
Appeal Decisions

Site visit made on 19 December 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 10th January 2018

Appeal A: Appeal Ref: APP/P1133/W/17/3180393
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 Jonathan Field against the decision of Teignbridge District Council.
 - The application Ref 16/03175/FUL, dated 29 November 2016, was refused by notice dated 29 June 2017.
 - The development proposed is change of use of offices to House in Multiple Occupation (Revised application - 8 letting rooms).
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Appeal B: Appeal Ref: APP/P1133/Y/17/3180394
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 Jonathan Field against the decision of Teignbridge District Council.
 - The application Ref 16/03176/LBC, dated 29 November 2016, was refused by notice dated 28 June 2017.
 - The works proposed are internal and external works in connection with change of use of offices to House in Multiple Occupation (Revised application - 8 letting rooms).
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Decisions

1. The appeals are dismissed.

Procedural Matters – both appeals

2. There is an extensive planning history on the appeal site and both parties have referred to previous appeal decisions¹ in relation to proposal to convert the building to a house in multiple occupation for 10 occupants. I have taken this decision into account in my reasoning below.
3. It was clear from my site visit that the proposed change of use has been implemented and that works have been carried out on the appeal building. The proposal would involve works that differ to that carried out previously. The appellant has also included amended and additional detail/information that was submitted to the Council. However, the Council did not accept those documents as interested parties would not have had the opportunity to comment on them before the agreed date for determination.

¹ APP/P1133/W/16/3165229 & APP/P1133/Y/16/3165233 – 10 April 2017

4. The appeal process should not be used to evolve a scheme. The additional detail involves revisions that are not of a minor nature and as such I cannot guarantee that no party would be prejudiced by my consideration of its content. Therefore, I have not taken it into account in the determination of this appeal. I have based my decision on the submitted plans that are indicated on the Council's decision notices. I have also taken into account the submitted Planning, Design and Access and Heritage Statements.

Main Issues – Appeal A

5. The main issues in this appeal are:-
- Whether the proposed development would preserve the listed building or any features of special architectural and historic interest it possesses or its setting and whether any harm is caused to the significance of the designated heritage asset; and
 - The effect of the proposal on the character and appearance of the Newton Abbot Town Centre, Courtenay Park and Devon Square Conservation Area; and
 - The effect of the proposal on the living conditions of the occupiers of 33 Devon Square with regard to noise and disturbance.

Main Issue – Appeal B

6. The main issue in this appeal is whether the works would preserve the listed building or any features of special architectural and historic interest it possesses or its setting and whether any harm is caused to the significance of the designated heritage asset.

Reasons

7. The appeal building is a mid-terrace dwelling and the whole terrace is a grade II listed building. The site is within Newton Abbot Town Centre, Courtenay Park and Devon Square Conservation Area (NACA) and is surrounded by a mix of uses including a children's day nursery, orthodontist and podiatry practices and residential. St Paul's Church and its associated churchyard are opposite the appeal site. The Council's decision notice refers to the NACA Character Appraisal but I have not been provided with a copy of that document and as such I give it little weight.
8. I am mindful that the property can be used as a HMO for up to six residents without the need for planning permission. This constitutes the fallback position in relation to Appeal A. However, the works associated with the conversion of the building to a HMO, regardless of the number of occupants, are highly likely to require listed building consent. As such, I give this matter limited weight.
9. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) require special regard to be had to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.

Listed building – both appeals

10. Paragraph 132 of the National Planning Policy Framework (the Framework) advises that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. The glossary to the Framework states that the setting of a heritage asset comprises the surroundings in which it is experienced and that different elements of that setting may either make a positive, negative or neutral contribution to its significance.
11. The list description states that the terrace dates from the mid-19th Century. From the details available to me I consider that the significance and special interest of the listed building is largely derived from its age, form, fabric, architectural features and association with the Courtenays and J W Rowling. The significance of the terrace is experienced from Devon Square and from within the curtilages and the rear garden areas of each of the individual properties that form part of the terrace. As such, the rear gardens and the front forecourt areas make a valuable contribution to the setting and the significance of the listed building.
12. The proposal involves the use of the building as a house in multiple occupation (HMO) for 8 occupants. The previous appeal decision involved the use of the cellar to provide rooms for an additional 2 occupants and those works appear to have been carried out. The cellar is shown as a tenant's storage room on the submitted drawings. Four rooms on each floor are used as rooms for each occupant and they all appear to have a small 'kitchen area' that consists of a fridge, kettle and microwave. The main communal kitchen is on the ground floor and three bathrooms would be at first floor level within a modern extension at the rear of the building. A fourth bathroom is also at first floor level but it is accessed off the main landing area.
13. The development/works that has been carried out on the ground and first floor levels appear to have retained many of the appeal building's architectural features including doors, windows, stairs, fire surrounds, architraves and skirting. An altered internal door has been replaced with a sympathetic alternative and door furniture in keeping with the style of the building has been used throughout. The subdivision of the cellar that has been carried out would be reversed.
14. Nevertheless, there is little information provided in relation to the works, including any damp proofing, that have been carried out within the cellar or how those works are to be reversed. I note that the previous Inspector stated that *"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"*. However, there is little evidence of any historic fabric remaining in the cellar area as the walls, ceiling and floor presently appear to constitute modern plaster and floor coverings.
15. The previous Inspector stated that *"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.... 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."*

