



Appeal Decision

Site visit made on 24 May 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2021

Appeal Ref: APP/X1165/W/21/3269178

Garage & Store, R/O 10 - 12 Sherwell Hill Torquay, TQ2 6LS

- 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 Marc Kemp against the decision of Torbay Council.
 - The application Ref P/2020/0851, dated 3 September 2020, was refused by notice dated 3 February 2021.
 - The development proposed is conversion of an existing storage building into a single bedroom dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of an existing storage building into a single bedroom dwelling at Garage & Store, R/O 10 - 12 Sherwell Hill, Torquay, TQ2 6LS, in accordance with the terms of the application, Ref P/2020/0851, dated 3 September 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. As part of the appeal, a revised plan was submitted showing the removal of the terrace from the flat roof of the proposed store. Where amendments are proposed, regard should be had to the 'Wheatcroft'¹ principles - including whether the amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changed development would be deprived of that opportunity. As the plan details minor amendments, and the nature of concerns of those who would have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I take the amended plan into account. I shall therefore determine the appeal on the basis of the plans referred to on the decision notice, as well as the amended plan submitted as part of the appeal.

Main Issues

3. The main issues are:
 - the effects of the proposal on the character and appearance of the area;
 - the effects of the proposal on the living conditions of neighbouring occupiers at Nos 10 and 12 Sherwell Hill, with particular regard to overlooking;

1. 1 Wheatcroft Ltd V SSE [1982]

- whether satisfactory living conditions would be created for future occupiers in respect of the availability of outdoor amenity space and waste collection arrangements; and
- whether the proposal would provide satisfactory off-street parking in the interests of highway safety and efficiency.

Reasons

Character and appearance

4. The appeal building lies within the built-up area of Torquay and has two floors, with the first floor served by an east-facing dormer window. The building is constructed from painted render and has a slated roof. It has a hardsurfaced parking area to the east and is accessed via a service lane that runs broadly parallel with Sherwell Hill and Marcombe Road. The area is predominantly residential but the appeal building has a commercial use and is sited in close proximity to a car repair workshop.
5. The appeal site is at an elevated level relative to dwellings in Sherwell Hill, but conversely sits on a lower level relative to dwellings on Marcombe Road. Owing to the acceptance of the amended plan as part of the appeal, the external changes to the building involve the construction of a small store and covered porch to the rear of the parking area, minor window alterations and external improvements. The store would be single storey in height with a flat roof, and would be constructed to match the existing building.
6. Whilst the addition of an enclosed terrace above the single storey extension may have resulted in an alternative conclusion, the minor alterations to the existing building now proposed would not otherwise be harmful to the character and appearance of the area. For these reasons, the proposal would accord with Policies DE1 of the Torbay Local Plan (Local Plan) (2015) and Policy TH8 of the Torquay Neighbourhood Plan (TNP) (2019), which seek to ensure that development is well-designed and respectful of local character in terms of height, scale and bulk.

Overlooking

7. The removal of the first floor terrace from the proposal materially alters the way in which it could harm the living conditions of neighbouring occupiers. The potential overlooking that could arise would stem from the change of use of the premises to a dwelling and overlooking through largely existing windows.
8. The existing building has windows in all but its western elevation. Due to its orientation and relationship with neighbouring buildings and spaces, overlooking from windows in the eastern and southern elevations would not cause harmful overlooking to an extent that does not already occur. However, the windows in the northern elevation (on both ground and first floor) more directly overlook the gardens and rear elevations of both Nos 10 and 12 Sherwell Hill, from an elevated position. Such harm already occurs when the building is in use for commercial purposes, albeit with restricted hours of use.
9. Given that the northern windows would adjoin the internal stairwell and the windows would not be the only means of allowing light ingress or achieving an outlook from the property, the use of a condition to require these windows to be fully obscure glazed would overcome the potential harm for neighbouring

occupiers. In addition, the enclosure of the access and parking area by the store extension would remove the potential for overlooking therefrom and limit the visibility of comings and goings from the building.

10. Therefore, subject to conditions, the proposal would not harm the living conditions of neighbouring occupiers at Nos 10 or 12 Sherwell Hill with particular regard to overlooking. The proposal therefore complies with Local Plan Policy DE3 which seeks to avoid adverse impacts on neighbouring occupiers from the impacts of noise, nuisance, visual intrusion, overlooking and privacy and light and air pollution.

