



Appeal Decision

Site visit made on 3 August 2020

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2020

Appeal Ref: APP/X1165/W/20/3252686

Loft House, Church Lane, Tormohun, Torquay TQ2 5SE

- 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 Ms Foreman against the decision of Torbay Council.
 - The application Ref P/2019/1019, dated 23 September 2019, was refused by notice dated 20 November 2019.
 - The development proposed is described as the resubmission of P/2018/0338, Change of Use from 1 No. Residential Dwelling to provide 2 No. Residential Flats and Ground Floor extension to rear.
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Decision

1. The appeal is allowed and planning permission is granted for the Change of Use from 1 No. Residential Dwelling to provide 2 No. Residential Flats and Ground Floor extension to rear at Loft House, Church Lane, Tormohun, Torquay TQ2 5SE in accordance with the terms of the application, P/2019/1019, dated 23 September 2019, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following documents and approved plans: Site location plan; drawing no 5943/101; drawing no 5943/102; drawing no 5943/103D; and drawing no 5943/104D.
 - 3) The development hereby permitted shall not be occupied until details of bin storage and cycle storage have been submitted to and approved by the local planning authority in writing. The approved stores shall be provided prior to occupation of the development hereby permitted and shall thereafter be retained and kept available for the intended purposes.

Procedural Matters

2. The description of development in the banner heading above has been taken from the planning application form. However, I have omitted the text 'resubmission of P/2018/0338' from the description of development in my decision because such words are not acts of development.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the living conditions of adjoining occupiers in 20 South Street; and

- whether the living conditions of future occupiers of the proposed development would be adequate, with particular regard to disturbance and external amenity space for the ground-floor flat.

Reasons

Adjoining occupiers

4. Set within a built-up area, the relatively constrained appeal site is surrounded by existing properties and backs on to the rear of 20 South Street. The site and No 20 are separated by a low boundary wall, with the external amenity areas of both plots situated in a courtyard setting. With only the low wall on the shared boundary, mutual overlooking is possible between the two plots and amenity areas.
5. The proposed extension would project towards the rear of the site and bring built form closer to the shared boundary, which would be most noticeable for the ground floor flats at No 20 which are slightly set down below their rear amenity areas. Given the limited degree of separation and the constrained area of the courtyard, the proposed development would therefore affect the outlook of the occupiers at No 20.
6. However, with its limited projection, single-storey height and partially pitched roof, the extension would not be particularly large or dominating. It would be situated to the east of the amenity area of flat 1 in No 20 and to the north-east of the amenity areas of flats 2 and 3. The existing outlook to the north and south, between existing built form running broadly east and west, would therefore not be affected, and I observed on my site visit that this provides the main outlook in the courtyard. The small terrace proposed on the site for unit 1 would separate the extension from the shared boundary adjoining the amenity area of flat 1 in No 20. The rear fenestration of that flat also is obscure glazed while the rear windows of the other flats in No 20 are positioned further away from the site.
7. The effect of the proposed extension on the light and outlook for existing occupiers at No 20 would therefore not be significant. The appellant has indicated that they could erect a 2 metre high fence on the shared boundary without the need for planning permission. This would limit the effect of the extension if it were built. To my mind it would also be likely to affect the outlook of adjoining occupiers to a greater extent than the proposed development and privacy screen, the latter of which would avoid significant overlooking of adjoining occupiers from the ground-floor terrace and kitchen/dining room. Furthermore, this is a built-up area with accommodation located in close proximity. As such, it seems to me that it would not be unexpected for surrounding built form to limit outlook to some extent and for there to be some mutual overlooking, as per the existing situation.
8. For the above reasons, I conclude that the proposed development would not harm the living conditions of adjoining occupiers in 20 South Street to an unacceptable extent. I therefore find that it accords with Policies DE1, DE3 and DE5 of the Torbay Local Plan 2012-2030 (TLP). Amongst other aspects, these require that the amenities of neighbouring uses are not unduly affected by development and that extensions do not harm the amenity of nearby properties.

