
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 A Ref: APP/X1165/W/20/3250844

Flat 4, Penlee Court, 25 Conway Road, Paignton TQ4 5LH

- 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 & Mrs I Robson against the decision of Torbay Council.
 - The application Ref P/2019/0754, dated 15 July 2019, was refused by notice dated 15 October 2019.
 - The development proposed is a two storey extension to existing building, reformation of site from 4 flats to 3 dwellings and 6 flats and associated works.
-

Appeal B Ref: APP/X1165/W/20/3251394

Flat 4, Penlee Court, 25 Conway Road, Paignton TQ4 5LH

- 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 & Mrs I Robson against the decision of Torbay Council.
 - The application Ref P/2019/1338, dated 12 December 2019, was refused by notice dated 26 February 2020.
 - The development proposed is the erection of a two storey extension to existing building, reformation of site from 4 flats to 3 dwellings and 6 flats and associated works with additional vehicular access.
-

Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters and Background

3. Penlee Court is a 2 storey building with basement area. The building presently accommodates 4 flats. Both schemes seek to remodel and extend the building to provide an additional 5 units of accommodation, which would result in a total of 9 units. Appeal B is a subsequent and different scheme to the previous proposal (Appeal A) and this includes material differences in terms of the position and form of the proposed extensions and parking arrangements. I will consider each scheme on its merits, however, as the Council refused both schemes for similar reasons I will examine the proposals together where this is appropriate in terms of the main issues.

Main Issues

4. The main issues are in respect of both appeals:
 - the effect of the proposal on the character and appearance of the area,

- the effect of the development on the living conditions of the proposed occupiers, with particular regard to provision of outdoor amenity space and the location of car parking, and
- whether the proposal would provide adequate off road car parking provision, with particular regard to the effect on the local parking situation and highway safety.

Additionally, in respect of Appeal A, another main issue is the effect of the proposal on the living conditions of the occupiers of 27 Conway Road.

Reasons

Character and appearance

5. The site lies within a built-up area. Opposite the site is the Language Centre, which is a large building set back a little way behind a reasonably high wall. Broadly on either side of the site, on the same side of the road, are terrace properties which are characterised by a reasonably consistent mix of architectural features including bay windows, chimneys and sloping roofs.
6. Penlee Court sits slightly elevated above and angled from the road. The spacing around this detached building contributes to the setting of the building within the road and together with its size, distinguishes it from the surrounding terrace buildings. While a variety of additions have been added in the past, the building still retains much of its original character with features such as the double bay window to the front elevation, the shallow sloping slate roof, chimney and general articulation, including the details around the side entrance door. The combination of all these features, together with the spacing around the building, mean that the site makes a generally positive contribution to the street scene.
7. With Appeal A, the two storey front extension would be a prominent addition projecting forward in the site. It would have some elements of design, such as the double height bay window, that would make reference to parts of the character of the adjoining buildings and Penlee Court itself. However, the extent of projection forward and the somewhat awkward connection to part of the existing front elevation of the main building would mean that the extension would sit uncomfortably with and dominate this principal elevation of the building. This rather awkward arrangement would be visible in the street scene because of the angle of the extended building on the site. This front addition would overwhelm some of the more characteristic and well-proportioned features of the existing building that contribute positively to the area.
8. The scheme would also incorporate reasonably extensive areas of flat roof to the side elevation. These additions may not be clearly apparent from public vantage points, nevertheless, these elements of the proposal would not appear as a visually attractive or a well-integrated component of the extended building. In this way, they would not be sympathetic with the form and character of the original building.
9. Additionally, a unit of accommodation is proposed within the roof space. This part of the scheme would incorporate quite sizeable flat roofed dormers to all four sides of the main roof. These dormers would add quite an imposing presence to the roof and in some angled views up towards the roof, particularly from some areas within the site, the height and width of the flat roof of the

