



Appeal Decision

Site visit made on 1 April 2025

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2025

Appeal Ref: APP/P1133/W/25/3359256

Plot between number 35 & 36 First Avenue, Teignmouth TQ14 9DJ

- 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 Keith Heron against the decision of Teignbridge District Council.
 - The application Ref is 23/00260/FUL.
 - The development proposed is 3 bedroom dwelling & associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant submitted amended plans with the appeal to relocate the position of the dwelling and raise its finished floor level. The *'Procedural Guide – Planning Appeals – England'* advises that if an appeal is made, the appeal process should not be used to evolve a scheme. The *Holborn Studios Ltd¹* judgement established that there are two tests that must be considered before deciding whether to accept amendments to a proposal, namely a substantive test and a procedural test.
3. The amended position of the dwelling would be substantially different from the scheme determined by the Council. The increase in height of the ground level of the site, as a result of the proposed amendment to the scheme, would not be inconsequential. As such, the substance of the proposal would be materially changed, and the proposed amendment would not pass the substantive test.
4. Furthermore, the amended plans were not submitted prior to determination of the planning application and that has resulted in interested parties, such as the Environment Agency, not being formally consulted on the proposed amendment. Accepting the plans would put the Council and interested parties at a disadvantage, and I therefore consider this would also not pass the procedural test.
5. As such, the amended plans have not formed part of my assessment of this appeal.

Main Issues

6. The main issues are:
 - the effect of the proposed development on the character and appearance of the area;

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

- the effect of the proposed development on the living conditions of the occupiers of neighbouring properties, having regard to outlook; and
- whether the proposed development would result in an increase in flood risk.

Reasons

Character and appearance

7. The appeal site is a plot between two residential properties in the settlement of Teignmouth. The opposite side of the road to the site comprises rows of terraced housing that has a clearly defined building line. The dwelling type on the eastern side of the road is more mixed. The properties immediately around the site are semi-detached and terraced dwellings. Further along the road there are examples of detached dwellings but those are not seen in the context of the site.
8. The built form on the eastern side of the road has a significantly lower level of density than the opposite side of the road. The existing gap between 35 and 36 First Avenue (Nos 35 and 36), together with the gap adjacent to the other end of the terrace, contribute to that lower density and they therefore contribute positively to the character of the street scene.
9. The varied styles of dwellings on the eastern side of the road leads to the design of the dwelling being acceptable. Additionally, the dwelling would align with the building line of the terrace. However, the loss of the gap between Nos 35 and 36 would result in a degradation of the existing character of the street scene. Moreover, the introduction of a detached dwelling in this space between residential properties would be an incongruent addition to the street scene that does not reflect, or respond to, its immediate environs.
10. The dwelling would be detached, and it would be erected on a relatively slender plot for such a dwelling type, resulting in a narrow dwelling being proposed. The dwelling would have a ridge height that is higher than the dwellings either side of it and this height would accentuate the narrowness of the proposed development. Having regard to these factors, the proposal would have the appearance of being crowbarred into the slender plot and it would therefore appear as an awkward and jarring development amongst the existing built form.
11. For these reasons, the proposed development would cause unacceptable harm to the character and appearance of the area. Consequently, the proposal would conflict with Policies S1 and S2 of the Teignbridge Local Plan 2013 – 2033 (LP), insofar as it seeks to maintain or enhance the character and appearance of street scenes and for development to integrate with and, where possible, enhance the character of the adjoining built environment.

Living conditions

12. No 35 has three windows in the gable end that faces over the site and 34 First Avenue (No 34) has a single window in that same elevation. One of the windows on the first floor belonging to No 35 is understood to serve a bathroom and it has an obscure glazed window. The outlook from this window would therefore already be limited and the proposed development would not result in a material loss of outlook.

13. The ground floor window that is understood to belong to No 34 is a relatively narrow window that appears to be a secondary window in the room it serves. Given that it is a secondary window, small in size and appears to serve the same area of the room as the larger window in the rear elevation, the proposal would not result in the room feeling enclosed or oppressive.
14. The evidence indicates that the other first floor window belonging to No 35 serves a kitchen/dining room together with a large window in the principal elevation of the dwelling. I note that its size indicates that it is a secondary window in that room. However, given the distance of the window from the front elevation, it appears to serve a long room and the window in the front elevation would not provide an outlook for someone stood at the far end of the room. As such, the gable window provides an important outlook from that room and the proximity of the proposed dwelling would form an oppressive presence when looking out of that window.
15. The bedroom in the loft is served by the window in the gable and a rooflight in the front facing roof slope. The room therefore has a dual aspect. I note that the appellant has referred to the gable window being the secondary window in that room. However, when I viewed No 35 from the street, the rooflight seems to be close to the floor of the room and the two windows appear to be of a similar size. I am therefore not convinced that the gable window is the secondary window in that room, and the outlook from the gable window would be compromised by the proposed dwelling forming a dominant and oppressive presence.
16. For these reasons, the proposed development would cause unacceptable harm to the living conditions of the occupiers of 35 First Avenue, having regard to outlook. Consequently, the proposal would conflict with Policy S1 of the LP, which seeks, in part, to prevent harm to the residential amenity of existing and committed dwellings, including outlook.

