



Appeal Decision

Site visit made on 18 July 2023

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2023

Appeal Ref: APP/X1165/W/23/3318011

175 Lymington Road, Torbay, Torquay TQ1 4BA

- 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 M Pow, POW Property Services Ltd against the decision of Torbay Council.
 - The application Ref P/2022/0832, dated 13 July 2022, was refused by notice dated 7 September 2022.
 - The development proposed is change of use from C3 residential house to 7 bed HMO.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Late evidence, in the form of a Flood Risk Assessment (FRA) that did not form part of the Council's decision was submitted by the appellant with their final comments. The 'Procedural Guide – Planning Appeals – England' (2023)' advises that late documents will only be accepted where there is a change in circumstances. Furthermore, the Guide continues that late documents will only be accepted if, amongst other things, it would be procedurally fair to all parties.
3. I have considered the appellants reasons for not submitting the evidence within the prescribed time limits which does not result from a change in circumstances. To accept this evidence at this stage would deprive those who should have been consulted the opportunity of such consultation. Therefore, if I were to accept the late evidence, it would not be procedurally fair to all parties. Accordingly, I have not taken this evidence into account and have considered the appeal on the basis of the information upon which the Council made its decision.
4. The change of use of the dwelling has been implemented and therefore I am considering this appeal retrospectively.
5. The description of development in the banner heading above is taken from the application form. However, I have removed reference to 'retrospective' as this is not an act of development.

Main Issues

6. The main issues are:
 - the effect of the proposal on the living conditions of neighbouring occupiers with regard to general disturbance, noise nuisance, car parking provision and waste and recycling storage and collection arrangements;

- whether the proposal would result in people and property being at risk from flooding;
- the effect of the proposal on the balance of the community and the level of social and economic deprivation in the local area; and
- whether the proposal provides suitable cycle storage.

Reasons

Living Conditions

7. The appeal site is a mid-terrace property, located in an established residential area. To the front of the property is a small paved garden area, whilst to the rear is a single garage and a yard area. It has been put to me that the appeal building has been operated as a House in Multiple Occupation (HMO) for 2 years.
8. Policy H4 of the Torbay Local Plan 2012-2030 (LP) permits the conversion of dwellings into HMOs subject to certain criteria being met including that the scale and nature of the use would not harm neighbouring living conditions by way of noise, general disturbance, litter or on-street parking, and adequate storage facilities can be provided for cycles, waste and recycling collection, and there is supervision by a resident owner or manager or an appropriate level of supervision.
9. Increased occupancy would result in additional comings and goings. However, there is no substantive evidence to indicate that any additional comings and goings would, in itself, lead to such additional noise nuisance or general disturbance over and above one large household that could occupy what is a substantial property, such that it would be likely to disturb neighbours.
10. Although the appellant refers to a single off road parking space that could be offered, the proposal seeks to utilise the existing garage for bicycle parking, as opposed to vehicular parking. No further off-road parking spaces are shown within the submitted plans. There is a mix of unrestricted on-street and paid for carparking in the locality. I observed at my site visit, although only a snapshot in time, that a number of properties in the wider area also lack off-road parking, and available car parking space within a reasonable walking distance of the appeal site was well used, resulting in any available parking spaces being severely limited.
11. Appendix F of the LP provides details of car parking requirements for specific locations and types of development. For HMOs the estimated requirement is one space per two bedrooms. Given the lack of any off-road spaces available, there would be a significant shortfall in parking provision when assessed against the Council's car parking requirements.
12. I note the appellant's comments that 'very few' of the current occupiers have vehicles, and the reasoning provided for this. Notwithstanding, this indicates that some occupiers do have vehicles and even if current occupiers do not have vehicles, this may not be the case in the future. I acknowledge that the appeal site is near to services, facilities and public transport thereby reducing reliance on private transport. However, while this may well reduce the likelihood of occupiers having a private vehicle, given the number of people independently

occupying the property, there is still likely to be an additional demand for, and thus pressure on, on-street parking.

13. Given that surrounding parking is well used and noting the lack of off-road parking associated with properties in the wider area, the resulting additional pressure on parking is likely to give rise to a harmful effect on the living conditions of surrounding occupiers or the wider neighbourhood who would have additional difficulties in parking in proximity to their place of residence, and subsequent potential for community conflict.
14. Three waste and recycling storage areas are indicated within the submitted plans within the rear yard area. I accept that a management team undertake regular site visits and housekeeping visits and the existing waste and recycling procedures appear to operate effectively. However, no mechanism such as a management plan has been put forward to ensure this is secured into the future.
15. I have also noted the Council's Waste Client Officer's comments noting concerns regarding the quantum of waste and recycling storage and collection procedure. If additional storage facilities were required, any additional storage could result in an already restricted outdoor yard area being reduced further. Consequently, noting the potential impact on useable garden area, I find waste and recycling is a matter which should be resolved before planning permission is granted rather than seeking additional information via a planning condition.
16. My attention has been drawn to the potential for the appellant to exercise permitted development rights and operate the appeal building as a 6 person HMO, thereby resulting in a potential 'fallback' position. Even if there is a potential 'fallback' position, the proposal would result in additional occupiers over and above that fallback position. Even if this were just one additional occupier, this would still result in additional pressure for vehicular parking and requirement for waste and recycling facilities.
17. Whilst I have found the proposal would not give rise to significant additional general disturbance or noise nuisance, the proposal would have a harmful effect on the living conditions of neighbouring occupiers with regard to car parking and insufficient information has been provided to ensure appropriate waste and recycling facilities and collection arrangements would be secured. The proposal would therefore conflict with LP Policies H4, DE3, TA3 and SS11 and Policy TH7 of the Torquay Neighbourhood Plan (NP). These policies, amongst other things, require that development reduces community conflict and does not harm neighbourhood living conditions by the provision of appropriate vehicular parking.

