

**Application Number**

P/2014/0181

**Site Address**13 Greenway Road  
Brixham  
Devon  
TQ5 0LR**Case Officer**

Carly Perkins

**Ward**

Churston With Galmpton

**Description**

Proposed Dwelling house and new access from Orchard Close

**Executive Summary/Key Outcomes**

The proposal is for a single detached two storey dwelling with access to the highway being achieved via Orchard Close. The proposal includes a single storey attached garage to the side of the dwelling.

The proposal is considered acceptable in this location and without serious detriment to residential amenity of neighbouring occupiers or the character or appearance of the locality.

**Recommendation**

Committee Site Visit; Conditional Approval subject to a section 106 agreement / upfront payment, to be signed / submitted within 3 months of the date of this committee or the application be refused for reasons of a lack of such agreement.

**Statutory Determination Period**

8 weeks, the determination date was the 29th April 2014. This date has been exceeded due to the need for further information to be submitted regarding surface water drainage, ecology and trees. An extension to this timescale has been agreed with the applicant/agent.

**Site Details**

The application site is part of the residential garden serving Bearscombe, 13 Greenway Road. Due to the topography of the site and the surrounding area, the site is at a lower level than Barnfield Close to the south and number 11 Greenway Road to the east and at a slightly higher level than properties in Orchard Close which are located to the west.

**Detailed Proposals**

The proposal is for a single detached two storey dwelling with access to the highway being achieved via Orchard Close. The proposal includes a single storey attached garage to the side of the dwelling.

## **Summary Of Consultation Responses**

*Highways Engineer:* Orchard Close is a private road and Highways would not raise any objection to the proposed access on to Orchard Close as there are already more than 5 dwellings served from this road which would be the normal maximum recommended from a private road. 5 of these dwellings are located in Orchard Close and the 6th is the application dwelling 13 Greenway Road which is served in part by Greenway Road and in part by Orchard Close. Whether or not the occupiers have a right of access over Orchard Close is a civil issue. Highways would recommend that the boundary hedge is maintained at a height not exceeding 900mm however if this would not to be implemented Highway would not recommend refusal.

In terms of visibility from Orchard Close on to Greenway Road, 1 additional dwelling would not be considered to significantly impact on highway safety. Parking on the private road and the impact the new dwelling would have on this is not a consideration from a highways perspective.

*Arboricultural Officer:* The Officer's original response raised some concerns regarding the siting of the habitable rooms of the dwelling within the shade path of the densely canopied Beech trees and the potential for requests for felling and/or major pruning in the future if the proposal is approved. In response to this a shade analysis report was submitted and following consideration of this the Arboricultural Officer has stated that the application is suitable for approval on arboricultural merit.

The submitted report and design layout, principally the fenestration, addresses concerns with regard to restricted light level to the property. The presence of the Tree Preservation Order provides a strong element of control over the retention of the important trees which can be further strengthened by way of condition requiring trees to be retained in perpetuity. In addition the tree report submitted contains a tree protection plan reference TPP04076 Rev A and a condition should be included to state that this is installed prior to the commencement of development.

*Drainage:* Details of infiltration tests and detailed design of soakaways should be submitted prior to planning permission being granted. Details of the infiltration tests and detailed design was submitted however the Drainage Engineer raised concerns with the submitted information and requested revisions to the proposed surface water drainage details.

Further details were submitted to the Drainage Engineer and he has stated that providing the soakaways are constructed in accordance with their detailed design and the invert level of the incoming pipework is above the soffit level of the soakaways there are no objections to planning permission being granted for this development.

*Green Infrastructure Coordinator:* The contents of the submitted ecological survey are largely agreed with and several conditions have been recommended in order to mitigate any potential impacts of the development. The conditions relate to:

1. the submission of a method statement for hedgerow translocation and a requirement to replace the hedgerow if translocation is unsuccessful,
2. the submission of further details of the new hedgerow to be planted including species and a minimum 5 year management plan,
3. the submission of further details of the green roof including species,
4. the submission of a method statement detailing the actions required to prevent amphibians/reptiles being injured,
5. the submission of details of bird and bat boxes and informatives to ensure that vegetation removal is undertaken outside of bird nesting season or following a pre-works check by an ecologist to ensure nesting birds are absent.

