
Appeal Decision

Site visit made on 9 March 2021

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26th January 2022

Appeal Ref: APP/N1160/W/20/3265144

7 Lipson Terrace, Plymouth PL4 7PR

- 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 TPX Homes (Padstow) Ltd against the decision of Plymouth City Council.
 - The application Ref.20/00433/FUL, dated 7 February 2020, was refused by notice dated 13 November 2020.
 - The development proposed is the conversion of a Grade II listed building, the Mount (a former care home), into 17 residential units, associated car parking, and communal gardens, with bike and waste bin storage.
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Decision

1. The appeal is dismissed.

Main Issues

2. No.7 Lipson Terrace is part of a listed building¹. The Council has granted listed building consent for the works involved in the proposed conversion² subject to conditions. In so doing, the Council must have satisfied itself that the works would preserve the building, its setting, and any features of special architectural and historic interest which it possesses, bearing in mind the duty imposed by s.16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990³. In that context, notwithstanding the parallel duty imposed by s.66(1) of the Act, it is not necessary for me to consider those works further.
3. Against that background, the main issues for consideration are whether the proposal: (1) should make provision for affordable housing and address any impacts on local and strategic infrastructure; (2) makes adequate provision for parking and, linked to that, its effect on highway safety; (3) deals properly with the need to meet the 20% target for reduction in carbon emissions; and (4) would respond in an appropriate way to existing trees.

Reasons

Affordable Housing and Infrastructure

4. Policy DEV7 of the Plymouth & South West Devon Joint Local Plan 2014-2034⁴ says that for developments of above ten homes, at least 30% of the total

¹ The listed building is the terrace made up of Nos.1-7 Lipson Terrace (No.8 having been combined with No.7)

² Ref.20/00434/LBC dated 13 November 2020

³ Referred to hereafter as the Act

⁴ Referred to hereafter as LP

number of dwellings should be affordable homes, without public subsidy, subject to viability. The policy expects these to be provided on-site, except in the case of sites between 11 and 14 dwellings where the requirement can be met by providing an off-site contribution to deliver affordable housing elsewhere in the policy area.

5. With that policy approach in mind, the Council says that the proposal should provide six affordable homes on-site, or in what I take to be a relaxation of the precise stipulations of LP Policy DEV7, make a contribution of £348,750 to allow for equivalent off-site provision. The proposal before me does neither.
6. The appellant cites the Vacant Building Credit⁵ as justification for making no provision for affordable housing on the basis that the scheme would not include any additional floor-space. Paragraph 63 of the National Planning Policy Framework⁶ says that to support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount. Footnote 28 explains that this should be equivalent to the existing gross floorspace of the existing buildings and that the concept does not apply to vacant buildings that have been abandoned.
7. The precise operation of VBC is expanded upon in the Planning Practice Guidance⁷. It is explained that the policy is intended to incentivise brownfield development, including the reuse or redevelopment of empty and redundant buildings and that in considering how the VBC should apply to a particular development, local planning authorities should have regard to the intention of national policy.
8. The PPG continues: In doing so, it may be appropriate for authorities to consider: whether the building has been made vacant for the sole purpose of re-development; and whether the building is covered by an extant or recently expired planning permission for the same or substantially the same development.
9. In relation to the latter point, there is no extant or recently expired permission for the conversion of the building to residential, as proposed here. The former point does, however, have some traction. According to the appellant, the building has been vacant since May 2019. The appellant says that 'the building has been marketed consistently for 15 months'; 'there may well have been interest in the building as a C2 use'; and 'as it remains on the market currently, it is obvious that this interest has not translated into a purchase'.
10. I am told that the owners closed the care home as it was not profitable and the building had failed to be maintained to the standards required due to its listed status and high repairs costs.
11. I appreciate that the Council might not have asked for details of the marketing of the building at application stage. Nonetheless, the appellant accepts that there may well have been interest in a C2 use. There is nothing before me to demonstrate that marketing has taken place in a realistic way, or to show why that interest has not been pursued to purchase. Obviously, a new purchaser wishing to continue the C2 use would have to carry out works of repair and

⁵ Referred to hereafter as VBC

⁶ Referred to hereafter as the Framework

⁷ Referred to hereafter as PPG

adaptation to facilitate it, but it has not been shown that the way in which the building was offered to the market reflected the necessary investment. In the absence of evidence of that kind, I am not satisfied that the building has not been made vacant for the sole purpose of re-development.

