



Appeal Decision

Site visit made on 30 July 2019

by S Leonard BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2019

Appeal Ref: APP/X1165/D/19/3230071
9 Heron Way, Torquay, Devon TQ2 7SW

- 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 and Mrs Pietro Iacono against the decision of Torbay Council.
 - The application Ref P/2018/1029, dated 11 October 2018, was refused by notice dated 16 May 2019.
 - The development is described as "change of use: garage into living accommodation; replace garage door with a white double-glazed pvc window and a frosted double-glazed pvc white door. Build a porch in the back garden – connected to the house by present back door."
-

Decision

1. The appeal is allowed and planning permission is granted for conversion of garage into living area facilitated by replacement of garage door with two windows. Replacement ground floor door and first floor windows on front elevation. Formation of extension on rear elevation and raised patio with associated works at 9 Heron Way, Torquay, Devon TQ2 7SW in accordance with the terms of the application, Ref P/2018/1029, dated 11 October 2018, subject to the conditions set out in Annex A.

Procedural Matters

2. The description of development in the heading above has been taken from the planning application form. The Council has used a different description, which accords with the description provided by the appellant on the appeal form. This accords with the details shown on revised drawing Ref 1465-18-001A dated December 2018. Given this fact, my decision is based on the revised description.
3. I note that the application has been submitted retrospectively, and I have dealt with the appeal on this basis. At the time of my visit, I saw that development comprising garage conversion into living accommodation, replacement ground floor door and first floor windows on front elevation, single storey rear extension and raised patio, has already taken place. I observed that the front elevation garage door has been replaced by a window and a door, whereas application drawing 1465-18-001A shows the garage door to be replaced by two windows. That drawing also shows the erection of a 1.7 m high timber fence screen along the northern edge of the raised patio. This has not been completed. For the avoidance of doubt, my decision is based on the development shown on drawing 1465-18-001A.

4. I also observed that a fence has been erected along the southern side boundary with no.11 Heron Way, which measures approximately 2.3 m high alongside the single storey extension and raised patio, dropping in height beyond that, as the rear garden ground levels drop. The main parties have confirmed that this fence does not form part of the planning application/appeal before me.

Main Issues

5. The main issues are:

- Impact on the living conditions of:
 - the occupants of the neighbouring properties to the north of the appeal site, with respect to outlook, privacy and access to natural light; and
 - the occupants of 11 Heron Way, with respect to privacy;
- and
- Whether the development provides for adequate on-site car parking provision, having regard to the transport needs of the property and highway accessibility and safety.

Reasons

Living Conditions

6. The appeal property is a two-storey building which was originally built as a coach house flat above three garages. The southernmost garage was previously used in connection with the flat and provided internal access to it. It has now been converted into a kitchen used in association with the flat. A single storey flat-roofed extension has been erected to the rear of the building, accessed internally via the ground floor living accommodation, and providing additional internal living space.
7. The extension has a footprint of approximately 3.5 m deep by 4.5 m wide and is around 3 m high. It is sited about 0.8 m from the boundary with 11 Heron Way and approximately 3.5 m from the boundary with 1 and 3 Heron Way. The extension includes a window on the south side elevation, double doors and a window on the rear elevation, and a door on the north side. The glazing on the south side window is covered with an opaque film. The north side elevation door comprises an obscure-glazed top half and solid lower half.
8. To the rear of the extension is a raised patio, extending to a depth of approximately 3.5 m beyond the extension, and accessed directly from the rear elevation doors. The patio has been created by raising the ground level of part of the sloping rear garden and has a retaining wall at its eastern end of around about one metre high. The raised patio area extends to the side boundary with 11 Heron Way, including the strip of land between the extension and the southern side boundary, and to within roughly 3 m of the side boundary with 1 Heron Way. The rear garden slopes down towards the north and the east. The lower level lawn and path to the rear of the patio are accessed via steps adjacent to the north side of the patio which are directly accessed from the side door of the extension. To the rear of the site is a maturely treed area of land which separates the site from Centenary Way.

