



Appeal Decision

Site visit made on 11 February 2020

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 01 April 2020

Appeal Ref: APP/X1165/C/19/3224984

Land at Unit 3 Batson Gardens, Paignton TQ4 5LT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr James Rundle against an enforcement notice issued by Torbay Council.
 - The enforcement notice, numbered 2017/0127/EN, was issued on 19/02/2019.
 - The breach of planning control as alleged in the notice is without planning permission, the change of use of the first floor of the Premises to a residential flat.
 - The requirements of the notice are to permanently remove all domestic/residential fittings, including kitchen and bathroom, from the first floor of the Premises and permanently cease the use of the first floor of the Premises for residential purposes.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

2. The Council has not made submissions in relation to this appeal and clarification was sought on these matters and the relevant applicable policies of the Paignton Neighbourhood Plan (NP) adopted in 2019 which was included with the questionnaire. The Council responded by including a previous planning appeal decision on the same site (APP/X1165/W/17/3168850) and the accompanied planning officer's report. The appellant has been given an opportunity to respond to the Council's documents, but no response has been received. The Council refers to TA2, TA3 and DE3, but these are Torbay Local Plan 2012 to 2030 (LP) policies and not NP policies.
3. I have considered this appeal based on the submitted information to date and no prejudice would arise to any party given that they were afforded an opportunity to comment.

The appeal on ground (a) and the deemed application

4. The main issues in this appeal are; the effects of the development on the living conditions of nearby residents and future occupiers of the flat in relation to privacy, the effects of adjoining commercial uses on the living conditions of future occupiers of the flat in relation to noise and disturbance, and the adequacy of the parking provision in relation to highway safety.
5. The appeal building is a workshop premises comprising three units on the ground floor and a first-floor office/store which has been converted to a residential flat. The notice is directed at the first-floor use in relation to the flat. The building is situated on the west side of Batson Gardens and to the rear of Nos. 51 and 51A St Michaels Road.
6. The previous appeal decision APP/X1165/W/17/3168850 for change of use from store to flatted dwelling and alterations at first floor level over workshop/store was dismissed in 2017. The deemed application in this case is the same development considered previously at appeal. The previous appeal decision, in my view, is given substantial weight in considering the deemed application of this appeal.

Living conditions in relation to privacy

7. The Council indicates in its officer report on the previous planning application that the separation distance between an existing first floor dormer window of the flat and Nos. 51 and 51A is some 6m. This is also referred to in the 2017 appeal decision. The appellant contends that this is an existing dormer and that it was in place when the first floor was used as an office/store. The appellant adds that No. 51A has its own dormer window which reduces the privacy of the flat development.
8. Having viewed inside the flat as converted the dormer window is at a high level and there are limited views of the garden or of lower floor windows of Nos. 51 and 51A. However, the wide dormer on the roof of the neighbouring properties incorporate a clear glazed window and an obscure glazed window and both are at high level such that they look down into the dormer window of the appeal development over a short distance. I agree with the previous Inspector that obscure glazing would not prevent overlooking unless the dormer window of the development is permanently closed. I also concur that this would present unacceptable living conditions for occupiers of the flat development, if such measures are introduced.
9. I note that the dormer window for the first-floor premises of the development has not changed and was present when it was used as an office/store, but the change of use to a flat has introduced a habitable bedroom close to others in neighbouring properties which look down and into the bedroom of the flat development. This results in significant harm to living conditions of nearby residents and future occupiers of the flat in relation to privacy. This development is therefore contrary to LP Policy DE3 that seeks to ensure that new development should not unduly impact upon the amenity of neighbouring uses, particularly impacts arising from privacy intrusion.

Living conditions in relation to noise and disturbance

10. The ground floor units comprise of three units. Unit 3 is associated with the first-floor flat premises and was reported to be used as a commercial garage.

This unit was available for inspection and is now used for storage purposes. The two other units were closed during the visit but were still in use as workshops.

11. The appellant indicates that the flat has been sound proofed and that the appellant does not experience unacceptable noise when the machines are working in the workshop below. These matters could not be corroborated at the site visit as the units were closed and Unit 3 had changed to a storage facility.
12. Nevertheless, these uses could be resumed without impediment and I am not aware that there are restrictions in place limiting their use and operation by planning permission. As these uses could continue separate of the flat development and the ground-floor Unit 3 could be re-let to a separate commercial use future residents of the appeal development could experience unacceptable levels of noise and disturbance by virtue of early and late opening and closing times, disturbance and noise through operating machinery and general coming and goings of staff and visiting customers. I am not satisfied that these matters could be satisfactorily addressed through noise transfer mitigation measure alone.
13. I therefore consider that the effects of adjoining commercial uses are likely to adversely affect the living conditions of future occupiers of the flat in relation to noise and disturbance. In my view, this is contrary to LP Policy DE3 that seeks to ensure that developments are designed to provide a good level of amenity for future occupiers, particularly having regard to noise impacts and NP Policy PNP 1(c) iv).

Highway safety

14. The appellant contends that the incoming use is less intensive than the use of the office/store and commercial garage in terms of traffic generation and the demand on parking in the area. However, this assumes that the garage use has ceased to operate and would not resume. The flat development in the deemed application is separate from the ground-floor use and this could be resumed. Therefore, the benefit in the reduction in movement and parking is not realised, and the deemed application cannot control the ground-floor use as this would be beyond the terms of the application. The displacement of the office/store for a flat would be neutral in terms of traffic generation, nevertheless, no provision can be made within the site for parking of one vehicle, as required by the LP Appendix F Car Parking Requirements.
15. As described by the previous Inspector the area generally lacks available on-street parking and the roads are narrow with confined alignment. When I visited the area the parking pressure was acute, and this in all-likelihood would rise during the evening. I would agree with the previous Inspector that the development would be likely to displace existing on-road parking where parking demands are high.
16. The appellant refers to recent residential conversions where no parking provision was made and a new flat development in the town centre. I am not aware of the circumstances of these cases and the Council has not commented. However, I have decided this case on the available evidence and the individual merits of this case and the development despite its sustainable location is deficient in parking provision for the flat in an area where on-street parking

pressure is high. The development is likely to displace existing on-road parking facilities to the detriment of highway safety and convenience of other road users.

17. I consider that the development is likely to have a significant adverse effect on highway safety. The development is contrary to LP Policies TA3 and DE3, which amongst other things, seek to ensure that flats do not result in the loss of parking provision below the Council's standards of one off-street parking space per unit of accommodation.

Conclusions

18. I conclude that the development conflicts with the development plan and material considerations are insufficient to outweigh this conflict in this case.
19. I conclude that the ground (a) appeal and the deemed application should not succeed.

Iwan Lloyd

INSPECTOR