



Appeal Decision

Site visit made on 13 June 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2023

Appeal Ref: APP/X1165/W/23/3315657

Korean Martial Arts, 37 Tor Hill Road, Torquay TQ2 5RY

- 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 Brian Jones against the decision of Torbay Council.
 - The application Ref P/2022/0795, dated 29 June 2022, was refused by notice dated 9 September 2022.
 - The development proposed is conversion of derelict basement and small area of wasteland into two flats with outside garden space.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of derelict basement and small area of wasteland into two flats with outside garden space at Korean Martial Arts, 37 Tor Hill Road, Torquay TQ2 5RY in accordance with the terms of the application, Ref P/2022/0795, dated 29 June 2022, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1654-40A Site Location and Block Plan; 1654-47A Proposed Front Elevation; 1654-48A Proposed Rear Elevation; 1654-50A Proposed Side Elevation; 1654-49A Proposed Side Elevation; 1654-46 Proposed Lower Ground Floor Plan; 1654-51 Proposed Indicative Section.
 - 2) Prior to the first occupation of the flats hereby permitted, provision shall be made for the storage of refuse and recycling awaiting collection according to details which shall previously have been submitted to and approved in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.
 - 3) Prior to the first occupation of the flats hereby approved, means of enclosure to the outside garden space serving both flats shall have been provided in full accordance with details submitted to and approved in writing by the Local Planning Authority. The approved details shall thereafter be permanently retained for the lifetime of the development.
 - 4) Prior to the first occupation of the flats hereby approved, the six windows facing Tor Hill Road shall be fitted with Pilkington level 4 (or an equivalent standard) obscured glazing over the entirety of the windows with no clear areas. The windows shall thereafter be permanently retained in that condition for the lifetime of the development.

Application for costs

2. An application for costs was made by Brian Jones against Torbay Council. This application is the subject of a separate Decision.

Preliminary Matters

3. My formal decision uses the description of development as set out on the application form as neither party has provided written confirmation that the revised description on the decision notice has been agreed.
4. At the time of my site visit, works to convert the building had commenced and appeared to accord with the submitted plans. For the avoidance of doubt, I have determined the appeal based on those plans.
5. The appeal is accompanied by a Revised Daylight Assessment detailing the levels of light to proposed rooms that the appellant requests be considered. Although this assessment has not been subject to public consultation, it has been commented on by the Council with no third parties raising comments in relation to levels of daylight. As a result, accepting the revised assessment at this stage would not deprive those who should have been consulted the opportunity of such consultation. Having regard to the principles of *Wheatcroft*¹, I have therefore taken this revised assessment into account, and have considered it in relation to the appeal.

Main Issue

6. The main issue is whether the living conditions of future occupiers of the proposed development would be acceptable, with particular regard to outlook, and daylight.

Reasons

7. The appeal proposal seeks the change of use of the building to two dwellings. The site is located within a predominately residential area positioned in very close proximity to the rear of Primrose Mews, Southlands Road which has two windows facing the appeal site.
8. The floorspace forming part of the appeal is currently accessed from the rear of the building and is served by large doors and windows to the rear elevation with obscure glazed windows to the front elevation facing Tor Hill Road.
9. The dwellings would benefit from outdoor space to the rear. This space would be enclosed by decorated/planted fencing positioned in close proximity to the rear elevation of the appeal building. The relationship with Primrose Mews prevents any more distant open outlook. However, given the tight nit character of the area, size, and number of openings to the rear elevation facing out onto private outdoor amenity areas that meet the minimum standards outlined within Policy THW4 of the Torquay Neighbourhood Plan (2019), both dwellings would benefit from a suitable outlook.
10. The six windows serving the two dwellings facing Tor Hill Road are relatively small and obscure glazed in order to protect the living conditions of future occupiers. Four of these windows are the only windows serving the bathrooms and secondary bedrooms. The other two windows serve the large

¹ *Bernard Wheatcroft Ltd v Secretary of State for the Environment* [JPL, 1982, P37]

living/dining/kitchen areas that also benefit from other sizable clear glazed windows and doors.

