



Appeal Decision

Site Visit made on 20 July 2021

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2021

Appeal ref: APP/X1165/W/21/3274399

127 Winner Street, Paignton TQ3 3BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr K Willis against Torbay Council.
 - The application Ref P/2020/1301, is dated 27 November 2020.
 - The development proposed is described as 'development for two residential dwellings (all as drawings) with parking, to demolish rear buildings retaining existing retail uses and flats over fronting Winner St (development of houses is outside Conservation Area)'.
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Decision

1. The appeal is allowed and planning permission is granted for two residential dwellings with parking, to demolish rear buildings retaining existing retail uses and flats over fronting Winner St at 127 Winner Street, Paignton TQ3 3BP in accordance with the terms of the application, Ref P/2020/1301, dated 27 November 2020, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 20 July 2021. Insofar as it is relevant to this appeal, I have taken the Framework into account in reaching my decision.

Main Issues

3. The appeal follows the Council's failure to determine the respective planning application. The Council have provided a Planning Officer Report, which recommends that the proposal be refused. On the basis of this Report, I consider the main issues are:
 - The effect of the appeal proposal on the character and appearance of the area, including the effect on the Old Paignton Conservation Area and the setting of the adjacent Grade II listed buildings, 117-119 and 131 Winner Street;
 - Whether the proposal would provide adequate living conditions for future occupiers by reason of amenity space;
 - The effect of the appeal proposal on the living conditions of neighbouring occupiers by reason of outlook and privacy; and

- The effect of the appeal proposal on highway safety by reason of parking provision and visibility.

Reasons

The site and its surroundings

4. The appeal site is located partly within and partly outside but adjacent to the Old Paignton Conservation Area (CA). The CA has an urban feel with tightly knit residential and business properties of various types and sizes which creates a varied and interesting street scene. There is a certain amount of uniformity in the predominance of terraced buildings, the use of brick and render building materials and in the way that buildings are generally positioned at the back of the footway resulting in narrow streets which open out at junctions and public spaces where larger, focal buildings tend to be located.
5. Winner Street has some buildings, including those in relation to this appeal, which are set back from the main frontage. This provides visual breaks in an otherwise almost continual terrace of predominantly two and three storey properties and results in a road width which varies along its length. A common feature is the presence of archway openings in the frontages leading to development at the rear.
6. The frontage of the appeal site consists of a twentieth century flat roof property used as retail premises at ground floor level and residential flats at first floor level with a central access which leads to the rear part of the site. At the rear of the access is a building currently used for storage in association with the retail unit on the frontage. The information supplied by the appellant suggests that this building would have been erected in around 1860. Beyond the store building and at a higher level, accessed by way of steps, is the rear garden area which continues to rise to where it meets Winner Hill Road. There are Grade II listed buildings known as 117-119 and 131 (The Globe Inn) Winner Street to either side of the appeal site.

Character and Appearance

7. The appeal proposal is for the erection of 2 dwellings on the sloping garden area at the rear of the site, together with the demolition of the storage building to provide an area for parking and turning. The sloping nature of the site means that stepped access would be provided to the front doors of each dwelling with cycle and bin storage provided in the area below. The design of the front elevation of each property is slightly different but the materials palette is the same, namely render with horizontal boarding and stone detailing under an artificial slate roof.
8. During my site visit, I noted that residential development to the rear of the Winner Street frontage has already occurred on the adjacent land and therefore this proposal is not at odds with the general pattern of development in the immediate area. The two proposed dwellings, incorporating half hipped roofs, gable features at eaves level and horizontal boarding would be at odds with the prevailing character and appearance of properties in Winner Street. However, the existing properties on the adjacent land, equally do not reflect the general character of development on Winner Street and from what I have seen, reflect more on the character of development above the site on Winner Hill Road.

9. In this respect, I do not find that the proposed development would harm the character and appearance of the immediate area and the appeal proposal therefore complies with Policy DE1 of the Torbay Local Plan 2012-2030 (LP), Policy PNP1(c) of the Paignton Neighbourhood Plan 2012-2030 (NP) and paragraph 130 of the Framework which seek to ensure that new development respects and relates well to the surrounding built environment.

Old Paignton Conservation Area

10. The appeal proposal would retain the frontage buildings and central access on to Winner Street but would require the demolition of the building at the rear currently used for storage.
11. The building appears to have undergone some alteration over the years, having a pitched roof over part of it and a flat roof over the remainder. Whilst the building has some merit in terms of its age, its positioning immediately at the rear of the frontage buildings means that its character and appearance is largely obscured from view and even when standing immediately in front of it, the constraints of the site are such that it makes very little contribution to the character and appearance of the CA. It cannot be seen from Winner Street, other than limited glimpses of a small part of the building through the archway. In this respect, I consider that although the proposal involves the demolition of the storage building in its entirety, its significance in the CA is very limited and therefore in reaching a balanced judgement, as required in paragraph 203 of the National Planning Policy Framework (the Framework), I find that the demolition of the storage building would be acceptable.
12. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. With regards to the overall development, given that the frontage building will be retained and taking account of the limited width of Winner Street which constrains wider views of the site, I am satisfied that the appeal proposal would not have an adverse impact on, and would therefore preserve the character and appearance of the CA. The proposal therefore complies with the statutory duty and Policy SS10 of the LP which seeks to conserve and enhance the CA.