### **Summary Of Representations**

11 objections have been received. Issues raised:

- Impact on highway safety and parking provision
- Out of character with bungalows in Orchard Close
- Impact on surface water/foul drainage and flood risk
- Impact on biodiversity
- Impact on light
- Concerns regarding right of access and maintenance
- Concerns regarding the setting of precedent
- Overdevelopment
- Loss of garden land
- Impact on residential amenity
- Concerns regarding removal of trees and other vegetation
- Concerns regarding noise
- Concerns regarding to construction traffic

These representations have been copied and sent electronically for Members consideration.

In line with the Site Review Meeting Protocol, a meeting took place on 02.05.2014 and following this meeting Councillors Mills and Pritchard agreed with Officers that the application be considered by the Development Management Committee at the next Committee Meeting of 09.06.2014.

### **Relevant Planning History**

- P/2003/0691           Erection of dwelling and garage with access on to Orchard Close (in outline) WITHDRAWN 09.06.2003
- P/2003/1832           Erection of dwelling with garage and access onto Orchard Close (in outline) REFUSED 31.12.2003

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

The relevant considerations are the standard of the internal environment for potential occupiers, parking provision, the impact on trees and biodiversity, the impact of the proposals on neighbouring residential amenity and the impact of the development on the character and appearance of the locality.

#### *Planning History:*

In 2003 two outline applications were submitted for a dwelling to the rear of number 13 Greenway Road. The first of these two applications was withdrawn and no details as to the reasoning for this are available. The second application, again in outline was refused as 'insufficient detail [was] submitted with the application to demonstrate that the proposal [would] not be contrary to Policies H3, H17 and C11 of the Adopted Torbay Local Plan and Environmental Guide or to Policies H10, L10, BES and BE1 of the Torbay Local Plan 1995-2011 Proposed Modifications and Environmental Guide'.

As part of this application only a site location plan and block plan were submitted and so the principle and impact of the development could not be properly considered leading to the refusal of the application.

#### **Character and Appearance:**

Representations regarding the impact of the proposal on the character and appearance of the area have been received and noted. The proposal is for one detached two storey dwelling with an attached single storey mono-pitch garage.

The design of the dwelling is not significantly different to those two storey dwellings in Greenway Road with the exception of the more modern additions such as sedum roofs and solar panels. Views of the dwelling will be most apparent from the junction of Greenway Road and Manor Vale Road and from this point it is considered that the dwelling will be viewed as part of the two storey character of Greenway Road rather than the bungalow character type of Orchard Close.

The presence of bungalows in Orchard Close and Barnfield Close are noted and these form part of the varied character of the wider area which is not characterised by one single house type. Due to the position of the new dwelling

in relation to the existing two storey dwelling and the clear separation from the bungalows to the west and south by the driveway and the significant change in land levels it is considered that a two storey dwelling in this location is considered appropriate and without detriment to the character or appearance of the locality.

Concerns have been raised regarding the overdevelopment of the site. No standards in terms of recommended densities have been given within the National Planning Policy Framework however it does state in paragraph 47 that housing density should reflect local circumstances. The plots surrounding the site in Orchard Close, Greenway Road and Barnfield Close vary substantially in size from approximately 400sqm to 1900sqm, suggesting that there is no prevailing plot size in this locality. However, the resulting plot sizes of number 13 and the new dwelling are approximately 1200 sqm each which would conform to the mean average plot size in this area.

Notwithstanding that the resulting plot sizes would be on a par with the average, each dwelling would benefit from a generous garden, driveway area and garage and the proposed dwelling is separated from the existing dwellings by a minimum distance of 17m-27m (approximately) and therefore the proposal would not be considered to represent overdevelopment.

Whilst an argument could be made that a development of a smaller dwelling or certainly no dwelling at all would be more spacious, this current arrangement is not considered to result in a cramped form of development given its similarities to the size of neighbouring plots or be to the detriment of neighbouring sites or future occupiers of the site.

Representations have also been received regarding the loss of garden land with reference to garden grabbing. National planning policy does not prohibit the development of residential gardens and only suggests that development of such kind should be restricted where it would be considered inappropriate (such as in more rural locations). In this instance the development would not be considered to result in the overdevelopment of the site nor would it be to the detriment of neighbouring site or the future occupiers of the site, the development would benefit from a separate access to the highway and remain in keeping with the varied character of the locality. Therefore it would be considered to be an appropriate form of development.

