



Appeal Decision

Site visit made on 12 August 2025

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2025

Appeal Ref: APP/X1165/W/25/3360980

41 Southfield Avenue, Paignton TQ3 1LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr J Turner against Torbay Council.
 - The application Ref is P/2024/0736.
 - The development proposed is described in the application as “replacement house inc. garage and parking (all as drawings)(self-build project)”.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal relates to a failure to determine the application within the prescribed period and the Council has highlighted what its reasons for refusal would have been, had it been determined. These relate to concerns over the character and appearance of the area, flood risk, and biodiversity. The appellant has had the opportunity to comment and would therefore not be prejudiced by them forming the basis for the main issues.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the area; and
 - whether the proposed development would be at risk of flooding.

Reasons

Character and appearance

4. The appeal site comprises a generous plot in a long and sloping residential street on undesignated land. The property that recently occupied it has mostly been demolished, save for a garage and some visible footings. House types in the area vary in their scale, design, and use of external materials. In that context, the 2-storey property downslope of the appeal site is smaller than others.
5. However, the group of properties immediately upslope of the appeal site follows a consistent theme of tall, hipped roofed buildings with generous gaps between. The adjacent property has a modest, hipped roof extension over its garage, though generally, additions in these gaps otherwise tend to be of a single storey.

Generous gaps and hipped roofs are commonplace and represent a prevailing characteristic of the area.

6. The roof and frontage gable design would be similar to that of an adjacent property. Additionally, external materials would be sympathetic. However, although being of a similar overall height to its predecessor, proposed dwelling would be set apart from other properties by the inclusion of particularly tall gable side elevations, covering almost the entire plot width.
7. Despite the presence of a neighbouring garage extension, these features, together with the prominence of the double projecting front elevation gables would result in an uncharacteristically imposing property. While undulating roof heights are not uncommon, its width, bulk, and massing would not make a positive transition between property types. Furthermore, it would lead to the erosion of spacious gaps, generating an unusually cramped property along the street. This would not add to the overall quality of the area as set out in paragraph 135 of the National Planning Policy Framework (the Framework).
8. For these reasons, I conclude on this main issue that the proposal would harm the character and appearance of the area. As a consequence, it would conflict with Policy DE1 of the Torbay Local Plan (LP) and Policy PNP (1) (c) of the Paignton Neighbourhood Plan. Together in this respect, these policies, amongst other things, seek to strengthen local identity ensuring developments are in keeping with the surroundings, respecting scale, design, height, and massing.

Flood risk

9. Paragraphs 174 and 175 of the Framework say that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test.
10. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment (FRA) demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future. The access/egress of the appeal site is in an area at risk of flooding, as identified by the Environment Agency. The scheme is not a type of exempt development set out in footnote 63 of the Framework, and therefore the sequential test applies.
11. While the previous dwelling has already largely been demolished, the proposal would essentially replace it. In fact, the application is described as a replacement house. As such, it would be impractical to seek out other sites for this scheme beyond the plot itself. A district wide search would not be reasonable.
12. In these circumstances, it is necessary to apply the exception test. To pass the exception test, paragraph 178 of the Framework says that it should be demonstrated that *a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and b) the development will be safe*

for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

13. Notwithstanding the lack of any detailed flood risk assessment, the Planning Practice Guidance notes that wider sustainability benefits could include the re-use of suitable brownfield land. Given the nature of this infill proposal on a previously developed plot in a large residential area, there would be wider sustainability benefits to the community.
14. The appellant acknowledges that the garage would be susceptible to flooding and claims habitable space would avoid flood risk. It is further added that the current road design is a cause of current issues. Surface water soakaways for the appeal site could be secured using an appropriately worded condition. Even so, in the absence of any technical appraisal or details, it is simply not known if the scheme would be safe for its lifetime, taking into account vulnerability of future occupiers without increasing flood risk elsewhere. The proposal would fail to pass exception test b) of Framework paragraph 178.
15. For the reasons given and based on the evidence provided, I cannot be satisfied that the appeal scheme would be at no risk of flooding on the site or elsewhere. I therefore conclude that the proposed development would be at risk of flooding. As such, there would be conflict with policies ER1 and ER2 of the LP which, together in this respect, seek to support developments are safe for their lifetime, and ensure the risk of flooding is not increased elsewhere.

