The Planning Inspectorate

Appeal Decision

Site visit made on 21 February 2023

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 24 March 2023

Appeal Ref: APP/X1165/D/22/3310044
Blue Hayes, Parkhill Road, Torquay TQ1 2DQ

- 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 D Hayes against the decision of Torbay Council.
- The application Ref: P/2022/0868 dated 26 July 2022, was refused by notice dated 26 September 2022.
- The development proposed is revised retrospective application for the retention of decking to the north of the existing dwelling and use of cabin for ancillary accommodation.

Decision

1. The appeal is allowed and planning permission is granted for retrospective application for the retention of decking to the north of the existing dwelling and use of cabin for ancillary accommodation at Blue Hayes, Parkhill Road, Torquay TQ1 2DQ in accordance with the terms of the application, Ref: P/2022/0868 dated 26 July 2022 subject to the conditions set out at the end of this decision letter.

Preliminary Matters

2. The application forms indicate that the works commenced in December 2019 but had not at that time been completed.

3. I am advised that a certificate of lawfulness for a proposed use or development was issued for a cabin in the grounds of the existing property under the Council's reference P/2018/1067 dated 13 December 2018 under Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015. These permitted development rights relate to *buildings etc incidental to the enjoyment of a dwellinghouse.*

4. At the time of my site visit, the cabin was fitted out with a kitchen and bathroom as well as 2 bedrooms and a living space. There appears to be no dispute that as a result the building no longer falls to be considered as *incidental* within Class E of Part 1 of Schedule 2 of the above Act. The appeal before me therefore seeks permission to retain the cabin as built for ancillary residential use.

5. At the time of my site visit the previously erected steps and decking leading up to the cabin, for which planning permission had not been granted, had been removed, but leaving in place the decking around the cabin and utilising existing steps leading up the side of the garden to access the cabin.

6. It is therefore my understanding that the appeal before me seeks permission to retain the cabin as built for additional residential use (rather than incidental use) as well as for the decking around the cabin. However, as at the time of the application the works were indicated not to have been completed, I am required to consider the appeal before me on the basis of the submitted plans.

7. The neighbouring residents have indicated that the cabin is not, in terms of windows and openings, the same as shown on the plans accompanying the earlier certificate of lawfulness for a proposed development as issued by the Council. This is also recognised in the application. However, there is nothing before me to indicate that the siting and size of the cabin are different to that which has been approved.

Main Issues

8. The main issues in this appeal are:

   a) The effect of the development on surrounding trees;

   b) The effect of the development on adjoining neighbours, with particular regard to overlooking and loss of privacy and

   c) The effect of the development on the character and appearance of the existing building and on the Conservation Area.

Reasons

Issue a) Trees

9. The appeal property is a residential dwelling on the north side of Parkhill Road, on a steeply sloping site. The property is sited above the road level and the rear garden is steeply terraced. There are existing steps leading up the side of the rear garden, with a series of terraces, held by retaining walls. The existing cabin is towards the upper part of the rear garden but with some remaining garden to the rear. There is a relatively narrow decking around the cabin, providing access from the steps leading up the side of the garden to the cabin and around the front and both sides of the cabin. The upper parts of the cliff face in the neighbouring gardens on either side have dense woodland which contributes to the wooded backdrop to the dwellings.

10. There is an Area Tree Preservation Order (TPO 1967.01) covering the trees on the appeal site and neighbouring gardens. I am advised that tree works were undertaken following the Council's approval of an application to undertake works to some of these trees within the appeal site and overhanging from neighbouring gardens (Council's reference: AT/2019/0103/TB dated 27 June 2019).

11. There is a lawful development certificate in place for a building on the same site and in the same location as the building the subject of this appeal. Tree works have also been undertaken to the surrounding trees, following approval from the Council in the vicinity of the site of the building. There is an addition of a lightweight deck around the building, accessed from existing steps but there is no suggestion that this in itself is of concern.

12. I do not consider that the expanded use of the building does or would physically affect the surrounding trees. Furthermore, the main outlook from the building is to the south and the main trees are in neighbouring gardens to the

side and a smaller number within the appeal site to the rear. As a result, I am not persuaded that there were there to be future requests to undertake further works to any of the surrounding trees, that these could not be assessed on their merits under the protection already given by virtue of the TPO on the trees.

13. In the particular circumstances of this case, I do not therefore consider that the development before me affects or would affect the surrounding trees and there is no conflict with Policy C4 of the Torbay Local Plan (Local Plan) relating to the protection of trees.

