
Appeal Decisions

Site visit made on 13 March 2017

by Jacqueline Wilkinson B. Arch, Dip Cons Studies (York) IHBC

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

Decision date: 10 April 2017

Appeal A Ref: APP/P1133/W/16/3165229
32 Devon Square, Newton Abbot, TQ12 2HH

- 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 Jonathon Field against the decision of Teignbridge District Council.
 - The application Ref 16/01402/COU, dated 11 May 2016, was refused by notice dated 3 October 2016.
 - The development proposed is change of use from offices (vacant) to HMO Sui Generis.
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Appeal B Ref: APP/P1133/Y/16/3165233
32 Devon Square, Newton Abbot, TQ12 2HH

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Jonathon Field against the decision of Teignbridge District Council.
 - The application Ref 16/01403/LBC, dated 11 May 2016 was refused by notice dated 4 October 2016.
 - The works proposed are internal and external works in connection with change of use from offices to HMO Sui Generis.
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Decisions

1. The appeals are dismissed.

Procedural matters

2. A rear extension has been built and works to replace windows have been carried out, which were approved in connection with a change of use to a single dwelling¹. The proposed use as a house in multiple occupation (HMO) for 10 people has also commenced. I have assessed these appeals on the basis of the submitted plans as listed in the officer's report. Any differences between the work as built and the submitted plans is a matter for the Council and is not within the scope of these appeals. The appellant has confirmed that plan 591-31A (which refers to another site) is to be taken as an example of the detail for the window treatment to the basement area of the building. I have also assessed this appeal on the basis that plan 2016-DS02-07D is amended by plan 674-05, with respect to the layout of the first floor front bathroom.

¹ Ref 16/00569, 16/00521/LBC

3. Further plans were attached to the appellant's final comments. However, new information cannot be accepted at this late stage in the appeal process as this would disadvantage the other parties to the appeal.
4. I have amended the description of the application for listed building consent to reflect the fact that the listed building consent is required for the works, not the change of use.

Main Issues

5. The main issues are i) whether the proposed change of use and works would preserve the listed building or any features of special architectural or historic interest which it possesses and ii) the whether the character and appearance of the Newton Abbot Conservation Area would be preserved and iii) the effect on the living conditions of the adjacent occupiers at 33 Devon Square in terms of privacy and disturbance.

Reasons

Listed building

6. The Heritage Statement impact analysis and the associated photos of the property before the works, indicate that the work required to upgrade the building to an HMO would be carried out in a non-intrusive manner. The existing features, such as cornices, fireplaces and historic internal joinery would all be retained. The conversion of the first floor landing room to a single bathroom would retain the spatial character of this room whilst providing modern facilities at the upper level.
7. The main area of dispute is the proposed work to the basement area to subdivide it into two rooms, each with an en-suite bathroom. This area was likely to have been a cold cellar, possibly for coal, but further research to find the historic plans would be needed to establish this. The Council's "before" photos show a relatively plain set of white washed rubble walls with some evidence of low lathe and plaster ceilings and a cobbled floor surface. There was an office file store and plinth, now removed. The appellant states that the simple open tread stair would be retained but there is no information about whether the lathe and plaster ceilings would be retained.
8. The impact on the historic significance of this cold cellar is from its subdivision into two rooms and the extensive works required to bring it up to habitable conditions.
9. The subdivision of the space into two units with en-suite shower rooms would alter the plan form of the cellar, which would harm the significance of the building as a high status mid-nineteenth century home, with an "upstairs and downstairs" hierarchy of functions. Whilst one en-suite would occupy a small corridor off the main space, the other en-suite would obscure the legibility of the original cellar space. The removal of the tin covers to the light wells would be a benefit. As the office store room did not divide the room completely into two, the single space would have been still legible. Its removal therefore would only be a small benefit.
10. The service runs and extracts to the en-suites and upstairs bathroom would need to be sensitively inserted into the structure to avoid harm to the fabric of the building, but this could be the subject of a condition. However, damp

proofing systems vary widely in their approach and effectiveness. Some damp proofing systems can require significant excavations well below floor level. The impact on the fabric of the building, such as the historic cobbles, the floor joist ends (from vertically displaced moisture) and the adjacent cellars (through horizontal displacement of moisture) over the longer term needs to be clearly understood. Fundamentally this type of alteration would permanently obscure the original materials, in this case the rubble walls and cobbled floors.

11. As there are no details of the proposed damp proofing, I cannot make an informed assessment of the impact on the historic fabric through the movement of moisture and this matter is too important to leave to a condition. The appellant points out that the use of this room has been made clear from the start, but this does not preclude the need for listed building consent for the works.
12. I am not persuaded that subdivision of this room has been fully justified or that a compelling case has been made for its conversion to full habitable standards. I cannot therefore conclude that the proposed works would preserve the listed building or any features of special architectural or historic interest which it possess, as required by section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Conservation area