- dormers would obscure the ridge of the main building. As a result, the dormers, even clad in slate, would add a discordant and unattractive feature to the building which would cause visual harm to its character and appearance.
10. With Appeal B, the two storey front extension would project forward of this existing principal elevation, effectively obscuring this original façade. When viewed from directly in front of the building, the two storey gable with the double height bay windows would appear as a well-proportioned and vernacular feature. However, the other components of that elevation, with the irregular fenestration of the other gable, the reasonably dominant central section with the flat roof and terrace areas, and the oversized dormer addition with the height similar to the ridge of the main roof, would result in a discordant combination which would not be sympathetic to the character of the building and the identity of the surroundings.
 11. In some limited views within the road, particularly from broadly north, the two storey projection would extend the side elevation to create quite a long length and bulky addition of built form. Because of the raised level of the land above the footway, the forward section of this extension would appear unduly dominant in some views from the road.
 12. The two story side addition to the south elevation would be an irregular shape and the flat roof would be a discordant element of this part of the extended building. While a minor part of the proposal it would, nevertheless, not add positively to the overall scheme.
 13. In the light of the above analysis, I conclude that both schemes, for the various reasons explained above, would result in harmful additions to the present building and detract from the character and appearance of the area. As a consequence, the schemes under both appeals would not comply with Policy DE1 of the Torbay Local Plan 2012-2030 (LP) and Policy PNP1(c) of the Paignton Neighbourhood Plan to 2030 (NP) which seek, amongst other things, that development proposals should strengthen local identity and consider the integration with the existing street scene and features.
 14. It follows that neither scheme would meet with the National Planning Policy Framework (the Framework) policy requirements that development should add to the overall quality of the area and be sympathetic to local character.

Living conditions of the proposed occupiers

15. Although there are differences, both schemes would have a communal area of lawn within a section of the frontage of the site. This would provide the most useable outdoor amenity space for some residents of each scheme, although some properties would also have patio areas, balconies, terraces and some of the dwellings a garden. I accept that there would be level differences and that planting could also mitigate the impacts, however, the communal garden area with each scheme would be positioned reasonably close to the ground floor windows of some of the properties within the site.
16. For instance, with Appeal A, users of the lawn area could come fairly close to the lounge and bedroom windows of Unit 1 and the lounge windows of Units 8 and 9. With Appeal B, the same fairly close relationship could occur with the lounges of Units 1 and 2. With both schemes, the proximity of users of the reasonably limited area of external amenity space and the adjoining windows of

habitable rooms would, in all likelihood, especially at times of the day and evening when sitting out was likely to occur, cause harm to the living conditions of residents of the adjoining units by way of overlooking, noise and disturbance.

17. In this way, the schemes would not meet with the Framework policy requirement that development creates places with a high standard of amenity for future users.
18. The Council also objected to the scheme proposed under Appeal A because Units 5 and 8 were considered to be dwellings and not have the separate 55sqm of useable outdoor amenity space. This requirement is set out in the supporting text to Policy DE3 of the LP and relates to the policy criteria regarding the provision of useable amenity space, including gardens. However, Unit 8 would be next to the communal lawn area which would provide a useable outdoor amenity space and Unit 5, although over two floors, would be more akin to a flat. In these circumstances, I am not persuaded that the Council's concern would cause undue harm and policy conflict in this respect.
19. In terms of disturbance of occupiers of adjoining residential units from the use of nearby car parking spaces, I am conscious that spaces are already in proximity to existing habitable rooms. However, both schemes would increase the number of units on the site and, in all likelihood, there would be a corresponding increase in the vehicle and parking movements, and the potential for associated noise and disturbance.
20. With the scheme under Appeal A, while most spaces would be broadly satisfactory in terms of the living conditions of residents, Unit 1 would have bedrooms adjoining spaces 3P and 4P, and in the case of space 4P the parking area would appear to extend in front of the entrance. However, if space 4P was used by the occupants of this unit, and having regard to the reasonably high level of the window cill in relation to the parking space, then it is likely the relationship of that space and the adjoining ground floor rooms would not be unduly harmful.
21. However, as only one space per flat would be provided for each unit under the Appeal A scheme, space 3P would in all likelihood be used by another resident. Notwithstanding the levels, I consider that the position of this parking space in proximity to the bay window of the bedroom of Unit 1 would be such that occupiers of this room would, when vehicles were manoeuvring in and out of the space, be unduly disturbed. This relationship would not create the high standard of amenity expected by the Framework.
22. With the scheme under Appeal B, the Council has highlighted concerns with spaces P5 and P6. However, these are already in place and would effectively adjoin existing flats in these locations. Furthermore, as I have indicated above, the cars would be parked on an appreciably lower level than the window cill and this would help mitigate any disturbance. I am not persuaded that even with the activity from the increased number of units on the site that the location of these spaces would cause more harm than is presently to be found. Consequently, I do not find this element of the proposal unacceptable.
23. Nevertheless, I conclude that there would be harm to the living conditions of future occupiers of some units because of the positioning of the communal external amenity space and this would be the case with both schemes. I have

also found that space 3P with Appeal A would not be satisfactory. In these circumstances, the schemes would not meet with Policy DE3 of the LP which seeks, in this respect, development to be designed to provide a good level of amenity for future residents or occupiers.

