
Appeal Decision

Site visit made on 23 June 2020

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 23 June 2020

Appeal Ref: APP/X1165/W/19/3244581

40 Church Street, Paignton TQ3 3AH

- 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 P Jain against the decision of Torbay Council.
 - The application Ref P/2018/0927, dated 7 September 2018, was refused by notice dated 2 July 2019.
 - The development proposed is described as the conversion of existing garage/workshop.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. There are discrepancies between the appeal site address and descriptions of development on the Council's decision notice and the original application form and appeal form submitted by the Appellant. For consistency, I have used the address and description of development from the Appellant's appeal form in the banner at the top of this decision letter.
3. The revised National Planning Policy Framework (the Framework) was published in February 2019 and, as such, references to the Framework in this decision therefore reflect the revised Framework as published in February 2019.

Main Issues

4. Although the Council has given two reasons for refusal on the decision notice, having reviewed the evidence and submissions I have considered it appropriate to identify three main issues.
5. The main issues are:
 - Whether the proposed development would provide adequate living conditions for future occupiers, with particular regard to internal and external amenity space;
 - The effect of the proposed development on the living conditions of nearby residents with particular regard to outlook, loss of light and privacy; and,
 - Whether the proposed development would preserve or enhance the character or appearance of the Old Paignton Conservation Area (the Conservation Area).

Reasons

Living Conditions of Future Occupants

6. The appeal site comprises a single storey dilapidated building with a corrugated metal roof, which is described as being a workshop/garage. The building is positioned adjoining a private lane which serves a number of residential dwellings and which connects with the Crown and Anchor Way.
7. The proposed dwelling would be located in close proximity to the rear of 40 Church Street, replacing the dilapidated outbuilding. Within the proposed dwelling, the living accommodation would be arranged over two floors, with a bedroom at ground floor level and a lounge with kitchen area being situated at first floor level.
8. Policy DE3 of the Torbay Local Plan 2012-2030 (the Local Plan) requires new development to provide adequate floor space in residential development in order to achieve a pleasant and healthy living environment. The explanatory text references the Nationally Described Space Standard and states that regard will be had to it when considering planning applications. Furthermore, while providing some flexibility, it is clear from the text of Policy DE3 of the Local Plan that it is expected that all new dwellings should aim to meet the minimum standards.
9. I acknowledge the submissions of the main parties in respect of the standards required for one person or two person accommodation. In this regard, whilst the Appellant maintains that the proposal should be assessed as a one person dwelling, the table provided under Policy DE3 of the Local Plan shows that there is no specific standard for 1 bedroom 1 person accommodation set over two floors. As there is no specific standard, it is a matter of judgement as to whether the amount of floorspace would be satisfactory.
10. The figures and submissions from the Appellant indicate that the total floorspace within the proposed dwelling would be approximately 39sqm. In my view, the floorspace would be modest in extent and the plans show that the layout would incorporate a narrow kitchen area in a restricted space with the space available for the lounge being extremely restricted by the presence of the stairs up from the ground floor. The bedroom space would be similarly restricted in area. Given the combination of these limitations, as well as the very modest amount of habitable floorspace when compared to overall floorspace, I am not convinced by the information before me that the habitable floorspace with its proposed configuration would provide adequate living conditions for future residents.
11. I therefore conclude in respect of internal amenity space, that, whilst the supporting text to Policy DE3 of the Local Plan refers to some flexibility to space guidelines, the internal habitable floorspace proposed would be below what would be considered acceptable in this instance. The dimensions of the area results in a restricted space with limited functionality and I consider that this would result in an inadequate living environment for future occupiers.
12. In respect of external amenity space, the appeal scheme proposes shared use of a yard which would be located between the proposed dwelling and the rear of 40 Church Street. The Appellant has put it to me that the area of this yard

would be in excess of 10sqm and that it would exceed the minimum recommended area applicable to one person one storey flats.

13. In my view, as noted above, the proposed development would be a dwellinghouse arranged over two floors and, consequently, the proposed very limited area of shared external amenity space would fall significantly short of the minimum 55sqm guideline stated in the supporting text of Policy DE3 of the Local Plan. However, the policy text refers to flexibility with regards to space guidelines and I have been referred to other developments in close proximity to the appeal site and where development did not appear to provide any external space.
14. In light of the evidence before me, and given the characteristics of the site and the locality where close knit accommodation does not always provide any external amenity area and where there is access to areas of open space close to the site, I conclude that the proposed development would not conflict with Policy DE3 of the Local Plan with regards to usable outdoor amenity space.
15. For the above reasons, in relation to this main issue, I conclude that whilst the external amenity area proposed would not necessarily be contrary to the provisions of the Local Plan, the appeal scheme would not provide adequate living conditions for future occupiers with regards to internal floorspace. As a consequence, the proposal would conflict with Policy DE3 of the Local Plan which seeks, amongst other things, to provide adequate floorspace to achieve a pleasant and healthy living environment for future occupiers.