Effect on the Setting of Listed Buildings

13. Section 66 (1) of the Act requires that I give special regard to the desirability of preserving a listed building or its setting. As set out above, there are Grade II listed buildings on either side of the site.
14. Having visited the site, it is my view that the setting of both of these buildings is derived from their location on the frontage of Winner Street and is very limited due to the tightly packed nature of the street scene. Given that the buildings on the frontage of the appeal site, which are attached to the listed buildings, will be retained, I do not consider that either the demolition of the rear storage building, nor the erection of new dwellings on the appeal site would affect the setting of either of these listed buildings and consequently their settings would be preserved in accordance with Policy SS10 of the LP which seeks to conserve heritage assets, proportionate to their importance.

Living Conditions of Future Occupiers

15. The plans include the provision of a terrace to the front of each property, together with a small patio area at the rear, with a retaining wall and steps up to the remainder of the garden. The majority of the garden is therefore on a slope and the Council argues that this would provide limited scope for recreation. The plans do not indicate any works to terrace the garden to provide further level areas but that is not to say that future occupiers could not do so or find some alternative way of using the space as it is, to derive recreational benefit from it. Therefore, although the majority of the garden would be on a slope, I find that there would be sufficient space and scope for the area to be used for recreational purposes.
16. Given the appeal sites location within the town, where private amenity spaces tend to be limited, I find that the provision in this instance is acceptable. I find therefore that the proposal would provide adequate living conditions for future occupiers by reason of amenity space. As such it complies with Policy DE3 of the LP which seeks to provide a good level of amenity for future occupiers including in terms of useable amenity space and paragraph 130 of the Framework which seeks a high standard of amenity for future occupiers.

Living Conditions of Neighbouring Occupiers

17. The adjacent dwelling, no. 123 Winner Street is separated from the appeal site by a low hedge. It is positioned towards the back of its plot with balconies to the front elevation and its main garden area to the front. The appeal dwellings would be located forwards on their plots, such that their rear elevations would roughly align with the front elevation of no. 123.
18. This positioning, together with the appeal properties being located on lower ground and the lack of any window openings in the side elevation facing no. 123, would limit to extent to which any overlooking of the neighbouring property could occur. In addition, the siting of the appeal dwellings on lower ground would not adversely affect the outlook of the neighbouring property to a harmful extent.
19. I find therefore that the proposal would not unacceptably harm the living conditions of neighbouring occupiers, by reason of outlook or privacy. As such, the proposal complies with Policy DE3 of the LP which seeks to protect the occupiers of neighbouring properties from unacceptable impacts such as overlooking, loss of privacy or poor outlook. The proposal also complies with paragraph 130 of the Framework which promotes a high standard of amenity for existing occupiers.

Highway Safety

20. The appeal proposal identifies four car parking spaces each measuring 2.4m by 4.8m with a manoeuvring area measuring 6m deep, in the area currently occupied by the store building. Appendix F to Policy TA3 of the LP states that for new residential development, two parking spaces would be required per dwelling but that this may be reduced in locations which have access to a greater range of transport options such as town centres. In addition, Appendix F specifies that each parking space should have minimum dimensions of 2.4m by 4.8m with a manoeuvring space of 6m in parking courts to enter and exit a space. The appeal proposal therefore satisfies these requirements.

21. The Council have drawn my attention to the Highway Design Guide for New Developments Revision 12 (dated July 2021) and the Highways Development Control: Standing Advice for Minor Development Applications Revision 6 (dated July 2021). The latter requires a minimum width of 3.2m for a parking space which is adjacent to a solid structure such as a wall and that dual spaces should be a minimum width of 5.6m. The proposal includes four parking spaces side by side and as such I do not consider that they constitute dual spaces. However, two of the spaces are adjacent to solid walls and have a width of 2.4m as opposed to the 3.2m set out in the Standing Advice document
22. In addition, the Council also contend that the vehicular access, via the archway, is not wide enough for two vehicles to pass each other and that this could result in vehicles reversing back on to the public highway. They also contend that the loading bays on either side of the access would restrict visibility to an unacceptable degree.
23. I accept that the width of the access is limited and that at times, this could cause conflict between vehicles entering and vehicles exiting the site. However, this is, in my view, likely to happen only on an ad-hoc basis. I also accept that two of the parking spaces may be more difficult for the occupiers of the appeal properties to use due to their constrained width. However, the site is located close to the town centre and provided with dedicated cycle parking so traffic movements and car ownership rates are likely to be lower than with some other forms of residential development. In addition, traffic speeds in Winner Street are low and narrow access points with very limited visibility such as the one shown in this appeal are a common feature along Winner Street. The presence of loading bays either side of the point of access does not restrict the visibility any further.
24. When taken together, I do not find that this would result in highway safety being compromised to such an extent that it would be contrary to Policy TA3 of the LP which requires an appropriate provision for car and cycle parking spaces in new development nor Policy PNP1(d) of the NP which seeks purpose designed cycle parking spaces. I also find that the proposal is not contrary to paragraph 111 of the Framework which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Other Matters

