



Appeal Decision

Site visit made on 12 March 2024

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 05 April 2024

Appeal Ref: APP/X1165/W/23/3327859

Kalina, Waddeton Road, Paignton TQ4 7BJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Gary Grover against the decision of Torbay Council.
 - The application reference is P/2023/0134.
 - The development proposed is a 4 bed detached house with garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Development Plan includes the policies of the Torbay Local Plan 2012 to 2030 (the Local Plan) and the policies of the Paignton Neighbourhood Plan (June 2019) (the Neighbourhood Plan).

Main Issues

3. Although the Council has given four reasons for refusal on its decision notice, having reviewed the evidence and submissions I have considered it appropriate to identify three main issues. Accordingly, the main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the surrounding area,
 - The effect of the proposed development on trees; and,
 - The effect of the proposed development on the living conditions of nearby residents and on the living conditions of future residents of the scheme.

Reasons

Character and Appearance

4. The appeal site is an area of garden land located at the rear of a detached dwelling. The host dwelling and other dwellings on this road are positioned set back from the highway. The wider surrounding area comprises a mix of residential development of varying scales and designs, and large industrial and commercial premises. In that respect, the appeal site is bounded to the north and south by residential development, and to the west of the site is a large industrial estate.
5. The appeal scheme seeks to construct a detached dwelling and garage building in the rear garden space at the host property. The proposed dwelling would be accessed from Waddeton Road via a driveway to be located between the host

dwelling and its immediate neighbour located to the north. The proposal would incorporate materials that would be consistent with other dwellings at this location.

6. Whilst acknowledging the nearby recently constructed higher density residential developments located south of the appeal site, dwellings on Waddeton Road are characterised by substantially scaled dwellings set within generous plots. The proposed backland development would relate poorly to the established street pattern of Waddeton Road due to its significant set back from that highway. Furthermore, by reason of the scale of the proposed dwelling relative to the size of the appeal site, in my view the proposal would result in a dwelling that would appear to be squeezed into the plot. The appeal proposal would not reflect the character or appearance of nearby housing located to the south in terms of mass or scale, nor would reflect the character or appearance of dwellings located within Waddeton Road in terms of scale, mass or set back from the highway.
7. Consequently, the appeal scheme would not reflect the grain of development at this location and would fail to acknowledge local character. However, it is noted that, whilst the proposed dwelling would be positioned at a higher level than other dwellings within Waddeton Road and that it would be possible to view parts of the proposed development from that highway, the site would not be prominent in views and would be partially screened by other development. On account of the prominence of the appeal site and given the presence of nearby developments that would partially screen the proposed dwelling, I find that the appeal scheme would only result in limited harm to the character and appearance of the area given that views of the site would be limited, affecting only its immediate surroundings.
8. In summary, I find that the proposal would not reflect the character or appearance of nearby housing in terms of scale, mass or set back from the highway and would relate poorly to the established street pattern. Consequently, the proposed development would conflict with Policy DE1 of the Local Plan and Policy PNP1(c) of the Neighbourhood Plan which, together and amongst other matters, requires that development acknowledges local character, relates to the surrounding built environment in terms of scale, height and massing, and integrates with the existing street scene. Furthermore, the proposed development would also fail to accord with those paragraphs of the National Planning Policy Framework (December 2023) (the Framework) which concern Achieving well-designed and beautiful places.

Trees

9. Policy C4 of the Local Plan requires that development should seek to retain and protect existing hedgerows, trees and natural landscape features wherever possible. That policy further provides that where loss of such features is considered acceptable as part of development, then replacement and other mitigation is required.
10. In the first instance, the Council raises concerns regarding the impact of the proposed access driveway, and which would encroach upon a portion of the root protection areas (RPA) of two trees identified as T1 and T2 on the Tree Protection Plan that accompanied the Appellant's submitted Arboricultural Impact Assessment (the AIA). In respect of trees T1 and T2, the Method Statement included within the AIA provides that site monitoring visits are to be

conducted and that tree protection fencing would be required. That tree protection fencing would create a "Construction Exclusion Zone" in which there would be no access during works at the site. The AIA also notes that works within the RPAs would be undertaken using a "non-dig" construction method and that use of a cellular confinement system would be made.