11. The small size of the windows to Tor Hill Road would restrict the level of daylight being received to the respective bathrooms and bedrooms in particular. However, the appeal has been accompanied by a Revised Daylight Assessment (RDA). This details the likely daylight levels to the kitchen/dining/lounge and bedrooms to each dwelling with privacy film of a suitable transparency fitted to these windows. The RDA adequately demonstrates that suitable daylight would be received to these rooms in accordance with the Building Research Establishment Report 'Site Layout Planning for Daylight and Sunlight 1991', even with the privacy film applied. In accordance with the recommendation in the report, the appellant has confirmed the use of paint with a high light reflectance value for Bedroom 2 to each dwelling. The provision of a minimal level of natural daylight to a bathroom is less essential given that it is not generally a habitable room.
12. For the above reasons, I conclude that the living conditions of future occupiers of the proposed development would be acceptable with particular regard to outlook and daylight. Accordingly, the proposal complies with Policy DE3 of the Torbay Local Plan, The Plan for Torbay: 2012 to 2030 and the National Planning Policy Framework (the Framework). Amongst other things, these seek to ensure that development is designed to provide a good level of amenity for future residents or occupiers, have particular regard to outlook and provides a high standard of amenity to meet the day-to-day requirements of existing and future occupiers and users.

Other Matters

13. The site lies within the Tormohun Conservation Area (CA) and I am required to give great weight to the conservation of the heritage asset. The significance of the CA comprises its historical position within Torquay within an area comprising villas and terraced and semi-detached houses of a consistent design with render the predominant facing material. The appeal property is not identified as a key building in the CA in the Tormohun Conservation Area Appraisal (August 2005). The proposal replaces existing openings with larger openings to the rear elevation that would not be visible from the public domain. Whilst six windows are proposed to the front elevation, these are small and set at road level. None of the proposed openings would disrupt the design of the building which is finished in render. As a result, the proposal would not detract from the existing building or wider area.
14. Accordingly, and for the above reasons, the appeal proposal would preserve the character and appearance, and as a result the significance of the CA as a whole in accordance with Section 72 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 (1990 Act). It is noteworthy that the Council came to a similar conclusion in this regard.
15. The proposed fencing would be at a suitable distance and set lower than the windows to the rear of Primrose Mews providing an acceptable relationship between them.
16. Although the two dwellings would not benefit from any off-street car parking, the site is located in close proximity to a range of services and facilities and

good public transport links. In such locations a relaxation of car parking standards can be applied.

17. With regard to the means of construction and associated parking, it is relevant to note that the conversion works were substantially underway at the time of my site visit, would be temporary in nature and that the Council raised no concerns in these regards.

Conditions

18. I have considered the suggested conditions in relation to the National Planning Practice Guidance. As the development has commenced, there is no need for the standard time condition. As the work is not yet complete, a condition to confirm the approved plans is necessary in the interests of certainty.
19. The Council have suggested a condition to secure suitable refuse and recycling collection. I find this necessary to protect the character and appearance of the area.
20. A condition has been suggested to ensure the submission of a hard and soft landscaping scheme, including implementation and management. However, given that the majority of hard surfacing to the rear of the site has already been carried out with limited opportunity for soft landscaping, only the submission of boundary fencing details is reasonable or necessary in the interests of protecting the living conditions of future and neighbouring occupiers. I have therefore amended the suggested condition to reflect this.
21. The Council have suggested a further condition to ensure that the windows facing Tor Hill Road are obscure glazed and retained as such. This is necessary to protect the living conditions of future occupiers. However, I have amended the wording in the interests of brevity.

Conclusion

22. For the reasons given I conclude that the appeal should succeed.

C Rose

INSPECTOR