12. I would also observe that according to the Council, someone appeared to be living on the ground floor on 15 March 2021. In response, the appellant says that any enforcement action should be taken up with the current owners. However, that response does not make clear whether the occupation is, in fact, unauthorised, or something the current owners are unaware, or not supportive, of. In that context, it is not clear that the building is, in fact, vacant. That adds weight to my findings above.
13. With all those points in mind, I do not regard VBC, as a material consideration, to be of sufficient weight to override the approach of the development plan to the provision of affordable housing as set out in LP Policy DEV7.
14. While the appellant does not dwell on the matter, LP Policy DEV7 says that the provision of affordable housing is subject to viability. In that context, it appears that a Financial Viability Assessment was submitted with the application, but I am told that the appellant declined to fund the Council's assessment of it⁸. On that basis, the Council did not take it into account. This Financial Viability Assessment has not been placed before me so I cannot interrogate it or come to any conclusions about its findings.
15. Taking all those points together, there is no good reason why the proposal should not make provision for affordable housing and it falls very clearly contrary to LP Policy DEV7.
16. LP Policy DEV30 sets out that the development of new homes should contribute to the delivery of sustainable communities with an appropriate range of community infrastructure, such as schools, primary health care infrastructure, sports/recreation and community facilities/village halls. Major housing developments will be considered in the context of the sufficiency (or otherwise) of the community infrastructure to meet the demands generated by the development. Where there are existing or anticipated capacity issues, financial contributions to appropriate projects will be sought to enable the community impacts of the development to be mitigated. Where possible, developments should directly incorporate community infrastructure and services as integral parts of the development.
17. The Council is clearly of the view that the proposal would have impacts on local and strategic infrastructure that would need to be mitigated but there is no vehicle before me to secure that mitigation. On the face of it then, the proposal fails to accord with the requirements of LP DEV30.
18. There appears to be a suggestion from the appellant that the need for this mitigation is outweighed by the obvious benefits of bringing the listed building back into use. That might be the case, but such a conclusion cannot reasonably be arrived at without some evidence that the scheme would not be viable unless the need to mitigate impacts on local and strategic infrastructure was set aside. For the reasons outlined above, I am unable to reach any conclusions on viability.

⁸ As required by paragraph 12.58 of the Council's SPD that accompanies the LP and the Council's fees policies

19. With that in mind there seems to be no good reason why the scheme could not make provision to address impacts on local and strategic infrastructure. As a result, I can only sensibly conclude that there is a failure to accord with LP Policy DEV30.

Parking and Highway Safety

20. LP Policy DEV29 sets out that development proposals should: consider the impact of development on the wider transport network; provide safe and satisfactory traffic movement and vehicular access to and within the site; and ensure sufficient provision and management of car parking to protect the amenity of surrounding residential areas and ensure the safety of the highway network. In general terms, LP Policy DEV1 says that development proposals will be required to safeguard the health and the amenity of local communities.
21. The Council's car parking standards set out in the SPD would require the development to provide 31 spaces. The Highway Authority has stated that it would be prepared to relax that requirement and accept 22 spaces (1 per flat plus 5 for visitors). However, the proposal would provide only 19 spaces (one per unit plus 2 visitor spaces). I would note that the visitor spaces are proposed in the existing turning head at the end of Lipson Terrace. This area already appears to be in use for parking by existing residents.
22. Like the Framework, the LP seeks to move away from reliance on the private car. In that context, I recognise that the site is in an accessible location from where it would be straightforward to walk or use the bus to gain access to the city and/or day-to-day facilities. In that context, it may well be that not all incoming residents of the proposal would see the need to keep a car. On the other hand, it could reasonably be argued that residents of a two-bedroom flat, couples or young families perhaps, might have more than one car.
23. The forecast made on behalf of the appellant using 2011 census data suggests that there would be a total of 14 cars (8 households with 1 car and 3 households with 2) serving the development. However, the scheme would allocate 1 space per flat and in the appellant's worst-case scenario, where residents who do not use their allotted space are not willing to let another use it, 3 cars would need to be parked off-site, on Lipson Terrace or other surrounding streets. I note that the Highway Authority casts doubt on any reliance on the 2011 census data because data on car ownership reflects the high number of students in the area. It is not altogether clear, therefore, that the appellant's 'worst-case' is an accurate one.
24. Residents on Lipson Terrace itself, and surrounding streets, rely on on-street parking. The area is, according to the Council, and I have no good reason to doubt what they say, parked to capacity in the evenings and at weekends. Illegal and inconsiderate parking prevails and any shortfall in parking provision on the appeal site will obviously increase reliance on these on-street spaces.
25. In that context, the failure of the proposal to provide sufficient parking space to meet even the appellant's own, most likely unduly optimistic, 'worst-case' scenario would lead to more competition for spaces on streets that are already heavily parked. That would have a detrimental impact on the amenity of the surrounding residential area. It is also likely to encourage further illegal or inconsiderate parking which might, in turn, compromise highway safety. All that brings the proposal into conflict with LP Policies DEV29 and DEV1.