14. Concerns appear to be raised regarding how the building was constructed but the decision I reach on this appeal would not change that position. This would need to be addressed separately under the relevant legislation.

Issue b) Living Conditions

15. The building and decking face southwards and do have views over the neighbouring properties and their garden areas, and in particular over Romiley. However, because of the steeply sloping gardens there are already extensive views from various parts of the garden over these neighbouring properties.

16. I do not consider that the retention of and use of the cabin as now sought as opposed to incidental use as permitted necessarily leads to any greater levels of overlooking and loss of privacy. Furthermore, the decking in place does not materially affect the views that can already be gained from inside the building and in other parts of the garden.

17. There are residential dwellings to the north of the appeal site at Prince's Point. To the rear of the cabin there remains an area of garden within the curtilage of the appeal site. I have noted the addition of decking but the majority of this lies to the south of the cabin, away from the properties to the north. I have taken account of the concerns of the neighbours and agree that the decking to the side could be used for sitting out, as well as the indicated uses for access and storage. However, the manner in which an owner or occupier seeks to use his garden area is primarily for him to determine and any excess noise and disturbance is addressed under other legislation.

18. Furthermore, and in respect of concerns about the intended use of the building, including for holiday or other lettings, the Council has proposed a condition to control the use of the building which I consider should be imposed, as it would reflect and control the use for which permission has been requested. It would then enable any alternative uses to be addressed on their merits, if they were to come forward.

19. I do not therefore consider that the living conditions of the neighbours are or would be materially harmed as a result of the development relating to the use of the cabin, and decking as built, compared with the existing position. There is no conflict with Policy DE3 of the Local Plan or the National Planning Policy Framework, and in particular paragraph 130 both of which amongst other matters seek a high quality of amenity for existing and future occupiers.

Issue c) Character and Appearance

20. The appeal site lies on the edge of but within the Lincombes Conservation Area. Although there has been considerable later redevelopment and infilling, the

significance of the Conservation Area remains the predominance of 19th century villas and terraces, many in generous plots and mainly set on steep hillsides and interspersed with dense vegetation. Section 72 (1) of The Planning (Listed Buildings and Conservation Areas) Act 1990 sets out in respect of development within Conservation Areas, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

21. The building is sited part way up the steeply graded rear garden with a modest decking surrounding. It is sufficiently well spaced away from the main house which is set at a much lower level to be seen as a separate and smaller building within the grounds of the main house. I do not therefore consider that it adversely affects the character and appearance of the main dwelling on the site.

22. There are very limited external views of the building and its associated decking and where views can be obtained it is seen as a building at the rear of and within the grounds of a residential dwelling with a backdrop of mature trees. I therefore am satisfied that there is no adverse impact on significance of the Conservation Area; it preserves the character and appearance of the Lincombes Conservation Area. There is no conflict with Policies DE1, DE5 and SS10 of the Local Plan, Policy TH8 of the Neighbourhood Plan and the Framework with particular reference to Sections 12 and 16, all of which amongst other things seek a high quality of design which respects the local context and the significance of heritage assets.

23. Furthermore, and whilst satisfied on the basis of my consideration of both the building and the decking as built, it is a material consideration that a lawful development certificate exists for a building of the same size and location, albeit for incidental use to the main dwelling. I do not consider that the addition of the decking as now undertaken together with the use for which permission is now sought materially affect or would affect the relationship with the existing dwelling or the character or appearance of the Conservation Area.

Conditions

24. I shall list the approved plans for the avoidance of doubt and in the interests of good planning. As set out above I shall also impose a condition to limit the use of the cabin in the manner proposed by the Council to protect the amenities of neighbours and to reflect the terms of the application.

Conclusion

25. For the reasons given above and having regard to all other matters raised, I conclude that this appeal should be allowed.

L J Evans

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall be carried out in accordance with the following approved plans: OS plan; PL4 and PL5.

2) The permission hereby granted relates solely to the use of the cabin hereby approved as a residential annexe, ancillary to the principal dwelling at Blue Hayes, Parkhill Road, Torquay TD1 2DQ. The principal dwelling and the cabin hereby approved shall be maintained as a single planning unit and there shall be no subdivision of the garden area or boundary demarcation between the cabin and the principal dwelling. The cabin shall at all times remain ancillary to the main dwelling as additional accommodation and shall not be occupied other than by family members or occasional non-paying guests of the occupants of the principal dwelling. The cabin hereby approved shall not be occupied either short term of long term for residential purposes by persons who are not family members of the occupants of the principal dwelling or for holiday purposes, by paying guests.