



Appeal Decision

Site visit made on 24 June 2024

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2024

Appeal Ref: APP/X1165/W/24/3339323

Land adjacent 63 Perinville Road, Babbacombe, Torquay TQ1 3PA

- 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 James Knott against the decision of Torbay Council.
 - The application Ref is P/2023/0456.
 - The development proposed is change of use from verge to curtilage and erection of boundary fences and hedge.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development in the banner heading above from the application form. However as '(63 Perinville Road)' and '(resubmission following refusal of previous application P/2022/1248)' are not an act of development, I have removed these elements.
3. The appeal has been accompanied by a Preliminary Ecology Appraisal dated 1st February 2024 (PEA). The PEA notes that the appeal site is heavily disturbed by dog walkers, and given its size, vegetation structure and location, it has negligible potential for protected or notable species of flora or fauna. Given the substantive evidence before me, I see no reason to disagree. The Council have confirmed that they are satisfied that the PEA overcomes their fourth reason for refusal.

Main Issues

4. The main issues are the effect of the proposal on:
 - the character and appearance of the area;
 - anti-social behaviour and crime in the area; and
 - the living conditions of local residents, with particular regard to the loss of an open space.

Reasons

Character and appearance

5. The appeal site is an area of grass verge adjacent to a stepped public footpath linking Perinville Road to Babbacombe Road within a suburban residential area. Boundary treatments in the area vary, but I observed that despite some taller timber fencing adjacent Perinville Road, particularly to either side of the appeal

- site, the area has a spacious open character due to the width of highway including verge and pavements, as well as generally low boundary treatments.
6. Despite its current unkempt appearance, the appeal site positively contributes to the character by providing a noticeable visual gap between built form and allowing wide views to Babbacombe Road. This is further emphasised by the adjacent somewhat uncharacteristic roadside timber fencing.
 7. The proposal would retain a 1m strip of verge adjacent the footpath, and a 1m high chain link fence with planting behind. Nevertheless, the proposal would introduce a tall timber fence fronting Perinville Road and a further fence fronting a service road at the opposing side of the site, both of which would be visually prominent.
 8. The enclosure and proposed use of the site as residential garden associated with the host property would inevitably and noticeably reduce the visual gap and sense of openness provided by the appeal site. It would therefore harm the open spacious character that I have identified.
 9. It is put to me that the low chain link fence could in any case be erected under permitted development rights without the requirement for the express grant of planning permission. This is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act (Act). In this regard, it is open to the appellant to apply to have this matter determined under section 192 of the Act.
 10. However, even if the chain-link fence could be erected under permitted development rights, the proposal nonetheless seeks to erect 2 metre fences adjacent to the highway which I have found would have a harmful effect on the character of the area. Therefore, I afford any fallback position limited weight.
 11. Consequently, I conclude that the proposal would harm the character and appearance of the area. As such, there would be conflict with Policy DE1 of the Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan 2019. These policies seek, amongst other things, for development to be well-designed, respecting and enhancing Torbay's special qualities and reflect the identity of its surroundings.

Anti-social behaviour and crime

12. The public footpath features a mature hedge to one side. While this existing hedge boundary is tall in places, the proposed 1m wide retained verge would provide a footpath of sufficient width to not feel unduly enclosing. Furthermore, due to the footpath being straight, clear views are available along its entire length from the highway and it is lit by street-lighting. Therefore, I find the proposal would not result in a harmful enclosing effect or a feeling of an unsafe environment for users of the footpath.
13. Furthermore, whilst the proposed low boundary treatment could allow easier access to the garden of 63 Perinville Road until planting had matured, planning conditions could be imposed to ensure that appropriate species of hedge planting are provided, and appropriate height boundary treatments are maintained. Moreover, whilst I note comments from interested parties and the Designing Out Crime Officer, no substantive evidence is before me that the footpath suffers from existing anti-social behaviour or crime.

14. To conclude, I see no reason why the proposal, subject to appropriate planning conditions, would increase antisocial behaviour or crime in the area. In this regard, the proposal would accord with LP Policy DE1, which seeks, amongst other things, for development to design out opportunities for crime and disorder.

Living conditions

15. Although the appeal site is currently open, it does not benefit from any formal open space designation. Moreover, whilst it may have been utilised by residents for activities such as dog walkers and recreationally used by children, the appeal site is relatively small, and features steeply sloping topography which makes it unappealing as a useable area of open space. The proposal would not prevent residents and dog walkers utilising the steps, or the proposed adjacent verge.
16. I therefore conclude that the proposal would not result in a significantly harmful effect on the living conditions of local residents, with particular regard to the loss of an open space. The proposal would accord with LP Policy DE3 which seeks, amongst other things, to provide useable outdoor areas.

Other Matters

17. The proposal would provide a benefit to the living conditions of the host properties occupants by way of extending the useable garden space at this property. However, as the property already has a reasonably sized private garden area, I afford this benefit minimal weight.

Conclusion

18. The proposal would conflict with the development plan, read as a whole and there are no other material considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal is dismissed.

S Harrington

INSPECTOR