### **Residential Amenity:**

Concerns have been raised regarding the potential impact on residential amenity by reason of loss of light, privacy or by reason of being unduly dominant or overbearing. The dwelling has been orientated to face north-west, with number 3 and 3a Orchard Close being located directly north-west of the front elevation and being approximately 21m (minimum distance) away. Whilst the concerns are noted, in light of this distance and the intervening features separating the

dwellings (existing garage, hedgerow and driveway) the proposal would not be considered to result in serious detriment to residential amenity by reason of loss of light, loss of privacy or by reason of being unduly dominant or overbearing for the occupiers of these dwellings.

Number 4 is located south-west of the proposed dwelling and is separated from the application site by the driveway associated with number 4 and a hedgerow within the application site. Proposed windows are positioned so that they do not directly face number 4 and any views in this direction would be offset such that they would not be considered to result in serious detriment to residential amenity by reason of loss of privacy. In addition to this windows are again located approximately 20m (minimum distance) from number 4 which, as the properties are not directly facing each other and due to the presence of intervening features, is considered to be an acceptable distance. Similarly due to this distance the proposal is not considered to result in serious detriment to residential amenity by reason of loss of light or by reason of being unduly dominant or overbearing.

The south-west elevation of the dwelling faces on to the rear boundary of the site and on to Barnfield Close which is located at a higher level than the application site. The south west elevation would face directly on to the turning head associated with Barnfield Road predominantly and the vegetation within the boundary of the application site and number 17 Barnfield Close. Due to the positioning and angle of the dwelling views toward number 19 would be offset.

Irrespective of the orientation in relation to the properties in Barnfield Close, number 17 is separated from the proposed dwelling by approximately 27m and number 19 approximately 17m. Due to the presence of intervening features, the offset nature of the dwellings and the change in land level such distances are considered acceptable and without serious detriment to residential amenity by reason of loss of privacy. Similarly due to this distance and the change in land levels the proposal is not considered to result in serious detriment to residential amenity by reason of loss of light or by reason of being unduly dominant or overbearing.

Numbers 11 and 13 Greenway Road are separated from the proposed dwelling by a minimum distance of 21m approximately (not including the proposed garage). As with other neighbouring dwellings, the orientation of the proposed dwelling prevents any direct overlooking between sites. The separation distance, change in land levels and orientation of plots is considered to prevent serious detriment to residential amenity by reason of loss of light, privacy or by reason of being unduly dominant or overbearing.

**Parking Provision and Highway Safety:**

Number 13 benefits from two accesses, one from Greenway Road and one from

Orchard Close (it is noted that only one of these appears to be used for vehicular access). It has been confirmed by the applicant that the property also benefits from a right of access over Orchard Close to the public highway. A vehicular access from the rear garden of number 13 on to Orchard Close would not require planning permission and could be achieved without consideration by the Local Planning Authority.

Orchard Close is considered to serve 6 properties therefore leading it to exceed the guidance contained with the Council's Highway Design Guide which states that only 5 dwellings should be served via a private drive. This guidance however is not in relation to highway safety, 5 dwellings is referred to because any more than this can lead to potential problems relating to maintenance of such private drives and inconsiderate parking.

In this instance this number has already been exceeded and therefore the Highways Engineer would not object to the proposal for an additional dwelling. In addition to this the National Planning Policy Framework' paragraph 32 states that 'development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe'. In this case one additional dwelling is not considered to have a significant or severe impact on highway safety and therefore in line with comments from the Highways Engineer the proposal is considered acceptable on highway safety grounds.

The proposal includes the provision of 3 off road parking spaces (to include 1 garage space) which is considered sufficient for a dwelling of this size. A condition relating to the retention of parking areas for the parking of vehicles has been included in this recommendation. The proposal also includes a turning area to allow cars to enter and exit the site in a forward gear. Whilst comments regarding the impact of parking on the private drive are noted, this drive is not formally set out as an area for parking and therefore whilst the residents of Orchard House may use the private drive as parking, this has not been formalised and so would not constitute a reason to refuse the application.

Representations about construction traffic have also been noted; however these potential issues are short lived whilst the scheme is in its construction phases and would not constitute reasons to refuse the application. The Applicant is, however, advised to carry out the proposal with consideration for the occupiers of neighbouring properties. Any damage caused to the private drive during the construction process would be a civil issue to be resolved between the relevant parties. It is noted that the applicant has agreed to a deed of covenant to cover the maintenance of the private drive but again this is a civil issue.

The Highways Engineer has made a recommendation that the hedgerow lining the western boundary be kept at a height no higher than 900mm but has confirmed that this is recommendation only that would improve the situation but would not result in a recommendation of refusal if it were not to be carried out. In

light of the benefits this hedge has in terms of visual and residential amenity it is considered appropriate to retain this hedgerow at its current height in order to lessen the impacts of the development.

