



Appeal Decisions

Site visit made on 25 October 2022

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 November 2022

Appeal A Ref: APP/X1165/W/22/3297228

Lincombe Keep, Lincombe Drive, Torquay TQ1 2HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3, Schedule 2, Part 1, Class AA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
- The appeal is made by Mr and Mrs Alan Marks against the decision of Torbay Council.
- The application Ref P/2021/1084, dated 20 September 2021, was refused by notice dated 10 February 2022.
- The development proposed is the enlargement of Lincombe Keep through the construction of 1no. additional storey.

Appeal B Ref: APP/X1165/W/22/3299531

Lincombe Keep, Lincombe Drive, Torquay TQ1 2HQ

- 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 prior approval required under Article 3, Schedule 2, Part 1, Class AA of the GPDO.
- The appeal is made by Mr and Mrs. Marks against Torbay Council.
- The application Ref P/2022/0403, is dated 28 March 2022.
- The development proposed is to enlarge an existing dwelling through 1no. additional storey.

Decisions

1. **Appeal A** - The appeal is dismissed.
2. **Appeal B** - The appeal is allowed and prior approval is granted under the provisions of Article 3(1) and Schedule 2, Part 1, Class AA, paragraph AA.2. of the GPDO to enlarge an existing dwelling through 1no. additional storey at Lincombe Keep, Lincombe Drive, Torquay TQ1 2HQ in accordance with the application Ref P/2022/0403 made on 28 March 2022, and the details submitted with it, including the following plans: 20.16_PL_400 (Site Location and Block Plan); 20.16_PL_401 (Existing Site Plan); 20.16_PL_402 (Existing and Proposed Lower Ground and Ground Floor Plan); 20.16_PL_403 (Existing Ground Floor Plan); 20.16_PL_404 (Existing First Floor Plan); 20.16_PL_405 (Existing Second Floor Plan); 20.16_PL_406 (Existing Roof Plan); 20.16_PL_407 (Existing Elevations); 20.16_PL_408 (Proposed First Floor Plan); 20.16_PL_409 (Proposed Second Floor Plan); 20.16_PL_410 (Proposed Third Floor Plan); 20.16_PL_411 (Proposed Roof Plan); 20.16_PL_412 (Proposed Elevations); 20.16_PL_413 (Proposed Section).

Application for costs

3. An application for costs was made by Mr and Mrs Marks against Torbay Council in respect of Appeal B. This application is the subject of a separate Decision.

Preliminary Matters

4. In both cases, I have used the description given in the Planning Statement that was submitted with the application, rather than that on the application form, as the Planning Statements say that the descriptions stated therein are for the avoidance of doubt.
5. As set out above, there are two appeals on this site. The two proposals are fundamentally similar, although they differ in some internal and external details. Appeal A provides for a ceiling height of 2.415 metres in the additional storey, whereas Appeal B proposes a ceiling height of 2.145 metres. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Background and Main Issues

6. Subject to a number of qualifying criteria, paragraph AA of Part 1 of Schedule 2 of the GPDO grants planning permission for the enlargement of a dwellinghouse, of two or more storeys, by the construction of up to two additional storeys immediately above the topmost storey of the dwellinghouse, together with any engineering operations reasonably necessary for the purpose of that construction. Paragraph AA.1 sets out the circumstances in which development is not permitted by Class AA. It is disputed that the proposals would be permitted development against the criteria in AA.1, in particular paragraph (h), which requires that the floor to ceiling height of the additional storey, measured internally, should not exceed that of any storey of the principal part of the existing dwellinghouse.
7. Paragraph AA.2 says that development is permitted by Class AA subject to a number of conditions. The Council has raised doubt regarding compliance with condition 2(b), which says that the development must not include a window in any wall or roof slope forming a side elevation of the dwellinghouse.
8. Paragraph AA.2 also requires developers to apply to the local planning authority for prior approval as to a range of matters in (3) (a) (i) to (iv). The Council refused prior approval for Appeal A under the matter described in (3) (a) (i), which is the impact on the amenity of any adjoining premises including overlooking, privacy and the loss of light. The reason for refusal referred specifically to the overshadowing of the garden of The Spinney, and overbearing and visual impacts on that property.
9. Therefore, the main issues in these appeals are, whether the proposals would constitute permitted development under Schedule 2, Part 1, Class AA of the GPDO and, if they do, the impact of the development on the amenity of the adjoining premises, The Spinney, regarding loss of light and outlook, and visual intrusion.

