



Appeal Decision

Site visit made on 16 July 2019

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2019

Appeal Ref: APP/X1165/W/19/3227577

18 Upton Hill, Torquay TQ1 3EW

- 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. A. Butterworth against the decision of Torbay Council.
 - The application Ref P/2019/0055, dated 14 January 2019, was refused by notice dated 6 March 2019.
 - The development proposed is for a conversion of building to a dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposal upon living conditions of future occupiers of the proposed dwelling with particular reference to amenity space, privacy, outlook and natural light, and the effect on living conditions of neighbouring occupiers at No 18 Upton Hill, with particular reference to privacy.
 - The effect of the proposal on highway safety, with regard to the adequacy of parking provision.

Reasons

Living conditions

3. The appeal site comprises a two-storey building that adjoins the dwelling called Ye Olde Dairy that fronts St. James Road. Although adjoining this dwelling, there is no internal link between the appeal premises to Ye Olde Dairy, and the building currently stands redundant. The rear elevation of the appeal building faces that of No 18 Upton Hill (No 18) in addition to its rear amenity area. No 18 is located at a higher land level and has windows that currently overlook the appeal property's rear yard area. The appeal building is accessed via the service lane that connects Lymington Road and St James Road.
4. The proposal would involve the conversion of the building to a 1-bedroom house, with a kitchen and living room at ground floor and a bedroom and bathroom at first floor level. A modest two storey rear extension is also proposed and would facilitate additional floor space for ground and first floors. This extension encroaches into the proposed rear amenity space leaving a small area for the property's future occupiers. In order to protect the privacy of

users of the amenity area, the proposal includes a 2m high timber fence to be placed on top of the existing retaining wall that separates the appeal property from the higher No 18.

5. At approximately 14m² the modest area of amenity space proposed, falls significantly short of the minimum 55m² guideline stated in the supporting text of Policy DE3 of the Torbay Local Plan 2012-2030 (Adopted December 20015) ("the TLP"). Whilst the policy text refers to some flexibility to space guidelines in respect of conversions, the amenity area proposed is well below what would be considered acceptable. The dimensions of the area results in a restricted space with limited functionality and I consider that this would result in an inadequate living environment for future occupiers. Whilst I acknowledge the appellant's case that the conversion represents a good use of space internally, this does not override the deficiency relating to the external amenity area to be provided.
6. In addition, the unsuitability of the external amenity space would be worsened by the presence of the proposed 2m timber fence that would sit above the existing rear boundary. To my mind, the presence of a boundary treatment of increased height in close proximity to the rear kitchen and living room window would be viewed as a dominant and oppressive structure from within the site, that would limit the extent of natural light that the window and external amenity area would receive.
7. Furthermore, the presence of a first-floor rear window at No 18 in close proximity and at an elevated level would result in harmful overlooking into the amenity area and internal living space of the proposed dwelling to the detriment of the living conditions of future occupiers. The proposed timber fence would not in my view mitigate the overlooking into these areas. In contrast, where the proposed dwelling would face the rear amenity space of No 18, there would be a proposed porthole window and rooflight both serving the first-floor bedroom. Both are proposed to be obscure glazed and providing that these are unopenable I do not consider there would be harmful overlooking into No 18 or its rear garden.
8. When having regard to the above, I find that the proposal would not harm the privacy of occupiers of No 18 Upton Hill. However, the absence of harm in that respect, does not justify the unsuitable living conditions of future occupiers of the proposed dwelling with particular reference to amenity space, privacy, outlook and natural light that I have identified. I, therefore, conclude that the proposal would be contrary to Policy DE3 of the TLP which, amongst other things, requires development to have a good level of privacy, outlook and amenity space.

Highway safety

9. The parking standards that are referred to in the TLP require new dwellings to have a minimum of two off road spaces. A relaxation of the standards can be applied for proposals in the town centre where there is a greater likelihood of non-car journeys, however, this site does not fall within that part of Torquay. In this instance the proposal has not been accompanied by any details of off-road parking for future residents.
10. During my visit to the site and the surrounding area I observed that on-street parking is limited primarily to residents parking bays, otherwise parking

restrictions are in place in the form of double yellow lines along Upton Hill, St James Road and Lymington Road. There is also a parking exclusion area in front of the Primary School on St. James Road. Therefore, I found there to be limited on-street parking opportunities in the area surrounding the appeal property.

11. I also saw that the service lane that accesses the appeal building is narrow and was being used for parking of vehicles, which had the effect of reducing the width of the lane further. Although there are no parking restrictions in place along the service lane, I consider that further parking along its length would undermine vehicular manoeuvrability along it and cause vehicles that are impeded by parked cars to reverse back onto St. James Road. Such a manoeuvre would be done with restricted visibility and therefore would have a detrimental impact on highway safety. Furthermore, the increased parking demand resulting from the proposed development, in an area of limited provision, may lead to additional congestion as drivers seek parking space, or park illegally. Parking along the restricted areas identified would reduce carriageway width, and as a consequence would be detrimental to highway safety.
12. The appellant suggests that future residents would either be a car-free household, or if they own a car use the on-street residents parking bays in the area. However, a method of securing and enforcing the dwelling as a car free household is not before me, whilst I have not been presented with any evidence of how future residents would obtain a residents parking permit or the likelihood of obtaining one being successful. I am not therefore convinced that the alternative parking provision proposed, even at a reduced level to the Council parking guidelines, can be provided.
13. I therefore conclude that the proposal would have a detrimental effect on highway safety. The scheme would therefore run contrary to Policy TA3 of the TLP and Policy TH9 of the Torquay Neighbourhood Plan 2019 (Post Referendum Version) (TNP), which amongst other considerations requires an appropriate level of car parking spaces in all new development and that parking will not add to potential conflict within the community.

Other Matters

14. My attention is drawn to the potential 'fallback' position of the building being used as a residential annex to the parent property without the need for planning permission, or alternatively for residential purposes ancillary to 3 St. James Road. The application form refers to 18 Upton Hill and therefore, I have assumed that is the parent property to which the appellant refers. In that respect, the full details of an alternative use of the premises as a residential annex are not before me. In any case, to my mind, I can afford it little weight as such a form of ancillary accommodation would not be directly comparable with the unsuitable living environment experienced by future occupiers of the appeal site and premises if used as a standalone dwelling, or the effect on local parking conditions and highway safety that I have identified. As for it being used as an annex to No 3, this would require a separate consent and the sale of the building, but I am not presented with any evidence to indicate that there is a significant probability of this fallback.
15. I have had regard to the proposed development's accessible location in the town and the presumption in favour of sustainable development referred to in

the National Planning Policy Framework. However, although in a location accessible to services and close to public transport connections, the site is also in an area where there are prevailing limitations in the availability of car parking, and I attach greater weight to the impacts I have outlined and the resultant conflict with the TLP and TNP. I have attached limited weight to the appellant's argument that the development would be unsuited for commercial occupation, as I have not been presented with any compelling evidence in relation to this matter that would outweigh the local plan conflicts. Furthermore, whilst I acknowledge that the conversion of the building would improve its character and appearance in the context of the area, I do not consider this overcomes the impacts identified and their conflict with local planning policies.

Conclusion

16. For the reasons given, I conclude that the appeal should be dismissed.

R. E. Jones

INSPECTOR