



Appeal Decision

Site visit made on 8 May 2024

by E Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2024

Appeal Ref: APP/X1165/W/23/3323479

Site at Waterside Quarry, Paignton TQ4 6LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant approval to details required by a condition of a planning permission.
 - The appeal is made by Mr Adam Billings against the decision of Torbay Council.
 - The application Ref P/2023/0084 sought approval of reserved matters pursuant to outline planning permission Ref P/2019/0520, granted on 15 July 2020.
 - The application was refused by notice dated 23 March 2023.
 - The development proposed is three new dwellings with vehicular access.
 - The details for which approval is sought are layout, scale, access, appearance and landscaping.
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Decision

1. The appeal is allowed and the reserved matters are approved, namely the layout, scale, access, appearance, and landscaping, submitted pursuant to outline planning permission Ref P/2019/0520 dated 15 July 2020 for three new dwellings with vehicular access at site at Waterside Quarry, Paignton TQ4 6LJ in accordance with the terms of the application, Ref P/2023/0084, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Adam Billings against Torbay Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. This has not raised any new matters which are determinative to the outcome of this appeal.

Main Issues

4. The main issues are the effect of the proposed development on the character and appearance of the area, and ecology and biodiversity.

Reasons

Character and appearance

5. The appeal site comprises a parcel of land which previously formed part of the upper section of Waterside Quarry. It forms a landscaped bank which rises steeply from the highway to the front of the site towards the rear boundary and

is at a higher level than the adjoining land to the side and rear. The surrounding area is predominantly residential in character, it includes traditional detached dwellings and the recently constructed dwellings to either side of the site, which are of a modern design. Waterside Holiday Park lies on the opposite side of the road.

6. The site is located within an area designated as an Urban Landscape Protection Area (ULPA). Policy C5 of the Torbay Local Plan 2012-2030 (TLP) sets out that development within an ULPA will only be permitted where it does not undermine the value of the ULPA as an open or landscaped feature within the urban area; and it makes a positive contribution to the urban environment and enhances the landscape character of the ULPA.
7. The appeal scheme, for three 2 storey dwellings of a contemporary style, with a flat roof design and external materials, would reflect the dwellings adjoining the site at Waterside View in design terms. While indicative plans were submitted at the outline stage, to show how the site could be developed, these were for illustrative purposes only as outline permission was sought with all matters reserved. The Council indicate that while it intended to impose a planning condition to restrict the height of the development to that shown on the submitted sections, the outline permission was granted in the absence of such a condition.
8. Notwithstanding the overall scale and mass of the dwellings, and consistency in their design, they would be set in from the site boundaries, with space between the buildings. Moreover, they would be viewed against the rising land to the rear of the site, and in the context of comprehensive landscaping of the site including hedge planting the rear and side boundaries, and shrub, amenity and tree planting to the front of the site, which would be seen in the foreground of the development in views towards it from Waterside Road.
9. The dwellings would be arranged in a staggered row, orientated to front the highway, and would step gradually down in height because of the ground levels. They would therefore sit comfortably between the adjoining property at Waterside, which occupies an elevated position set back from the highway, and the residential properties on the opposite side of the appeal site which are closer to the road and at a lower level. In light of the above considerations, the development would not appear as a discordant or prominent feature in the streetscape, or undermine the overall value of the ULPA, and would make a positive contribution to the urban environment.
10. I have had regard to the 2 detached dwellings recently constructed on the adjoining site, which the Council contend has somewhat undermined the landscape characteristics of the ULPA, which would be further exacerbated by the appeal proposal. However, for the reasons set out I have found the proposal to be acceptable. Moreover, the appeal site benefits from outline planning permission for the construction of 3 detached dwellings, which implies some effect on the openness or landscaped nature of the ULPA.
11. For the foregoing reasons the proposed development would not have a harmful effect on the character and appearance of the area. In that regard it would accord with the combined aims of Policies SS11 and DE1 of the TLP which seek a high quality built environment and well-designed development that respects and enhances the character of the area, and Policy C5 of the TLP. It would also not conflict with Policy BH5 of the Brixham Peninsula Neighbourhood Plan

2012-2030 (BPNP), which requires all new development to demonstrate good quality design and respect the character and appearance of the surrounding area, and the aims of the Framework with regard to achieving well-designed and beautiful places.

