



Appeal Decision

Site visit made on 3 September 2021

by Mrs H Nicholls FdA MSc MRTPI

An Inspector appointed by the Secretary of State

Decision date: 27 September 2021

Appeal Ref: APP/X1165/D/21/3274659

10A Clennon Summit, Goodrington with Roselands, Paignton TQ4 5HD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval to details required by a condition of a planning permission.
 - The appeal is made by Ms Leslie Casey against the decision of Torbay Council.
 - The application, Ref P/2020/0502, sought approval of details pursuant to conditions Nos 1 and 2 of a planning permission, also Ref P/2020/0502, granted on 16 October 2020.
 - The application was refused by notice dated 4 March 2021.
 - The development proposed is two-storey extension to rear elevation with raised decking.
 - The details for which approval is sought are: a surface water drainage scheme (condition 1) and privacy screen (condition 2).
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Decision

1. The appeal is allowed and details approved insofar as it relates to condition 1 attached to planning permission Ref P/2020/0502, dated 16 October 2020. The appeal is dismissed insofar as it relates to condition 2.

Preliminary Matters

2. I noted during my site visit that the construction of the development had already commenced.

Main Issues

3. The main issue in relation to condition 1 is whether the proposal would be served by an adequate means of surface water drainage. In relation to condition 2, the main issue is whether the proposal would protect the living conditions of neighbouring occupiers, with particular regard to overlooking.

Reasons

Condition 1

4. Planning permission was granted for the extension to the dwelling with a condition requiring the provision of surface water soakaways designed in accordance with the BRE Digest 365 design guidance for the critical 1 in 100 year storm event plus 40% allowance for climate change. However, the condition also includes a discretionary clause: *"unless an alternative means of surface water drainage is submitted to and agreed in writing..."*.
5. The appellant submitted details of the connection of the extension to the existing combined sewer in order to discharge the requirement for a soakaway/s. The Council refused to discharge the condition as in the opinion of the Drainage Engineer, insufficient evidence had been provided to indicate that infiltration drainage was not possible, having regard to the originally submitted Flood Risk Assessment (FRA). The appellant indicates that the original FRA

mistakenly included a standard paragraph stipulating that a soakaway would be provided. Further evidence was provided to indicate that the drainage undertaker, South West Water, did not object to the continued use of the connection to the combined sewer.

6. Whilst the aspiration to have surface water addressed through infiltration drainage is understandable, in this case, the scale of the development, the diminutive difference between the hardstanding to be removed and increased roof area, existence of the existing connection and that the development has commenced, combine to indicate that the existing means of surface water should continue to be used. As the condition allows for agreement to "*an alternative means of surface water drainage*", I consider that this is the most expedient way of dealing with the matter which will not result in any environmental harm, albeit that the inclusion of such discretionary clauses within conditions is not typically advisable.
7. In view of the above, the means of surface water drainage would be adequate and is sufficient to discharge condition 1 and complies with Policies ER1 and ER2 of the Torbay Local Plan (2015) which seek to ensure the maintenance of the prevailing water flow regime on site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere.

Condition 2

8. Condition 2 is a condition that requires the provision of a privacy screen on the side of the raised terrace close to the boundary where the neighbouring dwelling (No 10 Clennon Summit) is more exposed and set lower than the appeal site. The appellant asserts that the level of visibility from the raised terrace towards the neighbouring dwelling and its garden would not be materially different than it is presently, without the terrace in situ. I noted the number of windows in the appeal dwelling that already looked towards the neighbour and general intervisibility between the gardens.
9. The trigger for the provision of the privacy screen is prior to the first use of the terrace. This element of the development has not yet been constructed and therefore, the condition has not yet been breached.
10. However, the condition does not require details of the privacy screen to be submitted and discharged; it simply requires that such will be constructed at the appropriate juncture, prior to the terrace being brought into use. Should the appellant wish to remove or vary the condition, an application should be submitted under Section 73 of the Town and Country Planning Act 1990. It is not a matter under this appeal for me to fetter the interests of any decision maker determining such an application. Consequently, condition 2 remains as set out in the original permission.

Conclusion

11. For the above reasons, I conclude that details submitted in respect of condition 1 of the planning permission Ref P/2020/0502 should be approved and the appeal allowed. However, in respect of condition 2, the details are not approved and nor are they a matter for an appeal of this nature.

Hollie Nicholls

INSPECTOR