



Appeal Decision

Site visit made on 27 August 2019

by Christopher Butler BA (Hons) PG Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2019

Appeal Ref: APP/X1165/W/19/3227811

2 & 4 Fore Street, St Marychurch, Torquay TQ1 4NE

- 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 Raymond Bishop (OJ Developments Ltd) against the decision of Torbay Council.
 - The application Ref P/2018/1170, dated 21 November 2018, was refused by notice dated 18 January 2019.
 - The development proposed is alterations and change of use to three of ground floor level units at 2-4 Fore Street with A1/A2 in unit 1, A1 in unit 2 and allowing for A1, A2, A3, A4 and A5 combined use in unit 3. Alterations to include three-storey extensions, dormers and conversions of upper floors of No.2 and 4 Fore Street to form 4 residential units. Conversion and upper floor extension to the rear of No.4 Fore Street and erection of 2-storey extension consisting of 1 residential unit with parking provision.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Raymond Bishop (OJ Developments Ltd) against Torbay Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I am informed that subsequent to the appeal being made the Council has adopted the Torquay Neighbourhood Plan (TNP). As such, the TNP now forms part of the Development Plan for Torbay.
4. Planning Permission has been granted by the Council, under their reference P/2019/0168, on the 4 April 2019 for No.2 and 4 Fore Street to enable change of use and alterations to form three of ground floor units within the use classes A1/A2 in unit 1, A1 in unit 2 and A1, A2, A3, A4 and A5 combined use in unit 3. Additionally, this planning permission also allows alterations to the building and the construction of a 3-storey extension to the building, including the insertion of dormers, to enable the conversions of upper floors to form four residential units. Works implementing this planning permission were underway when the above mentioned site visit took place.

5. The difference between the above mentioned planning permission and the appeal proposal is the part conversion / part 2-storey extension to the rear of the building to form a single residential unit with parking provision. Additionally, the Council's refusal reasons relating to this appeal solely concern living conditions of future occupiers of the proposed residential unit located to the rear of the development site and the adjoining occupiers at No.24A Manor Road.
6. Furthermore, the appeal property lies within the St Marychurch Conservation Area (CA). I note that the Council considers that the proposal would not be harmful to the character or visual amenities of the locality and that the majority of the proposed elements would enhance the character of the CA. Based on all that I have seen and read I have no reason to disagree with this. Bearing in mind the CA, Planning Permission P/2019/0168 and the Council's refusal grounds, my decision concentrates on the living conditions of intended future occupiers of the proposed single residential units located to the rear of the site and the living conditions of existing residents, as set out in the main issue below.

Main Issue

7. The main issue is the effect of the proposal on 1) the living conditions of intended future occupiers of the proposed single residential unit located to the rear of the building with particular regard to outlook, light, privacy and noise and disturbance; and ii) the living conditions of the occupants of No.24A Manor Road with regard to privacy and overlooking.

8. Reasons

Living conditions of intended future occupiers of the proposed single residential unit located to the rear of the building.

9. The appeal site consists of a former bank outlet and offices and comprises some of the key buildings located in the lower end of Fore Street and the Babbacombe Road. This part of Fore Street consists mainly of a group of shops with some residential uses above.
10. To the south west of the appeal site are the rear elevations of the properties that front Manor Road (Nos.18 – 24 (Evens)). Nos.18 and 20 are two stories in height and contain three retail units (2 at ground floor and 1 at first floor), No.22 and 24 have the appearance of being single storey but have a first floor dormer located to the rear. This dormer has a single small obscure glazed window that faces north east towards the appeal site. The ground floor is in a single retail use, whilst the rear first floor is in residential use (No.24A).
11. Access is by a private road located to the rear, which serves the rear of the properties that front this part of Fore Street, Babbacombe Road and St Marychurch Road. Predominantly there exists in this part of Fore Street a number of part two storey pitched roof and part single storey flat roofed rear projections. The rear of these properties and the development site would be seen in this context.

12. Policy DE1 of the Adopted Torbay Local Plan 2012-2030 (TLP) specifies the design considerations proposed development should comply with, whilst Policy DE3 of the TLP specifies that all development should be designed to provide a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring and surrounding uses. These policies are consistent with the National Planning Policy Framework (the Framework).
13. The Council considers that the living conditions of future occupiers of the single residential unit located to the rear of the building would suffer from a potential loss of privacy, a lack of natural light to the ground floor rooms and noise and disturbance owing to the use of the adjoining ground floor communal area and the first floor terrace.
14. In terms of overlooking from the first floor terrace, it was clear on site that the angle between this terrace area and the habitable room windows of the proposed single residential unit located to the rear of the site would be oblique and consequently loss of privacy, by way of overlooking, from this terrace would be negligible.
15. In regard to this residential unit having a lack of natural light, no substantive evidence has been submitted to me to quantify this concern. It was clear on site that natural light would reach the windows within this residential unit and in the absence of any substantive evidence to the contrary no unacceptable loss of natural light to this residential unit would occur.
16. Notwithstanding similar rear projections existing elsewhere in the vicinity of the site, the ground floor bedroom windows within the residential unit located to the rear of the site would be in very close proximity to the two storey rear elevation of the adjoining building that faces onto Manor Road. As such the two storey rear elevation of this adjoining building, when combined with the close proximity of the ground floor bedroom windows of the proposed residential unit located at the rear of the site, would result in a poor level of outlook being experienced by future occupiers of that part of the development when using those rooms.
17. It was also clear that the position of the proposed ground floor bedroom windows in this rear residential unit would be located in close proximity to the access to the four flats within the remainder of the development. This is the primary access into and out of those flats and would be subject to constant comings and goings. Additionally, bearing in mind the limited outdoor amenity space being provided elsewhere within these flats, this area is likely to be well used as a communal area.
18. This potential communal use, together with the constant comings and goings to and from the flats and the close proximity of the ground floor bedroom windows of this rear residential unit would result in a detrimental impact on the living conditions of the proposed occupiers of this residential unit, which they could reasonably expect to be able to enjoy. As such the residential unit located to the rear of the site fails to comply with policy DE3 of the TLP, which seeks to ensure development does not unduly impact upon the amenity of neighbouring and surrounding uses, whilst ensuring a good level of amenity for future residents or occupiers. It would also be contrary to paragraphs 117 and 127 of the Framework.