11. From the detailed information before me, subject to the use of the suggested cellular confinement system and the employment of a "no-dig" method of construction within the RPAs as specified in the AIA, I am persuaded that the proposed development could proceed without any long term adverse impact upon the health of the existing trees numbered T1 and T2 on the Tree Protection Plan.
12. The AIA further notes that other existing trees and hedging at the site, identified on the Tree Protection Plan as H2, T4, T5, T6, G1 and part of H3, are to be removed. The Appellant suggests that tree T5 is to be removed due to being hollow and rotten at its base. The AIA provides that tree T5 is a mature elm which has been assessed as being a Category C1 tree. The AIA concludes that tree T5 has "significant structural defects". However, elsewhere within the AIA it is noted that tree T5 is in fair condition, having minor defects that are not significant to the structural integrity of the tree. The AIA also notes that there is a pocket of decay within that tree. Whilst not entirely clear, overall there does appear to be some evidence that the tree has suffered from decay. However, it is also noted that the AIA concludes that tree T5 could provide an estimated remaining contribution of more than ten years.
13. The AIA identifies tree T6 as being a mature Ash Category B2 tree in fair condition, and which could provide an estimated remaining contribution of more than twenty years. The Appellant has put it to me that that tree could now be retained if amendments were made to the appeal scheme. In that regard it is maintained that if the proposed garage was moved elsewhere within the site, or not included within the proposal at all, then tree T5 could be retained. However, I have not been provided with any details or plans that can be considered in terms of such an alternative scheme and, consequently, I have decided this matter based on the details of the application that was before the Council.
14. Collectively I find that the hedging and trees which the AIA confirms are to be removed, make a positive contribution to the character and appearance of the area. Furthermore, the loss of trees T5 and T6 would reduce the amount of screening available between the proposed dwelling and the large industrial unit located west of the appeal site, and which soften the views of the substantial blank elevation of the industrial unit that would otherwise dominate outlook from the west of the proposed dwelling. It is noted that the Appellant maintains that some of the small shrubs that comprise G1 could be replanted near their existing location. However, I have not been provided with any details to show that could be achieved and, consequently, I cannot be sure that such mitigation could be implemented at the site given the constraints on the amount of space available.
15. Overall and based on the evidence that is before me, I am satisfied that the scheme is unlikely to have a long-term adverse impact upon the health of the existing trees numbered T1 and T2. However, the proposal would result in the removal of other existing trees and hedging at the site, and I am not satisfied

that suitable mitigation in the form of replacement planting could be achieved at the site given the space constraints. Consequently, I conclude that the appeal scheme would conflict with the requirements, aims and objectives of Policy C4 of the Local Plan, and would fail to accord with the provisions of paragraph 136 of the Framework.

Living Conditions

16. Policy DE3 of the Local Plan concerns Development Amenity. Amongst other matters, that policy seeks to ensure that development provides a good level of amenity for future occupants and that proposals do not unduly impact on the amenity of nearby residents.
17. As noted above, the appeal site is located adjacent to a large industrial estate. The evidence indicates that the industrial units that are located nearest to the site, has no restriction on operating hours. Paragraph 193 of the Framework states that planning decisions should ensure that new development can be integrated successfully with existing businesses, and that such existing businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. The Framework continues by providing that where the operation of an existing business could have a significant adverse effect on new development, the applicant for the new development should be required to provide suitable mitigation.
18. Given the proximity of those units to the proposed dwelling, I am concerned that there would be potential conflict between the adjacent existing business use and the proposed residential use of the site, in terms of noise and disturbance. Whilst I note that the Appellant submissions suggest that the proposed dwelling would be "screened by an acoustic wooden fence or a block wall", I do not appear to have been provided with any details of the dimensions of any such screening.
19. Furthermore, and in that regard, without supporting information, such as in the form of a noise assessment or acoustic report, I cannot be sure the provision of the suggested screening would be sufficient to ensure that the living conditions of future residents of the scheme would not be adversely affected to an unacceptable degree by noise and disturbance emanating from the adjacent industrial units. It is noted that there are recently constructed residential developments which are also located close to the identified industrial units. However, I have not been provided with any details of those residential development schemes and therefore have no information as to any form of mitigation that was provided in terms of potential noise and disturbance for those developments. I therefore cannot be sure that the position regarding noise and disturbance for those nearby developments is comparable to the appeal scheme.
20. The access driveway that would serve the proposed dwelling, would be positioned between the host dwelling and its immediate neighbour located to the north. I note the Council's concerns that the living conditions of residents of those dwellings could be adversely affected by noise and disturbance from vehicles using that access driveway. However, whilst it is noted that the access driveway passes adjacent to these dwellings, the width of the driveway would dictate that vehicle movements would be at slow speed and, consequently, the noise generated by passing vehicles would likely be limited. Furthermore, the