Flooding

17. Part of the site is in Flood Zone 2, with the rest in Flood Zone 1. The Environment Agency (the EA) advised during the planning application process that the submitted Flood Risk Assessment (FRA) did not demonstrate that the development will be safe over its lifetime, without increasing flood risk to third parties. Additionally, they advised that the minimum finished floor level should be at least 5.8m AOD but the outdoor level should not be raised above 5.2m AOD at the front of the site, and that the proposed dwelling should be moved further away from the flood defence infrastructure. It seems that the appellant was unable to overcome the EA's concerns, and this formed the Council's third reason for refusal.
18. Following the refusal of the application by the Council, the appellant contacted the EA in an attempt to address the third reason for refusal. The appellant states that the EA's response was that subject to the proposed dwelling being positioned in line with No 36 and the finished floor level being no lower than 5.8m AOD, their objection could be removed subject to conditions securing the position and floor level of the dwelling.
19. As I have been unable to accept the amended plans showing the relocation of the proposed dwelling and the raising of the finished floor level, the objection made by the EA cannot be regarded as being overcome. In terms of attaching a condition to ensure that the position of the dwelling would be in line with No 36 and the finished

floor level would be no less than 5.8m AOD, without plans to formally demonstrate and secure those details, such a condition would be unenforceable. As such, the planning condition suggested by the appellant would not overcome the potential increase in flood risk.

20. For these reasons, it has not been sufficiently demonstrated that the proposed development would not result in an increase in flood risk. Consequently, the proposal would not comply with Policy EN4 of the LP, which sets out, in part, that development in Flood Zone 2 will only be permitted where it demonstrates occupants' safety in a flooding event and does not increase flood risk elsewhere.

Planning Balance

21. The appellant explains that the Council's Land Supply Statement, dated 13 December 2024, confirmed that the Council has a 5.1-year housing land supply. However, given recent Housing Delivery Test performances, the 20% buffer mentioned in Paragraph 79 of the National Planning Policy Framework (the Framework) should be added to their identified supply of specific deliverable sites. When applying the 20% buffer, the Council would not be able to demonstrate a five year housing land supply (5YHLS).
22. In these circumstances, Paragraph 11(d) of the Framework states that 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 a whole.
23. The site is located in Teignmouth and is therefore a sustainable location for residential development when having regard to the access to services, facilities and employment. The proposal would result in the contribution of one dwelling to the existing housing stock. The Framework supports the boosting of housing supply and the efficient use of land. However, the provision of one dwelling on brownfield land in a sustainable location would make a limited contribution to the housing stock and therefore attracts moderate weight.
24. There would also be associated social and economic benefits, including during the construction phase and future residents paying into the local economy. Although these types of benefits are supported by the Framework, given the relatively small scale of the proposal, they are given limited weight in the planning balance.
25. Weighing against the benefits is the conclusion that the proposed development would result in unacceptable harm to the character and appearance of the area and the living conditions of the occupiers of No 35, and it has not been demonstrated that the proposal would not increase flood risk. The proposal may comply with certain policies contained in the LP, but given the harm that I have identified, the proposal conflicts with the development plan when taken as a whole.
26. According to the Framework, development should be sympathetic to local character, including the surrounding built form, provide a high standard of amenity for existing users of development, and be made safe for its lifetime without increasing flood risk elsewhere. Given that the policies that I have identified are consistent with the Framework, I apportion significant weight to the policy conflicts and associated harm that would be caused by the proposed development.

27. In summary, the benefits associated with an additional dwelling would be moderate in weight even taking account of the objective in the Framework of boosting significantly the supply of housing and the Council's housing land supply position. Conversely, the Framework sets out that the development should be sympathetic to its built surroundings, protect the amenity of existing residents and ensure that the future occupiers of the site and other residential properties are not at increased risk of flooding.
28. Overall, I find that the adverse impact of the proposed development identified above would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole.

Conclusion

29. For the reasons given above, the proposed development would conflict with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Accordingly, the appeal should be dismissed.

K Reeves

INSPECTOR