Living Conditions of Nearby Residents

16. As noted above, the proposed dwelling would be sited in close proximity to the rear of 40 Church Street, separated by a proposed shared yard which is limited in size. The proposed dwelling would be two storeys in height and, by reason of its height and its proximity to the rear of 40 Church Street, would dominate the outlook from the rear facing habitable rooms in that property and from the shared external amenity space, and would result in a loss of light to an unacceptable degree.
17. Whilst I acknowledge the contention of the Appellant that adequate sky factor is provided by the development and that the proposal would replicate other examples in the locality, the separation distance between the proposal and the rear facing windows at 40 Church Street is severely restricted and in combination with the height of the proposal would, in my view, result in unacceptable living conditions for residents of 40 Church Street with regards outlook and loss of light.
18. In respect of the external amenity area which is proposed to be shared between the proposed dwelling and the residents of 40 Church Street, the amount of space to be provided would be below that sought as minimum under Policy DE3 of the Local Plan. However and as noted above, properties with small outside spaces, or even none at all, also feature within the locality. In these circumstances I conclude that whilst the external amenity space associated with 40 Church Street would be reduced, it would still adequately serve the needs of future occupants of that dwelling.
19. Notwithstanding the above, rear windows of habitable rooms at 40 Church Street look out over the proposed shared yard at, or close to, ground floor

level. As such, when entering or exiting the proposed dwelling or when using the proposed external space, occupants of the appeal scheme would be able to overlook into the rear of 40 Church Street. Given the unrestricted nature of the use of the yard, in my view the proposal would lead to a significant and unacceptable loss of privacy for occupiers of 40 Church Street.

20. In light of the above reasons, I conclude that the proposed development would be harmful to the living conditions of future residents of 40 Church Street with regards to outlook, loss of light and loss of privacy. Accordingly, the proposal would conflict with Policy DE3 of the Local Plan which seeks, amongst other things, to ensure that development does not unduly impact on the amenity of neighbouring uses.

Heritage Assets

21. The appeal site is located within the Conservation Area, with the surrounding area being characterised by close knit dwellings forming terraces around narrow lanes and behind more substantial sized buildings which front onto wide streets.
22. In accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area in reaching this decision.
23. Notwithstanding the above in relation to the impact of the appeal scheme on the living conditions of neighbouring residents, the proposed dwelling would reflect the height of the adjoining cottages which are accessed from the lane which connects with the Crown and Anchor Way and, when viewed from within the surrounding area, would reflect the close knit pattern of development at this location. Amendments were made during the application in relation to the external materials to be used, with the proposal seeking to use a combination of stone and timber cladding.
24. Whilst the height and depth of the appeal scheme would reflect that of nearby dwellings, nearby development is predominately finished entirely in stone or render. Consequently, the combination of stone with timber cladding above would not necessarily reflect the character and appearance of buildings within this part of the Conservation Area.
25. However, there are examples close to the appeal site where a combination of stone and timber cladding have been used and, in this respect, I would agree with the comments of the Council's Conservation Officer that if used appropriately, such combination of materials would not necessarily result in harm to the character or appearance of the Conservation Area. In this instance, by reason of the variety and mix of external materials used within this part of the Conservation Area close to the Crown and Anchor Way, and by reason of the permitted use of a combination of vertically aligned close set timber cladding and stone on a development close to the appeal site¹, I conclude that the proposed materials would not be harmful to the character or appearance of the Conservation Area.
26. The proposal would replace a dilapidated building and would, in terms of height and scale, reflect nearby dwellings within this part of the Conservation Area. I

¹ Local Planning Authority Reference: P/2017/1189

conclude therefore, that the appeal scheme would comply with Policies DE1 and SS10 of the Local Plan which, amongst other things, seek to ensure that development respects and enhances the distinctive character and appearance of the Conservation Area. Furthermore, the proposal would accord with Policy PNP1(c) of the Paignton Neighbourhood Plan which seeks to ensure new development relates to the surrounding built environment in terms of scale, height and massing. For the same reasons, the appeal proposal would also accord with those parts of the Framework which require that development is sympathetic to local character.

27. The evidence before me refers to the listed building at the Coach House Public House (the Listed Building) close to the appeal site. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. However, for the same reasons given above in relation to the impact of the proposal on the character or appearance of the Conservation Area, and by reason of the separation distance between the appeal site and the aforementioned Listed Building, I conclude that the proposal would not have a harmful impact on the significance or setting of the Listed Building.

Planning Balance and Conclusion

28. The Appellant has put it to me that the Council cannot currently demonstrate a five year housing land supply. The Council have not provided any statement which refutes the Appellant's contention in this regard.
29. In the absence of a five year supply of housing, the Framework provides that relevant policies for the supply of housing should not be considered up to date, and further states that where the development plan is out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
30. The proposal would contribute one unit towards housing supply, in an area with good access to services and facilities. Whilst I note that the Appellant refers to the proposal as being affordable accommodation, there is no evidence before me that the proposal would accord with the definition of Affordable Housing as provided within the Framework. I accept that future occupiers would, via their spend within local businesses, contribute to the vitality and viability of Paignton. There would also be benefits in the reuse of an underutilised site which has fallen into disrepair, the replacement of which is supported by a number of local residents. Given the small scale of the proposed scheme, these benefits would be moderate in scope.
31. Whilst I have found that there would be no harm to the character and appearance of the surrounding area or to the character or appearance of the Conservation Area, for the above reasons, I have concluded that the proposal would not provide adequate living conditions for future occupants and would be significantly harmful to the living conditions of occupants of 40 Church Street. Given the importance placed on providing a good standard of residential amenity within national policy and local planning policy, this is a matter of significant weight in the determination of this appeal. In my view, I consider

that the adverse impact in relation to living conditions for nearby and future residents would significantly and demonstrably outweigh the benefits of the scheme as described above.

32. Consequently, for the reasons given above I conclude that the appeal should be dismissed.

A Spencer-Peet

INSPECTOR