Off-road car parking provision

24. The external space around the building is reasonably restricted because land at the rear does not form part of the appeal site. Broadly to the north west lies Penlee Cottage with its garden area and it appears that vehicular access to this property is achieved via the same access to Penlee Court.
25. Due to the ownership boundaries of the site, providing car parking for the additional units is not straightforward. I broadly agree with the Council in its analysis that some of the spaces would be, in practice, difficult to use, such as the double garages because of the dimensions and/or the position of the stairway. The spaces alongside the side of the building in Appeal A are not of sufficient width to allow passengers and/or the driver to alight the doors of the vehicle that are next to the building. Also, with the Appeal A scheme there is no disabled space.
26. On the ground, space P6 (Appeal A) (which is the same as space P7 in Appeal B) seems to be intended to be positioned in the vicinity of the pebble surfaced area by the entrance to Penlee Cottage. Consequently, provision of this space to the appropriate dimensions would appear to be overly tight in relation to the adjoining space by the side of the building and could potentially restrict the access to the rear.
27. Policy TA3 of the LP indicates that the loss of on-street parking provision will be a material consideration in planning applications, with additional weight being given to loss of provision in those areas where there is congestion and/or heavy use of public or on-street spaces. The Council in the planning report indicate that this area has on-street car parking issues, and while only a snap shot in time this appeared to be the case at my site visit, notwithstanding the ability of residents to walk to services and facilities in the area. Given the reasonably high density of housing in the area, some of which appears to have limited or no off road car parking available, I consider that the supply of on-street car parking is an important resource to help reduce illegal and inconvenient parking in the area, thereby contributing to highway safety.
28. With the Appeal B scheme, two spaces are proposed to be accessed direct from Conway Road. This would be likely to lead to at least one or possibly two on-street car parking spaces being lost. This would, albeit to a limited extent, increase the pressure on the availability of other on-street spaces and thereby lead to the increased potential for illegal and inconvenient parking in the area with a harmful effect on highway safety. This element of the proposal therefore weighs against the scheme.
29. In terms of cycle storage, with the scheme under Appeal A, the proposed area under the stairway of Unit 5 looks limited in size to accommodate the number of cycles that could need to be stored by residents of the site. With Appeal B, the basement space is larger but access to this area appears a little inconvenient with the need to negotiate two sets of doors. Appeal A does not appear to provide a vehicle charging point and with the scheme under Appeal

B, one charging point is shown in the garage while the other charging point would not appear to immediately adjoin a car parking space.

30. I appreciate that the scheme seeks to provide off-street car parking to meet the appropriate standards and, indeed, the Appeal B scheme would provide 11 spaces. I accept that there may be a need for some flexibility in this case because the schemes involve the extension of an existing building using the land that is available. However, with the deficiencies that I have highlighted I am not satisfied that, taken as a whole, either scheme would be acceptable and would provide sufficient spaces that were convenient and useable to meet the needs of all future occupiers of the site.
31. I have noted all the submissions from the appellant on the highway and parking situation. In particular, I have carefully examined the parking layouts on all the sites which have been drawn to my attention and noted the site at 30 Conway Road at my site visit. I accept that there are examples where, because of the physical situation, there appears to have been some compromises in provision and layout. However, it seems to me that all the sites have their own circumstances, existing uses, arrangement of buildings, access onto adjoining roads and accessibility to local services and facilities such that each case in relation to the provision of parking needs to be examined in the light of the individual circumstances. I therefore find that these other examples afford limited weight in justification for the acceptability of the car parking provision on the appeal site with its individual circumstances including layout, land ownership, adjoining properties and existing number of units.
32. In the light of the above analysis, I conclude that neither scheme would provide adequate off road car parking provision and there are concerns with cycle storage and electric charging points. As a consequence, the scheme would, in all likelihood, notwithstanding the location within walking distance of services and facilities, lead to an increase in demand for on-street car parking. With the local parking situation, this, in all probability, would lead to some illegal or inconvenient parking and a resulting adverse impact on highway safety. Consequently, both schemes would conflict with Policies TA1, TA2 and TA3 of the LP and Policy PNP1(d) of the NP which seek, notably, to require appropriate provision of car and cycle parking spaces in all new development.