**Landscaping, Trees and Biodiversity:**

As part of the application, removal of trees and some vegetation is proposed, there is also a tree preservation order covering trees towards the south east corner of the site and the trees subject to this order are not subject to any works as a result of the development. In response to concerns raised by the Tree Officer relating to shading as a result of the trees subject to the tree preservation order, a shade analysis was submitted to the Council for consideration. The submitted report and design layout, principally the fenestration, addressed concerns with regard to restricted light level to the property. In line with the comments from the Tree Officer, the presence of the Tree Preservation Order provides a strong element of control over the retention of the important trees which can be further strengthened by way of condition requiring trees to be retained in perpetuity. In line with these comments the proposal is considered acceptable in terms of its impact on trees within the site.

In light of the need to remove hedgerows and trees an ecological survey has been submitted to support the application. This survey makes recommendations in order to mitigate the potential impacts of the development. The report has been considered by the Green Infrastructure Coordinator who has agreed with its findings and requested the inclusion of conditions if the proposal is considered to be acceptable.

It is noted that some vegetation along the rear boundary of the site has been removed and the applicant has noted that some replanting has taken place. Some detail of this planting has been formally submitted but further information is still required regarding the new planting as specified on the drawings. It is therefore considered necessary to include a landscaping condition to include details of existing trees/vegetation to be retained, planting plans, specifications and future management. This condition will also include further details of boundary treatments and hardstandings to be submitted.

**Drainage:**

It is proposed that surface water drainage be dealt with via soakaways. The Council's Drainage Engineer has requested further details to demonstrate that a soakaway is a suitable option to deal with surface water. Details of surface water drainage were submitted during the process of the application and the Drainage Engineer has stated that providing the soakaways are constructed in accordance with their detailed design and the invert level of the incoming pipework is above the soffit level of the soakaways the proposal is considered acceptable.

It is proposed that foul sewerage be disposed of via a mains sewer or a package treatment plant. The proposal is for one additional dwelling and therefore it is considered that the impact on the capacity of the mains sewer (if this option is pursued) would not be greatly impacted however the ability of the public sewer to accommodate an additional dwelling will be thoroughly considered during the process of a building regulations application.

**Other Issues:**

Representations have been made regarding rights of access over Orchard Close and are noted. However access rights are a civil issue to be resolved between the relevant parties and would not constitute a planning consideration. Representations regarding the setting of precedent have also been noted but would not constitute planning considerations. All applications are considered on their own merits and the acceptability of one scheme does not automatically result in the acceptability of another.

**Conditions:**

In addition to the conditions noted above regarding the retention of parking areas, landscaping, biodiversity and the retention of trees it is also recommended to include a condition relating to the removal of permitted development rights. Whilst at present the proposed dwelling is considered acceptable the inclusion of extensions to the rear and sides of the development may result in a detrimental impact to residential amenity by reason of additional windows, an impact on trees or an undue loss of private amenity space and therefore it is considered necessary to ensure that any additions to the dwelling are subject to planning consideration.

**S106/CIL -**

As part of the application process the proposal has been assessed against the Council's adopted Planning Contributions and Affordable Housing Supplementary Planning Document and subsequent updates ('the SPD'). This requires all appropriate developments to mitigate any adverse impacts they may have, individually and collectively, on the community infrastructure of Torbay. In addition, the application has been assessed against the adopted Council Report 'Third Party Contributions towards the South Devon Link Road', which seeks contributions towards funding the South Devon Link Road (SDLR) where new development impacts on, or contributes to the need for the SDLR.

The following contribution is required, based on the type and size of the development proposed:

## FINANCIAL CONTRIBUTION:

Waste Management	£ 50.00
Sustainable Transport	£3,353.33
Lifelong Learning – Libraries	£ 213.33
Greenspace and Recreation (where no onsite public open space)	£2,113.33
South Devon Link Road (subtracted from sustainable development contributions)	£ 770.00
<b>TOTAL (including 5% admin charge)</b>	<b>£6,825.00</b>
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<b><u>Total with 5% early payment discount (including 5% admin charge)</u></b>	<b>£6,483.75</b>

### **Conclusions**

The proposal is considered acceptable in this location and without serious detriment to residential amenity of neighbouring occupiers or the character or appearance locality. The application accords with Local Plan Policy and relevant paragraphs of the NPPF. The sustainable development contribution is to be paid via a section 106 agreement.

