



Appeal Decisions

Site visit made on 10 March 2020

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2020

APPEAL A:

Appeal Ref: APP/X1165/W/19/3241811 243 Torquay Road, Paignton TQ3 2HL

- 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 D Fusco against the decision of Torbay Council.
 - The application Ref P/2019/0588, dated 4 June 2019, was refused by notice dated 25 July 2019.
 - The development proposed is conversion of existing property into two, three bedroom flats and retaining a shop on the ground floor.
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APPEAL B:

Appeal Ref: APP/X1165/W/19/3241816 243 Torquay Road, Paignton TQ3 2HL

- 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 D Fusco against the decision of Torbay Council.
 - The application Ref P/2019/0840, dated 7 August 2019, was refused by notice dated 15 October 2019.
 - The development proposed is conversion of existing property into two, two bedroom flats and retaining a shop on the ground floor.
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Decisions

1. APPEAL A:

The appeal is allowed and planning permission is granted for conversion of existing property into two, three bedroom flats and retaining a shop on the ground floor at 243 Torquay Road, Paignton TQ3 2HL in accordance with the terms of the application, Ref P/2019/0588, dated 4 June 2019, subject to the conditions in the attached Schedule A.

2. APPEAL B:

The appeal is allowed and planning permission is granted for conversion of existing property into two, two bedroom flats and retaining a shop on the ground floor at 243 Torquay Road, Paignton TQ3 2HL in accordance with the terms of the application, Ref P/2019/0840, dated 7 August 2019, subject to the conditions in the attached Schedule B.

Procedural matters

3. Appeal B is described on the application form as a proposal for conversion of existing property into two, three bedroom flats and retaining a shop on the ground floor. The Council's decision notice and appeal forms describe the development as a proposal for two, two bedroom flats, which is also reflected in the submitted drawings. I have sought the views of the parties who agree that appeal B should be considered as a proposal for two, two bedroom flats. This is reflected in my heading and formal decision.

Main Issue

4. The main issue is the effect on the living conditions of the future occupiers of proposed 'Flat B'.

Reasons

5. The existing building contains a shop at ground floor with a single flat above, spread over two upper floors. The proposals both seek permission for the retention of a smaller shop unit at ground floor, flat above (Flat A), spread over two upper floors and further residential unit to the rear (Flat B), spread across the ground and first floor in a remodelled/extended rear section.
6. In the appeal A scheme, Flat B would be accessed via a rear alleyway leading from Old Torquay Road, whereas in the appeal B scheme, it would be accessed via a shared hall and entrance from Torquay Road to the front. The Council raise no concern about the proposals for the shop or Flat A and consider that the level of external space provided for future occupiers is appropriate, given the site's proximity to Preston Park. I have no substantive evidence to lead me away from that position.
7. In part, policy DE3 of the Torbay Local Plan 2015 (LP) seeks to ensure that adequate floorspace is provided to achieve a pleasant and healthy living environment. The supporting text, at paragraph 6.4.2.15, indicates that regard will be had to the Government's Nationally Described Space Standards (NDSS). Whilst there is no dispute that the requirement would be met in respect of Appeal B, the Appeal A scheme would fall short.
8. In the appeal A scheme, Flat B would have living accommodation with windows facing across a rear yard area that would be shared with the rear access to the retail unit. Refuse for both the dwelling and the retail unit would be stored in this yard so occupiers of the dwelling may be disturbed by commercial users who would also have unfettered access to the yard.
9. However, the submitted drawing indicates that the commercial bin storage could be sited in a narrow passage adjacent to the rear of the shop, rather than in a wider part of the yard that would be overlooked by the principal living area windows. As only high level windows would be provided in the bedroom adjacent to that storage area, occupiers of the dwelling are unlikely to be harmfully disturbed by commercial activities in the vicinity of the bins. Commercial bins may have to be moved to the street via the rear access, but the commercial occupiers would have no other obvious reason to access the wider yard on a regular basis. As such, their presence in the yard would likely be low and so a significant loss of privacy or disturbance would not result.

