

**Application Number**

P/2018/0837

**Site Address**

Land To Rear Of Broadway  
Dartmouth Road  
Brixham  
TQ5 0LH

**Case Officer**

Mr Alexis Moran

**Ward**

Churston With Galmpton

**Executive Summary**

This is a Reserved Matters application relating to the layout, design, scale and landscaping of one dwelling within a site that has outline approval for up to ten dwellings. It is accompanied by a separate reserved matters application for nine units within the same site.

The site is located within the Churston/Galmpton village envelope.

The siting and layout of the proposed dwelling is considered to be in conflict with trees protected by a tree preservation order, which make up the eastern boundary of the site and make a significant contribution to the character and appearance of the area.

Due to the proximity of the dwelling to the protected trees, there is likely to be future pressure to lop or fell the trees as a result of conflict with the residential amenity of the proposal's future occupiers. The loss or reduction in the canopy of the protected trees would have a significant impact on the landscape character of the area and would be contrary to Policies DE1, DE3, C1 & C4 of the Torbay Local Plan 2012-2030.

**Recommendation**

Refusal

**Site Details**

The site is located to the west of the Dartmouth Road and to the south-east of the Weary Ploughman Public House (a Grade II Listed Building). Churston Grammar School playing fields lie to the west of the site and there is a petrol filling station to the south.

The site is located within an area designated as Countryside Zone, is within the Greater Horseshoe Bats foraging zone and an area known to be used by Cirl Buntings. The Application Site is classed as being of 'low' value to bats and the proposed development will not result in the loss of any features of value for roosting and/or feeding.

A Tree Preservation Order covers the eastern and northern boundaries of the site; these trees are considered to be important to the visual character of the area. The site area measures 0.27 hectares.

The site is located within the Churston/Galmpton Village Envelope in the Torbay Local Plan. This identifies it as an area which could provide appropriate levels of housing provided that it would be in keeping with the density and character of the area.

### **Detailed Proposals**

This is a Reserved Matters application relating to the layout, design, scale and landscaping of one dwelling and associated development.

The dwelling is proposed to be a coach house with two parking spaces and would include a double garage for unit 8 of the associated development, which is the subject of an accompanying application for reserved matters (P/2018/0852) which is a development of 9 units. The dwelling under consideration would be the tenth unit associated with Outline permission P/2015/0097 (Development of up to 10 dwellings and associated infrastructure with all matters reserved other than access, approved 17.08.2015).

The dwelling is shown as being finished in render with artificial slate to the roof.

### **Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

#### Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")

#### Material Considerations

- Emerging Brixham Peninsula Neighbourhood Plan
- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

### **Summary Of Consultation Responses**

Natural England - No objection

## SWW - No Objection

Highways - The Adopted Torbay Highway Design Guide policy states 5 dwellings and over on a new site should be encouraged to be adopted by the LHA, but to date the Developer has not contacted the LHA to prepare a section 38 Agreement with this Council.

The current layout does not show a suitable turning head that conforms with Today's Adoptable Standards.

If the Developer intends to adopt the access road then the proposals are contrary to the above policy.

Arboricultural Officer - Recommendations from previous tree officer for this part of the site still apply to unit 10. These are as follows:

*“The protected trees make a highly appreciable contribution to the character and appearance of the area which is amplified by the flat local topography and paucity of blocking features. They have a readily appreciable and significant public amenity value which makes them worthy of retention in the long term, particularly as they will become more prominent as they get taller and laterally as is likely with the deciduous species into view receptors of increasing separation from the site.*

*Whilst the layout of the rooms could be designed to accommodate the effect of the trees in terms of allowing adequate light from aspects facing the suns path, the detrimental impact on room aspects / external amenity spaces to all other elevations would give rise to compromised living conditions for the occupiers of the property. This is likely to lead directly to pressure for cutting down, lopping or topping of the protected trees with such requests likely to be difficult for the Council to resist. Issues and concerns arising from normal seasonal debris fall, residue onto paved surfaces, washing lines, blocking of gutters, fear of harm from falling parts would amplify to erode the ability of the residents to reasonably enjoy the property.*