Living conditions of the occupiers of 27 Conway Road

33. This concerns the scheme under Appeal A. At the present time, No 27 includes a modest sized seating area to the rear of the patio doors of the dwelling and an area of grassed amenity space which steps up the site. To the rear of the garden of No 27 is the wall of a workshop like building and to the sides of the garden, including towards the appeal site, the aspects are reasonably open.
34. The Penlee Court site is on a level a little higher than parts of the adjoining property at No 27. The proposal would extend the Penlee Court building at a two storey height along and closer to a fairly large stretch of the side boundary with No 27. The height, extent and bulk of this addition in proximity to the boundary, and having regard to the different site levels, would result in a building of unduly imposing and dominating effect for the occupiers of No 27. It would be such that the impact of the building would cause an unacceptable and overbearing impact and loss of outlook adversely affecting the living conditions of the adjoining occupiers when they used their rear outdoor amenity areas, and the side passageway and side door. While I appreciate that this adjoining

resident has not objected to the proposal this does not alter the harm I have concluded would occur in this case.

35. The reason for refusal also raises concern with respect to loss of light to the side windows of No 27. Given the sunken nature of the side passageway, the ground floor door and windows are already affected by their position and relationship to the boundary fence. As the two storey front extension is proposed to extend to approximately a position just beyond these openings, I am not persuaded that light would be so affected to these ground floor openings, and the first floor window above, that this should form a reason for refusal in itself.
36. Nevertheless, for the reasons explained above, I conclude that the proposal under Appeal A would adversely affect the living conditions of the occupiers of No 27. Accordingly, it would not comply with Policy DE3 of the LP which seeks, in this respect, that all development should not unduly impact on the amenity of neighbouring and surrounding uses.

Other Matters

37. I have noted the frustration of the appellant in relation to the discussions with the Council to seek to resolve planning issues. However, these matters are not for my consideration regarding the merits of the proposals at the appeal stage. I have also taken into account the background documents supplied by the appellant which indicates that the Council may accept the redevelopment of the site for 10 units. However, at this stage of the discussions, the details, understandably, do not appear to have been fully worked up and the option of redevelopment does not have the benefit of a planning permission. Consequently, I afford this alternative scheme little weight in my overall analysis.
38. With both schemes I have taken into account the representations, both for and against the scheme. In particular, I have noted those letters of support from local residents that wish to see the area improved and that they consider that the schemes would contribute positively in this respect. These residents also judge the proposals would provide sufficient car parking and amenity space. However, these comments do not outweigh the harm that I have identified above.
39. I have also taken into account all the other schemes, photos and layouts that have been presented to me, including in terms of examples of the physical impact, external design, relationships between spaces and habitable rooms, and also highways and parking. However, it seems to me that all these sites have their own circumstances, including the character of each site, the existing uses, constraints, and relationship to neighbouring properties and the street scene. Therefore, I am not satisfied that these other examples are so comparable or demonstrate such best practice that they would justify the grant of planning permission in this case, given the specific harm I have found in relation to the circumstances of this site. I therefore attach these other examples limited weight.

Planning Balance and Conclusion

40. It is accepted by the main parties that the Council is unable to demonstrate a 5 year supply of deliverable housing land. In these circumstances, the

presumption in favour of sustainable development as set out in paragraph 11d of the Framework is engaged. This indicates that planning 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.

41. The site lies within a built-up area and where the principle of development is accepted, and indeed is a general location where development is to be directed. The provision of the additional residential units under both schemes would provide a worthwhile boost to the supply of housing in a location with good access to services, facilities and public transport. There would be social and economic benefits to the local economy during construction and in subsequent occupation, although these would be to a limited degree due to the scale of the proposal, and in respect of construction would only be for a limited time.
42. The additional accommodation would be provided on a windfall site and would make efficient use of the land. This would meet with the policies of the Framework in this respect. The proposed units would be reasonably modest in size, whilst still meeting the appropriate space standards, and therefore they would be more affordable for local people than some other dwellings in the area. However as only 5 additional units of accommodation would be provided the cumulative benefits of each scheme afford only limited weight.
43. On the other hand, I have found that both schemes would harm the character and appearance of the area, not provide satisfactory living conditions for some residents of the proposed accommodation and that parking provision would not be adequate leading to highway safety issues. In addition, in respect of Appeal A, there would be harm to the living conditions of the occupiers of No 27. These are matters that would not accord with policies of the Framework and the development plan. In relation to both schemes the cumulative harm I have found would be significant and this affords substantial weight against each proposal.
44. In the circumstances, I consider that the adverse impacts of granting planning permission for either appeal would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. As a consequence, neither proposal would constitute sustainable development and this weighs heavily against the scheme.
45. For the reasons given above, there are no material considerations that indicate that either proposal should be determined otherwise than in accordance with the development plan. I therefore conclude that both appeals should be dismissed.

David Wyborn

INSPECTOR