
Appeal Decision

Site visit made on 24 June 2019

by R Lankshear BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2019

Appeal Ref: APP/X1165/D/19/3226075

Caradoc, Cary Park, Babbacombe, Torquay, Devon TQ1 3NH

- 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 Andrew Keast against the decision of Torbay Council.
 - The application Ref P/2018/1096, dated 1 November 2018, was refused by notice dated 15 January 2019.
 - The development proposed is described as 'proposed rear/side two storey elderly persons accommodation'.
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Decision

1. The appeal is dismissed.

Procedural matters

2. Since the determination of the application subject of this appeal, there has been a change in the Development Plan with adoption of the Torquay Neighbourhood Plan (NP), and the National Planning Policy Framework (the Framework) has been revised. I have determined this appeal in accordance with national and local policies as adopted at the present time.
3. The appellant has raised concern with the manner in which the Council determined the application and previous proposals. This is a matter that would need to be taken up with the Council in the first instance and in determining the appeal I have only had regard to the planning merits of the case.

Main Issues

4. The main issues are:
 - i) Whether the proposed development would preserve or enhance the character or appearance of the Cary Park Conservation Area and the host property; and
 - ii) Whether a legal agreement is necessary to prevent the use of the proposed building as an independent dwelling and to safeguard the living conditions of occupiers of Caradoc and future occupiers of the appeal development.

Reasons

Conservation Area

5. The appeal property Caradoc is a semi-detached dwelling dated to the late 19th century situated towards the western end of Cary Park Conservation Area. S72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* requires special attention to be had to the desirability of preserving or enhancing the character and appearance of a conservation area.
6. Caradoc is identified within the Cary Park Conservation Area Character Appraisal (CACA) (2005) as forming part of an important building group with the neighbouring dwelling of Clifton. The dwellings themselves appear generally unaltered in their form and, although there are some differences in detailing, they retain a significant degree of symmetry. The dwelling benefits from a wide frontage although the boundary tapers inwards towards the rear. The enclosure forming the boundary with Babbacombe Vicarage to the west is an approximately 3-metre-high stone wall, although this is not identified as a prominent wall within the CACA. Whilst a number of buildings have undergone varying degrees of alteration, this part of the conservation area is characterised by generally large buildings set within generous plots, that gives an open and spacious character with views through gaps between buildings.
7. The appeal proposals seek to introduce a two-storey building comprising of living accommodation that the appellant indicates will be occupied by elderly relatives. This building will be linked to the main dwellinghouse by a glazed corridor and will be situated towards the rear of the dwelling, following the demolition of the existing garage.
8. Whilst noting the setback of the proposal from the frontage of the host property, the appeal development would introduce additional built form of increased height between the host property and the boundary wall. The proposed annex would be orientated at an angle to the host dwelling similar to the existing garage but would be situated further forward than it. Although views of the appeal site are currently partially obscured by vegetation to the front of the appeal site and within the neighbouring property, these cannot be relied upon to provide long term screening of the proposals.
9. Despite the proposed use of matching materials, given its position in close proximity to the boundary wall, the proposed increase in height and relative orientation, the proposals would result in an awkward juxtaposition between the two-storey form of the development and the host property. Whilst the development would maintain views of the principal elevations of the host dwelling and would not unacceptably diminish the sylvan character of the area, I consider it would result in a cramped form of development, that would result in significant harm to the character of the host property, the balance of the host pair and the openness of the wider Conservation Area.
10. The appellant contends that the proposals have been designed to replicate a coach house, although I did not observe that such buildings at the orientation proposed are a characteristic form of development within the area.
11. I note the reason for refusal makes reference to the impact upon the setting of the boundary wall. Having assessed its contribution to the wider character of the area and noting the position of the appeal proposals to this enclosure, I am

not persuaded that the impact upon the setting of the wall itself would have an unacceptable impact upon the character of the wider Conservation Area.

12. Nevertheless, all in all, having considered the above, I consider that the proposals would fail to preserve, and would unacceptably harm, the character and appearance of Cary Park Conservation Area and therefore the significance of the designated heritage asset. As such it would fail to accord with the conservation aims of Policies DE1 and SS10 of the adopted Torbay Local Plan 2012-2030 (LP)¹, TH8 of the NP and the Framework. In reaching this conclusion, I have taken into account paragraph 193 of the Framework which states that great weight should be given to an asset's conservation.
13. I consider that the harm to the Conservation Area would be 'less than substantial' in respect of paragraph 196 of the Framework. Therefore, such identified harm to the significance of the designated heritage asset needs to be weighed against public benefits of the proposal. The appellant contends that the proposals would assist in addressing a need for accommodation for the elderly in a sustainable location as identified by policy including TH5 'Sustainable Later Life Homes' of the NP. He also indicates that development would assist in addressing an under-delivery of housing in accordance with the Framework. Given that the proposal is to create an annexe to an existing dwelling, not a new dwelling itself, it would not be beneficial to housing supply and as such I attribute this little weight in the planning balance. On the evidence before me, any need for annexe accommodation would represent a private benefit rather than being driven by identified public benefit and it could be used in a manner of ways as long as it remained ancillary to the principal dwellinghouse. As such, I consider that these matters do not outweigh the harm identified above to the Conservation Area.

Legal agreement and living conditions

14. The Council contend that a legal agreement is required to prevent the independent residential use of the appeal development. In the absence of such they indicate there would be unacceptable impact upon living conditions of occupiers of both the annex and the host property.
15. Noting the proposed position of the appeal development, and given that it would have a number of openings at both ground and first floor level facing the rear of the host property and its rear garden, I concur that if occupied as an independent unit of accommodation it would result in unacceptable living conditions for both future occupiers and the residents of the host property.
16. However, this is not what has been applied for. It is acknowledged that the proposed annex would include many of the facilities that one may expect within an independent residential unit and would only be physically linked to the host property by a glazed corridor. However, each case must be considered on a matter of fact and degree. Whilst the occupiers of the annex may therefore be able to have a degree of independence, it would still be served by the drive serving the existing property and would share the rear garden. Given this, on the evidence before me, I find that the proposals would likely be occupied as an annex and would not be tantamount to creation of a new planning unit or separate dwellinghouse

¹ Adopted December 2015

17. Moreover, having regard to the relevant tests in the Framework, I am satisfied that any use of the proposed building as annex accommodation to Caradoc, could be satisfactorily controlled by way of condition. Therefore, whilst the appellant has submitted a Unilateral Undertaking as part of their appeal submission, I consider a legal agreement is not required.
18. Noting the nature of accommodation proposed and means available to control the use, I am therefore satisfied that the proposals would not result in an unacceptable impact upon living conditions as contended by the Council.
19. For these reasons I do not consider that a legal agreement would be required or that the proposals would be at odds with the living conditions aims of policy DE3 of the adopted LP, the adopted NP or the Framework.

Other matters

20. The appellant contends that weight should be given to policy TH10 'Protection of the historic built environment' of the NP. However, this policy relates to alterations to listed buildings and so I give this little weight in the planning balance.

Conclusions

21. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Robert Lankshear

INSPECTOR