



Appeal Decision

Site visit made on 30 July 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2020

Appeal Ref: APP/X1165/W/20/3251621

19 Waterside Road, Churston With Galmpton, Paignton TQ4 6LJ

- 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 Alan Tucker against the decision of Torbay Council.
 - The application Ref P/2020/0144, dated 7 February 2020, was refused by notice dated 1 April 2020.
 - The development proposed is the alterations and extension to existing domestic garage to provide ancillary accommodation.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Alan Tucker against Torbay Council. This application is the subject of a separate Decision.

Procedural Matter

3. One of the reasons for refusal states that some of the application plans are not accurate. While the OS map/site location plan does not show the rear extension, this appears to be shown on the layout/block plan. There is no dispute regarding the accuracy of the plans in respect of the proposal for the outbuilding. Based on the information before me and my site visit I am satisfied that I have sufficient information to accurately assess the proposal and determine the appeal.

Main Issues

4. The main issues are:
 - the effect of the development on the character and appearance of the area,
 - whether the development would be ancillary accommodation to the main dwelling or a separate independent dwelling,
 - the effect of the proposal on the living conditions of the occupiers of 19 Waterside Road, and
 - whether the proposal would provide acceptable living conditions for future occupiers of the accommodation.

Reasons

Character and appearance

5. 19 Waterside Road and the other properties on this broadly southern side of the road are substantial detached dwellings set back in their plots. While the front gardens are sizeable, the rear gardens are more modest in extent. In the case of No 19, the recent single storey addition to the rear of the property has extended into some of the rear area. However, because of the single storey form of the extension and the existing flat roofed, single storey detached outbuilding these structures have little impact beyond the boundaries of the site.
6. At my site visit I noted the two storey outbuildings within the rear gardens of some properties in this row. In particular, I saw from the appeal site the two storey outbuilding at No 20. This is visible from parts of the front road area, but because of the set back behind the dwelling and the distance, it does not have a harmful impact on the street scene. However, within the rear garden area of No 19, the outbuilding at the adjoining property appears quite high and reasonably bulky. In my view, the first floor element of the adjoining building exerts quite a marked and fairly dominant effect on the immediate surroundings. I do not have detailed information as to when this and the other outbuildings were built and the planning circumstances that led to their construction. Given the impact on this rear area from the outbuilding at No 20, I am not persuaded that it would represent best practice and design such that its presence would justify the approval of similar proposals elsewhere.
7. The appeal proposal would extend the outbuilding further back into the site and, while this would result in a fairly sizeable footprint relative to the size of the rear garden, the extent of ground floor area in itself would not be particularly harmful to the surroundings. The second floor section, however, would have a fairly steep pitch to the roof, a quite high ridge and eaves for an outbuilding and, in this reasonably modestly sized rear garden area, the overall bulk of the building would be quite a dominant feature.
8. When viewed from parts of the surrounding properties and in some views from some adjoining windows, the first floor element would be reasonably conspicuous and would appear as a fairly bulky and incongruous addition. Indeed, the first floor section of the rear gable would be fairly prominent in the outlook for the occupiers of the adjoining bungalow in Blue Waters Drive where at the present time there would be some feeling of separation between the main bulk of buildings.
9. The proposal has been amended with the first floor section stepped back from the front elevation, the building would not be visually harmful when viewed from the footway of Waterside Road itself and the building would appear smaller than the two storey outbuilding at No 20. I am also conscious that there are no objections to the proposal from adjoining residents or local bodies. However, these matters do not reduce the harm that the bulk of the first floor element would have within this rear area when viewed from the immediate surroundings.
10. Given the reasonably modest area at the rear of the dwelling the resulting development would appear cramped on the site and it would manifest itself as an overdevelopment of the land. The proposal would undermine the present

spacing between buildings with a two storey height and cause harm to the character and appearance of this rear area and the immediate surroundings. The proposal would therefore not constitute good design and layout as required by the National Planning Policy Framework.

11. This visual harm from the bulk and form of the extended outbuilding would be irrespective of whether the scheme would be considered as ancillary accommodation or a separate dwelling.
12. In the ways I have explained above, I conclude that the proposal would harm the character and appearance of the area. The scheme would therefore not accord with Policy DE1 of the Torbay Local Plan 2012-2030 (the LP) and Policy BH5 of the Brixham Peninsula Neighbourhood Plan Policy Document 2012-2030 which seek, amongst other things in this respect, development to relate to the surrounding built environment in terms of scale, height and massing.

