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# Appeal Decision

Site visit made on 13 July 2017

by **Andy Harwood CMS MSc MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 03 August 2017

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**Appeal Ref: APP/X1165/W/17/3173769**

**Land to the rear of 16 to 26 Castor Road, Brixham TQ5 9PY**

- 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 Eric Brice against the decision of Torbay Council.
  - The application Ref P/2016/0947/MPA, dated 26 August 2016, was refused by notice dated 16 December 2016.
  - The development is described as: "proposed 10 No new residential units on land to the rear of 16 to 26 Castor Road, Brixham".
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## Decision

1. The appeal is allowed and planning permission is granted for 10 No new residential units at Land to the rear of 16 to 26 Castor Road, Brixham TQ5 9PY in accordance with the terms of the application, Ref P/2016/0947/MPA, dated 26 August 2016, subject to subject to the conditions set out in the attached schedule.

## Application for costs

2. An application for costs was made by Mr Eric Brice against Torbay Council. This application is the subject of a separate Decision.

## Preliminary Matter and Main Issues

3. The Council has confirmed that since refusing the planning application sufficient additional information has been submitted regarding drainage. The third reason for refusal is no longer being pursued.
4. The first main issue is therefore the effect of the proposal upon the living conditions of the occupiers at neighbouring dwellings with respect to outlook and privacy. The second is the effect of the proposals upon highway safety and convenience.

## Reasons

### *Living conditions*

5. The appeal site is located between the buildings along Castor Road, those within Weston Close and also some of the dwellings along Drew Street. Much of the site is gently sloping up towards Weston Close and Drew Street and is covered with grass with some landscaping around the perimeter and through the centre. An existing stone wall around the western boundary with Weston Close and Drew Street would be re-pointed and retained. Close to the

boundary with the dwellings in Drew Street there is an area of hardstanding which also includes a substantial detached workshop building. The site is used as a private allotment by the appellant who lives in Castor Road and as part of a landscape gardening business. To the northern end, beyond the site but in the appellant's ownership is a group of buildings which have planning permission to be converted into 2 dwellings. Although there was little activity on the site at the time of my visit, this may not be representative of the general or potential situation with comings and goings occurring in relation to these existing and proposed uses on the site.

6. The proposal would involve the construction of 10 dwellings. These would be laid out in 2 short terraces of 3 dwellings and 2 pairs of semi-detached dwellings around a cul-de-sac accessed off of Castor Road. There would be 2, 2-bedroom dwellings and 8, 3-bedroom dwellings. An access would be retained off of the cul-de-sac for the approved development of 2 dwellings within the existing buildings at the northern end of the site. The precise levels of the dwellings would require further agreement through a planning condition.
7. The dwellings would be spaciouly laid out with reasonably sized private rear gardens. Main habitable rooms would be positioned with windows directed away from neighbouring dwellings with side views only being possible. The long, narrow side windows, a design feature of the proposal would serve non-habitable rooms and would not lead to a loss of privacy or, at the distances proposed, a perception of being overlooked for the adjoining residents. There would be some overlooking caused by the proposal including from sideways views out of dormer windows in plots 6 and 7 towards the gardens in Weston Close. However, this again would be at a reasonable distance and at an angle rather than creating a direct viewpoint. This is an urban area where inter-visibility between nearby dwellings and from this site already occurs and this proposal would not unreasonably add to that. There would also be communal areas with landscaping along the margins where the development would adjoin neighbouring properties helping to soften such impacts.
8. The existing rear gardens within Castor Road are lower than the site. The dwellings would be set well away from those properties and would not have an imposing impact. The nearest proposed dwelling at plot 10 would be in a higher position and would be noticeable from the nearest dwellings at No 16 and 18. However, the proposed dwelling would be off-set from the boundary and would be a substantial distance from the rearward parts of those dwellings. This and other dwellings within the proposal would not have an over-dominant impact or cause a sense of enclosure for those adjoining residents.
9. The nearest of the proposed dwellings to the rear gardens in Weston Gardens would be at a lower level within the site. The side elevations would protrude above the boundary wall but this would be at a substantial distance from the gardens and would not have an enclosing or over-dominant impact upon those adjoining residents. The parking area close to the end of the cul-de-sac would have a landscaped area next to it. Along with the retention of the stone wall this would help to reduce the impact of activity within the new development.
10. I have limited information regarding a previous appeal on this site relating to a planning application refused in 2004 (APP/X1165/A/04/1143574) for 13 dwellings. The appeal was dismissed due primarily due to the impacts arising from noise and disturbance for nearby residents from traffic on the proposed

access. This included the effect of headlights. The proposal now includes rendered walls alongside the access into the site, a raised planted area at the back of the garden of the dwellings in Castor Road and also the lowering of the access road. I am satisfied that these aspects of the design would help to prevent noise from vehicles and headlights from causing an unreasonable disturbance for those adjoining residents overcoming that previous Planning Inspector's concerns.

11. In relation to this main issue, the proposal would have a satisfactory impact upon the living conditions of the occupiers at neighbouring dwellings. This would comply with Torbay Local Plan<sup>1</sup> (LP) Policies H1 and DE3. The requirement in paragraph 17 of the National Planning Policy Framework (Framework) to secure a good standard of amenity for all existing and future occupants of land and buildings would be complied with.

#### *Highway safety and convenience*

12. There would be 12 parking spaces for the 10 dwellings. This allows for a parking space for each dwelling as well as 2 visitor spaces all of which would be close to the dwellings. LP appendix F requires dwelling houses to have 2 parking spaces per dwelling. However, in locations "such as" town centres where there is a greater choice of transport this standard may be reduced.
13. As well as the nearby public house, the Sea Anglers' Club and convenience shop, driving around the area I saw other facilities and services. The Council's committee report does not dispute the appellant's view that the town centre is approximately 10 minutes away on foot. Although the site is not within a town centre, it is within walking and cycling distance (2 transportation methods which are alternatives to the use of private vehicles) of a range of services. There are bus stops nearby. It is not a location where residents would rely only upon private vehicle ownership. Consequently I consider that it is the type of location where the discretion allowed for in LP Appendix F can be applied.
14. Parking restrictions apply within Caster Road and should prevent dangerous parking and it will be clear to people considering living within the dwellings that parking is limited nearby. Current advice within the Framework, as updated by a Written Ministerial Statement on 25 March 2015, indicates that Local Planning Authorities should only impose local parking standards where there is clear and compelling justification that it is necessary to manage their local road networks.
15. The Council has referred to a recent appeal relating to a proposal for 126 dwellings elsewhere in Brixham (APP/X1165/W/16/3160843). My colleague considered that due to the large number of dwellings with only 1 available parking space per dwelling, there would be high levels of on-street parking causing harmful impacts. The current proposal is a much smaller scheme. Any additional on-street parking whether inside the site or elsewhere as a result of only 10 additional houses, considering the evidence provided in this case, would not have the same degree of impact.
16. In relation to this main issue, the proposals would not have a harmful impact upon highway safety and convenience. The proposal would comply with LP

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<sup>1</sup> Torbay Local Plan, A Landscape for Success, The Plan for Torbay: 2012 to 2030

Policy TA2 as it would not impact upon the wider network and would provide safe vehicular and pedestrian access.

### **Other Matters**

17. This would be a spacious development for prospective occupants providing a high quality living environment for them and neighbouring occupiers with adequate parking provision. The density of proposed development according to the Council would be at 36 dwelling per hectare (dpa) although the Development Management Committee report indicates 35dpa. This would only be a little higher than the minimum density of 30dpa that the explanatory paragraphs following LP Policy DE3 require. This measurement is not, given the lack of harm in relation to either main issue, any indication that this would be an "overdevelopment" of the site as suggested by the Council. The Urban Design Guide<sup>2</sup> acknowledges that accessible areas can accommodate more intense activity. Although this document pre-dates the current LP and the Framework these aspirations remain consistent with the aims of the more up to date policies.
18. The Conservation Area (CA) boundary is located close to the northern end of the boundary of the site. The boundary is close to the rear of the storage building outside of the site. There would be a short gap between the CA and the back boundary of the gardens for the dwellings on plots 6 to 10. The enclosure to these rear gardens would replace the existing hard surfaced area used for general storage as well as the large building within the site. The dwellings are proposed further into the site relative to the CA and would be a substantial distance to the northern boundary and lower down than the buildings in Drew Street, the back gardens of which form the western edge of the CA. The proposal would not have a harmful impact upon the character and appearance of the area and would preserve the setting of the CA.
19. A grade II Listed Building is located on the opposite side of Castor Road from the access to the site. This is already an access into the site and the proposed development will not have any impact upon that building. The setting of that building would therefore be preserved.
20. I saw extraction systems located at the rear of the Sea Anglers' Club. It is not clear that these would cause unacceptable harm to the living conditions of the proposed dwellings. These mechanical systems are already close to properties in Castor Road and I have no evidence that this hinders the use of the club.

