



Appeal Decision

Site visit made on 21 March 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2023

Appeal Ref: APP/X1165/W/22/3306294

26 Berachah Road, Torquay, Devon TQ1 3AX

- 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 Darren Peirce against the decision of Torbay Council.
 - The application Ref P/2021/1199, dated 14 October 2021, was refused by notice dated 6 June 2022.
 - The development proposed is change of use to 7 bedroom house in multiple occupancy (sui generis).
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Decision

1. The appeal is allowed and planning permission is granted for proposed change of use to 7 bedroom house in multiple occupancy (sui generis) at 26 Berachah Road, Torquay, Devon TQ1 3AX in accordance with the terms of the application, Ref P/2021/1199, dated 14 October 2021, subject to the conditions set out at the end of this decision.

Preliminary Matters

2. The first reason for refusal includes reference to a Policy T7. It is clear from the Officer Report and its appeal statement that the Council is referring to Policy TH7 of the Torquay Neighbourhood Plan to 2030. Having regard to the clear references to this policy in the Council's submissions, I consider that no one would be prejudiced by determining the appeal on this basis.

Main Issues

3. The main issues are:
 - whether the proposed development would support a balanced and cohesive community in this area;
 - the effect of the proposed development on highway and pedestrian safety, with particular regard to parking provision and refuse bin storage;
 - the effect of the proposed development on the living conditions of neighbouring residential properties with particular regard to privacy and noise and disturbance; and
 - whether the proposal would provide suitable living conditions for future occupiers with regard to daylight, outlook, noise and disturbance, garden space and refuse bin storage, and whether the proposal would prejudice future development and is capable of providing sustained, appropriate living conditions for future occupiers.

Reasons

Mixed and balanced communities

4. The building accommodates a commercial use with a roller shutter door providing access from the street to the ground floor, and a door providing access to a stairwell leading up to the first floor. Berachah Road contains a mix of buildings with a stepped terrace of residential dwellings on the opposite side of the road and a predominance of commercial units alongside the appeal site.
5. The site lies in an area designated as a Community Investment Area (CIA), which is defined as an area experiencing significant deprivation and within the twenty percent most deprived Super Output Areas. Policy SS11 of the Torbay Local Plan 2012-2030 (the LP) sets out that development will be assessed against its contribution to improving the sustainability of existing and new communities within Torbay, and especially the way in which it closes the gap between the most and least disadvantaged neighbourhoods. The policy seeks, amongst other things, to provide a good standard of accommodation, by seeking to retain small to medium sized homes and resisting change of use of these homes to Houses in Multiple Occupation (HMOs).
6. Policy H4 of the LP broadly seeks to resist HMOs in areas of high concentration. The Council's reason for refusal refers to the loss of a potential self-contained dwelling. However, whilst prior approval has been granted (Council reference P/2018/0936) for the partial change of use from light industrial to dwelling houses for two families, it was evident during my site visit that there was no residential use within the building. Although the appellant notified Building Control, there is no substantive evidence before me that demonstrates the proposed development would result in the loss of an existing self-contained dwelling.
7. The Council's Housing Option Service has advised that there is a high demand and reduced availability for suitable quality temporary accommodation in Torbay. Moreover, the Housing Specialist of the Council has given support to the appellant's decision to apply for planning permission. This weighs in favour of the proposal.
8. There are no registered HMOs within the street. According to the appellant's statement, there are some HMOs in the wider area. Additionally, the appellant highlights that two HMOs on Windsor Road have had licences revoked and they are no longer used as licensed HMOs.
9. The Council considers the area is host to several registered HMOs, and the accommodation would be capable of providing temporary housing. Nevertheless, there is no substantive evidence before me that the proposal would lead to an over-concentration of similar uses in the CIA that could exacerbate existing social and economic deprivation or lead to a community becoming imbalanced.
10. In this case, the existing building is in commercial use. Therefore, the proposed development would not lead to the loss of family housing. Taking into account the location of the proposal, the evidence of nearby HMOs and the mix of property types in this area, I am not provided with specific evidence that leads me to find that there would be an over-concentration of similar uses or that there would be noticeable change to the balance of the community.

11. As such, the proposed development would not result in harm to the balance and cohesiveness of the community in this area. Consequently, with regard to this main issue, the proposal would not conflict with the provisions of Policies SS11 and H4 of the LP. Nor would it conflict with Policy TH7 of the Torquay Neighbourhood Plan to 2030 (the NP) which supports HMOs where they would not worsen concentrations of deprivation or create conditions of community conflict.