Conditions for future occupiers

11. In respect of waste and recyclable waste collection, the service lane providing access to the appeal building is incapable of being accessed via refuse collection lorries. The Council would not be obliged to carry out waste or recycling collections from the unadopted service lane and thus, any future occupiers would be required to take refuse to the nearest collection point, some approximate 100 metres at the junction with Ashfield Road.
12. Policy DE3 of the Local Plan requires that developments make satisfactory provision for storage of containers for waste and recycling. This could be achieved through the provision of the store extension. Whilst the distance to take the bins and recycling would be, to a degree, inconvenient, it would not be prohibitively so, and nor do I consider the potential for trip hazards from siting bins at designated collection points to be so problematic that it would result in material harm.
13. The change of use of the appeal building would result in a compact single bed dwelling, adequate to meet the required internal space standards of 58 sqm². The Local Plan requires a provision of useable amenity space, i.e. gardens and outdoor amenity areas. Policy THW4 of the TNP requires that all new houses shall have not less than 20 sqm of outside space. Flats and maisonettes are only required to be provided with 10 sqm of outdoor amenity space either in the form of a balcony or part of communal green area.
14. Owing to the removal of the first floor terrace, there would not be any external amenity space other than the parking area for the future occupiers to use for recreational purposes or sitting out. No alternative compensatory measures are proposed to directly offset this shortfall, although my attention is drawn to the abundance of local promenades and beaches that can provide publicly accessible outdoor amenity space. I also note the convenient access and satisfactorily accessible storage areas that would be provided for occupiers in the context of the otherwise limited size of the site.
15. However, insofar as the proposal would force future occupiers to seek alternative outdoor amenity provision, the proposal would conflict with Policies DE3 and THW4 of the Local Plan and TNP respectively.

Parking provision

16. Appendix 4 of the Local Plan sets the parking requirements in the context of Policy TA3 and indicates that each dwelling to be provided with two car parking spaces; one of which can be a garage or car port. Policy TH9 of the TNP

² DCLG: Technical housing standards – nationally described space standard (2015)

requires all developments to meet the parking requirements in the Local Plan unless it can be shown that there is not likely to be an increase in on-street parking arising from the development or, the development is within the town centre and an easy walk of a public car park.

17. The appeal site is not within the town centre and nor has my attention been drawn to any locally accessible public car parks. There is one existing car parking space on site which would be maintained for future occupiers. This single space falls short of the Local Plan requirement by one space. Whilst the Council allege that the occupants of No 10 Sherwell Hill use the appeal site to park vehicles, the appellant refutes this point. Given the lawful business use of the appeal premises, there is limited evidence to suggest that there would be a loss of off-road parking for occupants of No 10.
18. However, I do accept that the site has some constraints which limit its useability for parking for two vehicles of a standard size and, in the event that two occupiers with separate cars took residence of the unit, there would be one additional vehicle needing to park elsewhere in the immediate vicinity. Such an outcome would conflict with Policies TA3 and TH9 of the Local Plan and TNP respectively.

Planning balance and conclusion

19. The appeal proposal would fail to provide adequate outdoor amenity space for future occupiers and would under-deliver on the requisite number of off-road vehicle parking spaces. These shortcomings conflict with the aforementioned Policies and bring the proposal into conflict with the development plan, when taken as a whole.
20. However, the appeal proposal would make use of an existing building in a sustainable location, providing a small dwelling to the local housing stock and in all other respects, providing satisfactory living conditions for future occupants whilst protecting those of neighbouring occupiers. Very few alterations would be needed to make the building habitable and certainly none which would harm the character and appearance of the area. Taking into account the thrust of the National Planning Policy Framework to boost significantly the supply of housing and provide increased densities where appropriate to do so, the social, environmental and economic benefits that would result from the conversion of the building, despite its modest scale, are such that it indicates that a decision should be taken other than in strict accordance with the development plan.

Conditions

21. In addition to the statutory time limit, a condition is required specifying the approved plans in the interests of certainty.
22. In the interests of protecting the living conditions of neighbouring occupiers, a condition is necessary to require the windows in the north elevation to be provided as obscure glazed.
23. In the interests of the character and appearance of the area, highway efficiency and in the interests of the living conditions of future occupiers, a condition is required to ensure that the cycle parking, vehicle parking and external storage areas are otherwise provided prior to first occupation.

Final conclusion

24. For the reasons set out above, the appeal is allowed.

Hollie Nicholls

INSPECTOR

SCHEDULE OF CONDITIONS

- 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:
 - Site location plan, ref 021-KRM-PA02-REV C
 - Outbuilding floor plans and elevations, ref 021-KRM-PA01-REV B dated 16.02.21
- 3) Prior to first occupation of the development hereby approved, the windows in the northern elevation shall be fitted with obscure glazing to Pilkington level 4, or an equivalent standard. These windows shall be fixed shut unless opening parts are located higher than 1.7m above finished floor level or they are fitted with a 100mm opening restrictor. The windows shall thereafter be permanently retained in that condition.
- 4) Prior to first occupation of the development hereby approved the bike store, parking area and bin storage area shown on drawing 021-KRM-PA01-REV-B shall be provided in accordance with the approved plans and shall thereafter be permanently retained thereafter.