Reasons

Whether the proposals are permitted development

10. To comply with paragraph AA.1(h), the floor to ceiling height of the additional storey, measured internally, should not exceed the floor to ceiling height, measured internally, of any storey of the principal part of the existing dwellinghouse. The sectional drawings show that the ground, first, and second floors of the existing dwelling have floor to ceiling heights ranging between

2.425 and 2.56 metres. The ceiling height of the proposed additional storey is 2.415 metres for Appeal A, and 2.145 metres for Appeal B, so, in neither case, would the storey heights of the existing ground, first, and second floors be exceeded. However, there is a garage below the ground floor, and the sectional drawing submitted with Appeal B shows that it has a floor to ceiling height of 2.175 metres. I measured the height as 2.2 metres during my visit. The ceiling height of the additional storey proposed under Appeal A would exceed this.

11. The appellants contend that the floor to ceiling height of the additional storey is not limited by that of the garage, as the garage is not a principal part of the dwelling and does not comprise a storey.
12. Paragraph AA4(1) of the GPDO clarifies that "principal part" means the main part of the dwellinghouse excluding any front, side or rear extension of a lower height, whether this forms part of the original dwellinghouse or is a subsequent addition. The Keep has a complicated floorplan, and occupies a sloping site, with differing roof heights across the expanse of the overall building. However, the main part of the dwelling is readily discernible, rising above the other parts, and supporting the existing second floor accommodation under a parapeted roof. The garage is an integral part of this core structure, and cannot be disassociated from it due to its use. Whilst there is evidence suggesting that it may not originally have had an internal link to the living accommodation above, this does not alter the fact that it is a constituent part of the building. Whether or not there was originally an internal link is, in any event, immaterial, as I saw that there is now an internal stairway to the ground floor. I therefore find that the garage is a constituent element of the principal part of the dwellinghouse.
13. Paragraph AA4(2) of the GPDO states that, in Class AA, references to a "storey" do not include any storey below ground level. Article 2(2) of the GPDO clarifies that, unless the context otherwise requires, "ground level" means the level of the surface of the ground immediately adjacent to the building in question or, where the level of the surface of the ground on which it is situated is not uniform, the level of the highest part of the surface of the ground adjacent to it. In this case, the only ground adjacent to the garage is the forecourt immediately in front of it. As the garage is at the same ground level as the adjacent forecourt, which itself has level access off Lincombe Drive, it is not below ground level, so it is a storey for the purposes of Class AA. The fact that it is below the level of the house that contains the entrance door, and which is referred to as the ground floor, does not alter my conclusion on this matter.
14. As the proposed ceiling height for the additional storey under Appeal A would exceed this height, it would not meet the requirements of paragraph AA.1(h), so would not be permitted development. Consequently, this appeal should be dismissed, and there is no need for me to consider whether it would meet the conditions of permitted development, or to assess its impact on the amenity of The Spinney.
15. Under Appeal B, however, the ceiling height for the additional storey does not exceed that of the garage. Under these circumstances the Council accepts, in its statement, that the proposal would meet the requirements of paragraph AA.1(h). Consequently, it would be permitted development, so it is necessary for me to consider the other issues in respect of this appeal.

Whether the proposals under Appeal B comply with the conditions of permitted development

16. Condition 2(b) of Paragraph AA.2 of the GPDO says that the additional storey must not include a window in any wall or roof slope forming a side elevation of the dwellinghouse. The Council has suggested, in its statement, that recent alterations to the pedestrian access point off Lincombe Drive may have altered the status of the southwest elevation of the house, such that it now forms the principal elevation of the dwelling. If this were the case, the southeast and northwest elevations would be side elevations. The windows that are proposed in these elevations in the additional storey would, therefore breach this condition.
17. I saw, however, that the southeast elevation faces the road and has a prominent turret extending up to roof level. This turret and the rest of the façade contains a range of large windows, serving principal rooms that look out over the sea. This elevation also has a vehicular access to the garage, and a pedestrian access via a grand entrance arch with a portcullis, which is joined to the house by high retaining walls in matching stone. Consequently, the whole frontage, embracing the entrance arch and the southeast elevation of the house, provides a sweeping elevation that addresses the road. Its scale and detailed design, using high quality materials, together with the inclusion of ornamental railings and topiary hedging gives this elevation a significant presence in the street scene.
18. By contrast, the southwest elevation is narrow, with fewer storeys, and does not contain any large windows. Although it contains the entrance to the living accommodation, this doorway feels rather like a secondary access, after having passed through the imposing archway off the road. The recent addition of the new stepped access from Lincombe Drive only serves to accentuate the importance of this archway as the main entrance to the site, thus reinforcing my conclusion that the southeast, road-facing façade is the principal elevation.
19. As a result, the windows that are proposed in the additional storey would be in the front and rear elevations, rather than the sides. The proposal would, therefore, accord with condition 2(b) of Paragraph AA.2. It is not disputed that the other conditions of permitted development set out at paragraph AA.2.(2)(b) could be met.

Effect of Appeal B on the amenity of The Spinney

20. Paragraph AA.2 (3) (a) (i) of the GPDO requires prior approval as to the impact of the proposal on the amenity of any adjoining premises including overlooking, privacy and the loss of light. It is contended by the appellants that, as the terms overbearing and visual impact are not referenced, these impacts cannot be considered. However, case law¹ has held that the word “including” does not preclude the consideration of any other issues relating to amenity.
21. The Spinney is a bungalow with roofspace accommodation that lies to the northwest of The Keep. It is set further back from the road and, consequently, at a higher level. It has a garage at road level, with a number of planted terraces leading up to a relatively level lawned area beyond a retaining wall. The dwelling itself is at a higher level again, with an extensive decked area to

¹ CAB Housing Ltd v Secretary of State [2022] EWHC 208 (Admin)

the front and side, which is roughly at the same level as its ground floor.

Pedestrian access is gained off Lincombe Drive via steps and a steep path that run adjacent to the side elevation of The Keep.

22. The side elevation of The Keep is close to the southern edge of the level lawned area. Much of the accommodation in The Keep is at a lower level, but the second floor rises above it, and extends across most of the width of the lawn. The additional storey would occupy virtually the full extent of this elevation of the building, and would only be marginally set back from the side wall. Consequently, there would be a considerable increase in the height and bulk of the building close to the boundary. As the lawn lies to the north of the building, there is scope for a resultant loss of sunlight.
23. The appellant has submitted a Daylight/Overshadowing Report (the Daylight Report) which has been prepared by a suitably qualified expert in accordance with "Site Layout planning for daylight and sunlight: A guide to good practice" by the Building Research Establishment (the BRE guide). Although the BRE guide is not mandatory, it does provide an objective analysis of the impact of the additional storey on light reaching The Spinney and its garden. I therefore afford it significant weight in my decision.
24. The Daylight Report shows the additional area of the garden that would be in shadow as a result of the development at various times of the day in March and June. The impact is greatest from mid-morning to mid-afternoon in March, but even at this time, the additional area in shadow is not extensive. In June, the impact is negligible throughout the day. The impacts will vary throughout the year, and may be greater in the late autumn and winter, but the lawned area is less likely to be used for outdoor recreation at those times of the year. In any event, the Daylight Report shows that the additional storey would not interrupt sunlight reaching most of the lawned area for most of the year. Consequently, the ability of the lawn to function as a pleasant outdoor amenity space for the occupants of The Spinney would not be affected to any significant degree.
25. The increase in the height of the building would give it a greater presence. However, whilst it would be a somewhat dominant feature from the nearest corner of the lawn, even from here there would be wide open views across the valley to the west and to the sea beyond The Keep. Across most of the lawn its impact on the outlook for occupants of the garden would be limited to the loss of a small strip of sky above the building. Open views would be retained in a wide arc from the northeast to the southwest, and there would still be a significant amount of visible sky over The Keep, despite the additional storey. Consequently, the visual impact of the enlarged building would not result in the lawn feeling unduly enclosed. Indeed, it would remain a spacious and extensive area for outdoor recreation, with a largely open outlook and wide-ranging views.
26. The dwelling and deck are at a higher level than the lawn, and currently occupants have views over the roof of The Keep to the sea beyond. Whilst the additional storey would intrude into these views to some extent, it would only occupy a small part of the vista available from the windows and deck. A wide-open outlook would remain available to Lyme Bay to the northeast, the wooded valley to the east, and the sea to either side of The Keep to the southeast. The floor level of the extension would be only a little above the deck, and it would have a flat roof, so even from the closest parts of the deck, it would not