Highway safety

12. Policies TA2 and TA3 of the LP require development proposals to make appropriate provision for parking. Appendix F of the LP provides car parking guidance and for HMOs this sets out an estimated requirement of 1 space per 2 bedrooms plus 1 cycle space per bedroom. In instances where the location of the HMO and its setting may limit the parking available, the availability of public spaces will be taken into account.
13. The proposal makes no provision for car parking within the site. Berachah Road within the vicinity of the appeal site is subject to parking restrictions in the form of single and double yellow lines. Nearby roads are subject of a residents' permit scheme, including Wellesley Road, which allows unrestricted parking between 1800 and 0800. At other times a residents' permit scheme applies or a maximum of three hours is permitted. My own daytime observations found several available spaces, though I accept this was only a snapshot and occupancy levels will fluctuate, most commonly in the evenings when people return from work.
14. It cannot be known how many would enjoy the use of a car. However, any who wished to do so would require a permit to park near to the site during the day. I have no substantive evidence that on street parking would not be available. Moreover, I noticed on my site visit that the site lies within walking distance of public transport options and within a 10 minute walk of the town centre, where there are a range of services and facilities to meet the day to day needs of residents. I note that the Highway Authority has not raised any objection to the proposal, and I have no reason to come to a different conclusion.
15. I consider these factors outlined above to be evidence which suggests that applying the guidance standards would not be relevant and, in accordance with Appendix F of the LP, this would be an instance where the availability of public spaces can be taken into account. In light of the above I am satisfied that the proposed development would not result in any unacceptable harmful impact on local car parking provision or highway safety.
16. There appears to be sufficient space within the ground floor lobby for some bin and bicycle storage which could maintain suitable access to the highway for collection. I am therefore satisfied that adequate and safe provision could be achieved through the imposition of appropriate conditions. In such circumstances, the necessary provision could be ensured. Then this would accord with Policy H4 of the LP where it requires HMOs to be provided with adequate facilities for cycles, waste and recycling collection.
17. For the above reasons, the development proposed would have an acceptable impact on highway safety, with particular regard to parking provision and, subject to conditions, would provide adequate refuse bin storage. As such the proposal would comply with Policies TA2, TA3 and Appendix F of the LP.

Living conditions – neighbouring residential properties

18. There is no substantive evidence to suggest that harmful noise and disturbance would occur or translate to harm to neighbours' living conditions. Moreover, the site is boarded on two sides by commercial properties. It lies within an area where there is a mix of commercial and residential buildings, and the proposed residential use would not be out of place in this context. Whilst an increase in the levels of people coming and going from the site may arise, the proposal would be unlikely to give rise to unacceptable levels of noise and disturbance to the neighbouring uses particularly compared to an existing commercial use.
19. I observed during my site visit that there is a degree of mutual overlooking between properties in the area. The proposal would utilise existing windows and the proposed plans show a roof light and roof lantern in the northern end of the building. These would be high level and would provide daylight to a bathroom and a corridor. The windows within the front elevation face onto Berachah Road. A window and door to the rear elevation face onto the enclosed courtyard. The side windows are over the roofs of the adjacent commercial units. Windows within the west elevation are obscure glazed. The side windows offer oblique views across the rear of the dwellings along Hatfield Road. Due to the juxtaposition of buildings the proposal would not exacerbate the existing levels of overlooking which currently occur.
20. The appeal proposal would not have an unacceptable, adverse or harmful effect on the living conditions of neighbouring residential properties with particular regard to privacy and noise and disturbance. Consequently, on this main issue, there would be no conflict with Policies DE1, DE3 and H4 of the LP where they seek to protect the amenity of residents. There would also be no conflict with the provisions of the National Planning Policy Framework (the Framework) in relation to ensuring high standards of amenity.

Living conditions - future occupiers

21. A degree of outlook would be achieved from the existing windows. The bedrooms and communal area would be served by windows which would allow views over the roofs of the adjacent buildings, onto the street or over the rear courtyard. There would be light to the corridor via side facing windows and a roof lantern. I am also cognisant of the existing permission to convert the space into two residential units, and I see no obvious difference between a HMO and the existing planning permission for residential accommodation in terms of outlook and daylight requirements. Consequently, the proposal would not be unacceptable with regard to outlook and daylight.
22. The submitted plans include sound proofing, which can be secured by condition. Subject to this, there would be no detrimental impact on future occupiers in terms of either noise or disturbance from the adjoining property uses. Accordingly, I am satisfied that the proposed development could be integrated effectively with existing businesses in accordance with paragraph 187 of the Framework.
23. Whilst development at the adjacent sites could alter the outlook from the proposal, there is nothing before me to suggest that the future use or development of the adjacent sites would be prejudice by the proposal compared with the existing situation. The close relationship between buildings is not unusual in this area, given the dense, urban context to the site. In

addition, there are already residential properties close to the site, which would likely be as affected by potential future uses on adjoining sites as development on the appeal site. Suitable noise mitigation measures could be secured by condition. There is no evidential basis for concluding that there would be prejudice occasioned by the appeal scheme.