16. I consider that this finding is persuasive and without those details the potential harm from the conversion of this part of the building to form part of the HMO has not been clearly and convincingly justified. Moreover, even though the windows would provide some ventilation to the cellar there is no indication that this would be sufficient to reduce the impacts of damp on this room as a habitable space without other method of damp proofing.
17. Given my findings below in relation to the character and appearance of NACA I consider that the evidence before me fails to demonstrate that the proposal would not harm the setting of the listed building.
18. Taking into account all of the above, there is insufficient evidence to indicate that the proposal would not harm the special interest and setting of the listed building. Consequently, it would be contrary to the expectations of the Act.
19. In this case I conclude that the harm caused to the designated heritage asset, would be, in the context of the significance of the asset as a whole and in the language of the Framework, less than substantial. In those circumstances, paragraph 134 of the Framework says that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. I will return to this matter below.

Conservation Area – Appeal A

20. The character, appearance and significance of the part of NACA that the appeal site is within appears to mainly derive from the historic buildings that it contains together with its use of materials, pattern of development and the relationship of buildings to the spaces around them. The formal stucco terraces of Devon Square and their forecourts create an attractive townscape in combination with St Paul's Church and its churchyard.
21. A number of the small forecourts at the front of the terrace, containing the appeal building, do have waste bins stored within them. The waste bins do not form an attractive feature and they harm the attractive townscape that forms part of the character, appearance and significance of this part of NACA. At my site visit there were waste bins stored in the forecourt of the appeal building and recycling bins stored in the rear garden. The appellant has stated that all the bins could be stored in the rear garden and the '*rear lane*' used to put the bins out for collection on Devon Square.
22. A waste management strategy could be required by a planning condition if I was minded to allow the appeal. However, the use of the '*rear lane*' would require substantial works to enable it to be used effectively for the transportation of the waste bins on a regular basis. At the present time it has a significant slope, is unsurfaced and substantially overgrown. There is little evidence to indicate that it is likely that the appellant would be able to implement this. As such, I consider that it is highly likely that the waste bins would continue to be stored in the front forecourt.
23. The rear garden presently contains 2 raised areas one of which is surrounded by a timber balustrade. The submitted plans indicate that the timber balustrade is to be replaced by planting but there is no indication of any proposals for the other area. I noted that a rotary washing line has been installed in the garden. The landscaping of the garden including finished

ground levels could be controlled by planning condition if I was minded to allow the appeal.

24. Nevertheless, as stated by the previous Inspector, cycle storage should be covered and secure and that is not part of the proposal before me. The recycling bins are open topped and to ensure the containment of the material in those bins they should be stored within a structure. It may be possible to construct a structure within the rear garden to house both the cycles and recycling bins. However, due to its potential impact on the character and appearance of NACA and the setting of the listed building it would not be reasonable to require this as a planning condition.
25. The previous Inspector stated that *"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"*. I acknowledge that the previous use of the appeal building was as offices and that the adjacent building is now used as a children's day nursery. However, these uses would mainly occur on a weekday and any activity by children in the garden would be likely to be for short periods of time. Furthermore, given my conclusion on living conditions below I consider this finding remains convincing.
26. Taking into account all of the above I consider that it has not been demonstrated that the proposal would preserve the character and appearance of NACA. Consequently, it would be contrary to the expectations of the Act. In this case I conclude that the harm caused to the designated heritage asset, would be, in the context of the significance of the asset as a whole and in the language of the Framework, less than substantial. In those circumstances, paragraph 134 of the Framework says that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. I will return to this matter below.

