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# Appeal Decision

Site visit made on 15 February 2022

**by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 March 2022**

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**Appeal Ref: APP/X1165/W/21/3284788**

**Flat 2, Holm Lodge, Livermead Hill, Torquay, Devon TQ2 6QY**

- 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 Mr Nick Craven against the decision of Torbay Council.
  - The application Ref P/2021/0769, dated 16 June 2021, was refused by notice dated 28 August 2021.
  - The development proposed is the formation of balcony to rear, existing window to be removed and French/patio style door to be installed.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. I have amended the original description of development to reflect that as provided for on the Council's decision notice, in the interests of accuracy and consistency.

## Main Issues

3. The main issues in this appeal are:
  - The effect of the proposed development on the character and appearance of the surrounding area and on the host building; and,
  - The effect of the proposed development on the living conditions of residents at Flat 1 Holm Lodge, with particular reference to privacy, outlook, noise and disturbance.

## Reasons

### *Character and Appearance*

4. The appeal building is a detached, substantially scaled villa located within a residential area and which exhibits impressive and attractive elevations with decorative features. The villa is separated into two flats. To the rear of the building is a well proportioned area of garden which, the evidence before me confirms, serves the flat which occupies the space at ground and basement level. The appeal scheme seeks to construct a modestly sized first floor balcony to the rear of the building.
5. In terms of its scale and position, the proposed balcony would largely replicate and respect the position of the existing balcony to the rear of the building which serves the ground floor flat. It was noted on my site visit that there were

other examples of balconies in the area, and I find that the scale and position of the appeal proposal would not have a harmful effect on the character or appearance of the area nor, in these respects, would be harmful to the character or appearance of the host building. Furthermore, I find that the proposed French/patio style door would reflect the scale and appearance of the existing substantially sized window which would be replaced, and would not be harmful to the character or appearance of the host building or to the surrounding area.

6. Notwithstanding the above, I share the Council's concern regarding the design and use of materials for the proposed balcony which would incorporate a metal balustrade with glass panels. These materials would be in stark contrast to the materials found at the appeal building and, in my view, would appear incongruous set against the more traditional appearance of the rear elevation of the host building. In this regard, the proposed balcony would draw the eye from those architectural and decorative features which contribute positively to the character and appearance of the host building. Whilst the rear of the building would not be visible from within the street scene, the proposal would be prominent in views from south of the site.
7. In light of the above, the proposed balcony would have a harmful effect on the character and appearance of the host building and would result in harm to the character and appearance of the surrounding area. The appeal scheme would therefore conflict with Policies DE1 and DE5 of the Torbay Local Plan (2015) (the Local Plan) and Policy TH8 of the Torquay Neighbourhood Plan (2019) which, together and amongst other matters, seeks to ensure that development is well designed, respects local character and does not adversely affect the character or appearance of the original property.
8. I acknowledge that the Appellant has indicated that they would be prepared to use different materials in the construction of the proposed balcony. However, in this regard, the plans submitted in support of the appeal proposal are specific regarding the materials to be used in the construction of the proposed balcony and there are no alternative details before me. Annexe M of The Procedural Guide, Planning Appeals – England clarifies that the appeal should not be used to evolve the application. Consequently, the determination of this appeal has been concluded on the basis of the application, which was made to the Local Planning Authority, and upon which the opportunity for consultations has been provided.

### *Living Conditions*

9. Policy DE3 of the Local Plan seeks to ensure that development provides a good level of amenity for occupants and that proposals do not unduly impact on the amenity of nearby residents with regards to, amongst other matters, noise, disturbance, outlook, overlooking and privacy, for neighbouring properties.
10. The proposed balcony would project approximately 1.9 metres from the building's rear elevation above a larger balcony serving the flat below. The balcony would act as a canopy and would give rise to a degree of overshadowing of the balcony below. However, the aspect from the ground floor is a relatively open one and the times of the day during which the balcony would directly cause overshadowing would be limited. By reason of the modest scale and depth of the appeal proposal, I also find that the appeal scheme

would not have a significant overbearing effect or result in unacceptable harm to the outlook for residents at the ground floor flat.

11. As I observed on my site visit, it is possible to look directly into the rear garden area at the property, and directly onto the existing balcony below, from a significant number of rear facing windows at first floor level which are substantial in terms of their height and width. Given the likely frequent use of the habitable rooms at first floor level and the attraction of the views of Torbay on offer from within them, I consider that overlooking from the first floor flat towards the rear garden amenity area is already significant.
12. Whilst the proposed balcony would intensify overlooking to an extent, weather permitting, I do not consider that this would go above or beyond the established situation. Furthermore, the proposed balcony would be positioned such that it would significantly reduce levels of overlooking from the rear windows at first floor level directly down onto the below balcony. Consequently, whilst I acknowledge that balconies can result in overlooking and a loss of privacy, I consider that in this instance, the proposal would not result in a significantly greater degree of overlooking than currently exists.
13. The proposed balcony would be accessed from a habitable room and would be modestly sized. Given the characteristics of the proposed balcony, and that it is likely that the large windows at first floor level would be likely to be open during periods of fine weather, I consider it unlikely that its use would be of such intensity as to be capable of generating levels of noise that would be disturbing for residents of the below flat at the appeal building.
14. For the above reasons, the appeal scheme would not unduly impact on the amenity of future residents with regards to noise, disturbance, outlook, overlooking and privacy. Consequently, the appeal scheme would not conflict with Policy DE5 of the Local Plan.

### **Other Matters**

15. The Appellant submitted the proposed development following pre-application advice from the Council. The National Planning Policy Framework stresses the benefits of early engagement and of good quality preapplication discussion. Whilst it is not binding, it is clearly unfortunate if proposals are initially supported but then the final outcome is an adverse one. Nevertheless, at appeal the proposal is considered afresh and, as a consequence of this, the positive feedback given at pre-application stage does not warrant allowing the appeal.
16. Interested parties also raise concerns regarding the proposed development, on the grounds of matters relating to ownership and in relation to potential damage caused during and after works are completed. However, whilst these are matters of importance, issues relating to such concerns are civil matters and as such they fall outside the scope of an appeal under Section 78 of the Town and Country Planning Act 1990.

### **Conclusion**

17. Whilst I have found that the appeal proposal would not have a harmful impact with regards to living conditions of residents, the proposed balcony for the reasons given above, would have a harmful impact on the character and appearance of the host building and on the character and appearance of the

surrounding area. Consequently, the proposal would conflict with the development plan when taken as whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

*Mr A Spencer-Peet*

INSPECTOR