vehicle movements to and from the site would be likely to have no more than a momentary impact. I therefore find no harm in that regard.

21. The first-floor level of the proposed dwelling would include a number of window openings that would look out over the rear garden amenity space at the property located north of the appeal site. Whilst I acknowledge that within residential areas there would be a degree of overlooking and intervisibility between properties, given the elevated position of those windows, and by reason of the limited separation distance between those windows and the rear garden area of the neighbouring property, there would be potential for overlooking and which would result in unacceptable loss of privacy for residents of that neighbouring property.
22. It is noted that those windows could be obscure glazed with restricted openings. However, that would leave one of the proposed bedrooms with only a very small window facing directly towards the adjacent industrial unit at close proximity. Consequently, in the event that obscure glazing was used for the north facing window of that bedroom, users of that bedroom would experience unacceptable living conditions in terms of outlook. I therefore do not find that provision of obscure glazing would be suitable in these circumstances.
23. In summary of this main issue, I do not find that the position of the driveway would result in any unacceptable levels of noise or disturbance for residents at the host dwelling or at the neighbouring dwelling located north of the appeal site. However, residents at that neighbouring property would be adversely affected to an unacceptable degree with regards to overlooking and loss of privacy, being significantly harmful to the living conditions of those residents. Furthermore, without the benefit of additional information from a noise assessment, I cannot be sure that the living conditions of future residents of the scheme would not be adversely affected to an unacceptable degree in terms of noise and disturbance emanating from the adjacent industrial units.
24. In light of the above matters, the proposed development would conflict with Policy DE3 of the Local Plan.

Other Matters

25. The Council Officer's report indicates that the appeal site is located within a sustenance zone for Greater Horseshoe Bats associated with the South Hams Special Area of Conservation. However, I have not found it necessary to examine this matter in greater detail as, for the reasons outlined above and below, it does not alter my overall conclusion in relation to this appeal.

Planning Balance

26. The Council accepts that it cannot demonstrate a five-year supply of housing. I have not been provided with any information regarding the extent of any shortfall in terms of housing supply and, consequently, I have no reason to assume this is no greater than a moderate shortfall. Nonetheless, as a consequence of a shortfall in five-year housing supply, paragraph 11(d) of the Framework would be engaged. This provides that planning 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.

27. In terms of benefits, the Framework seeks to boost significantly the supply of homes. It advises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built out relatively quickly. The proposal would provide an additional unit of housing at the site which is located within an area with access to local services and public transport links. There would also be economic benefits associated with employment opportunities during construction of the proposed dwelling. Given the very small scale of the scheme, these would represent modest social and economic benefits which, in total, carries moderate weight in favour of the proposal.
28. The siting and scale of the proposed development would result in harm, albeit limited, to the character and appearance of the area. The appeal scheme would further result in the loss of trees at the site and there is insufficient information before me that confirms such a loss can be successfully mitigated. The proposed scheme would also result in unacceptable levels of overlooking and loss of privacy for occupants of the property located north of the site. Furthermore, in the absence of suitable mitigation, the appeal scheme would not provide acceptable living conditions for future occupiers in terms of noise and disturbance.
29. Consequently, the scheme would be contrary to the requirements of the Framework with regards achieving well-designed and beautiful places which provide a high standard of amenity for existing and future users. Overall, I consider that the harm from the development would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. The proposal would not amount to sustainable development in the terms set out in the Framework.

Conclusion

30. The proposed development conflicts with the development plan, taken as a whole. There are no material considerations, including those of the Framework, that indicate the proposal should be determined other than in accordance with the development plan.
31. For the reasons given above the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR