



Meeting: Council

Date: 01 May 2014

Wards Affected: St Marychurch

Report Title: Planning Application P/2014/0085 – Provision of a dwelling on land at Pine Lodge, Sladnor Park Road, Torquay

Is the decision a key decision? No

When does the decision need to be implemented? Notice to be issued immediately after the decision is made by Council. Given the need to determine the application at Council the application will be determined after the end of the 8 week statutory determination period.

Executive Lead Contact Details: David Thomas, Deputy Mayor & Executive Lead Strategic Planning, Housing and Energy, Ext 7069, david.thomas@torbay.gov.uk

Supporting Officer Contact Details: Peter Roberts, Team Leader Development Management, Ext 7742, peter.roberts@torbay.gov.uk

1. Purpose and Introduction

1.1 The Council is asked to determine whether or not to grant planning permission for the proposed construction of a dwelling on land at Pine Lodge, Sladnor Park Road, Maidencombe, Torquay. The application is a resubmission of previously refused application P/2013/0979. The proposed dwelling has been substantially revised in terms of the design following that earlier refusal.

1.2 The planning application was reported to the Development Management Committee for decision on Monday 14 April. The officer recommendation to the committee was refusal of planning permission for the following reasons:

01. The development is contrary to Local Plan policy L4 as the site is within the defined Countryside Zone, and the precedent set by approval would result in sporadic residential development within the Countryside Zone which would impact on the special landscape character of the area contrary to policies L2 and L3 of the saved Adopted Local Plan.

02. The scheme should deliver community infrastructure contributions in line with the Adopted SPD 'Planning Contributions and Affordable Housing' in order to mitigate the impact of the scheme on the local area. The scheme does not secure this and as such it is contrary to the provisions of the SPD and to policy CFS and CF6 of the Saved Adopted Torbay Local Plan 1995-2011.

1.3 The committee resolved on Monday 14 April to recommend approval to the application and as such the matter is referred to Council for decision. This is in accordance with

the terms of reference for the Development Management Committee. Schedule 4 of the Constitution (Terms of Reference) includes under Development Management Committee part 3, the following term (where reference is made to the Executive Head of Spatial Planning read 'Director of Place'):

The Committee shall not determine any application (or other matter) in a manner that would (in the opinion of the Executive Head Spatial Planning) not be in accordance with the Torbay Local Plan unless both those Officers recommend such determination and the determination is in entire accordance with their recommendation. If the Committee consider that an application (or other matter) shall be determined not in accordance with the Torbay Local Plan then (unless their determination is in accordance with the recommendation of the Executive Head Spatial Planning) the item shall be referred to Council for determination.

2. Proposed Decision

- 2.1 That Planning application P/2014/0095 should be refused for the reasons set out in 1.2 above and in accordance with the officer's recommendation set out in the officer committee report (Appendix 1), notwithstanding the deferral of the Development Management Committee based on its decision to approve the application.

3 Reason for Decision

- 3.1 Planning decisions should be made in accordance with the Saved Local Plan, unless material planning considerations indicate otherwise. The revised application remains contrary to policies L2, L3 and L4 of the saved adopted Torbay Local Plan. These policies seek, explicitly, to protect the landscape character of Areas of Great Landscape Value (L2), protect the unspoilt character of Coastal Preservation Areas (L3) and to prohibit development in the countryside (L4) unless clear criteria are met. Policy L4 is broadly consistent with the National Planning Policy Framework (NPPF).

Efforts to revise the design of the dwellinghouse have been well conceived, but the result is the same in principle. Whilst material weight is to be given to paragraph 63 of the NPPF, it is not considered that the design improvements to the scheme out-weigh the clear policy constraint in this case.

NPPF Para 63: In determining applications, great weight should be given to outstanding or innovative designs which help raise the standard of design more generally in the area.

- 3.2 There has been a long history of refused decisions for new dwellings in this area and these have been upheld at appeal (see 4.5 below and Appendix 1 for details). Appendix 1 sets out the planning balance to this recommendation and provides essential planning background to this Council decision.

- 3.3 Notwithstanding the decision that was made in relation to the adjacent site at Allways, Teignmouth Road (P/2012/0743), there is a policy constraint to development of this type in the Countryside Zone. There are not considered to be substantive economic, environmental or social reasons to over ride the policy and the design is not so exceptional as to warrant a contrary decision in this case.
- 3.4 It is not considered that the test set out in paragraph 55 of the NPPF in terms of being truly outstanding or innovative has been met. Such a test is intended to apply to innovations in design and not merely to a response to the landscape constraints of a sensitive site. Paragraph 4 of the NPPF states:

Local planning authorities are required to take design into consideration and should refuse permission for development of poor design. Local planning authorities should give great weight to outstanding or innovative designs (emphasis added) which help to raise the standard of design more generally in the area. This could include the use of innovative construction materials and techniques.

The predecessor to the NPPF in this respect was PPS7 and although now cancelled, the wording in paragraph 11 provides useful background to previous approvals across the Country under this rural design exception:

Very occasionally the exceptional quality and innovative nature of the design (emphasis added) of a proposed, isolated new house may provide this special justification for granting planning permission. Such a design should be truly outstanding and ground-breaking (emphasis added), for example, in its use of materials, methods of construction or its contribution to protecting and enhancing the environment, so helping to raise standards of design more generally in rural areas. The value of such a building will be found in its reflection of the highest standards in contemporary architecture, the significant enhancement of its immediate setting and its sensitivity to the defining characteristics of the local area.

Supporting Information

4. Position

- 4.1 The proposal represents a new dwelling in the Countryside Zone, contrary to the provisions of local plan policies. The proposal is also contrary to the NPPF (para 2) and is not supported by para 55 of the NPPF, which relates to isolated homes in the countryside. The improvement to the design and sustainable construction of the dwelling does not overcome the policy objections. Whether the proposed house is above ground, underground or partially underground makes no difference – it is a house in the countryside, contrary to Local Plan policy. If permission was given for the proposal an unacceptable precedent would be set for similar development and for larger developments in the countryside.

- 4.2 The Local Plan is quite clear in seeking to resist residential development within the defined countryside zone unless it meets strict criteria. In relation to dwellings, policy L4 only allows them where there is a proven agricultural need or they constitute infill development within the existing areas of settlement.
- 4.3 Sladnor Park Road forms part of the sporadic post war ribbon development that occupies both sides of Teignmouth Road for most of its length, between the outskirts of Torquay and the boundary with the neighbouring authority.
- 4.4 The justification to the policy makes it clear that new residential development would only be considered acceptable within the existing village settlements. The reasons for this are that such development, outside village boundaries, will alter the face of the countryside by creating sprawl that will ultimately erode its open, rural character and lead to merging of existing settlements.
- 4.5 The guidance under policy L4 makes it clear that new homes should 'be located and designed to minimise impact on open countryside, and should not accentuate ribbon or sporadic development in rural areas'.
- 4.5 There is a long history of applications for dwellings within domestic gardens within the Maidencombe area. These have been consistently refused primarily as they are contrary to Local Plan policy L4, which resists sporadic residential development within the defined Countryside Zone. The Council has been very successful at defending these decisions at appeal, which have been routinely dismissed due to non compliance with the adopted local Plan.

These are P/2008/0121: The Barn Teignmouth Road, P/2005/0936: Langley Manor Teignmouth Road, P/2004/1578: Curtilage of Combe Mount Teignmouth Road, P/2004/1351: Land curtilage of West Winds Teignmouth Road, P/2003/0754: Brantfell Ridge Road

- 4.6 There is also further relevant planning history in the decision to approve application P/2012/0743: New Dwelling in grounds of Allways, Teignmouth Road. That application was approved by the Development Management Committee contrary to the officer recommendation to refuse. It was considered by the committee that the application would result in an improvement in highways terms (central access to serve the existing and proposed dwellings) and that the new dwelling would be surrounded by properties and have direct frontage onto Teignmouth Road.

Having considered that case in some detail it is not clear why, in the circumstances, that application was not referred to Council for decision.

- 4.7 There is further relevant planning history at both English House (P/2011/0361) and Rock House (P/2012/0566 & P/2012/0567). In both cases approved developments were allowed due to the particular circumstances of the case.

In the case of English House, the approval would result in the demolition of an existing building in commercial use and its replacement with 2 pairs of dwellings and garden dwellings. It is very material in that case that approval had also been granted for the extension of the existing building and that the scheme was for replacement buildings not wholly new buildings.

In the case of Rock House, the approval for 2 dwellings results in the replacement of 2 existing structures within the grounds of the listed building. The owner of the site has been obliged to enter into a planning agreement to ensure that proceeds of the sale of the development land is used to undertake essential repair works to the listed building making the proposals enabling development. The decision was to approve replacement buildings to fund works to the listed building and not to approve wholly new dwellings in the undeveloped garden.

- 4.8 The most recent planning history of the application site is P/2013/0979: New dwelling in the grounds of Pine Lodge. That application was refused by the Development Management Committee in 2013 for the following reasons:

01. The site is within a defined countryside zone where protecting rural character is an identified priority. Policy L4 of the Saved Adopted Local Plan indicates that new dwellings are only permissible within existing settlements or where there is a proven agricultural need. The inclusion of an additional dwelling in this domestic garden outside a defined settlement would be contrary to this policy and result in a more urbanised character of development which would act to erode the sporadic, more sparsely laid out 'ribbon' form of development along Teignmouth Road and in the wider L4 area. It would also make it more difficult to resist similar infill schemes which would cumulatively erode the open rural character of the area and act to blur the distinction between urban Torquay and the more rural hinterland. This would be harmful to the special landscape character of the Area of Great Landscape Value and Coastal Preservation Area. As such the proposal is contrary to policies L4 L2 and L3 of the Saved Adopted Torbay Local Plan 1995-2011.

02. The scheme should deliver community infrastructure contributions in line with the Adopted SPD 'Planning Contributions and Affordable Housing', in order to mitigate the impact of the scheme on the local area. The scheme does not secure this and as such it is contrary to the provisions of the SPD and to policy CFS and CF6 of the Saved Adopted Torbay Local Plan 1995-2011.

03. It has not been demonstrated that there is adequate visibility in relation to the proposed vehicular access; as such the development may impact upon highway safety contrary to policy T26 of the saved Torbay Local Plan 1995-2011.

- 4.9 The application the subject of this report (P/2014/0095) was considered at the Development Management Committee of 14 April 2014, the agenda for which is at:

5. Possibilities and Options

- 5.1 When dealing with all planning applications the Council, as Local Planning Authority (LPA) must make its decision in accordance with s.70 of the Town & Country Planning Act 1990 and paragraph 2 of the National Planning Policy Framework (NPPF) in that *'applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise'*.

Whilst the design of the scheme is a good response to the constraints of the site, it nevertheless remains a type and form of development that runs counter to the policy in this area, in principle. There will be a discernible change in the landscape and landform of the site as a result of the development and an apparent intervention in the land as a result of the dwelling being introduced. There are particular exceptions to building in the Countryside Zone set out in policy L4 and these are not applicable to this case of new dwelling in the garden of an existing property.

- 5.2 Whilst precedent is hard to argue in planning cases, the acceptance to the scheme would also signal (in addition to the adjacent decision at Allways) a change in approach by the LPA to the development of dwellinghouses in the Countryside Zone. Such a move would be likely to increase pressure for development to occur in the Countryside Zone to the detriment of its character and function.
- 5.3 Notwithstanding points 5.1 and 5.2 above it is for the Council to decide whether there are material considerations (such as the design and landscaping proposed) that indicate a different decision should be taken in this case. Should this be the conclusion of the Council it is strongly recommended that the decision notice clearly state the reasons why the decision has been taken contrary to its own adopted policy in this case.

6. Fair Decision Making

- 6.1 The planning application has been subject to the public consultation required by planning law, which has included the posting of a site notice and letters to the neighbouring occupiers. The application was heard at the Development Management Committee on 14 April 2014 and further discussions have been held with the applicant's architect. As such the applicant is well advised as to the nature of the Council decision-making process in this case.
- 6.2 Whilst this is a decision to be made on its own particular merits, as with all planning decisions, it is important because it will clarify through this decision what the Council's position in respect of its current planning policy. In this case the decision to refuse or

approve the application is likely to carry a significant level of importance to the future decisions of the Local Planning Authority with respect to residential development in the Countryside Zone.

7. Public Services (Social Value) Act 2012

7.1 The Public Services (Social Value) Act 2012 does not apply to this decision since the proposals do not require the procurement of services or the provision of services for or on behalf of the Local Authority.

8. Risks

8.1 There are risks attached to the decision in this case. Challenges to the way in which the decision was reached could be raised through the Council's complaints procedure and onto the Local Government Ombudsman. Furthermore, a Judicial Review into the Council's decision could be raised. However, so long as the decision is made in accordance with policy and having had regard to other material considerations the Council will not be found guilty of maladministration or be found to have made an unlawful decision. It is imperative that only matters related to planning are considered and that notwithstanding the decision at Allways, this application is dealt with on its own individual merits.

8.2 It is likely that the risks associated with this decision will be reduced as a result of refusing the planning application. This is because such a decision would be in accordance with policy and the applicant will have a right to appeal such a decision.

8.3 If the Council decides to approve the application, there are risks that this could encourage other landowners within the Countryside Zone to submit similar applications. In combination with the adjacent decision at Allways, this has the potential to be perceived as altering planning policy through the decision-making process and not through strategic plan making.

Appendices

1. Development Management Committee Report – 14.04.2014

Additional Information

[Saved Adopted Torbay Local Plan, 1995-2011](#)

[New Torbay Local Plan \(Proposed Submission Plan\), 2012-2032](#)

[National Planning Policy Framework \(NPPF\)](#)