Other Matters

16. The site is in the zone of influence for the Berry Head to Sharkham Point component of the South Hams Special Area of Conservation (SAC). Within the context of this appeal, the responsibility for assessing the effects of the proposal on the European designated site falls to me as the competent authority. Had I been otherwise minded to allow the appeal, and the circumstances therefore existed in which planning permission could be granted, it would have been necessary for me to examine this matter further, and to undertake an Appropriate Assessment (AA) of the implications of the appeal scheme for the European designated sites. In that context, I would have looked at whether the scheme amounted to an increase in housing numbers as set out in LP Policy NC1, and therefore the appropriateness of a financial contribution towards mitigating recreational pressure on the SAC.
17. However, as the appeal is being dismissed for other reasons, the outcome of any such AA would have no bearing on the overall outcome of this appeal. There is therefore no need for me to consider this matter any further as part of my decision since any findings on this issue would not change the appeal outcome.
18. I have paid regard to the appellant's comments in respect of the processing of the application. However, these have no bearing on my decision which is based on the planning merits of the proposal.
19. The appellant refers to their claimed compliance with other policies of the LP, including elements of DE1, designing out crime and highways/living conditions. However, the absence of harm would not outweigh that identified. I attached limited weight to this matter.

20. Even if the intention is that the property would be a self-build, there is no mechanism before me that would secure it for such purposes. I give this matter limited weight.

Other Considerations

21. The large family dwelling would be in an accessible location and sustainably constructed with high thermal capacity to assist with carbon reduction. The proposal would provide a limited amount of short-term employment through its construction. The new house, built on brownfield land, that is encouraged in the Framework, would make a modest but important contribution to the overall supply of housing. This would be tempered by the fact it effectively replaces a dwelling.
22. The appellant claims that the previous property could have used certain permitted development rights to extend its roof, making it similar to this scheme. The plans show the previous property was however narrower where massing effects would be likely to be less intrusive. Moreover, it is stated that it was not economically suitable to alter or extend it. In any case, it has been demolished. This means that there is no realistic fallback position that could be relied upon.
23. Photographic examples of other massing arrangements are acknowledged, though I am not aware of their site-specific circumstances that led to their presence. The pair of detached properties at 33 and 33a are built at a similar level to one another and are of matching design. They are not comparable with this appeal scheme. Nevertheless, I have assessed this proposal on its merits. I give this matter little weight.

Planning Balance and Conclusion

24. There is no dispute that the Council cannot demonstrate a sufficient supply of deliverable housing sites. In the absence of the extent of any shortfall, I shall assume that it is severe, that being the worst-case scenario. Paragraph 11 d) of the Framework indicates that, where the requisite housing land supply cannot be demonstrated, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. In accordance with footnote 7 of the Framework, as I have found the scheme would be at risk of flooding, it is the case that the policies in chapter 14 of the Framework provide a strong reason for dismissing the appeal. As such, the proposal does not benefit from the presumption in favour of sustainable development.
25. Section 38(6) of the Planning and Compulsory Purchase Act 2004 says development should be in accordance with the development plan 'unless material considerations indicate otherwise', and this is reaffirmed in the Framework.
26. I have concluded above that the proposal conflicts with the development plan, when taken as a whole. Furthermore, even when considered cumulatively, the weight given to the other considerations would not outweigh the identified harm. Accordingly, other considerations do not therefore indicate that permission should be granted contrary to the development plan. Therefore, the appeal is dismissed, and planning permission is refused.

J Hills

INSPECTOR