Flooding

18. The appeal site lies within a Critical Drainage Area and Flood Zone 3b, where, as set out in the National Planning Policy Framework (Framework), development should only be considered following a sequential test (and, if required the exception test) where, informed by a site-specific FRA, it can be demonstrated, among other things, that development is appropriately flood resilient and resistant.
19. However, paragraph 168 of the Framework indicates that the sequential or exception test does not need to be applied for some minor development and

changes of use but should still meet the requirements for a site-specific FRA. The Council's Officer report considers that the proposal does not fall within the definition of minor development for the purposes of flood risk and as such a sequential test is necessary. However, footnote 56 of the Framework is clear that changes of use are not subject to the sequential or exception test, except those which relate to a caravan, camping or chalet site, or to a mobile home or park home site, where the sequential and exception tests should be applied as appropriate, which is not the case with the appeal proposal.

20. Notwithstanding, in this instance an FRA was not submitted with the planning application. Despite the appellant's comments in relation to floor levels and lack of flooding history in the area, given the location within flood zone 3b, and that the submitted plans indicate sleeping accommodation within the envelope of the ground floor of the appeal site, it has not been adequately demonstrated that the proposal is appropriately flood resilient and resistant. Therefore, this is a matter which should be resolved before planning permission is granted rather than seeking additional information via a planning condition.
21. Consequently, I conclude that the proposal does not establish that people and property would not be at risk from flooding. The proposal therefore conflicts with LP Policy ER1 which, amongst other things, seeks to ensure development is safe for its lifetime and is designed to ensure buildings and their surroundings are appropriately resistant and resilient to all forms of flooding. There would also be conflict with the provisions of the Framework and guidance within the Planning Practice Guidance which seeks to minimise vulnerability and improve resilience to flooding.

Social and Economic Deprivation

22. The appeal site is located within a designated Community Investment Area (CIA) and in an area stated by the Council to be within the top 10% of multiple deprivation within England.
23. LP Policy SS11 seeks to improve the sustainability of existing communities and close the gap between the most and least disadvantaged neighbourhoods, while LP Policy H4 seeks to ensure that proposals would not lead to an over-concentration of similar uses that could exacerbate existing social and economic deprivation or lead to a community becoming imbalanced. Similarly, NP Policy TH7 does not support proposals which would worsen concentrations of deprivation.
24. The proposal relates to an unrestricted HMO, which could be occupied by a range of occupiers including those employed in the local area. I note that 2 other properties within Lymington Road are registered as HMOs, and there are in total 39 HMOs within the wider TQ1 postcode area. Nevertheless, given the small number of properties in Lymington Road registered as HMOs, I do not find that the proposal would result in an overconcentration of similar uses in the immediate area. Furthermore, no substantive evidence has been provided that brings me to conclude that the proposal would result in an imbalanced community.
25. It has not been shown that the proposal would have a harmful effect on the balance of the community and the level of social and economic deprivation in the local area. Consequently, in this regard, the proposal would accord with LP policies H4 and SS11, and NP Policy TH7, the aims of which I have set out.

Cycle Storage

26. LP Policy TA3, via Appendix F requires that 1 cycle space per bedroom is provided within HMOs. Although the submitted plans indicate space for just 3 cycles within the garage area, I observed that the garage, noting it would be used for cycle storage as opposed to vehicular parking, could comfortably accommodate 7 cycles. Consequently, if the appeal were to be allowed, there would be scope to provide appropriate cycle storage facilities, subject to the imposition of a suitably worded planning condition to secure it.
27. I therefore conclude that the proposal provides suitable cycle storage, and as far as they relate to this main issue, there would be no conflict with LP policies H4, DE3 and TA3 which requires, amongst other things, appropriate provision for storage of cycles.

Other Matters

28. The property may have been used, and a license in place, as a 7 bedroom HMO. However, even if the proposal meets licensing criteria, such a licence is issued under a differing legislative regime and is not indicative of acceptability of the proposal in planning terms.
29. The Council has acknowledged within their Officer report that it cannot currently demonstrate a five-year housing land supply, though there is no conclusive evidence about the extent of the shortfall. In such circumstances, paragraph 11(d) of the Framework indicates that the policies which are most important for determining the application are out of date and that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
30. The adverse impacts are derived from the above identified harm to neighbouring living conditions, and the failure to demonstrate that people and property would not be at risk from flooding. The Framework is clear that proposals should seek to provide a high standard of amenity and minimise vulnerability and improve resilience to flooding and therefore I afford the harm significant weight.
31. The development provides a HMO instead of a large dwelling. Given that it replaces one type of residential development with another, it does not result in the provision of an additional dwelling so does not help to address the Council's housing supply. Nevertheless, it provides a different type of accommodation.
32. There is disagreement between the parties as to if there is a shortage of low-cost accommodation, such as that provided by HMOs in the area. Notwithstanding, given the scale of the development, even if there is a shortage of low-cost accommodation, any additional social and economic benefits over and above a single dwelling would be limited, and I therefore afford this limited weight.
33. Although there is accordance with some elements of the development plan, given the identified harm, the adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, including those seeking to boost the supply of homes. The proposal does not therefore benefit from the presumption in favour of sustainable development.

34. The appellant raises concerns regarding planning application validation and engagement with the Council during their consideration of the planning application. However, these are not matters which are for consideration in this appeal.

Conclusion

35. For the reasons given, I find that the proposal would conflict with the development plan, read as a whole. Material considerations, including the Framework, do not indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

S Harrington MA MRTPI

INSPECTOR