*The trees are relatively young in their life spans and will continue to grow vertically and laterally over the subject site towards the path of the sun, seeking to increase and maximise leaf area as edge trees. Continual pressure to remove branches or whole trees will be experienced which would be difficult to defend at appeal given the dense canopy of the trees covering nearly all available amenity space to North West, North and North East elevations of the unit. This partial or full erosion of canopy will lead to highly appreciable reductions to the public visual amenities presently made by the protected trees to the adjacent A road and further view receptors within the largely flat local topography. This will be negative to the visual amenities of road users, existing residents within the local and wider landscape and additionally to any new residents of the scheme*

*excluding those of the 10th unit.”*

Senior Historic Environment Officer - The proposal will not have a detrimental impact on the character or setting of the Grade II Listed Weary Ploughman.

### **Summary Of Representations**

None

### **Relevant Planning History**

P/2018/0852 - Reserved Matters application in relation to P/2015/0097 (Development of up to 10 dwellings and associated infrastructure with all matters reserved other than access.) Under consideration.

P/2016/0772 - Removal of condition re P/2015/0097 (Development of up to 10 dwellings and associated infrastructure with all matters reserved other than access.) Condition 3 - Traffic calming measures. Approved 19.04.2017

P/2016/0206 - Submission of Reserved Matters relating to layout, in relation to P/2014/0687 (Development of up to 10 dwellings and associated infrastructure with all matters reserved other than access) 30.06.2016

P/2015/0097 - Development of up to 10 dwellings and associated infrastructure with all matters reserved other than access. Approved 17.08.2015

P/2014/0687 - Development of up to 10 dwellings and associated infrastructure with all matters reserved other than access. Approved 13.10.2014

Formal pre-application advice provided in May 2014. This related to a residential development consisting of 14 dwellings and associated infrastructure. The Officer response stated that the density of the development would need to be reduced (DE/2013/0137).

### **Key Issues / Material Considerations**

The key issues are:

1. The principle of the proposed development
2. Design and scale
3. Impact on residential amenity
4. Other considerations

1. The Principle of the Proposed Development

The principle of residential use of the land for up to ten dwellings was established by the granting of outline planning permission, which related to access only, under planning reference P/2015/0097.

2. Design, Scale and Layout

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space.

The centres of Churston and Galmpton Villages consist of terraced cottages however the wider area encompassed by the Village Envelope has a varied character in terms of design, dwelling forms and plot sizes.

In the main, the external materials of dwellings within the village envelope consist of render and stone. The proposed dwelling is to be finished in render with UPVC timber effect doors and windows, and artificial slate.

Given the proposal's siting within what may become a new residential development, outside of any conservation area, it is considered that the proposed appearance and design, complies with Policy DE1 of the Torbay Local Plan. With regard to materials, the use of render and timber-effect windows is considered to be acceptable. The use of artificial slate is considered to be out of keeping with the rest of the development approved under Outline P/2015/0097 (the dwellings proposed by P/2018/0852) where natural slate is being proposed. If the proposal was deemed to be acceptable, in order to ensure the quality of the design, it is considered that a condition would be required to ensure the use of appropriate materials.

The layout of the proposal would place the proposed dwelling in very close proximity to the protected trees on the eastern boundary of the site. The Council's Arboricultural Officer has advised that this relationship is not acceptable given the likely conflict between the trees and the proposal's future occupiers. The Council's Arboricultural Officer has advised that the partial or full erosion of the canopy will lead to highly appreciable reductions to the public visual amenities the protected trees offer.

The proposed layout would therefore be contrary to Policy DE1 which promotes the integration of existing trees and landscape features into schemes for dwellings, Policy C1 (Countryside and the rural economy) which states that new development should protect, conserve or enhance the distinctive landscape characteristics and visual quality of a particular location, and Policy C4 (Trees, hedgerows and natural landscape features) which states that development will not be permitted where it would seriously harm, either directly or indirectly, protected trees.

There are two parking spaces below the proposed dwelling associated to it which

would meet the standards required by Policy TA3. However there appears to be insufficient space within the plot for bin storage and cycle parking. Conditions requiring further information to be submitted on these issues was part of the Outline consent and therefore if this application was deemed to be acceptable, these details would need to be submitted at a later date.