Living Conditions- Appeal A

27. Each room for the individual occupants is generous in size and could be used for socialising with a small number of people. However, as they are the only private spaces for the occupants they are unlikely to be used on a regular basis for communal socialising. The appellant has stated that the cellar could be used as a communal living room. Nevertheless, due to my findings in relation to the lack of evidence in relation to damp proofing it has not been demonstrated that this room could be used as a habitable space.
28. As stated above the past use of the appeal building and the adjacent children's day nurse would occur mainly on a weekday. The adjacent property, 33 Devon Square (No 33) is used as a dwelling and there appear to be habitable rooms and a rear garden in close proximity to the garden of the appeal building. It is highly likely that a 6 person HMO (the fallback position) would only require a maximum of 6 individual rooms for occupiers. As a result, there would be rooms available to be used for communal living space thereby reducing the intensity of use of the garden area.
29. Whereas, the potential impact of the development upon the occupiers of No 33 is intensified by the close proximity of the appeal site and the presence of only one internal communal area, the kitchen/diner, for the residents and their

visitors. In such circumstances, it is reasonable to consider that residents of the HMO and visitors are likely to use the rear garden more intensively than a typical family terraced house or the fallback position. This could result in increased noise and disturbance externally which would be harmful to the existing living conditions of the occupiers of No 33.

30. There is no evidence to indicate that any soundproofing has been undertaken within the property. As each individual occupier's room would be used as their main living space these rooms would be used more intensively than the rooms in a family dwelling. These rooms especially those on the first floor are likely to be adjacent to bedrooms in No 33. As such, there is the potential for noise and disturbance to occur to the occupiers of No 33.
31. In my experience the solid wall construction of many historic buildings can provide sufficient noise insulation without additional means being required. However, there is no evidence before me to indicate that this would be applicable in this case. As the application of sound insulation could have a harmful impact on the architectural features of the building I do not consider that it would be reasonable to leave this matter to a planning condition.
32. In conclusion, I consider that taking into account the intensity and nature of the occupation as an 8 person HMO the use could result in a level of noise and disturbance that would result in unacceptable harm to the living conditions of the occupiers of No 33. Consequently, the proposed development would conflict with Policy S1 of the Teignbridge Local Plan (LP) which seeks, amongst other things, development to perform well in relation to the impact on the residential amenity of existing dwellings. The proposal would also conflict with paragraph 17 of the Framework which seeks to secure a good standard of amenity for all existing occupants.

Overall Balance and Conclusion

33. The appellant considers that the use of the building as a single residence would be untenable due to the limited availability of parking in the vicinity of the site. However, from the evidence in front of me it appears that there are single family residences within the listed terrace even though the majority of uses are commercial. Therefore, I am not convinced that its use as a single dwelling is not viable.
34. It has not been demonstrated that there are no other viable uses for this building. Advice in the Planning Practice Guide states *"If there is a range of alternative viable uses, the optimum use is the one likely to cause the least harm to the significance of the asset, not just through necessary initial changes, but also as a result of subsequent wear and tear and likely future changes"*. I have found that it has not been demonstrated that the proposal would preserve the significance of the designated heritage assets. As such, I do not consider that the proposal represents the optimum viable use of the property.
35. I note that the previous Inspector stated that *"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". I have no reason to disagree with these findings.

36. The appeal proposal would add to the housing supply of the area as part of a range of housing that meets the needs of local people and different groups in the community. However, due to the overall size of the proposal this benefit would be modest.
37. I have found that the proposal would result in less than substantial harm to the designated heritage assets. I must attach considerable importance and weight to these considerations when reaching my decision. The public benefits attributable to the proposal would not outweigh the considerable importance and weight to be given to the harm to the heritage assets. As such the proposal would not comply with paragraph 134 of the Framework.
38. It would also conflict with LP Policies S1, S2 and EN5 which together, amongst other things, seek development that takes account of and maintains and integrates with the character, appearance and historic interest of settlements and buildings particularly heritage assets. I have also found that the proposal would harm the living conditions of the occupiers of No 33 and would conflict with LP Policy S1 in that respect.
39. In accordance with S38(6) of the Planning and Compensation Act 2004, and as set out in paragraph 12 of the Framework, development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. In this case there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
40. Therefore, for the reasons given above, and having regard to all other matters raised, I conclude that both appeals should be dismissed.

D. Boffin

INSPECTOR