Ecology and biodiversity

12. The site includes an area of calcareous coastal grassland on land adjacent to the rear boundary, which is identified as an important ecological habitat. It is proposed to retain the grassland, which is to be incorporated within the individual private property boundaries, in an undeveloped form. The retention and future maintenance of the calcareous coastal grassland is to be secured via a planning condition to ensure compliance with the Landscape & Ecological Management Plan (LEMP). The appellant also proposes to impose a positive covenant on the new owners of the properties to ensure the provisions of the LEMP would be complied with in the future.
13. While I acknowledge the Council's assertion that a legal agreement would be required to secure the implementation of the LEMP so as to safeguard the retention of the grassland long term, there is nothing before me to demonstrate that this could not be achieved through the imposition of a planning condition.
14. The appeal site is approximately 5.5 km from the Berry Head to Sharkham Point component of the South Hams Special Area of Conservation (SAC) a European site designated under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and is within the Berry Head greater horseshoe bat Sustainance Zone. The SAC is designated for its qualifying features of interest including its greater horseshoe bat population and range of natural habitats.
15. Although there is an extant outline permission and subsequent reserved matters approval¹ for the construction of 3 dwellings on the site, no dwellings exist at present. Therefore, I have no reason to doubt that the proposal, which would result in greater activity and disturbance than at present, in combination with other development, could undermine the conservation objectives of the SAC.
16. The Council's Habitats Regulation Assessment dated 3 February 2020 (HRA) in relation to the outline planning application identifies the potential for the proposal to have a likely effect on the SAC through the loss of the greater horseshoe bat roost and its associated foraging and commuting habitat. However, it advises that with appropriate avoidance and mitigation measures, including the implementation of the Ecological Management and Enhancement Plan (EMEP) and Habitats Regulations Assessment Screening Report, the provision of a LEMP, Construction Environment Management Plan (CEMP), Integrated Landscape and Lighting Design Strategy, and the removal of permitted development rights relating to the installation of micro wind turbines on the development site, any significant effects on the integrity of the SAC either alone or in combination with other development could be avoided. The Council has confirmed that the conclusions of the HRA remain valid for the reserved matters application.

¹ Appeal Ref: APP/X1165/W/22/3310672

17. The appellant contends that a condition to secure the implementation of the LEMP is not required on the basis that the most relevant provision with regards to the HRA, the hedge cutting regime, is no longer necessary as it has been demonstrated these hedges are not required to achieve the appropriate levels of darkness around the adjacent cave roost. While this may be the case, for the reasons set out above, a condition is required to secure the implementation of the LEMP to ensure, among other things, the retention and management of the calcareous coastal grassland in perpetuity, as this is not included in the maintenance provisions set out in the submitted Landscape and Planting Specification.
18. I appreciate that the previous Inspector² did not impose a condition to require compliance with the LEMP. However, I cannot see any reason, based on the evidence before me now, as to why a condition would not be required to secure the retention and long-term management of the qualifying features of the SAC, including important commuting routes and foraging habitats.
19. Furthermore, while a section 106 legal agreement has been submitted in draft form by the appellant as part of the appeal, there is no reason why the enforcement regime relating to planning conditions would be less effective than those relating to a planning obligation. Accordingly, I find that the imposition of a planning condition to secure the implementation of the LEMP, would be sufficient to provide certainty that there would be no likely significant effect on the integrity of the SAC. Following appropriate assessment under the Conservation of Habitats and Species Regulations 2017, I am, therefore, satisfied that adverse effects on the integrity of the SAC will be avoided.
20. For the reasons given above, subject to the imposition of planning conditions, the proposed development would not have an adverse effect on ecology or biodiversity. Consequently, it would not conflict with Policy NC1 of the TLP and Policy E8 of the BPNP which set out that internationally important sites and species will be protected, and that development will only be permitted where adverse effects can be fully mitigated and it can be demonstrated there is no likely significant effect, either alone or in combination with other plans or projects, or the Habitat Regulations.

