



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: 27 November 2023

Appeal Ref: APP/X1165/W/23/3318168

189 Union Street, Torquay TQ1 4BY

- 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 Daniel Mitchell of Alliance Build Company Ltd against the decision of Torbay Council.
 - The application Ref P/2022/0909, dated 4 August 2022, was refused by notice dated 8 September 2022.
 - The development proposed is to create a single dwelling within the basement of 189 Union Street Torquay.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development in the banner heading above is taken from the application form, except where I have deleted references to the application being a resubmission and a previously approved application as these do not relate to an act of development.

Main Issue

3. The main issue is whether the development proposed would provide satisfactory living conditions for its future occupants, with regard to natural light.

Reasons

4. The proposed flat would be provided within the basement of a building that fronts on to Union Street in Torquay. It would be a studio flat accessed independently from Magdalene Road. The accommodation consists of an open plan living and sleeping area, and a separate bathroom. The sleeping area would be located at the rear of the flat and the entire open plan area would be served by one window.
5. The Council have not raised specific concerns in regard to the level of natural light that would be provided within the living area. Their main concern is the natural light that would be available within the sleeping area. I also note that the appellant has not provided an assessment to demonstrate that the flat would benefit from sufficient natural light.
6. The window that would serve the open plan area of the flat is not a large opening and it is set low down within the wall. Additionally, it is north facing and therefore direct sunlight does not penetrate through the aperture. I acknowledge that an internal wall would be removed to allow more natural light

to enter the sleeping area, but it would be set at the rear of the living accommodation and sufficient natural light may struggle to reach this area of the flat.

7. It is suggested that provision of more natural light into the flat could be created as part of the construction process. However, no substantive details of these mitigation works have been provided. In any event, the appeal process is not the correct avenue to amend schemes and address policy conflict. The appellant states that the works could be secured through a planning condition, but no suitable condition has been provided by either party.
8. Additionally, it is also suggested that the bed could be moved closer to the window, but this cannot be secured through a planning condition, and I am determining the appeal on the basis of the layout shown on the submitted plans.
9. For the above reasons, and without clear evidence demonstrating that the flat would have an acceptable level of natural light, the living conditions for future occupiers of the proposed flat would not be satisfactory. 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.

Other Considerations

10. I am aware that the planning history for the site indicates that planning permission was previously granted for the change of use of the basement to a self-contained flat (reference P/2009/1255). I understand that the permission was never implemented and has now lapsed. As such, the previously approved scheme does not form a fallback position. Moreover, I do not have the plans of that scheme and so I cannot make any meaningful comparison between the appeal scheme and the previously approved scheme.
11. The appellant submits that the Council have not sufficiently communicated with them prior to determining the application. However, this is a matter between these parties, and does not affect my determination of this appeal.

Planning Balance

12. The Council accepts that it cannot currently demonstrate a five-year housing land supply. In these circumstances, Paragraph 11(d) of the National Planning Policy Framework (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.
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 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.

15. 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, when assessed against the policies of the Framework as a whole, which include seeking a high standard of amenity for future users of development.

Conclusion

16. For the above reasons, the proposal would conflict with the development plan, when taken as a whole. There are no other considerations, including the provisions of the Framework, which outweigh this finding. Accordingly, I conclude that the appeal should be dismissed.

K Reeves

INSPECTOR