
Appeal Decision

Site visit made on 13 December 2016

by Andy Harwood CMS MSc MRTPI

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

Decision date: 21 December 2016

Appeal Ref: APP/X1165/D/16/3161326
84 Marldon Road, Torquay, Devon TQ2 7EH

- 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 Peter Ford against the decision of Torbay Council.
 - The application Ref P/2016/0640/HA, dated 28 May 2016, was refused by notice dated 29 July 2016.
 - The development proposed is the addition of a first floor extension above existing rear flat roof extension to form a master bedroom with covered balcony.
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Decision

1. The appeal is dismissed.

Main Issues

2. The first main issue is the effect of the proposal upon living conditions for occupiers of the 2 adjoining neighbouring properties with respect to privacy, the degree of enclosure as well as daylight and sunlight. The second main issue is the effect of proposals upon protected species.

Reasons

Living conditions

3. The appeal site includes a bungalow style property with living accommodation within the roof. A modest dormer in the rear roof slope enables a restricted view from one of the rooms within the roof. From there I could see mainly the rear garden of the site itself but also some parts of the adjoining gardens.
 4. The proposal would involve the creation of a larger first floor with an extension in place of and the same depth as the existing flat roof part of the building at the rear. This would have a pitched roof running perpendicularly into the existing roof. On one side, facing the adjoining property at No 86, there would be a pair of dormer windows. From those windows, it would be possible to look directly towards the patio within that neighbouring garden and also towards the ground floor bedroom windows in the side of that dwelling. A full length glazed door with glazed balcony would also be included in the south elevation at first floor level. Views from the balcony would primarily be towards the rear garden within the site with only restricted views to either side that would not cause significant additional overlooking of the neighbouring properties.
 5. Within the garden of No 86 there is some high planted screening within a
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raised bed that surrounds the patio. This helps to prevent any loss of privacy due to the restricted views from the existing dormer windows at the appeal site. The views from the proposed dormer windows may also be interrupted by that screening. However a planted screen cannot be retained permanently as the plants will die at some point in the future. I cannot impose a condition to require re-planting given the location of the screen outside of the appeal site.

6. Furthermore, the dormer windows would sit in a high position relative to the window in the ground floor bedroom at the side of No 86. Views into this room would be intrusive. Even if the proposed windows were obscure glazed they would loom over occupants using that room bringing a sense of being overlooked. Whilst the users of the room could close curtains to create privacy, during the day that would reduce light within the room and overall this would reduce their enjoyment of the dwelling.
7. The proposed extension would be set away from both side boundaries and would not bring about any significant degree of additional enclosure of the adjoining garden areas. The first floor bedroom in the side of No 82 has a window facing towards the appeal site. The larger bedroom on the ground floor and the dining area which is part of the kitchen also has windows facing towards the site. The dwelling at No 82 is in a skewed position relative to the boundary and the gap between the 2 dwellings is greater at the rear. The gap would be retained. The proposed pitch roof would slope away from No 82.
8. Given the distances involved I do not consider that the general outlook from the side windows within No 82 would be significantly affected. The roof would not bring about a dominating sense of additional enclosure. The effect upon general daylight reaching the side of No 82 would be minor and any loss of direct sunlight would be for a very limited period at the end of the day when the sun comes around to the west. I have not been presented with any daylight or shadowing evidence and have reached this view based upon my assessment of the proposal and the attributes of the site.
9. However, due to a loss of privacy that would be caused I consider the proposal would have a harmful impact upon living conditions for occupiers of the neighbouring property at No 86 Marldon Road. This would not comply with Policies DE1, DE3 and DE5 of the Torbay Local Plan¹ (LP).

Protected species

10. The Council has quoted guidance from a Natural England document regarding the need for bat surveys where buildings have features suitable for bats and nesting birds. I have not been provided with a copy of that guidance, a full reference for it or an objective assessment of why, taking account of that advice, whether this building has such features.
11. Where there is a reasonable likelihood of protected species being present on or near the site, I agree that an ecological survey would be necessary. As well as not describing the features that would attract protected species, the Council has not provided any evidence to indicate what records there may be of bats in the area near to the site.
12. In the absence of any evidence about the reasonable likelihood of protected species being present or the suitability of features at the building for such

¹ Adopted Torbay Local Plan 2012-2030

species, I cannot reach a view that the proposal would have a harmful impact upon protected species. Based upon the information available, it is not clear that the proposal would breach LP policy NC1.

Other Matters

13. A similar development was previously approved by the Council in 1989. Windows would have been in a similar position at first floor level. The appellant has provided me with those approved plans but there is no evidence or acceptance by the Council that those plans could still be implemented. I have reached my own conclusions about the current proposal and do not know all of the material circumstances applicable at the time of the previous planning permission. That old planning permission has little weight in my determination of the current appeal.
14. Although I have not found against the appeal in relation to the second main issue, that is because of the lack of assessment presented by the Council in this case. Given my consideration of the first main issue, the second issue was not decisive and does not outweigh my concerns regarding the impact upon living conditions.

Conclusion

15. For the reasons given above and having considered all other matters raised, I conclude that the appeal should be dismissed.

Andy Harwood

INSPECTOR