The Weary Ploughman public house, which is a Listed Building, is in excess of 50m away from the site. Given this distance it is considered that there would be no unreasonable amenity issues to this building as a result of the development of this site. The proposal would not be of detriment to the character or setting of the Listed Building and would therefore comply with Policy HE1 (Listed Buildings).

### 3. Impact on residential amenity

The proposed coach house complies with the internal floor area standards of Policy DE3 (Development amenity). However it would be above garages for up to 4 cars, 2 of which would belong to a separate unit within the site, there is also an area of hardstanding adjacent to the dwelling which appears to be for car parking. Without having control over the movement of vehicles from the half of the garage which would serve unit 8 and the parking area to the south, there is potential for the future occupiers of the dwelling to be detrimentally affected by noise and disturbance caused by vehicle movements. Furthermore, the need to provide the parking for unit 8 (the dwellings proposed by P/2018/0852) beneath unit 10 would appear to indicate that the proposal would be an overdevelopment of the site.

Policy DE3 has a guideline for garden sizes to be at least 55 square metres. The garden area for the dwelling appears to be located largely under or adjacent to the tree canopies of the protected trees which would not provide a good quality of external amenity space and is likely to lead to future pressure for works to these valuable trees.

Bearing these points in mind the proposal is deemed to be contrary to Policy DE3 of the Local Plan.

### 4. Other Considerations

#### *Neighbourhood Plan*

The Brixham Neighbourhood Plan has recently completed its Independent Examination. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a post-examination draft neighbourhood development plan, so far as material to the application. The most relevant policies for this application are Policies BH3, BH4, BH5 & E7. These policies require development to be of good quality design and to respect the local character in terms of height, scale and bulk and reflect the identity of its surroundings, to provide a good quality of residential environment and to retain and enhance the landscape character of the area. The proposal is not considered to comply with Policy E7 which aims to protect landscape

features such as the protected trees.

#### *Ecology*

This reserved matters application does not result in any further impact on ecology.

#### *Transport and access*

Access details have been approved prior to the submission of this application. Highways have advised that the turning area within the site is not in accordance with the Torbay Highway Design Guide. As such the internal road could not be adopted. However in this instance the applicant wishes for part of the internal road to be private.

#### **S106**

A section 106 agreement was completed as part of the Outline application (P/2015/0097).

#### Community Infrastructure Levy

As the Outline application was approved prior to the adoption of CIL, the legal agreement entered into above is the means for obtaining contributions in relation to the development.

#### Statement on Human Rights and Equalities Issues

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

#### EIA

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

### Proactive Working

In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has attempted to work positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. However in this instance the applicant was unable to comply with Policies de1, DE3, C1 & C4 of the Local Plan and the Council has concluded that this application is not acceptable for planning approval.

### **Conclusions**

The proposal is considered to be unacceptable, having regard to the Local Plan, and all other material considerations.

### **Reason(s) for Refusal**

01. The siting and orientation of the proposed dwelling on the plot in close proximity to protected trees would cause overshadowing of the property and the external amenity area which would result in a poor standard of accommodation for the proposal's future occupiers, contrary to Policy DE3 of the Local Plan. The conflict that is likely to emerge between the protected trees and the proposal's occupiers is likely to result in pressure to lop or fell trees that are protected for their amenity value. The proposal is therefore contrary to policies DE1, DE3, of the Torbay Local Plan 2012-2030.
02. The ground floor parking layout and proximity of the external parking area to the south of the proposed dwelling has the potential to cause an unacceptable level of noise and disturbance which would cause harm to the amenity of the future occupiers of the proposed dwelling. Moreover, the need to provide parking for unit 8 in this location indicates that the proposal would lead to an overdevelopment of the site. The proposal is therefore contrary to Policies DE1 and DE3 of the Torbay Local Plan 2012-2030

### **Relevant Policies**

- DE1 - Design
- DE3 - Development Amenity
- TA2 - Development access
- TA3 - Parking requirements
- H1 - New housing on identified sites
- C1 - Countryside and the rural economy
- C4 - Trees, hedgerows and natural landscape