### **Condition(s)/Reason(s)**

01. The development shall not commence until full details of hard and soft landscape works, including an implementation and management plan, have been submitted to and approved in writing by the Local Planning Authority. Details of soft landscape works shall include retention of any existing trees and hedges; details of any translocation (including a method statement and details of replacement hedgerows if translocation is not successful), finished levels/contours; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate. The hard landscape works shall include means of enclosure and boundary and surface treatments. In terms of biodiversity mitigation, details shall include measures for biodiversity mitigation and enhancement, such as retention of hedge and trees where possible, replacement habitat features for any lost, planting schemes of benefit to biodiversity, incorporation of bird and bat box features; information shall also be provided on how these features are to be maintained in favourable condition to support biodiversity. All works shall be carried out in accordance with the approved details and the implementation plan and thereafter maintained in accordance with the approved management plan.

Reason: In the interests of biodiversity and to secure a landscape scheme that will complement the development in the interests of visual amenity in accordance with Policy NCS, NC5 and L9 of the Torbay Local Plan 1995-2011.

02. Prior to the commencement of the development the tree protection shall be installed in accordance with drawing number 04076 TPP 21.01.2014 Rev A and the Arboricultural Impact Assessment Report Aspect ref: 04076 AIA 8.1.14 dated 21.01.2014.

Reason: In accordance with the submitted details and to protect trees in the interests of visual amenity in accordance with Policy L9 of the Torbay Local Plan 1995-2011

03. Notwithstanding condition 1, trees shall be retained in perpetuity in accordance with drawing number 04076 TPP 21.01.2014 Rev A.

Reason: In accordance with the submitted details and to protect trees in the interests of visual amenity in accordance with Policy L9 of the Torbay Local Plan 1995-2011.

04. The development shall not commence until full details of the green roof of the garage including details of species and future maintenance have been submitted to and agreed in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.

Reason: In the interests of visual amenity and biodiversity in accordance with Policy BES, BE1, NCS, NC5 and L9 of the Torbay Local Plan 1995-2011

05. Parking facilities shall be provided and thereafter permanently retained for the parking of vehicles in accordance with the approved plans prior to occupation of the dwelling.

Reason: To ensure adequate parking facilities are provided to serve the development in accordance with Policy T25 of the Torbay Local Plan 1995-2011.

06. Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development of the types described in Classes A, B, C, D, E, F and G of Part 1 and Classes A and C of Part 2 of Schedule 2 (which includes enlargement, improvement or other alteration, porches, sheds, greenhouses, huts, oil storage tanks, fences and walls) shall be constructed (other than hereby permitted, or unless the prior written consent of the Local Planning Authority has been obtained).

Reason: In the interests of visual and local amenity in accordance with Policy H9

of the Torbay Local Plan 1995-2011.

07. Development, including the removal of the pond and any site or vegetation clearance, shall not commence until details of a scheme designed to avoid harming common amphibians and reptiles has been submitted to and approved in writing in advance by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme

Reason: To prevent harm to amphibians and reptiles, such as common toads and frogs, palmate and smooth newts in accordance with Policy NCS and NC5 of the Torbay Local Plan 1995-2011.

08. No vegetation removal shall be undertaken during bird nesting season (March-September) unless a pre-works check is carried out by a suitably qualified ecologist to ensure that nesting birds are absent.

Reason: To prevent harm to nesting birds in accordance with Policy NCS and NC5 of the Torbay Local Plan 1995-2011.

09. Prior to the occupation of the dwelling, the soakaways shall be constructed in accordance with drawing number BS-05 and the invert level of the incoming pipework shall be above the soffit level of the soakaways. The surface water drainage system shall be continually maintained thereafter.

Reason: Reason: In the interests to adapting to climate change and managing flood risk, and in order to accord with saved Policy EPS of the Adopted Torbay Local Plan 1995-2011 and paragraph 103 of the NPPF.

10. Notwithstanding the approved plans, the access to the site from Orchard Close shall proceed in accordance with drawing number BS-01N rev2 received 25 June 2014.

Reason: For the avoidance of doubt in accordance with the submitted details.

### **Relevant Policies**

- H2 New housing on unidentified sites
- H9 Layout, and design and community aspects
- NCS Nature conservation strategy
- NC5 Protected species
- L9 Planting and retention of trees
- T25 Car parking in new development
- EPS Environmental protection strategy
- NPPF National Planning Policy Framework