



Appeal Decision

Site visit made on 11 September 2019

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2019

Appeal Ref: APP/X1165/W/19/3231922

3 Headland Park Road, Preston, Paignton TQ3 2EN

- 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 Owen Evans against the decision of Torbay Council.
 - The application Ref P/2019/0226, dated 25 February 2019, was refused by notice dated 16 May 2019.
 - The development proposed is the erection of building to provide ancillary accommodation.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the proposal was refused, the Paignton Neighbourhood Plan (to 2030) (NP) has been subject of a successful referendum and has been made by the Council. The NP now forms part of the development plan for the area. The appellant has been given the opportunity to comment on the implications of the NP policies to the proposal and therefore has not been prejudiced by the consideration of the scheme against the NP.
3. At the appeal stage, three plans have been submitted with different drawing numbers. Two of the plans show the ground and first floor layout of the proposed ancillary accommodation and only the address of the agent has changed with a resulting different plan number. This change is of no consequence to the merits of the proposal.
4. The other plan is a revised site plan (drawing No 1846-03B). This shows variations to the parking and landscaping areas across the frontage. In particular, the central area of landscaping has been reduced, what appears to be a planting area adjoining the main front door added, the removal of an additional brick pillar and the widening of the parking area in front of the ancillary accommodation building. This was not the plan listed on the decision notice against which the Council determined the application although the Council may have been aware of the proposed changes.
5. The 'Procedural Guide – Planning Appeals – England' advises that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which the views of interested parties were sought.

6. The revisions suggested by the appellant would alter the nature of the proposal in respect of the frontage area and the related car parking arrangements. Were I to accept these changes this could lead to possible prejudice to interested parties, for example, neighbours in the vicinity of the appeal site who have not been able to consider these details. I therefore conclude that the proposed amendments should not be considered and that the appeal has to be decided on the basis of the proposal as set out in the application plan (drawing No 1846-03A) which the Council determined.

Main Issues

7. The main issues are:

- the effect of the development on the character and appearance of the area,
- the effect of the proposal on the living conditions of the occupiers of 3 Headland Park Road, with particular regard to overbearing impact,
- whether the proposal would provide adequate parking and access arrangements, and
- whether the development would form ancillary accommodation to the main dwelling or form a separate dwelling, and if the latter could be the case, whether a legal agreement is necessary to control the use of the accommodation.

Reasons

Character and appearance

8. This section of Headland Park Road is characterised by semi-detached properties, some divided into flats, which are set back, often behind a wall, from the road. Generally, there is a reasonably good separation between the main buildings, with, in a number of cases, detached garage buildings in the intervening space.
9. The appeal site consists of a semi-detached house with a detached single garage to the side of the property. The reasonably low height and small scale nature of the garage, the access drive to No 5A Headland Park Road and the parking areas to the side of 5/5B Headland Park Road, provides a space between the main buildings which makes a positive contribution to the character of the street scene.
10. The proposed building would replace the single storey garage. The pitch of the roof and front bay window of the new structure are designed to relate to the adjoining dwelling. However, the overall appearance of the building with its narrow width, reasonably significant 2 storey depth and limited architectural articulation when viewed from the road, would be at odds with the general proportions and form of other nearby buildings. The long and virtually featureless side elevation would be prominent in angled views within parts of the road and would appear as a particularly stark addition. The result would be a conspicuous and discordant building that would not integrate successfully with the character and appearance of the surrounding area.
11. The proposal would erode some of the meaningful space between Nos 3 and 5/5B. With the overall size, depth and height of the structure, together with its

reasonably close siting next to the side of No 3, the building would also appear cramped on this part of the curtilage.

12. For the above reasons, I conclude that the development would harm the character and appearance of the area and would therefore conflict with Policy DE1 of the Torbay Local Plan 2012-2030 (the Local Plan) and Policy PNP1(c) of the NP which seeks, amongst other things, that development respects existing street frontage and built form, and positively enhances the built environment.

Living conditions

13. The proposal is advanced on the basis that the building would be used as ancillary accommodation to the main house and not as a separate dwelling. In these circumstances, the occupiers of the main dwelling would, therefore, have a close relationship with those in the ancillary accommodation. Nevertheless, that does not in itself justify an arrangement which could unacceptably diminish the living conditions of the occupiers of the main dwelling. The National Planning Policy Framework (the Framework) states that decisions should ensure that developments create places with a high standard of amenity for existing and future users.
14. While the present occupiers of No 3 may be satisfied with the proposed arrangement of buildings it is also necessary to consider future users. No 3 has a door and windows in the side elevation and the two storey ancillary accommodation building would be in proximity to these openings. While I do not have details of the spaces that the side windows light, the height, bulk and position of the ancillary accommodation building would be likely to have an undue and harmful influence on the living conditions for occupiers of these internal spaces. This effect would be overbearing.
15. Furthermore, the passageway between the two buildings would be reasonably long and bounded on both sides by 2 storey structures. As a consequence, the use of the passageway would not be especially pleasant because of the corridor effect of the adjoining buildings. This would compound the overbearing effect on the living conditions of the occupiers of No 3 that I have found above.
16. In the circumstances of this case and based on the information available, I conclude that the ancillary accommodation building would have an overbearing effect on the living conditions of the occupiers of No 3. The proposal would therefore be contrary to Policy DE3 of the Local Plan which seeks, amongst other things, that all development should be designed to provide a good level of amenity for future residents or occupiers.

