



Appeal Decision

Site visit made on 3 November 2021

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2021

Appeal Ref: APP/X1165/D/21/3278248

9 Rhodanthe Road, Preston, Paignton TQ3 1RD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Mr L Bayliffe against the decision of Torbay Council.
 - The application Ref P/2021/0053, dated 14 January 2021, was refused by notice dated 13 April 2021.
 - The development proposed is described as '*retrospective to agree works for dormers with windows, rear terrace and rear extension*'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At my site visit I observed that a dormer and a rear terrace/platform, above a rear extension, have been erected in a manner consistent to that shown on the proposed plans subject to the Council's decision. As such, I have assessed the appeal on the basis that the proposal has been carried out, notwithstanding the proposed further alterations concerning the operation of the dormer windows and the erection of screening along the flanks of the terrace/platform.
3. The appellant has asserted that the dormer does not require permission as it is permitted development (PD) pursuant to Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Within the context of an appeal made under section 78 of the Act, it is not within my remit to formally determine whether or not that is the case. However, I shall consider the evidence as to whether permission is required so far as it is material to this appeal proposal.
4. If the appellant wishes to ascertain whether development at the site is or would be lawful, they may make an application under sections 191 or 192 of the Act. Any conclusions I reach are for the purposes of the current appeal only and do not prejudice any future application for a lawful development certificate and/or, if it were to become relevant, any enforcement proceedings.

Application for Costs

5. An application for costs was made by Mr L Bayliffe against Torbay Council. This application is the subject of a separate decision.

Main Issues

6. The main issues are the effect of the proposal on (i) the character and appearance of the area and (ii) the living conditions of the occupants of neighbouring properties, with reference to privacy and light.

Reasons

Character and appearance

7. 9 Rhodanthe Road is a two-storey property fronting a private highway. The land it occupies rises steeply southwards away from the highway, and its rear garden is terraced, reaching heights which are roughly level to and above the roof of the dwelling. Whilst there are a variety of building types and heights across the street, and limited examples of dormers, there is also a discernible characteristic of traditional and well-proportioned pitched and hipped roofs.
8. The dormer protrudes across the rear and much of the flank roofslopes of the dwelling. There is little set back from the eaves and it rises to the height of the house, immersing its ridge with a singular flat roof. The result is a substantial roof enlargement which is harmfully top heavy and protuberant, which fails to respond respectfully to the intended design and proportions of the building. This is exaggerated by the elevation of the dwelling above the highway and the way that the outline of the dormer appears against the sky.
9. I therefore conclude on this issue that the proposal has an unacceptable effect on the character and appearance of the area. It conflicts with the visual and design aims of Policies DE1 and DE5 of the Torbay Local Plan 2021-2030 (adopted 2015) (TLP), Policy PNP1(c) of the Paignton Neighbourhood Plan (made 2019) and the National Planning Policy Framework (the Framework).

Living conditions

10. The topography along Rhodanthe Road has led to high levels of mutual overlooking between private spaces, including from the upper echelons of garden areas into neighbouring dwellings. Within this context, whilst overlooking would be possible from the windows within the dormer, I am satisfied that this could be restricted to acceptable levels through the retention of the obscure glazing and by significantly restricting how and to what extent the windows can open. Unacceptable overlooking from the elevated terrace/platform would be prevented by the tall screening which would bound it. These measures could be secured by the use of conditions.
11. Trees within gardens, the upward slope of the land itself, and the presence of houses set atop the ridge to the south along Barcombe Heights are likely to already reduce the amount of light received to the Rhodanthe Road housing. The proposal would not have a significant effect beyond this established situation. Light pollution emitted from the windows would be modest and acceptable.
12. On this basis, I conclude on this issue that the proposal would have an acceptable effect on the living conditions of the occupants of neighbouring properties, with reference to privacy and light. It would accord with the relevant aims of Policy DE3 of the TLP and the Framework.

Other Considerations

13. The dormer contains windows which open sideways less than 1.7m above the floor of the room in which they are installed. This is precluded by Schedule 2, Part 1, Class B.2 (c) (ii) of the GPDO. From the proposed plans and my own observations on site, the dormer looks to have broken forward of the uppermost part of the apex of the front roofslope of No 9. Although this appears to be by a modest degree, such works are also precluded under Class

B.1 (c). The platform/terrace is linked to and directly accessed from the dormer and I consider it to be an integral part of the dormer development, given that it functions as a necessary means of escape. This leads the proposal to also likely fall within the preclusion for such set out by Class B.1 (e).

14. The appellant has referred to revised drawings which postdate the Council's decision, and which may serve to clarify the status of the dormer in relation to the GPDO. However, these drawings have not been provided. The evidence that is before me draws the conclusion that, regardless of its volume, the dormer is unlikely to comprise PD. Consequently, and with regard to relevant case law¹, I am not convinced that lawfulness of the dormer pursuant to PD rights is a real prospect. For these reasons, this is a fallback position which is of limited weight in my assessment. I also recognise the personal circumstances of the appellant and family, and the desire to resolve the situation with the dormer. This matter is further apportioned limited weight in favour of the scheme.

Planning Balance

15. The harm to the character and appearance of the area is a matter to which I attribute significant weight, and which brings the scheme into conflict with the development plan when read as a whole. The other considerations in favour of the scheme do not outweigh this conflict.

Conclusion

16. For the reasons outlined above, and taking all other matters raised into account, I conclude that the appeal should be dismissed,

Matthew Jones

INSPECTOR

¹ Mansell v Tonbridge and Malling Borough Council [2017] EWCA Civ 1314