25. Interested parties have raised the issue of the effect of the appeal proposal on wildlife. The appeal was accompanied by an Ecological Impact Assessment which identified that the only likely impact of the development of the appeal site would be on nesting birds. The Council has recommended a condition to ensure that nesting birds are protected and I am satisfied that this addresses the issue.
26. The issue of land stability has also been raised in relation to the effect of the appeal proposal on those properties on Winner Hill Road which sit above the site. Given that the appeal proposals do not extend as far as the boundary on Winner Hill Road and that I have not been provided with any substantive evidence of land stability being an issue at the site, responsibility for securing a safe development would lie with the developer.

27. The appeal site is located within the Paignton Town Centre Community Investment Area. Policy SS11 of the LP seeks to regenerate and improve such areas by resisting the change of use of small and medium sized homes to houses in multiple occupation. In this regard, the Council has put it to me that a condition would be required to prevent this from occurring without written consent and I agree that this would be necessary in order to comply with the aims of the LP.

Conditions

28. In addition to the standard time limit, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interests of certainty. I find that pre-commencement conditions are necessary in terms of a construction method statement, archaeology and vegetation clearance. These are necessary to protect the living conditions of nearby residents; to ensure that archaeological evidence that could otherwise be destroyed by the appeal proposal it is properly investigated, recorded and analysed; and, in the interests of protected species respectively. The appellant has provided his written agreement to the terms of these conditions although I have removed the phrase 'unless otherwise agreed in writing by the local planning authority' from the archaeology condition in the interests of certainty.
29. I have attached conditions requiring the submission of a drainage scheme as the site is located in the Torbay Critical Drainage Area and a requirement for the materials of construction to be agreed in the interest of visual amenity. I have also found it necessary to attach a condition requiring the provision of boundary treatment, bin and bicycle storage, electric vehicle charging points and parking to ensure that provision is made in accordance with the LP requirements and to safeguard the living conditions of occupiers and neighbours.
30. Finally, I have removed permitted development rights to alter and extend the proposed dwellings and erect outbuildings to protect the living conditions of neighbouring occupiers and to prevent the use of the dwellings as a house in multiple occupation in accordance with LP requirements.
31. I have not attached the condition suggested by the Council in respect of landscaping. Given the limited scale of the proposal and that I have found that there is limited scope for the appeal site to be viewed from public vantage points, I do not find that a landscaping scheme would be necessary to make the development acceptable.

Conclusion

32. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be allowed.

Alison Fish

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: 1922/4A; 1922/40; 1922/40A; 1922/42; and, 1922/43A.
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by the local planning authority. The CMS shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works with priority given to the reuse of building materials on site wherever practical;
 - viii) Measures to minimise noise nuisance to neighbours from plant and machinery; and
 - ix) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) No vegetation clearance shall take place between 1st March and 31st August inclusive in any given year unless prior to the commencement of those works, a detailed check of the vegetation for active bird's nests has taken place by a competent ecologist. Written confirmation that no nesting birds will be harmed and/or appropriate measures are in place to protect them on site shall have been submitted to and approved in writing by the local planning authority prior to any clearance works taking place on site. The development shall thereafter be carried out in accordance with the agreed details.
- 5) No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. The development shall be carried out at all times in accordance with the approved scheme.
- 6) Prior to their use on site, details of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted including wall finishes, roofing materials, window frames, doors, eaves, fascia and rainwater goods shall have been submitted to and approved in writing by the local

planning authority. Development shall thereafter be carried out in accordance with the approved details.

- 7) No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 40% for climate change and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall provide information about:

- i) the design storm period and intensity;
- ii) the method employed to delay and control the surface water discharged from the site;
- iii) a timetable for its implementation; and
- iv) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Where it can be demonstrated that the ground conditions are not suitable for soakaways, details of the alternative means of surface water drainage shall be submitted to and agreed in writing by the local planning authority.

- 8) The development hereby allowed shall not be occupied or brought into use until the following have been provided in accordance with the detail shown on drawing numbers 1922/40 and 1922/42:

- i) Boundary treatments;
- ii) Bin storage;
- iii) Bicycle storage; and
- iv) Electric Vehicle Charging Point;

These elements shall thereafter be retained for the lifetime of the development

- 9) The development hereby allowed shall not be occupied or brought into use until the parking spaces and drive have been provided. These elements shall thereafter be retained for the use of the associated dwellings for the lifetime of the development.
- 10) Notwithstanding the provisions of Classes A to E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order with or without modification), no enlargements, improvements or other alteration shall take place to either of the hereby approved dwellings within the application site, and no outbuildings or other means of enclosures shall be erected within the garden areas of these dwellings, with the exception of one ancillary structure each up to 10 cubic metres in volume.

- 11) Notwithstanding the provisions of Class L of Part 3 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order with or without modification), no change of use shall take place from the hereby approved dwellings (falling within Class C3) to a use falling within Class C4 (house in multiple occupation) of that Schedule.

*****End of Conditions*****