



Appeal Decision

Site visit made on 10 October 2023

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2023

Appeal Ref: APP/X1165/W/23/3315610

Kenbern Garage, Princes Road, Torquay TQ1 1NW

- 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 Waye against the decision of Torbay Council.
 - The application Ref P/2022/1039, dated 8 September 2022, was refused by notice dated 1 December 2022.
 - The development proposed is alterations to garage to form owners flat at first floor level to enable business security.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above is taken from the application form, except where I have deleted reference to the application being a resubmission as this does not relate to an act of development.

Main Issue

3. The main issue is whether or not the development proposed would provide satisfactory living conditions for its future occupants, with regard to noise, air quality and privacy.

Reasons

4. Kenbern Garage is a commercial garage located within the settlement of Torquay. The site is within a predominantly residential area, but there are commercial units located next to the entrance. The existing building is set within a yard and the proposal would involve a residential flat and roof terrace being formed over part of the existing building.
5. The garage business would continue to function after the construction of the flat. The workshop bays would be relocated into the section of the building that the flat would not be constructed over. The area under the flat would be given over to private parking garages.
6. A commercial garage is likely to involve loud noises from machinery and tools. There is also likely to be further noise created by employees and customers conversing and coming and going from the site. The noise levels experienced by the occupier of the proposed flat would be worsened if works are carried out within the open environment of the yard. There appears to be no restrictions on such activities taking place. Furthermore, the running of vehicles would result in the emission of exhaust fumes that could pose harm to the occupier of the flat by negatively impacting on the quality of the air within the site.

7. The Council has referred to the flat being overlooked by people stood within the yard. However, the flat would be located at a higher level than the yard and therefore would look over the yard, not vice versa. Views up towards the flat would be at such an angle that there would not be a loss of privacy. The roof terrace would have balustrading along the edge facing towards the yard and this would afford sufficient privacy to users of this outdoor space.
8. The appellant has suggested that an occupancy condition be attached so that the applicant, who is the owner of the garage, would be the only person permissible to live within the flat in perpetuity. This would mean that the occupier of the flat would have control over the activities that take place within the site and therefore prevent the living conditions of the occupier of the flat being compromised.
9. The Planning Practice Guidance is clear that planning permission usually runs with the land, and it would require exceptional circumstances for someone to benefit from a planning permission that is enured to just them. I have not been provided with sufficient information to conclude that the proposed development constitutes an exceptional circumstance where a permission personal to the appellant would be appropriate.
10. I have not been provided with another condition that could mitigate the harm that would result from the proposed development. I note that the development description includes reference to the flat being an "owners flat", but there would be no mechanism in place to ensure that any subsequent occupier of the flat owns or manages the commercial business.
11. My attention has been drawn to other sites within Torbay where residential accommodation is over commercial units, including commercial garages. However, I have been provided with limited information to explain the background and context to the decisions that were made to allow those developments. In any event, the presence of these other mixed residential and commercial developments in Torbay does not justify the unsatisfactory living conditions for future occupiers of this particular proposed flat, and I have determined the proposal on its own individual merits based on the evidence before me.
12. For these reasons, the proposed development would result in unsatisfactory living conditions for future occupiers of the proposed flat. Consequently, the proposal conflicts with Policy DE3 of the Torbay Local Plan 2012 – 2030 (TLP), which seeks, amongst other things, for development to be designed to provide a good level of amenity for future residents or occupiers. Additionally, the proposal conflicts with the National Planning Policy Framework (the Framework), which seeks, in part, to ensure that there is a high standard of amenity for future users of development. I have considered the suggestion of a condition to limit the benefits of the planning permission to the appellant, but this would not meet the tests of national planning policy.

Other Considerations

13. The proposal would make a positive contribution to housing supply by providing a single residential dwelling within walking distance of services and facilities, with associated social and economic benefits. However, the contribution of one dwelling to meeting the shortfall of deliverable housing in Torbay and the associated benefits are limited.

14. The appellant also asserts that the proposed development would allow surveillance of the commercial business and would therefore provide better security for the site. Additionally, it is stated that the proposal would lead to positive improvements to the garage operation, employees' working conditions and generally improve the appearance of the area. However, these asserted benefits, whether public or private benefits, would also be limited.

Planning Balance

15. The Framework does not change the statutory status of the development plan as the starting point for decision making. I have found that the proposal is not in accordance with Policy DE3 of the TLP, due to the unsatisfactory living conditions that would be provided for future occupiers of the proposed flat. This means it conflicts with the development plan as a whole. Proposed development which conflicts with the development plan should be refused unless other material considerations, including the Framework, indicate otherwise.
16. The Council accepts that it cannot currently demonstrate a five-year housing land supply. As a result, in accordance with Paragraph 11 of the Framework, the policies most important for determining the application are deemed to be out-of-date, including Policy DE3 of the TLP. In these circumstances, Paragraph 11(d) of the Framework states that 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.
17. Overall, I find that the adverse impact of the proposed development arising from the unsatisfactory living conditions that would be provided for future occupiers of the proposed flat would significantly and demonstrably outweigh the benefits, set out within the other considerations including the contribution to housing supply, when assessed against the policies of the Framework as a whole.

Conclusion

18. The proposal would conflict with the development plan, when taken as a whole. There are no other material considerations of sufficient strength to outweigh this finding. For the above reasons, and having regard to all other matters raised, including the lack of objections from consultees and interested parties, I conclude that the appeal should be dismissed.

K Reeves

INSPECTOR