Other Matters

21. Whether the site was removed from the Brixham Peninsula Neighbourhood Plan and the granting of outline planning permission by the Council are not matters for consideration as part of this appeal. Moreover, even if the land was sold for use as amenity land, this does not lead me to a different conclusion.
22. It has been brought to my attention that existing trees were removed from the site prior to the planning application being submitted. However, there is nothing particular before me to suggest the works to remove them were unauthorised. I have therefore assessed the proposal based on my observations on site and the evidence before me.

Conditions

23. While not specific to this scheme, the Council has provided a list of conditions it put forward previously as part of its submissions in relation to a previous appeal against the refusal of reserved matters for 3 dwellings at the site, to

² Appeal Ref: APP/X1165/W/22/3310672

which I have had regard. Where I agree the conditions are necessary, I have amended the wording, in the interests of precision and clarity, and to comply with advice in the Planning Practice Guidance.

24. In the interest of clarity, a condition is necessary to specify the drawing numbers. To discharge my duty as the competent authority, I have imposed conditions requiring the development to be carried out in strict accordance with the submitted LEMP, CEMP, Lighting Design Strategy and the EMEP and to remove permitted development rights pertaining to wind turbines. A condition is necessary to secure the implementation of the approved landscaping scheme, to ensure the development is visually acceptable and to safeguard ecology and biodiversity interest on the site.
25. Conditions are necessary to ensure that adequate facilities are available for the storage of refuse and recycling and the parking of vehicles prior to the first occupation of the dwellings, in the interests of highway safety, and the character and appearance of the area.
26. I have not imposed conditions relating to EV charging points, sustainable construction, surface water drainage, a structural geological survey or delivery/construction hours as these matters fall outside of the scope of the reserved matters. The timing of the removal of vegetation is covered by other legislation, a condition is therefore not necessary.

Conclusion

27. For the reasons set out above the appeal is allowed.

E Worley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing nos:

1927 - S1 Rev C - Dated: 09/11/2021 – Location plan
1927 - PL102 - Dated: 28/11/2022 - Proposed site plan
1927 - PL103 - Dated: 28/11/2022 – Site elevations
1927 - PL105 - Dated: 28/11/2022 – House 1 – Plans
1927 - PL106 - Dated: 28/11/2022 – House 1 - Elevations
1927 - PL107 - Dated: 28/11/2022 – House 2 – Plans
1927 - PL108 - Dated: 28/11/2022 – House 2 - Elevations
1927 - PL109 - Dated: 28/11/2022 – House 3 – Plans
1927 - PL110 - Dated: 28/11/2022 – House 3 - Elevations
1927 - PL111 - Dated: 28/11/2022 – Materials
1927 - PL113 - Dated: 28/11/2022 - Proposed Sections
1927 - PL114 - Dated: 28/11/2022 – Proposed Sections
1927 - PL115 - Dated: 28/11/2022 - Proposed Sections

- 2) Development shall take place strictly in accordance with the hereby approved Landscape & Ecological Management Plan dated January 2023.
- 3) Development shall take place strictly in accordance with the hereby approved Lighting Design Strategy dated January 2023.
- 4) Development shall take place strictly in accordance with the hereby approved Construction Environment Management Plan dated January 2023.
- 5) Development shall take place strictly in accordance with the recommendations of the Ecological Management and Enhancement Plan dated March 2018 and Habitats Regulations Assessment Screening Report dated May 2019.
- 6) The dwellings hereby approved shall not be occupied or brought into use until the hardstanding parking areas detailed on approved plan 'PL2 Rev F' have been provided in full. The hardstanding shall thereafter be permanently retained for the use of parking for the associated dwelling for the life of the development.
- 7) Prior to the first occupation of the dwellings hereby permitted, provision shall be made for the storage of refuse and recycling awaiting collection in accordance with drawing number 1927 - PL102 - Dated: 28/11/2022 - Proposed Layout. The storage arrangements shall be retained for the lifetime of the development.
- 8) The proposed landscaping works shall be carried out in accordance with the Landscape and Planting Specification dated January 2023 before any part of the development is first occupied. The completed scheme shall be managed and/or maintained in accordance with the Landscape and Planting Specification dated January 2023. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 9) Notwithstanding the provisions of Class H of Part 14 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order with or without modification), no installation of wind turbines shall take place to the approved dwellings, unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

*******end of conditions*******