9. 11 Heron Way is an end-of-terrace, two-storey house whose rear wall is sited approximately 5 m behind the line of the rear wall of the original coach house building. It has rear elevation patio doors leading on to its rear garden, which slopes downwards towards the rear. Having regard to the similar ground levels of the appeal site and the rear garden of no.11, the existing boundary fence along the southern boundary of the appeal site prevents any materially harmful loss of privacy to the lounge and upper-most, more private, part of the rear garden of no.11 arising from the southern side window of the extension and the raised patio. Similarly, the erection of a 2 m high boundary fence under Permitted Development, in place of the existing fence, could serve a similar purpose.
10. To the north of the appeal site, 1-7 Heron Way is a two-storey residential terrace which rises in ground level height from east to west. The easternmost property, no.1, comprises a coach house flat above three ground floor garages. It is sited on a lower ground level than the appeal site and has a first-floor window and two roof lights on its rear elevation. Its rear garden slopes steeply upwards towards the appeal site. Nos. 3, 5 and 7 are terraced houses. No.3 is also sited at a lower ground level than the appeal site. It has 2 rear first floor windows and 2 roof lights. Rear patio doors lead onto a conservatory and its rear garden also rises up steeply towards the appeal site. The garden has been levelled adjacent to the appeal site to provide a raised deck which is sited at a lower ground level than the appeal site.
11. The northern boundary of the appeal site with 1 and 3 Heron Way is defined by close-boarded fencing which is around 1.2 m high. The elevated height of the raised patio in relation to these properties gives rise to overlooking onto their rear gardens and rear elevation windows. Work has started on the construction of a close-boarded screen along the northern side of the raised patio, but this has not been finished. The erection of the proposed 1.7 m high vertical timber boarding as shown on drawing Ref 1465-18-001A would appropriately mitigate against harmful overlooking to the properties to the north.
12. The existing doorway in the north side of the extension allows for overlooking to the neighbouring properties when open. However, this is an obscure-glazed, secondary door, whose main function is to provide access to the steps leading to the rear garden. As such, it is unlikely to be left open for prolonged periods, and the occupants of the appeal site are unlikely to spend much time on the garden steps. Therefore, I do not consider its impact to be unduly harmful to the privacy of the neighbouring occupiers. The potential for future alterations to the northern side elevation which could materially harm neighbouring privacy could be dealt with by means of planning conditions, which I consider further below, and does not justify the dismissal of the appeal scheme.
13. The Council considers that the extension has resulted in an unacceptable impact on the occupiers of the properties to the north with respect to their outlook and access to natural light. However, I disagree. The single storey, flat-roofed extension is of a modest height and depth and is sited some 3.5 m from the side boundary of the appeal site. It has not resulted in unacceptable overshadowing of those properties or diminished the outlook and light to an unacceptable degree. Likewise, I do not consider that the proposed 1.7 m high privacy screen along the northern edge of the patio would unacceptably impact on the outlook and light enjoyed by the neighbouring properties, given that it

would be sited around 3 m from the side boundary and will only extend to a length of approximately 3 m.

14. Given their distance from the appeal development, their position adjacent to the original building and front parking area, and the presence of timber fencing along their eastern side boundaries, I do not consider that the appeal development would have a significant impact on the privacy, outlook or light experienced by the occupiers of 5 and 7 Heron Way.
15. For the above reasons I find that, subject to imposing conditions to ensure the provision of a screen along the northern side of the raised patio and restrict the fenestration in the north side of the extension, the development would not materially harm the living conditions of the occupiers of the neighbouring properties in Heron Way to the north and south side of the appeal site, having regard to privacy, outlook and light. The development therefore complies with policy DE3 of the Torbay Local Plan 2012- 2030 (TLP) which aims to protect neighbour amenity.

Parking

16. The appeal site is located in a small tributary cul-de-sac off Heron Way, a spine road within a modern suburban housing development located on the north-western edge of Torquay. It is within walking distance of local retail and community facilities and public transport bus routes, including bus stops at Centenary Way and Browns Bridge Road and shops and services sited around Nicholson Road and Browns Bridge Road.
17. The appeal dwelling originally comprised coach house accommodation above a block of three garages, each with a forecourt parking space in front, accessed from Heron Way. The converted garage provided parking for the appeal dwelling. The remaining two garages are used by third parties and have not been altered by the development. The forecourt parking space in front of the former garage has not been altered.
18. The Council is concerned that the development has resulted in an increase in dwelling size together with an associated decrease in the number of parking spaces to serve it, within an area poorly served by public transport and street parking.
19. Policy TA3 refers specifically to parking requirements, confirming that new development must make appropriate provision for car parking spaces. The policy states that that residential extensions or sub-divisions must not result in the net loss of parking provision to below the standards set out in TLP Appendix F, which expects 2 car parking spaces to be provided for dwelling houses and one parking space for flats. Appendix F confirms that parking within the curtilage will only include garages which have minimum single garage internal dimensions of 6 m by 3.3 m and that, in these instances, the Council will require their retention for parking by planning condition.
20. It would appear that the size of the former garage space is deficient in this respect. The Council has not provided evidence that the former garage space meets the required minimum internal space standard of Annexe F, nor that the use of the former garage for parking can be compelled by requirement of a condition of any planning permission. The appellant has advised that the former garage space was too small to house an average sized car. On this

basis, it appears that, when judged against Policy TA3, a loss of off-street parking has not actually occurred.