Future occupiers

9. The ground-floor bedroom would face the public highway and adjoin a storage area owned by a third party. However, Church Lane is a rather narrow street mainly in residential use. It is therefore likely to be relatively quiet, with passing vehicles limited in number and not travelling at significant speeds. The submitted proposed plans show that the window facing the Lane would be triple glazed and the party wall running between the ground-floor bedroom and adjoining store would be upgraded with sufficient sound insulation to comply with Building Regulations. This is also a relatively built-up area where some noise and disturbance from various uses and activities would not be unexpected, and I observed on my site visit that there are a number of properties on Church Lane which appear to have a similar relationship with the Lane and adjoining garages/stores.
10. The proposed extension would reduce the size of the existing external amenity space on the site, with unit 1 having only a relatively small patio and terrace area. TLP Policy DE3 requires development to be designed to provide a good level of amenity for future residents, including in relation to the provision of useable outdoor amenity space. The policy's explanatory text sets out that development should make provision for external amenity space where possible, and includes a guideline minimum of 10 square metres for apartments.
11. At approximately 7 square metres, the external amenity area of unit 1 would fall short of this guideline. However, given the constrained nature of the site, the built-up character of the surrounding area and in the context of the relatively limited size of the amenity space for flat 1 in No 20, it seems to me that this amount of outside space would be acceptable in this particular case.
12. Although the Officer Report refers to the lack of external amenity space for the proposed first-floor flat (unit 2), the Council does not allege that this would be unacceptable in relation to the living conditions of future occupiers in that flat. I have little substantive evidence to indicate otherwise, particularly given the site's town centre location, its proximity to public open space and that the supporting text to TLP Policy DE3 refers to the provision of external amenity space 'where possible'.
13. The kitchen/dining area of the proposed ground-floor flat would be served by two sets of patio doors – including one with outlook towards the south – and a rooflight, while the living area would be served by a window and a glazed door and also receive light from the kitchen/dining area. Accordingly, although the privacy screen shown on the proposed ground floor plan would restrict the outlook and light for the proposed ground-floor flat to some extent, future occupiers of it would receive sufficient light and outlook. Although the existing situation only involves a low boundary wall, the privacy screen would also reduce mutual overlooking between it and the adjoining flats.
14. For the above reasons, I conclude that the living conditions of future occupiers of the proposed development would be adequate, with particular regard to disturbance and external amenity space for the ground-floor flat. It seems to me that the site, although somewhat constrained in size, is thus also large enough to accommodate the development proposed. I therefore find that it accords with TLP Policies DE1, DE3 and DE5. Amongst other aspects, these require well-designed development that provide a good level of amenity for future residents, including in relation to noise and the provision of outdoor

amenity areas, and that the plot be large enough to accommodate the proposed extension.

Other matters

15. The Council's Officer Report sets out that the development would have a neutral impact on the Tormohun Conservation Area. Having considered the development proposed and visited the site, I concur and find that it would preserve the character and appearance of the designated heritage asset and the surrounding area in general.
16. It has been put to me that building works and the size of the ground-floor flat, particularly in relation to the bedroom and bathroom, do not comply with regulations, that the bin store for unit 2 is located on land which is not owned by the appellant, and that that bin store and doors in the alleyway restrict access, including as a fire exit, for 20 South Street. However, I have restricted my considerations to the planning merits of the appeal proposal.
17. A number of other matters have been raised by interested parties and I have taken them all into account. The other matters related to planning include effects on wildlife and construction works affecting access and creating disruption and noise. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed.

Conclusion and Conditions

18. For the above reasons, the appeal is allowed.
19. The Council has not submitted any suggested conditions for my consideration as part of the appeal. However, in addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty. I note that the Council's Officer Report also refers to a condition being required with respect to the submission of details of bin and cycle storage prior to occupation of the flats. Given the constrained nature of the site, such a condition would be necessary and reasonable, and I have therefore imposed it.

Tobias Gethin

INSPECTOR