### **Conditions**

21. I have imposed a condition specifying the relevant drawings as this provides certainty that the development will be implemented as proposed. I have considered the other conditions suggested by the Council with regard to the tests for planning conditions in the Framework.
22. I have combined a condition requiring further landscaping details and surveys of trees and hedgerows as well as a condition requiring implementation. A separate condition requires the agreement of boundary treatment.
23. The initial ecology survey that accompanied the planning application identified that the site contains a population of slow worms. A relocation programme

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<sup>2</sup> Urban Design Guide Supplementary Planning Document, adopted 2007

was undertaken in 2016. A further survey and programme of relocation of any remaining slow worms should be undertaken prior to the commencement of development and I have amended the Council's suggested condition. I have also included conditions similar to those suggested regarding the timing of works outside of the nesting season and to secure the indicated sparrow nesting terraces.

24. I have included conditions requiring the implementation parking areas. The requirement for a section 278 agreement is not explained and it is not clear to me that this is necessary.
25. The Council has suggested a condition removing permitted development rights for enlargement, alterations and additions to the dwellings and development within gardens. The Planning Practice Guidance makes it clear that such restrictions should only be used in exceptional circumstances. It has not been demonstrated that there are exceptional circumstances in this case and I have not imposed such a condition.

### **Conclusion**

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

*A Harwood*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 'AV 005'; 'AV 006'; 'AV 007'; 'AV 008'; 'AX 001 rev A'; 'AE 001 rev B'; 'SL 002 rev C'; and 'T6793-FRA Drainage'.
- 3) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority further details of a scheme of landscaping. The scheme shall include a survey of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. The scheme shall also show all details for the rendered block walls alongside the access road and around the "landscape bunded screen" adjoining the properties in Castor Road as well as the retaining structure along the western boundary of the site with Weston Close and Drew Street.
- 4) All planting, seeding and/or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 5) No clearance of shrub vegetation shall take place other than outside of the bird breeding season between 1st March and 15th September unless details are submitted in writing in advance for the agreement by the Local Planning

- Authority. Any such clearance work permitted within the bird breeding season shall be carried out in accordance with the agreed details.
- 6) Prior to the occupation of the dwellings hereby permitted, three sparrow nesting terraces should be fitted to the new structures to provide opportunities for nesting birds in accordance with details that shall have been submitted to for approval by the Local Planning Authority.
  - 7) No development shall commence until a Method Statement detailing the methodology for a search and relocation of any remaining reptiles on the site shall have been submitted to and approved in writing by the local planning authority. The methodology shall be implemented as approved.
  - 8) No dwelling shall be occupied until the refuse and recycling stores as shown on the approved plans have been implemented for that dwelling.
  - 9) No dwelling shall be occupied until space has been laid out within the site in accordance with the approved plans for cars to be parked relating to that dwelling and that space shall thereafter be kept available at all times for the parking of vehicles.
  - 10) No development above damp proof course level shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan indicating the positions, design materials and type of boundary treatment to be constructed. The boundary treatment shall be completed before the the dwellings are occupied in accordance with the approved details.
  - 11) Prior to the first occupation of any dwelling, the submitted and approved surface water drainage system shall be implemented in full and maintained as such to serve the development at all times thereafter.
  - 12) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed dwellings, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.