
Appeal Decision

Site visit made on 6 June 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 12th June 2017

Appeal Ref: APP/X1165/W/17/3168007

3 Dendy Road, Paignton TQ4 5DB

- 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 Mark Mills against the decision of Torbay Council.
 - The application Ref P/2016/1051/PA, dated 16 September 2016, was refused by notice dated 22 December 2016.
 - The development proposed is for the change of use of current office spaces into a 10 room HMO for keyworkers and rear single storey extension.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of current office spaces into a 10 room HMO for keyworkers and rear single storey extension at 3 Dendy Road, Paignton TQ4 5DB in accordance with the terms of the application, Ref P/2016/1051/PA, dated 16 September 2016, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: L01; L02; EX01; EX02; EX03; EX04; GA01; GA02; GA03, and; GA04.
 - 2) Within 3 months of this permission, details of surface water drainage shall be submitted to and approved in writing by the local planning authority. The details shall include evidence of how surface water will be dealt with in order not to increase the risk of flooding to surrounding buildings, roads and land. Unless otherwise agreed in writing by the local planning authority, the submitted scheme shall ensure that all off site surface water discharging from the development shall be limited to the "Greenfield" run off rate for the 1 in 10 year rainfall event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus a 30% allowance for climate change.

The residential units shall not be occupied until the approved surface water drainage system has been completed as approved and it shall be retained thereafter.
 - 3) Before the first floor deck hereby approved is brought into use, a 1.7 metre high obscurely glazed privacy screen, obscured to an equivalent no less than Pilkington Level 3, shall be fitted along the full length of both the western and eastern flank elevations of the deck. The privacy screens shall be permanently retained in that condition thereafter.
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Procedural matters

2. Although works to extend the appeal property as proposed have not yet commenced, internal works to convert some of the rooms to en-suite bedrooms have started. I was able to inspect some of the completed rooms during my unaccompanied site visit.

Main Issues

3. The main issues are the effects of the proposed development on:
 - the level of Houses in Multiple Occupation (HMOs) in the area;
 - the character and appearance of the area, including the setting of the Old Paignton Conservation Area; and
 - the living conditions of occupiers on Nos 1 and 3 Dendy Road in terms of outlook and privacy.

Reasons

HMO levels in the area

4. The proposal would see the conversion of the existing two and a half storey office building and former dwellinghouse to a 10 room HMO for keyworkers together with a single storey rear extension with terrace above. The site lies adjacent to the Old Paignton Conservation Area. Although the street contains a mix of uses, the significant overriding character is one of a residential street branching from the town centre.
5. Dendy Road lies within a town centre ward in the seaside resort that has been identified as the 10% most deprived Lower Layer Super Output Area (SOA) in the Indices of Deprivation 2015 and also within the 10% most deprived area in the Living Environment domain, which encompasses housing quality. Policy SS11 of the Torbay Local Plan (TLP) has identified the town centre area as a Community Investment Area (CIA) in recognition of the existing levels of deprivation and related social issues, seeking amongst other things the provision of new homes that help secure a mixed and balanced community.
6. The explanatory text to TLP Policy H4 explains that HMOs form about 2.3% of the housing stock in Torbay compared to the national rate of 1.6%. There is concern that such large numbers of HMOs or those that are badly managed can aggravate levels of deprivation and lead to a situation that undermines the tourism offer locally and impede regeneration of resort areas such as Paignton. Policy H4 itself is a criteria based policy with criterion 4 stating that applications for HMOs will only be permitted where they do not lead to an over-concentration of similar uses. In the consideration of the issue of 'development amenity', Policy DE3 also identifies that the scale and nature of the use will be assessed in order to prevent over-concentration of similar uses which would harm the amenity of the area.
7. The appellant suggests that the Council's concerns also include those connected with the "standard" of accommodation proposed. However, there is nothing either within the reasons for refusal or the planning officer's report that would identify this aspect as a main issue. Instead, from what I have gleaned from the evidence, the principal concern relates to whether the proposal would

lead to an over-concentration of similar uses and exacerbation of local social problems.

8. In this respect, the Council has relied principally upon the evidence used to support TLP Policy H4, which is of a strategic Council-wide nature. The appellant draws his evidence from a wide range of Council documents¹. There is little argument between the parties that HMOs can provide an important and essential source of available and affordable housing choice within the private housing sector and that it is the over-concentration of such accommodation in a specific location that is most likely to impede the creation of mixed and balanced communities.
9. According to the appellant, whilst the level of HMOs in Torbay, taken as a whole, is in excess of the national average, when the figures for Paignton itself are broken down as a percentage of Torbay's total housing stock, the levels equate to 0.4%. Moreover, using data from the Council's HMO register and planning portal, the appellant contends that there are no other HMOs on Denby Road itself, whilst the four nearest registered HMO are located between 250m and 600m from the appeal site and are not inter-visible given the urban built-up nature of this part of Paignton.
10. From my own observations of Dendy Road and surrounding streets, I share the appellant's view that there are no obviously recognisable HMOs in the immediate area. Nevertheless, using the appellant's calculations, which are not contested by the Council, at some 0.4% of the total housing stock of Torbay, levels appear considerably below the point at which community imbalance would occur.
11. For these reasons, I therefore conclude that the proposed development would not result in an over concentration of HMOs in the area. As a result, the proposed development would not adversely affect community balance and would accord with policies H4, SS11 and DE3 of the Torbay Local Plan.