24. As a result, the proposal would not prejudice the development of adjacent sites and would be capable of providing sustained, appropriate living conditions for future occupiers with regard to outlook and daylight.
25. The plans show only one outdoor garden space, which is limited in area. However, it would not be of an abnormally small size within the residential area, and the garden size would not be a constraining factor that would prevent the use of part of the building as a HMO, nor would the proposal result in overdevelopment within the site.
26. For the reasons set out above, there would be space to provide adequate bin storage for the proposed development.
27. Therefore, the proposal would provide adequate living conditions for future occupiers with regard to daylight, outlook, noise and disturbance, garden space and bin storage. As such, with regard to this main issue, the proposal would accord with the requirements of Policies DE1, DE3 and H4 of the LP where they seek to protect the amenity of residents. There would also be no conflict with criterion 5 of Policy SS11 of the LP, which seeks to ensure development avoids opportunity for community conflict. The proposal would also comply with the advice in the Framework around ensuring high standards of amenity and the advice in paragraph 187 that planning decisions should ensure new development can be integrated effectively.

Other Matters

28. Notwithstanding comments regarding the loss of an existing commercial use, the Council has not opposed the proposal in these terms, and from the evidence before me I see no reason to disagree. Moreover, Policy H4 of the LP makes provision for the reuse of buildings as HMOs. The Senior Environmental Health Officer has advised that the proposed accommodation would meet the Torbay Amenity Standard and acknowledges that provision has been made for bicycle and bin storage within the property. Given the representations submitted I am also content that the living standards of future occupants of the property would be adequate. The nature of the proposed use and alterations to the building would not harmfully alter the character and appearance of the area.
29. The proposed development would reuse an existing building in an accessible location for residential development, which would make a modest contribution to the Council's five-year housing land supply. This is a matter that weighs in favour of the proposal.
30. It would be possible to impose a condition requiring an assessment of potential contamination prior to occupation of the HMO. Any future owner/operator would need to comply with the terms of any planning permission and all other rules and regulations for HMOs, including fire safety provisions. There is no substantive evidence that the proposal would adversely impact on tourism or

property values in the area. Consequently, these matters do not alter or outweigh my conclusions on the main issues above.

31. Comments were submitted in relation to the current anti-social behaviour that is occurring in the area. There is, however, no substantive evidence before me that the proposal would exacerbate this issue. Therefore, refusal is not warranted on this basis. I am also mindful that the Council's Senior Environmental Health Officer has no objections to the proposed use. Moreover, the occupation of the building would add surveillance to the area as people would likely be present day and night.
32. I am satisfied the details of the appeal scheme as shown on the plans and details in the written evidence allow a reasonable assessment of the development sought. I note the comments regarding the positioning of the site notice for the planning application, however, this does not change my findings above.

Conditions

33. I have considered the conditions put forward by the Council. Where necessary I have amended the wording of the conditions for clarity, to reflect the advice in the Framework and to meet the six tests. I have attached the standard time condition and I have specified the approved plans in the interests of certainty.
34. Conditions are necessary to secure adequate bicycle and bin storage, sound insulation and assessment of contamination in the interests of the living conditions of future occupiers. The conditions relating to noise and contamination are pre-commencement conditions as these measures need to be addressed from the outset of the development. The appellant has agreed to these.

Conclusion

35. For the reasons given above, and having regard to the development plan as a whole, the Framework and all other material considerations, I conclude that the appeal should succeed.

J White

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: the 1:500 scale UK Planning Maps plan, DP/HMO/2a, DP/HMO/3, DP/HMO/4 and DP/HMO/05.
- 3) Prior to the first occupation of the development hereby permitted details of the proposed bicycle storage facility for seven cycles shall be submitted and agreed in writing by the local planning authority. The cycle storage facilities shall be provided in accordance with the approved

details prior to first occupation of the building as a House in Multiple Occupation and shall thereafter be retained.

- 4) Prior to the first occupation of the development hereby permitted a Waste Management Plan shall be submitted to and agreed in writing by the local planning authority. The Plan shall include details of the proposed refuse and recycling bins, enclosure, their locations on the site, collection points and proposed collection schedule and maintenance of the facilities. The development shall be implemented and operated in accordance with the approved Waste Management Plan on the first occupation of the building as a House in Multiple Occupation, and shall thereafter be retained.
- 5) Prior to the commencement of the development hereby approved a detailed scheme of noise insulation measures to protect the internal environment of the residential development shall have been submitted to and approved in writing by the Local Planning Authority. The scheme of noise insulation measures shall be prepared by a suitably qualified consultant/engineer and shall take into account the provisions of BS 8233: 2014 Guidance on sound insulation and noise reduction for buildings. The approved scheme shall be implemented prior to first occupation of the building as a House in Multiple Occupation and shall thereafter be retained and maintained in accordance with the approved details.
- 6) Prior to the commencement of the development hereby approved an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.
The assessment shall include:
 - (i) a survey of the extent, scale and nature of contamination;
 - (ii) an assessment of the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - groundwaters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 7) Where contamination is found which poses unacceptable risks, no development shall take place until a detailed remediation scheme shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The approved remediation scheme shall be carried out and upon completion a

verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the Local Planning Authority before the development is occupied.

- 8) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development is resumed or continued.