Parking and access

17. Policy TA3 of the Local Plan indicates that development proposals will be expected to meet the guidelines for parking requirements as set out in Appendix F. This appendix seeks 2 car spaces per dwelling unit and 1 space per 2 bedrooms for domestic extensions and ancillary outbuildings. It is explained that where parking spaces are accessed directly from the highway, a space shall be 3.2m by 6m (5.5m minimum where there is no door opening into the parking area) to ensure that the highway is not obstructed.
18. While the Council has considered the parking requirement should be based on 2 dwellings, for the reasons explained below, I have considered the parking

requirement for a dwelling and a 2 bedroom ancillary building. Consequently, 3 parking spaces would be required to meet the appropriate standards.

19. The drawings show 2 spaces in front of the ancillary accommodation building. However, these spaces are substandard in width and, given the pillar and street lighting column on the footway, in practice the area would only allow parking for a single vehicle. Nevertheless, this could provide the single space to be associated with the ancillary building and this would meet the required standard for this element of the accommodation.
20. The two spaces shown in front of the main dwelling would be less than the specified width, if each space was required to be 3.2m. However, there is some space to the side by the proposed landscaping area that could in practice be utilised to assist with the overall width. The depth of the area is sufficient to ensure vehicles would not overhang the footway. Overall the arrangement would be adequate to provide the 2 spaces required for the main dwelling.
21. At my site visit I noted that there are some parking restrictions within the road and, while only a snapshot in time, there was a reasonable level of traffic movements. However, I am satisfied that given the proposed layout there would be an appropriate provision of car parking spaces to meet the requirements of the site. I do not consider, based on the evidence before me and my observations on site, that this should lead to any undue highway safety issue.
22. In the light of the above analysis, I conclude that the proposal would provide adequate parking and access arrangements for the main dwelling and ancillary accommodation and therefore comply with the general approach set out in Policies TA2 and TA3 of the Local Plan which seek, amongst other things, to require appropriate provision of car parking spaces in all new development.

Ancillary accommodation or separate dwelling

23. The new building would have all the day-to-day facilities and accommodation to provide a separate unit such that the Council consider it would be an additional dwelling on the site. However, the appellant is clear that the intention is that the building would be used as ancillary accommodation to the main house and would be willing to sign a planning obligation or accept a planning condition in any approval to that effect.
24. The case of *Uttlesford DC v SSE & White* [1992] considered that, even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling – instead it would be a matter of fact and degree. In that case the accommodation gave the occupant the facilities of a self-contained unit although it was intended to function as an annexe with the occupant sharing her living activity in company with the family in the main dwelling. It was found that there was no reason in law why such accommodation should consequently become a separate planning unit from the main dwelling.
25. I consider that similar circumstances apply in the present case. The building would be sizeable but would be in proximity to the main dwelling. Occupants would be able to share the garden with the main property and the plans do not show a demarcation between the outside spaces. The car parking would all be within the frontage space, albeit provided in 2 areas, and could be jointly used.

Furthermore, the accommodation, although sizeable would still be smaller than the main house. Because of the interrelationship between the buildings and uses on the site it would not be good planning in respect of living conditions or the functioning of the site for the proposed building to operate as an independent unit of accommodation, however the circumstances are such that the building could operate satisfactorily as ancillary accommodation to the main dwelling.

26. Consequently, I am satisfied that providing the use was suitably controlled to ensure that it would be occupied as an ancillary building to the main dwelling, then it need not form a separate unit of accommodation. Were that use to change in the future then that would be a matter to consider at that time.
27. The Framework explains that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. In this case, a suitably worded planning condition could control the use of the building to ensure that it was used ancillary to the main dwelling. As a consequence, a planning obligation would not be necessary to make the development acceptable in planning terms, because this could be achieved by a planning condition.
28. For the above reasons, I conclude that subject to an appropriate planning condition in any approval, the building could form ancillary accommodation to the main dwelling and that it would not be necessary to control the use with a planning obligation. Consequently, in this respect I find no conflict with Policy DE3 (development amenity) or Policy TA3 (parking requirements) of the Local Plan.

Other Matters

29. The appellant has set out extensive correspondence with the Council that occurred during the processing of the application. It appears that while the Council raised concerns with the proposal, they were willing to consider a planning obligation to resolve the issue regarding the ancillary nature of the accommodation.
30. I have noted all the matters that have been raised and the concerns of the appellant that the application was decided without a draft agreement being forthcoming. However, while I have regard to this background, I attribute it limited weight as I am required to consider the proposal on its planning merits based on the policies and evidence before me.

Conclusion

31. I have found that the parking situation would be acceptable, and that the accommodation could be subject of a planning condition to ensure it was used as ancillary accommodation to the main dwelling. These matters, however, are not benefits of the scheme and are therefore neutral in the overall analysis.
32. I have also found that the proposal would harm the character and appearance of the area and harm the living conditions on future occupiers of No 3. These are matters which conflict with policies of the development plan and I attribute them substantial weight.

33. Consequently, the scheme would not accord with the development plan when considered as a whole and the evidence does not indicate a departure from the development plan would be justified. Accordingly, taking all other matters into account, I conclude the appeal should be dismissed.

David Wyborn

INSPECTOR