Ancillary accommodation to the main dwelling or a separate independent dwelling

13. The detail submitted with the application, and subsequently at the appeal, makes it clear that the intention is for the additional floorspace to be used as ancillary accommodation to the main dwelling. It is explained that the space would be used by the appellant's elderly relatives and/or for bed and breakfast accommodation. The intended ancillary nature of the accommodation is reflected in the description of the development for which permission is sought. Additionally, the appellant has set out in the submissions a proposed condition to attach to any permission to ensure that the accommodation would be used as an annexe ancillary to the main dwelling.
14. The Planning Report describes the proposal as a self-contained planning unit with the outbuilding including an open living area with lounge and kitchenette, a bathroom and two bedrooms, one with en-suite facilities. The Council conclude that the accommodation would be self-contained and tantamount to a separate dwelling and therefore considered the proposal on that basis.
15. A leading case in respect of these matters is *Uttlesford DC v SSE & White [1992]* which determined that, even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling – instead it would be a matter of fact and degree.
16. In this case, the accommodation would be reasonably extensive and with the kitchenette it could be used, in principle, in a self-contained manner. However, it is important to consider the particular site specific circumstances.
17. The accommodation would be housed in a building located close to the main dwelling with a combined external amenity area. The proposed annexe would be accessed along the side of the main house and from the same access from the road. Any parking of cars would be within a shared drive area. The outbuilding, while sizeable in itself, would be smaller than the main dwelling and therefore subservient in scale and appearance. Furthermore, the outbuilding and the main house would be in such proximity that it would be convenient for occupiers of the outbuilding to mix with the main dwelling residents in the proposed joint rear garden area and future occupants could easily access the main house to use its facilities.

18. The physically close relationship of the outbuilding and the main dwelling, shared external spaces, and position of the outbuilding to the rear, would make it difficult to operate the outbuilding separately from the main dwelling. In all likelihood, there would in practice need to be a functional relationship between the two buildings if the occupation of the overall site was to operate effectively and to protect the living conditions of the occupants of the main dwelling.
19. The combination of these circumstances is that there would be a realistic prospect that the outbuilding would be occupied as ancillary accommodation and not as a separate dwelling. A single planning unit across the site would be retained. This is the intention of the proposal and a planning condition in any approval restricting the use to ancillary accommodation would be reasonable and necessary to ensure that the use was appropriately controlled to protect the living conditions of the occupiers of the main dwelling.
20. I therefore conclude as a matter of fact and degree, and subject to an appropriately worded condition in any approval, that the proposal should be considered, as proposed in the application, as ancillary accommodation to the main dwelling and not on the basis that it would constitute the formation of a separate independent dwelling.

Living conditions of the occupiers of the No 19

21. Views from the windows of the proposed accommodation would look directly across a short stretch of garden directly towards the windows of the main house and vice versa. However, on the basis that the accommodation would be an ancillary accommodation to the main house and used by relatives or bed and breakfast guests as a single planning unit, there would be a single occupancy of the site. In these circumstances, the relationship would be acceptable in terms of privacy.
22. The outbuilding would be within the corner section of the garden of No 19 with the first floor bulk of the building set back from the front elevation. Any effect on the living conditions of the occupiers of the main dwelling from the physical presence of the outbuilding would be tempered by the benefits provided by the additional accommodation and by the situation that there is already an impact from the existing outbuilding. In the circumstances any adverse impact resulting from the extended outbuilding on the living conditions of the occupants of the main dwelling would not be at a level that would justify refusal on this matter.
23. In the light of the above, I conclude that the proposal would maintain adequate living conditions for the occupants of No 19 and therefore accord with Policy DE3 of the LP in this respect.

Living conditions for occupiers of the accommodation

24. The Council considered the proposal as the provision of a separate dwelling and that as a consequence the internal living space and external outdoor amenity area would be substandard. However, for the reasons explained, the outbuilding would provide an annexe to the main house. Occupants would have access to the accommodation in the main dwelling and use of the wider garden areas. In these circumstances, the occupiers of the proposal would be provided with adequate floorspace overall and acceptable levels of outdoor amenity areas such that the living conditions would be acceptable.

25. Accordingly, I conclude that the proposal would provide acceptable living conditions for future occupiers of the accommodation and thereby, in this respect, meet with the requirements of Policy DE3 of the LP which seeks that development be designed to provide a good level of amenity for future residents or occupiers.

Other Matters

26. The bed and breakfast accommodation would provide a small boost to the local economy and provide an additional form of local tourist accommodation. However, given the size and nature of the proposal the benefits in this respect would be minor.
27. I am also conscious that the floorspace would provide accommodation for the appellant's elderly relatives and the submissions in support of this matter indicate that they need ground floor accommodation. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 and how the appeal development might assist in meeting the stated needs. Notwithstanding these important considerations, it does not follow from the PSED that the appeal should succeed. Dismissing the appeal would mean that the appellant may have to consider other options for meeting the accommodation needs. There is no clear evidence before me to demonstrate the proposal is the only means by which such needs may be met. Accordingly, dismissing the appeal would be a proportionate response given the identified harm.

Conclusion

28. I have found that, subject to a suitably worded condition in any approval, the scheme would provide ancillary accommodation to the main house and that the proposal would provide acceptable living conditions for occupiers of the existing dwelling and the proposed accommodation. This, however, is neutral in the overall analysis. The main benefits I have identified above and the provision of the additional accommodation to meet the stated needs afford limited weight. However, the scheme would have an adverse impact on the character and appearance of the area. Because of the localised effect the adverse impact would be modest in extent but nevertheless would cause harm for the reasons explained and this would conflict with development plan policies. This identified harm affords moderate weight against the scheme, nevertheless, this would not be outweighed by the benefits.
29. It therefore follows that the proposal would not comply with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict. I therefore conclude that the appeal should be dismissed.

David Wyborn

INSPECTOR