



Appeal Decision

Site visit made on 16 July 2024

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2025

Appeal Ref: APP/X1165/W/24/3340925

Westerlands, Flat 3, Underhill Road, Torbay, Torquay TQ2 6GU

- 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 Rundle against the decision of Torbay Council.
 - The application Ref is P/2023/0422.
 - The development proposed is a new dwelling.
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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 'within the curtilage of Westerlands' is not an act of development, I have removed this element.

Main Issues

3. The main issues are:
 - whether the proposal would comply with local and national policies that seek to steer new development away from areas at the highest risk from flooding; and
 - the effect of the proposal on the character and appearance of the area.

Reasons

Flood risk

4. Although the footprint of the proposed dwelling is within Flood Zone 1, the access from Cockington Lane and lower parts of the site lies within Flood Zone 2 and 3 and are at risk from fluvial sources.
5. Given part of the site lies within Flood Zone 2 and 3, the proposal falls to be assessed against the requirements of Policy ER1 of the Torbay Local Plan 2012-2030 (LP), and the provisions of the National Planning Policy Framework (Framework) in relation to flood risk. These require, amongst other things, that a sequential test should be undertaken, and development should be directed to sites at the lowest risk of flooding now or in the future, taking account vulnerability of land uses.
6. The Planning Policy Guidance (PPG) states that the aim of the sequential approach is to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far

as possible, development in current and future medium and high flood risk areas, considering all sources of flooding. It continues that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.

7. Although the appellant's Flood Risk Assessment indicates that in modelled worst case scenarios flooding wouldn't affect the proposed dwelling itself, it notes that flooding of 0.6-0.8m is likely to affect safe access and egress. Even if other means of safe access and egress to the proposed dwelling are available, given part of the site is within Flood Zone 2 & 3, the site inevitably presents a greater risk than those entirely within areas of Flood Zone 1. Furthermore, the Framework and PPG refers to 'sites' in relation to applying the sequential test as opposed to part of sites, or buildings.
8. Accordingly, I find that a sequential test is required in relation to the appeal proposal to establish whether there are other reasonably available sites for the proposal in areas with a lower probability of flooding.
9. A lack of objections from the Council's Drainage Officer, South West Water and the Environment Agency during the planning application stage, does not negate the requirement for the sequential test to be passed. No sequential test assessment is before me. I therefore have no substantive evidence that there are no reasonably sequentially preferable locations and therefore no other sites that could accommodate the proposal in areas of lesser flood risk.
10. Consequently, the proposal would not comply with local and national policies that seek to steer new development away from areas at the highest risk from flooding. The proposal would conflict with LP Policy ER1. The scheme would also be contrary to the provisions of the Framework previously outlined.
11. LP Policy ER2 is cited in the Council's reason for refusal and relates to matters of water management. The proposed drainage strategy seeks to discharge by infiltration in accordance with the SuDS hierarchy, and no objections on this matter have been raised by the Council's Drainage Officer. Although the drainage strategy currently lacks detail, I find no substantive evidence of any conflict with the objectives of LP Policy ER2, and therefore this Policy is not determinative to my assessment of this main issue.

Character and appearance

12. The appeal site is part of a garden area of Westerlands that fronts Cockington Lane and is within a largely residential area. A mix of built form is evident in the area including both buildings featuring traditional design elements such as pitch roofs, as well as contemporary design including flat roofs and large areas of glazing, resulting in variety of appearance.
13. However, the host and neighbouring properties are sited within their plots close to Underhill Road. This results in the immediate area along Cockington Lane being defined by a consistent and discernible building line, setback from Cockington Lane. The resultant large garden areas directly fronting Cockington Lane make an important contribution to a distinctive verdant, open and spacious character.
14. Moreover, the appeal site is in close proximity to, but not within, the Cockington Conservation Area (CA). The significance of the CA as a whole

arises in part, from the built form and pattern of development of Cockington within an attractive self-contained valley which provides a good example of an estate village. In this regard, while the appeal site is outside the CA, it is within its setting with the character of Cockington Lane providing an important approach to the CA which makes a modest contribution to its significance.

15. The appeal proposal is to erect a single two storey dwelling which due to its flat roof, large areas of glazing and proposed materials would be of contemporary appearance. Such a modern appearance is common in the area as demonstrated by the examples provided by the appellant. I observed that the design and materials of the proposed dwelling would reflect some of the architectural styles of buildings in the wider locality.
16. However, even if the percentage of 'building to site' at Westerlands is lower than that of the adjacent Watermeadows, the proposed dwelling would nevertheless occupy a plot to the front of the established building line. Despite some screening provided by existing tree planting, due to a combination of scale, eye-catching modern appearance and the site being above the level of Cockington Lane, the proposal would be clearly evident as an intrusion into the open area formed by established building line.
17. Consequently, the proposal would appear incongruous in the context of the established pattern of development, harmfully projecting into and eroding the characteristic verdant, open and spacious character of the area.
18. Given the modest contribution Cockington Lane makes to the setting of the CA, I consider the harm to the CA to be less than substantial. Nonetheless, this harm attracts great weight under the terms of the Framework and falls to be weighed in the balance with the public benefits. The scheme would provide a new dwelling to the area. There would also be associated economic benefits during the construction period and from future occupation. However, due to the modest scope and scale of the proposal, these benefits attract limited weight and would not outweigh the identified harm to the CA.
19. For these reasons, I conclude that the proposal would harm the character and appearance of the area. The proposal would conflict with LP policies DE1 and SS10, and Policy TH8 of the Torquay Neighbourhood Plan June 2019 (NP). These policies seek, amongst others, to ensure that development respects local character and reflect the identity of its surroundings and preserve and enhance the character and appearance of Torbay's Conservation Areas. The proposal would also be contrary with the provisions of the Framework in relation to achieving well-designed and beautiful places which are sympathetic to local character and conserve and enhance the historic environment.

Other Matters

20. My attention has been drawn to a nearby development of 8 apartments which has gained planning permission¹. Although this development is in relatively close proximity to the appeal site, I have been provided with minimal detail in relation to the other permission to allow me to assess its equivalence, although note that the planning application appears to date from 2014 which predates the current Framework and the NP. Moreover, the current appeal proposal has its own circumstances, and I shall determine it on its own merits.

¹ P/2014/1182

21. The Council has stated within its Officer Report that it is unable to demonstrate a five-year supply of deliverable housing land. Paragraph 11(d) of the Framework sets out the presumption in favour of sustainable development. This includes, in summary, that where the policies which are most important for determining the application 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. The policies referred to in this part of the Framework are set out in footnote 7 and include those in relation to designated heritage assets and areas at risk of flooding.
22. In this case, the appeal development would cause harm to the significance of the Conservation Area, which would not be outweighed by the public benefits as well as falling contrary to provisions relating to flooding. This provides a clear reason for refusing the proposal. Consequently, the presumption in favour of sustainable development as set out in paragraph 11(d) of the Framework does not apply.
23. Nevertheless, the benefits of the proposal include an additional dwelling to the areas housing supply in a location within easy reach of services and facilities. There will also be benefits in terms of employment opportunities during the construction phase, with further economic and social benefits through future occupiers spend within the local economy, and use of services and facilities. Notwithstanding, I find that the benefits of the proposed scheme would be limited in scope and scale.

Conclusion

24. For the reasons given above, I find that the proposal would conflict with the development plan, read as a whole. No material considerations, individually or cumulatively, indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

S Harrington

INSPECTOR