Character and appearance including setting of Conservation Area

12. Beyond the one-way street, largely a service lane, to the rear of the appeal property lies the Old Paignton Conservation Area (CA). Although I have not been supplied with any description or appraisal of the CA as part of the appeal, from my own observations, the area is characterised by a medieval layout within the town's core extending to wider and planned formal street patterns of distinctly Victorian properties containing many unaltered buildings and shop-fronts. The appeal property incorporates some of the features found on buildings throughout the CA, including a bay window to the front elevation and brick detailing. However neither the appeal property nor its neighbours along Dendy Road epitomise the grandeur of many of the 19th century buildings within the CA and are altogether modest by comparison.
13. The proposal would involve the provision of 10 units of accommodation over three floors and include the erection of a rear extension measuring some 9.3m in depth extending close to the rear boundary beyond which is a separately owned private parking area with access from the one-way street that serves the mixed use properties on Victoria Street as well as several of the semi-detached properties fronting Dendy Road. Shared kitchen and dining facilities

¹ See Appendices to the Appellant's Statement of Case (Mark Evans Planning – January 2017)

would be provided while two units would also share a bathroom with all others having en-suite facilities.

14. As part of the rear extension, an outside terrace would be formed within the structure at first floor incorporating screen fencing on the one side and opaque glazed panels on the other. The Council's concerns relate to the effect of the extension on the character and appearance of the area when viewed from the public realm. However, given that a parking area separates the rear curtilage from the service lane to the rear, only glimpsed views would be possible from this road. Moreover, from what I observed, there is a plethora of extensions and outbuildings that form the rear curtilages of buildings fronting both Dendy Road and Victoria Street. This gives the street a relatively incoherent built environment with the various clutters of buildings to the rear also further limiting direct views of the rear of the appeal property.
15. Nevertheless because of the elevated nature of the screen fencing in particular, I would agree with the Council that this aspect of the extension would have a significantly harmful effect on the character and appearance of the area. In response, the appellant has suggested an alternative solution that could be conditioned were I in a position to allow this appeal. This would involve either deleting part of the screen fencing along the western elevation or replacing such in its entirety with opaque glazed screening to reflect what is currently proposed on the eastern elevation. I would accept that this latter solution would help lighten the appearance of the screening on this side of the extension.
16. Subject to an appropriately worded condition relating to the screening aspect, I would conclude that the proposed development would not adversely affect the CA's setting or be significantly harmful to the area's character and appearance. Accordingly, the proposal would comply with TLP Policies DE3 and DE5. These policies seek to ensure that new developments including extensions are designed to not unduly impact upon the amenity of neighbouring uses or have adverse effects on the character or appearance of the street scene in general.

Living conditions

17. The Council's concerns relating to the third main issue include the likely changes both to the outlook from No.5 Dendy Road and to privacy levels enjoyed by occupiers of No.1. As noted above the appellant has offered to replace the screen fencing along the west elevation with an opaque glazed screen. This in my view would reduce the massing effects arising from a fence constructed above the eaves of the extension. From No.5 the presence of an essentially single storey extension would not be overly oppressive and would not therefore harm the living conditions of occupiers of the neighbouring property at No.5.
18. In addition, I am satisfied that a 1.6m high privacy screen would prevent downward views towards either property, in particular the existing side windows and rear garden area to No.1.
19. As a consequence, taking all matters into consideration and subject to a condition that specifies the revised details of screening, I conclude that the proposed development would not significantly harm the living conditions of occupiers of either no.1 or No.5 Dendy Road. By reaching this conclusion, I am satisfied that the proposal would comply with TLP Policies DE3 and DE5 which

combine to ensure that new developments, including extensions, do not impact unacceptably on existing living conditions of neighbours, including through overlooking or overbearing impact.

Conditions

20. The Council has suggested two conditions that have been assessed against the use of planning conditions set out in the Planning Practice Guidance. To provide certainty a condition is attached specifying approved plans. In addition, a condition is included that requires prior approval by the Council of a sustainable surface water drainage scheme and its subsequent implementation in accordance with the TLP and having regard to the site's location within a Critical Drainage Area. In the interests of character and appearance together with the protection of living conditions, a condition is included that requires the implementation of the revised method of screening of the first floor decking area.

Conclusion

21. For the above reasons and having regard to all other matters raised, I conclude that this appeal should be allowed.

Gareth W Thomas

INSPECTOR