10. The yard would be separated from the neighbouring property by a boundary fence. Thus, there would be no scope for overlooking the ground floor accommodation from this adjoining commercial yard area. Whilst the boundary fence would be only a short distance from the main living room windows, it would not be so high as to be an oppressive structure. Nor is there is no substantive evidence that the internal spaces would be particularly gloomy or overshadowed.
11. In the appeal B scheme, access to the rear of the shop would be physically separated from the Flat B yard area by a low fence. Such would mean that commercial occupiers would not stray into the residential environment. The height of the fence, and another low fence separating the yard from the neighbouring one would not prevent views from this neighbouring land towards the ground floor bedrooms or yard area associated with the dwelling. However, for the reasons given in respect of appeal A, any associated effects from the commercial occupiers at the appeal site would be limited, and there is no substantive evidence that the neighbouring rear yard is heavily used either.
12. In respect of appeal A, the Council has suggested that the access to Flat B would be inadequate. Whilst it would be via the narrow, uneven passage from Old Torquay Road to the rear, no substantive reasons are given as to why this would result in harmful or substandard living conditions.
13. There was also concern expressed that the refuse storage arrangements in the appeal A scheme were unacceptable due to the nature of this access to any collection point on Old Torquay Road. However, whilst I understand that these storage arrangements may conflict with Highway Authority standing advice, no such concern was raised in respect of appeal B. Indeed, that scheme, the plans for which indicate similar rear-yard storage for the shop and Flat B, received no objection from the Council's Waste Manager. Given their similarities, I find that no harm would result from the refuse storage proposals in either appeal scheme.
14. I, therefore, find that both schemes would provide adequate living conditions in respect of outlook, effects on privacy and disturbance and result in no conflict with those parts of LP Policy DE3 that seek to safeguard against such harm. However, appeal A would provide inadequate floor space when assessed against the NDSS, which would result in a partial conflict LP Policy DE3.
15. Set against this, there is no dispute that the Council cannot currently demonstrate a 5 year supply of deliverable housing land. Such engages paragraph 11(d) of the National Planning Policy Framework (the Framework) which indicates that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework, read as a whole. There is no particular evidence of a conflict with the Paignton Neighbourhood Plan 2019, so this balance would not be affected by the policies set out in Framework paragraph 14.
16. Whilst the Framework advocates the application of the NDSS, it also seeks to boost significantly the supply of housing. Considering the undisputed accessible location of the appeal site and generally high density characteristics of the surroundings alongside the shortfall in housing delivery in the area, the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, considered against the Framework read as

a whole. The presumption in favour of sustainable development outlined at Framework paragraph 11, therefore, applies.

17. In conclusion, then, there would be no conflict with the development plan in respect of appeal B. There would be some conflict with the development plan in respect of appeal A, but given the shortfall in housing delivery in the area, I attribute substantial weight to the delivery of housing and to the presumption in favour of sustainable development outlined in the Framework. This outweighs the conflict with the development plan in this case.

Other matters

18. A neighbouring property owner has noted that there have been historic problems with drains in the area and that parts of the building are in a poor state of repair. However, there is no substantive evidence that the grant of permission would exacerbate these problems, nor are repairs to the building a necessary condition of development being carried out.
19. A developer of the site may have to ensure that all necessary agreements with neighbouring property owners are in place regarding boundary works, and that any requirements in respect of fire escapes and the like are met, but any such requirements do not lead me away from my overall findings in respect of the main issue.

Conditions

20. A plans condition is required in the interests of certainty. To ensure that adequate provision is made, conditions are necessary to secure the provision of refuse and cycle storage. In respect of appeal A, the Council recommended conditions to provide bicycle storage in accordance with the approved plans and submit refuse storage details for approval. However, there is no clear indication of cycle storage facilities on the drawings and I have found the detailed refuse storage arrangements to be appropriate. I have, therefore, amended the requirements of the conditions accordingly.

Conclusion

21. For the reasons given above, I conclude that the appeals should be allowed.

M Bale

INSPECTOR

SCHEDULE A – conditions attached to appeal A

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1993/EXISTING; 1993-1.
- 3) Prior to the first occupation of the development hereby approved, provision shall be made for the storage of refuse and recycling awaiting collection in accordance with storage arrangements indicated on the approved plans and shall thereafter be retained for the life of the development.
- 4) Notwithstanding the approved plans, prior to the first occupation of the accommodation hereby permitted provision shall be made for the storage of bicycles in accordance with details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

SCHEDULE B – conditions attached to appeal B

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1993/EXISTING; 1993-1 B.
- 3) Prior to the first occupation of the dwellings hereby approved, the refuse and bicycle storage arrangements indicated on the approved plans shall be provided, and thereafter retained for the life of the development.