21. The existing forecourt parking space meets the TLP policy TA3 requirement for flats. I acknowledge that the appeal dwelling has been enlarged and could be considered to be more akin to a house, which would require two on-site parking spaces to accord with the TLP parking standards. However, in considering the parking needs of the appeal dwelling, I have taken into account the modest increase in living accommodation that has occurred on the appeal site and the proximity of the site to public transport routes and community facilities and services. On this basis, I find that the existing parking space meets the transport needs of the development. Having regard to the limited opportunity for on-street parking within the cul-de-sac, I consider that the future retention of this parking space should be secured by a planning condition.
22. Paragraph 109 of the Framework advises that "*Development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*". I am not aware of localised parking problems, parking congestion or impeded access to the highway network within the vicinity of the appeal site, arising from the appeal scheme. Neither did I witness such during my site visit, albeit I acknowledge that this was only a snapshot during the day and there may well be more on-street parking at other times, including the evening.
23. For the above reasons, I find that whilst the development does not strictly accord with the TLP policy TA3 parking requirement for 'houses', the modest increase in living accommodation that has been provided, the location of the appeal site in relation to public transport routes and community facilities and services, and the lack of compelling evidence of highway danger arising from the development, I conclude that the development provides adequate on-site parking, having regard to the transport needs of the property and highway accessibility and safety. The development therefore accords with the objectives of TLP policies TA2 and TA3, which amongst other aims, seek to ensure that development proposals satisfy the transport needs of the development and make appropriate provision for car parking spaces. For similar reasons, it would achieve the aforesaid aims of the Framework.

Other matters

24. I have noted the neighbour concerns about the design of the development. Within the context of this modern housing estate, I do not consider the replacement windows and doors to be unduly harmful to the character of the building and the street scene. White upvc windows and doors are evident elsewhere within the appeal site vicinity. Moreover, the extension to the rear of the building, although flat-roofed and not constructed of materials to match the main building, has not harmed the character and appearance of the area, given its small size and its position to the rear of the building where it is predominantly screened from the public realm by neighbouring trees and buildings.
25. I acknowledge the presence of trees adjacent to the rear appeal site boundary. However, I have no evidence before me to demonstrate that any trees of significant visual amenity value have been affected by the extension and patio development.

26. With regard to the neighbour concerns regarding loss of a smaller, more affordable property, I have not been provided with any policy requirement to retain flatted accommodation within the vicinity of the appeal site. I do not therefore consider that this is determining factor in the consideration of this appeal.
27. I acknowledge that there are other buildings comprising ground floor garages with coach house flats above within the vicinity of the appeal site. However, each case is determined on its own particular merits, as I have done here. In this instance I do not find material harm arises from the appeal scheme to justify its dismissal.

Conditions

28. The Council, in the appeal questionnaire, has suggested a number of conditions, which I have considered in the light of advice in Paragraph 55 of the National Planning Policy Framework (the Framework) and the national Planning Practice Guidance (PPG). As a result, I have omitted them, having regard to the development that has already taken place.
29. Notwithstanding the appeal questionnaire, in the Officer Report, the Council suggests that conditions could be imposed to mitigate harmful loss of privacy to the rear garden of 11 Heron Close, by requiring appropriate boundary screening and design for the south-facing side window of the extension. As detailed above, the existing boundary fence provides adequate mitigation against loss of privacy to the most sensitive part of the rear garden of no.11. Any overlooking to the rear-most part of the garden arising from the appeal development is not deemed to be materially harmful within the context of this built-up residential area, where some degree of overlooking to rear gardens is an acceptable occurrence. Accordingly, the Council's suggested conditions do not meet the required tests of the Framework and PPG and I have not included them.
30. Conditions are necessary to protect the living conditions of the occupants of the neighbouring properties to the north of the appeal site with respect to privacy. The purpose of condition 1) is to require the appellant to comply with a strict timetable for completing the timber screening along the north side of the raised patio, which needs to be addressed in order to make the development acceptable. Condition 2) is imposed to ensure that the existing door in the north elevation of the extension remains obscure-glazed, and to prevent the installation of any further doors or windows in this elevation, given the potential for harmful overlooking to the neighbouring properties to the north. A condition is also required to ensure the retention of the existing parking space, as detailed above. The purpose and effect of the conditions are to ensure that the development on the site authorised by the grant of planning permission may only continue if the appellant complies with each of a series of requirements.

Conclusion

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

S Leonard

INSPECTOR

Annex A

Schedule of Conditions

- 1) Within 3 months of the date of this decision, 1.7 m high vertical timber fencing shall be erected along the northern side of the raised patio in the position shown on drawing Ref 1465-18-001A. The fencing shall thereafter be retained.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no further windows or doors shall be installed, nor alterations be made to the existing door, within the northern side elevation of the extension hereby approved.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the area in front of the converted garage shall be retained at all times for the parking of vehicles.

*****End of Conditions*****