



Appeal Decision

by Neil Pope BA (HONS) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2024

Appeal Ref: APP/X1165/W/24/3340788

Glenridge, Ilsham Marine Drive, Torquay, Devon, TQ1 2PN.

- 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 Ms Helen Tucker against the decision of Torbay Council.
 - The application reference is P/2023/1043.
 - The development proposed is a new build single storey dwelling and landscaping using existing parking and vehicular entrance.
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Decision

1. The appeal is invalid and I decline to determine it.

Preliminary Matter

2. Section 79(6) of the above Act provides that if, before or during the determination of an appeal, the Secretary of State forms the opinion that planning permission for that development could not have been granted by the local planning authority, he may decline to determine the appeal.

Reasons

3. Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (the Order) sets out the general requirements for applications for planning permission¹. This includes the need to submit a plan which identifies the land to which the application relates and any other plans, drawings and information necessary to describe the development.

4. Amongst other things, the Government's Planning Practice Guidance (PPG) provides advice on validity requirements for applications. It states that:

"The application site should be edged clearly with a red line on the location plan. It should include all land necessary to carry out the proposed development (e.g. land required for access to the site from a public highway, visibility splays, landscaping, car parking and open areas around buildings.) A blue line should be drawn around any other land owned by the applicant, close to or adjoining the application site."

The PPG stipulates that this is essential in order to meet national information requirements.

5. Elsewhere, the PPG advises that applicants when providing an ownership certificate must confirm that an appropriate notice has been served on any other owners of the land to which the application relates. An application is not

¹ Article 13 requires requisite notice to be given to any person (other than the applicant) who on the prescribed date is the owner of the land to which the application relates.

valid, and therefore cannot be determined by the local planning authority, unless the relevant certificate has been completed.

6. The planning application and the appeal were accompanied by a red line plan identifying the site, as well as a certificate of ownership. However, the appellant's agent has stated the following:

"During the application, it was assumed that the Highway was the lane that formerly lead to Stoodley Knowle School as a neighbouring application has previously been granted for a development of 90 dwellings off of this lane and it was assumed that the lane was adopted as part of this. Following the issuing of the decision letter, it came to light that this road is a private road and therefore the redline boundary of the site should have extended to the junction of this private road with Ilsham Marine Drive. However, this does not materially effect the proposal and would typically have been discussed at the validation stage if it was determined as an issue."

7. The plans upon which the application was determined and those submitted with the appeal do not include within the red line site boundary a private road² that connects the site to the public highway. All the land necessary for access to the site has not therefore been identified within the plans. This failure to comply with the PPG renders the application and appeal invalid.
8. This procedural failing could appear somewhat trivial to the appellant. However, it is important that applications and appeals comply with national guidance/requirements. Moreover, the submission of an amended red line plan that included the private road connecting the site with the public highway would, in turn, require the appellant (or those acting on her behalf) to serve requisite notice on all of those with a legal interest in the private road and the submission of a different certificate of ownership³. This would delay any determination of the appeal and is a matter that should have been resolved before an appeal was submitted. All parties to appeal proceedings have a responsibility to avoid unnecessary delays.
9. It is unclear to me whether the Council was aware of this procedural failing when it determined the application and if so, why it did not deem the application invalid. Whatever information was or was not before the Council at that time, it has informed me that the appeal is invalid and if I were to determine the appeal it would give rise to procedural unfairness.
10. I consider that if planning permission was granted on the basis of the submitted red line plan and land ownership certificate there would be a risk of unfairness and possible prejudice. In particular, to those who have a legal interest in the private road that connects the appeal site to the public highway and over which access to the development would be obtained.
11. There is no suggestion whatsoever of any attempt by the appellant to issue a false or misleading ownership certificate under section 65 of the Act. However, a permission would deprive parties who have a legal interest in land over which access would be obtained (and who may be unaware of the proposal as no notice has been served upon them) of their rightful opportunity of making representations prior to the issuing of any planning permission.

² Even if this road were to be adopted (it is by no means certain that it would) at present, it is a private road.

³ Failure to undertake this in association with an amended red line plan would render the application/appeal as invalid.

12. As noted above, it is accepted, on behalf of the appellant, that at application stage the red line site boundary should have included the private road which connects the main body of the appeal site to the public highway. It is not entirely clear to me why this was not therefore rectified at that time. Whilst I understand the appellant has an existing right of access over this private road, this does not obviate the requirement to provide a red line site plan showing the means of access to the public highway, or excuse the appellant of the need to notify those who have a legal interest in this private road.
13. The appellant has drawn my attention to a 2023 appeal decision⁴ in respect of her existing house. However, it would appear that no matters relating to the appropriateness of the submitted red line plan/access to the public highway were drawn to the attention of the Inspector. That appeal was also for a materially different proposal to the one that is before me. This previous appeal decision does not set a precedent that I am bound to follow.
14. On behalf of the appellant, it has also been stated *that*:

"..if you wish us to we can amend the red line accordingly and serve notice to the relevant owners or (sic) the private road for the purposes of this appeal."

Although it is not unusual for an Inspector to be presented with amended or revised plans, it is not the role of the Planning Inspectorate to advise an appellant, especially one that has been professionally represented throughout, on how best to proceed. To do so would set a dangerous precedent and in itself, be likely to raise matters of unfairness.
15. Given all of the above, I find that planning permission could not have been granted by the local planning authority due to the procedural failings that I have identified. I therefore conclude that the appeal is invalid, I decline to determine it and shall take no further action.

Neil Pope
Inspector

⁴ APP/X1165/D/22/3304830. This was a 'householder appeal' for an extension to the existing house. The red line plan may also have been different to the one in the appeal before me.