prominent nearby buildings, the proposal would not appear recessive, but rather, incongruous against this characterful, verdant foreground and tree lined backdrop. The setting of the CA would consequently be harmed.
10. The proposal would cause less than substantial harm to the CA's significance as a designated heritage asset due to the relatively small scale of the development proposed. Paragraph 208 of the Framework explains that in such circumstances, it is necessary to balance the harm against the public benefits of the proposed development. The proposal would provide a high quality, low energy demand family home. It would also generate employment during the construction phase. However, any such benefits would not offset the harm I have identified to the significance of the heritage asset.
11. Therefore, I conclude on this main issue that the proposal would fail to preserve the character and appearance of the area. Consequently, it would conflict with policies C1, C2, DE1 and SS10 of the Torbay Local Plan 2012 to 2030 (LP) and policies TH8 and TH12 of the Torquay Neighbourhood Plan June 2019 (NP). Collectively in this respect, these policies seek to promote developments of an appropriate scale and massing, acknowledging local character and the conservation and enhancement of heritage assets.

Flood Risk

12. Paragraph 168 of the Framework states that *the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.* The Planning Practice Guidance advises that the aim is to steer new development towards flood zone 1. The proposal would replace an existing dwelling and as such, it would be impractical to seek out other sites for this scheme.
13. The Council is concerned that the appellant's submitted flood risk assessment (FRA) and surface water management report (SWMR) do not demonstrate there is no risk of flooding on or adjacent to the site for the critical 1 in 100 year storm event. This is based on an allowance of 50% for climate change and 10% for urban creep. The focus of the concern relates to proposed surface water drainage.
14. The appellant's SWMR acknowledges that there will be a requirement to have underground storage in the form of cellular units to prevent flooding. In that context, although the design standard in the SWMR is set at 40% for climate change, the appellant confirms that the required 50% can be achieved by a small increase in the size of the proposed attenuation tank. Moreover, they advise that the appeal site is large enough to accommodate such an increased tank, outside any risk areas, if required. Details of the drainage scheme are set out in appendix G of the SWMR.
15. However, ground testing to the expected BRE 365 has not been carried out. In this respect, the SWMR references an initial ground investigation report. An extract from this report states that *it should be noted that infiltration testing in boreholes uses notably less water than tests undertaken within soakaway trial pits. Accordingly, results should be considered as an indication of the potential viability of soakaways. It is recommended that full soakaway tests should be undertaken at the site in accordance with BRE 365, to facilitate detailed drainage design, once access onto site with machinery is possible.* As such, the available evidence demonstrates that this testing is necessary to inform the design of the surface water drainage scheme.
16. Notwithstanding the validation requirements, as a small part of the appeal site is within flood zone 3, the submitted FRA says an exception test is required. To pass the exception test, paragraph 170 of the Framework says that it should be demonstrated that the development would provide wider sustainability benefits to the community that outweigh the flood risk; and the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.
17. In that context, the proposed replacement property would be positioned on higher ground in a part of the site with a lower risk of flooding. However, I have already concluded that any sustainability benefits associated with a high quality, low energy demand family home would not be outweighed by the harm to the character and appearance of the area. Moreover, the absence of necessary ground testing means I cannot be certain the development would be

safe for its lifetime. This goes to the heart of whether the proposal is acceptable in principle. Accordingly, such detailed and technical matters, including those relating to the proposed swimming pool would have needed to have been submitted at this stage. The use of planning conditions would consequently not be appropriate in this sensitive location.

18. For the above reasons and based on the evidence provided, I cannot be satisfied that the appeal scheme would be at no risk of flooding on the site or elsewhere. I therefore conclude that the proposed development would have a harmful effect on flood risk. As such, there would be conflict with policies ER1 and ER2 of the LP which, together in this respect, seek 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. There would also be conflict with paragraph 170 of the Framework.

Living conditions

19. The proposed timber screened external terrace would span a similar width to that of the existing property and would be on raised ground. It would be positioned closer to the boundary with Home Orchard. This would consequently result in a more prominent structure in the proximity of Home Orchard.
20. However, the timber screen would be set behind an established naturally vegetated boundary within the ownership of Home Orchard. Even if vegetation could not be secured in perpetuity, it is likely that occupiers of Home Orchard would choose to maintain their own existing boundary screening. This natural screening, together with any proposed tree planting would soften the overall effect of the timber screen's prominence.
21. Additionally, at my visit, I observed that Home Orchard contains extensive private garden space, primarily to the rear. In that context, the timber screen would be set forward of the property, adjacent to only a very small section of its front garden. Opportunities for the enjoyment of private gardens are therefore not restricted to the space adjacent to the proposed timber screen. Moreover, the front elevation of Home Orchard would be set back by a generous distance from the timber screen and would not directly face it. Thus, any harmful overbearing effects would be avoided.
22. For these reasons, the proposal would not have a harmful effect on the living conditions of the occupiers of Home Orchard, with particular regard to outlook. As such, it would not conflict with Policy DE3 of the LP or Policy TH12 of the NP which, together in this respect, seek to promote a good level of amenity of occupiers. There would also be no conflict with paragraph 135 of the Framework which says that decisions should ensure a high standard of amenity for existing and future users.

Other Matters

23. There is the Grade II listed Court House near the appeal site and consequently there is a statutory duty to pay special regard to the desirability of preserving the building or its setting. The building's significance derives from its late 16th century origins as a farmhouse within a group of buildings. From the evidence before me and my own observations, it is apparent these buildings are separated from the appeal site by generous distances and intervening

vegetation. As such, the appeal site does not affect their setting. Furthermore, neither party has raised any concerns in this respect.

Planning Balance and Conclusion

24. Bringing together my conclusions on the main issues, I have found that the proposal would not harmfully affect the living conditions of Home Orchard. However, this does not outweigh the identified harm I have found to the conflict with the development plan in respect of the character and appearance of the area and flood risk.
25. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development fails to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

J Hills

INSPECTOR