13. Concerns have been expressed about the lack of parking, but this is a highly sustainable location where the use of a car would not be essential. There would be nothing to prevent the future occupiers of the HMO from owning a car, but this in itself would not affect the character or appearance of this mixed commercial/residential locality. The Council has not refused this proposal on the basis of its lack of car parking and the use of the private car park opposite the appeal site is a private matter.
14. Waste bin storage is shown at the front of the building and I accept that other properties have this arrangement. However, this is a negative feature which has harmed the attractive forecourts of these listed buildings and in turn this affects the character and appearance of the conservation area. The number of bins/recycle bins has not been stated and there is no information with the application about the waste/recycling management for the building. The use of the appeal frontage for an unspecified level of waste/recycling storage would unacceptably harm the setting of the building. I do not accept the appellant's point that 10 adult occupiers would be no different to a large family. 10 adults are likely to generate significantly more waste/ recycling material than a family of two adults with two or three children, which is a normal family size.
15. The use of the rear alleyway has been suggested, which could be required by condition. However, I have concerns about the practicality of using this narrow, sloping and unsurfaced alleyway for the significantly increased levels of activity. Information would be necessary about where the bins/recycling containers would be placed on collection days and how, when and by whom they would be brought back in. Whilst there would be a place for them at the end of the right of way, there is no evidence that the owner of the land would consent to this arrangement. The size of the cycle parking requirement has not been quantified and as cycles would be the main mode of transport, they should be covered and secure. An outdoor drying line would be essential in order to discourage the hanging of washing in rooms, the cumulative moisture

from which would affect the fabric of the building in the longer term. These matters are too important to be left to a condition as they would have a direct impact on the rear garden area.

16. Two raised areas have been made in the rear garden, but these are not shown on the application plans. One is fenced and its function is not clear. A planning condition could require levels over the rear garden area to be set as part of a landscaping scheme to be approved. However, the garden area is relatively small. I am not persuaded by the evidence before me that the garden would have sufficient capacity to store all waste and recycling for the 10 adults occupying the building, a clothes line and their essential secure cycle storage, in addition to providing the only communal amenity space for all the occupiers of the HMO and their visitors apart from the small kitchen.
17. The rear garden was historically intended to be for low key domestic amenity use. The comings, goings and gatherings of the residents and the associated paraphernalia and structures would be at odds with the tranquil garden setting of the listed buildings and the character and appearance of the conservation area.
18. I therefore conclude that the proposal would fail to preserve the setting of the listed building and the listed adjacent properties, contrary to the requirements of section 66 of the Act. It would also fail to preserve the character or appearance of the Newton Abbot Conservation Area, contrary to the requirements of section 72 of the Act and policy EN5 *Heritage assets* of the Teignbridge Local Plan 2013, which accords with similar requirements set out in section 12 of the National Planning Policy Framework (the Framework).

Living conditions

19. Although not raised by the Council, the effect on their amenity has been raised by the occupiers of the adjacent property, 33 Devon Square.
20. The gardens along this side of the Square step down towards the north. The garden and garden level rooms of 33 are set below the level of the garden at 32. There is also a first floor bedroom facing over the appeal site garden. There is a wall between the two gardens and it is possible to look over it if the viewer comes close up to the wall. However, it would be possible to devise a sensitive method of preventing people from gaining close access to the wall whilst not significantly overshadowing the garden at 33 and a planning condition could require this.
21. That said, the lack of any internal communal areas apart from the small kitchen for the future occupiers of the HMO gives rise to my concern that the proposal would significantly increase the pressure on the limited garden space and would intensify the use of the rear garden. This would be particularly noticeable at weekends and in the evenings. This activity would be likely to cause undue disturbance to the residential occupiers at 33, over and above the usual level of mutual impacts experienced between single family dwellings. Whilst in theory the building could have had a greater number of staff when in use as an office, in practice this is unlikely and the employees would not have used the garden so intensively and not at all at night or on the weekends.

22. I therefore conclude that the proposal would fail to secure a good standard of amenity for the existing adjacent occupiers at 33, as required by paragraph 17 of the Framework.

Discussion and conclusions

23. The appellant points out that the County Council states that the residents' parking scheme is over-subscribed, so a permit could not be obtained. He makes the case that a single family use of this building would not therefore be viable, due to the lack of on-street parking. However, the Officer's report refers to the possibility of one permit being issued for a single family dwelling, so I am not persuaded that there is no likelihood of the building being used for such an occupation.
24. Suggested benefits arising from the previous approval, such as the replacement of unsympathetic windows, do not weigh in favour of this proposal, as they have already been delivered as part of the approved and now built scheme. I exclude general redecoration and repair from the balance, as this as this would be a normal part of any proposal. The replacement of a door and 20c door furniture would be a small and very limited benefit.
25. I conclude that the subdivision of the cellar for habitation would harm the significance of the plan form of the building. Due to lack of information about the alterations to the cellar area I cannot conclude that the proposed works would not harm the fabric, and therefore special interest of the listed building, as required by the Act.
26. I also conclude that the use of the forecourt for an unspecified level of waste/recycling storage would harm the setting of the listed building and the character and appearance of the conservation area. Alternatively, the use of the rear garden for waste/recycling storage, cycle storage and clothes drying, as well as being the only amenity space for the future 10 HMO occupiers, would harm the domestic garden setting of the listed building and its listed neighbours and the character and appearance of the conservation area. I have also concluded that this intensification of use would also be likely to lead to an unacceptable level of disturbance to adjacent occupiers at 33 Devon Square.
27. It has not been clearly demonstrated that the use of the building as an HMO for 10 people would represent the optimum viable use for the listed building. This type of accommodation would serve a need for single person's accommodation, but this would only be a small benefit to the housing mix in the district. I am required by paragraph 132 of the Framework to give great weight to the conservation of heritage assets. I therefore conclude that there would be no public benefits arising from the proposal which would outweigh the harm caused to the significance of the listed building and the character and appearance of the conservation area I have identified above.
28. For the reasons given above I conclude that the appeals should be dismissed.

Jacqueline Wilkinson

INSPECTOR