have an overbearing presence. Furthermore, the Daylight Report shows that there would be no loss of sunlight to the deck or windows at any time in March or June. The proposal would not, therefore, be unduly dominant or visually intrusive from the deck, or from within The Spinney, so would not result in significant harm to the amenity of the occupants.

27. The path giving access to The Spinney runs at a lower level than the lawned area, and is immediately adjacent to the side wall of The Keep. The full height of the existing building, in such close proximity, is already a dominant presence for users of the path. This is exacerbated by the close-boarded fencing along the other side, which gives the pathway a very confined feel. This narrow area is not of any real amenity value to residents, and it is unlikely that much time would be spent along its length, other than to get to or from the dwelling and its spacious garden. In any event, the additional storey would not be readily apparent when walking along the path, as it would be set a little back from the outer wall, and to see it the observer would have to look skyward. The impact of the proposal on users of the access route would not, therefore, result in any material harm to the overall amenity enjoyed by the occupants of The Spinney.
28. For these reasons, I conclude that the proposal would not have a harmful impact on the amenity of the adjoining premises, The Spinney, regarding loss of light and outlook, and visual intrusion.

Other Matters

29. In coming to my decision, I have also had regard to the other issues raised in representations, including the impact on the residential amenity of other surrounding properties. 28 Oxlea Road lies to the northwest, at a higher level, and beyond a high conifer hedge. The windows in the additional storey would look over the hedge, towards this dwelling, but would be around 30 metres from the boundary, and there would be some 50 metres between opposing windows. Over such a distance there would not be any significant loss of privacy. As The Keep is at a lower level, and bearing in mind the distance between buildings, there would not be any harmful impacts through dominance or visual intrusion. I saw also that Castle Tor is largely screened from The Keep by a line of tall conifers, such that there is little intervisibility between the buildings.
30. Concerns have also been raised regarding the external appearance of the proposal, which is a matter that can be considered under an application for prior approval. In this regard, however, I note that the additional storey would respond to the host building in terms of its scale, materials, and design. It would not, therefore, appear as an incongruous addition to the roof of the building, but rather as a well-considered extension.
31. It is suggested in representations that the building may not be solely in use as a dwellinghouse, so that the rights conveyed by Part AA would not apply. However, I was able to see all parts of the inside of the building at my visit, and saw no evidence that it had been, or was being used, for any other purposes. Condition (d) of paragraph AA.2.(2) requires that following the development, the dwellinghouse must be used as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse.

32. The impact of the development on the adjacent Grade II Registered Garden has also been raised in representations. However, I note that Historic England has been consulted on the scheme, and that amendments have been made to overcome minor concerns. Historic England had no objections to the final scheme, and, from what I saw at my visit, I have no reason to come to a different conclusion.
33. Concerns regarding disruption as a result of construction traffic can be dealt with through Condition (b) of paragraph AA.2.(3) of the GPDO, which requires that before beginning the development, the developer must provide the local planning authority with a report for the management of the construction of the development, which sets out the proposed development hours of operation and how any adverse impact of noise, dust, vibration and traffic on adjoining owners or occupiers will be mitigated.

Conditions

34. Planning permission granted by Article 3, Schedule 2, Part 1, Class AA of the GPDO is subject to a number of conditions, which are set out at paragraph AA.2. These include the use of matching materials and completion of the development within 3 years.

Conclusion

35. For the reasons given above, I conclude that the proposal under Appeal A would not constitute permitted development under Schedule 2, Part 1, Class AA of the GPDO, and this appeal is, therefore, dismissed.
36. The proposal under Appeal B would constitute permitted development, would comply with the relevant conditions, and would not have a harmful impact on the amenity of any adjoining premises. This appeal is, therefore, allowed.

Nick Davies

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/X1165/W/22/3297228	Mr and Mrs Alan Marks
Appeal B	APP/X1165/W/22/3299531	Mr and Mrs. Marks