Living condition of adjoining occupiers.

19. The Council's concern in this regard relates to overlooking and loss of privacy from the first-floor windows of the rear extension (relating to the proposed dwelling) on the occupants of the neighbouring property at No.24A Manor Road. They also raise concerns in regard to the intervisibility between the two dwellings and consider that this will result in a poor standard of accommodation in relation to the dwelling itself. The Officer's report provides some assistance in understanding the Council's concern in this regard in that it states: *"There are however concerns about intervisibility between the windows serving the first floor kitchen area and No.24A Manor Road."*
20. In addition to the above the Officer report notes that No. 24A Manor Road has a window at first floor level facing the rear courtyard of the application site, stating *"It is unclear what type of accommodation this window relates to."* The Officer report also states *"The proposed rear extension which will form one dwelling includes a number of windows at first floor level. It is considered that the intervisibility is unacceptable and will result in a detriment to the amenity and privacy of the occupier..."*
21. Within the rear elevation of the properties located to the south west side of the appeal site (Nos.18–24 (Evens) Manor Road) there are three first floor windows that overlook the appeal site. Two are located within the Nos.18 and 20 Manor Road that are in wholly retail use. Indeed, one of these windows is obscure glazed, whilst the other can be clearly seen as serving a kitchen area. Bearing in mind the fact that the first floor of No.18 and 20 is in wholly retail use and the nature of these windows, it is clear that no unacceptable level of overlooking or impact on living conditions will occur from these windows.
22. With regard to the remaining window at first floor level, within the properties located to the south west side of the appeal site. This window is located within the dormer window. It is obscure glazed and small in size. Whether or not it serves No.24A Manor Road it is clear that no unacceptable level of overlooking or impact on living conditions will occur from this window. Furthermore, it is clear that there would be no intervisibility between No.24A Manor Road and the proposed residential unit located to the rear of the site. As such the development would comply with policy DE3 of the TLP, in this regard, which seeks to ensure development does not unduly impact upon the amenity of neighbouring and surrounding uses, whilst ensuring a good level of amenity for future residents or occupiers.

Other Matters

23. The appellant argues that the Council does not currently have a five year housing land supply. This is not disputed by the Council. A presumption therefore exists in favour of granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The proposal would contribute towards the housing supply in the area which would undoubtedly be a benefit of the scheme and I attach moderate weight to this fact.

24. In terms of the public benefits derived from the development it would create some short-term economic benefits through construction related employment, and investment in the local economy following its occupation. However, those benefits to the construction industry would be modest and short lived and thus a matter of limited weight.
25. The appellant has also highlighted the fact that the proposal would result in a vacant building being brought back into a beneficial use and that they consider the physical alterations and enhancements proposed would complement the active re-use of the building by making a significant and positive contribution to the vitality and viability of the district shopping area. However, planning permission P/2019/0168 has been implemented and works to convert the building were ongoing at the time of the site visit mentioned above. Therefore, the building works implemented will already make a positive contribution to the vitality and viability of the district shopping area in any event and the additional residential unit to the rear, whether granted consent or not, would not significantly change this. As such limited weight is afforded to this factor.
26. It is also noted that the appellant has suggested planting could be used to soften the impact of the neighbouring building, which confines the application site, and the landscaping in the courtyard area. They also point out that dwellings are commonly located in close proximity to communal spaces and suggest that such an argument is not a valid justification for perceived disturbance of future occupiers. However, as set out above, it is clear that harm would occur to the living conditions of intended future occupiers and planting would not adequately address this harm.
27. The appellant's comments regarding having sought pre-application advice from the Council and having made other planning applications in the past are noted. It is also noted that you consider the development site to be an under-utilised 'Brown Field' site and that both you and the Council consider the development to meet minimum space standards. However, none of these points outweighs the harm detailed above that would result from the development.
28. In the absence of any other compelling evidence outlining any further benefits, which when combined with the benefits associated with the additional residential accommodation, none of the benefits detailed above or in the appellant's appeal statement would outweigh the harm I have identified above. Accordingly, the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits. This does not indicate the proposal should be determined other than in accordance with the development plan.

Planning Balance and Conclusion

29. I have found that the proposed development would not result in a harmful loss of privacy or a harmful level of intervisibility for the occupants of No.24A Manor Road. However, the proposal would result in a poor outlook for future intended occupiers and would cause an unacceptable level of noise and disturbance.
30. I conclude that the adverse impacts of granting planning permission for the proposal would significantly and demonstrably outweigh the benefits of the scheme in this case.

31. For the above reasons, and considering all other matters raised, I conclude that the appeal should be dismissed.

Christopher Butler

INSPECTOR