
Appeal Decision

Site visit made on 23 January 2025

by Adrian Hunter BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2025

Appeal Ref: APP/X1165/W/24/3349802

Rear of 37 & 39 Hyde Road, Paignton TQ4 5BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Adam Steward against the decision of Torbay Council.
 - The application Ref P/2024/0057, dated 25 January 2024, was refused by notice dated 22 April 2024.
 - The development proposed is removal of existing refreshment kiosk/store and construction of three dwellings with associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published during the consideration of this appeal on 12 December 2024. The references in my decision to the paragraphs in the Framework relate to this new document.
3. During the course of the appeal the Council identified changes that had been made to the Berry Head Recreational Zone of Influence and, as a result they submitted that, should the appeal be allowed, additional mitigation measures were now required to address this. In response, the appellant submitted a completed Unilateral Undertaking to address the matter.

Main Issues

4. The main issues in this appeal are:
 - The effect of the proposal upon the character and appearance of the area;
 - The effect of the proposal upon the living conditions of surrounding residents and those of future occupiers with particular regard to the amount of internal floor area and loss of privacy; and
 - Whether the proposal would lead to an unacceptable flood risk.

Reasons

Character and appearance.

5. The appeal site comprises a car parking area located to the rear of 37 and 39 Hyde Road, accessed via a narrow lane between the two buildings, which are large properties, with commercial uses on the ground floor and some residential on the upper floors. Hyde Road comprises a run of three storey

terraced properties, broken up by the occasional rear access. The majority have commercial uses on the ground floor, with long rear areas, some of which include a number of single storey outbuildings.

6. To the rear of the appeal site is Victoria Park, which is an open, undeveloped pleasant space that contains a number of recreational amenities for local residents and visitors, including a play park located adjacent to the appeal site. In this area of the Park, surrounding development, including the appeal site and that along Hyde Road, is set well away from its boundaries. The site also contains a small, single storey building, which faces onto the Park and the adjoining play area and operates as a kiosk serving refreshments from an opening on its Park side.
7. The rear of the buildings along Hyde Road are visible from Victoria Park but are set some distance away. Furthermore, whilst there are a number of buildings located to their rear, including the kiosk on the appeal site, they are predominantly single storey and, as a result relatively inobtrusive. Therefore, when viewed from Victoria Park, the relationship of the existing buildings on Hyde Road, along with the limited development within their rear areas, represents an important element of the open and pleasant character of the Park by providing a clear separation from development.
8. In contrast, the proposed development would be positioned close to the rear boundary of the appeal site and, due to its position, size, scale and bulk would be clearly visible and would bring development considerably closer to Victoria Park. This, along with the visual impact, would be harmful to the current open and pleasant character of Victoria Park. As a consequence, when viewed from within the Park, it would appear as an oppressive, visually dominant and incongruous form of development, out of keeping with the character and appearance of the area.
9. I note the appellants' reference to their approach of reflecting local vernacular in the design of the dwellings, along with reference to other developments within the area. However, I do not find this to be sufficient to address the substantial harm I have found. Given the limited size and scale of the existing kiosk, neither do I consider this to provide any justification for the proposed development.
10. For the above reasons, I conclude that the proposed development would harm the character and appearance of the area and, in this respect, would be contrary to Policy DE1 of the Torbay Local Plan (TLP), Policy PNP (c) of the Paignton Neighbourhood Plan (PNP) and the Framework. These policies, amongst other things seek to ensure that proposals should be of appropriate scale and size to be in keeping with their surroundings.

Living conditions

11. It is agreed between the parties that the proposed internal floorspace provided within each of the dwellings would fall below the internal space standards as set out in Nationally Described Space Standards (NDSS), as replicated in Policy DE3. The purpose of the NDSS is to ensure that adequate floorspace is provided to achieve a pleasant and healthy environment for residents.
12. However, whilst on the face of it, the proposed development would be contrary to this aim, this does not automatically mean that the dwellings would be

unacceptable or sub-standard. Each property would have a downstairs kitchen/lounge area, along with two upstairs bedrooms and a bathroom. Useable, private outside space would also be provided. Overall, whilst the amount of internal floor space would fall slightly below the required standards, in this instance, I consider that adequate space would be provided to meet the needs of future occupiers.

13. The appeal property would be separated from the nearest dwellings, which are located on the upper floors of Nos. 37 and 39 Hyde Road. These flats currently have rear windows which face onto and across the appeal site.
14. The proposed development, due to its position within the appeal site would both impede the outlook from the existing properties and introduce windows that face towards them. However, the appeal building would be positioned a reasonable distance away, across the existing car park. As such, whilst there would be an element of overlooking and some loss of privacy to the residents of Nos 37 and 39, I do not consider this to be so excessive as to justify refusing planning permission for this reason alone.
15. For the above reasons, I therefore conclude that the proposed development would not harm the living conditions of future occupiers or neighbouring residents and, in this respect, accords with Policy DE3 of TLP and the Framework. These policies, amongst other things, seek to ensure development provides a good level of amenity for future residents.

Flooding

16. The majority of the appeal site is located in flood zone 1, with a small section of the proposed rear garden being located in flood zone 2.
17. In response to the concerns of the Council and their request for additional information, the appellant provided a response, along with the wording for a suggested planning condition to address the matter. I do not have the view of the Council on the appellant's response, or their comments on the suggested planning condition. Although in this respect, I note that the Council have suggested a condition of their own in relation to surface water drainage.
18. I have reviewed the additional detail submitted and, whilst I don't have the Council's position on the matter, given that there is only a small section of the rear garden that is located in flood zone 2, with the majority of the site being in flood zone 1, I am content that the additional detail, along with the suggested condition would be suffice to address the matter.
19. For the above reasons, I therefore conclude that the proposed development would not give rise to unacceptable flooding either on the site or to surrounding properties and, in this respect, accords with Policies ER1 and ER2 of the TLP and the Framework. These policies, amongst other things seek to ensure that proposals maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere.

Planning balance

20. It is accepted by the parties that the Council is unable to demonstrate a 5 year supply of deliverable housing land. In these circumstances, the presumption in favour of sustainable development as set out in paragraph 11d of the

Framework is engaged. Paragraph 11 of the Framework states that where the most important policies are out of date, 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 whole, or where specific policies in The Framework, indicate that development should be restricted. In this respect, I have found that the proposed development would not conflict with policies in the Framework, in particular in relation to flood risk, that protect areas or assets of particular importance as set out in footnote 7 of the Framework.

21. The proposed development would contribute three dwellings towards the existing housing stock, on a brownfield site, within the settlement boundary, in a highly accessible location. Whilst this would be a benefit, given the very limited scale of the contribution, the adverse impacts the proposed development would have upon the character and appearance of the area, significantly and demonstrably outweighs this limited benefit.
22. I have found that the proposed development would not harm the living conditions of neighbouring residents. Furthermore, I note that the Council raise no other issues in relation to ecology and highways, amongst other things. However, as these are requirements of policy and legislation, the absence of harm in respect of these matters are neutral factors that weigh neither for nor against the development.

Conclusion

23. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Adrian Hunter

INSPECTOR