26. Concern has been expressed too about any increase in traffic movements through the Lipson Terrace entrance/exit given its interaction with the junction of Mount Gould Road and Lipson Road. It is noteworthy that as the Council acknowledges, very few accidents have been recorded along the section of Lipson Road in the vicinity of the access. That said, the accidents that have occurred have involved vehicles turning into and out of junctions.
27. The appellant's material suggests that there would be an increase in traffic movements through the access as a result of the proposed change from a care home to 17 residential units. The Council characterises the uplift that would occur as 'slight', which seems to me reasonable.
28. The junction of Lipson Terrace and Lipson Road is one that is challenging for motorists. However, it does not necessarily follow, in my view, that that a challenging junction is more dangerous. It appears to me that a responsible motorist would recognise the nature of such a junction and approach it with more care.
29. In that context, the slight uplift in movements through the junction as a result of the proposal need not translate into any significant impact on highway safety. As such, I find no departure from LP Policy DEV29 in this specific regard. In reaching that conclusion I am mindful that paragraph 109 of the Framework tells us that development should only be prevented on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Carbon Emissions

30. The aim of LP Policy DEV32 is to deliver low-carbon development. Amongst other things, it says that all major development proposals should incorporate low carbon or renewable energy generation to achieve regulated carbon emissions levels of 20% less than that required to comply with Part L of the Building Regulations.
31. According to the appellant, suitable upgrades will be adopted, along with solar photovoltaic arrays on the roofs of the newer parts of the building. Together these will achieve a 17.7% reduction in carbon emissions from what would be required by Part L. It is clear then that the proposal would not accord with the requirements of LP Policy DEV32.
32. The argument put forward to justify that failure is, put simply, that this reduction is all that can be achieved without materially altering the fabric of the building, which would, in turn, compromise its status as a listed building. I am not convinced by that. As the Council has set out, there are many ways in which listed buildings can be made more energy efficient without causing harm to their special interest. That some of those ways might require a grant of listed building consent should present no great barrier to their adoption.

Trees

33. LP Policy DEV28 states that development should be designed so as to avoid the loss or deterioration of woodlands, trees, or hedgerows. The Arboricultural Implications Assessment⁹ submitted with the appeal identifies a number of trees on and adjacent to the site.

⁹ Referred to hereafter as AIA

34. On the basis of the submitted AIA the Council has some concern about the impact of car parking spaces on the Root Protection Areas¹⁰ of two trees on land adjacent to the site (T1-B1 and T6-C1). However, they accept that these concerns could be allayed by the imposition of suitable conditions that ensured the RPAs would be protected. I agree and as such there would be no resulting departure from the requirements of LP Policy DEV28.

Conclusion

35. The proposal could respond in an appropriate way to existing trees and would have no significant impact on highway safety in relation to additional traffic movements through the junction with Lipson Road. However, it would fail to make the required provision for affordable housing and would not mitigate its impacts on local and strategic infrastructure. Neither would it achieve the required reductions in carbon emissions. Finally, it would lead to an increase in parking pressure on streets that are already heavily parked. That would have a detrimental impact on the amenity of the surrounding residential area and compromise highway safety.
36. In my view, these are serious shortcomings that far outweigh the benefits of bringing the listed building back into use. The proposal is contrary to the development plan read as a whole and there are no material considerations of sufficient weight to warrant a decision contrary to its provisions.
37. On that basis, the appeal is dismissed.

Paul Griffiths

INSPECTOR

¹⁰ Referred to hereafter as RPAs