



Appeal Decision

Site visit made on 23 April 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08.05.2024

Appeal Ref: APP/X1165/W/23/3335404

2 Braeside Road, Paignton TQ4 6BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr/Mrs. J Rios Tijerina against Torbay Council.
 - The application Ref is P/2023/0725.
 - The development proposed is change of use to 3 No residential apartments (rear annexe).
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Decision

1. The appeal is allowed and planning permission is granted for change of use to 3 No residential apartments (rear annexe) at 2 Braeside Road, Paignton TQ4 6BX in accordance with the terms of the application, Ref P/2023/0725, subject to the conditions in the attached schedule.

Preliminary Matters and Background

2. The appeal relates to a failure to determine the application within the prescribed period. The Council's main concerns relate to the effect of the proposal on the living conditions of future occupants, with regard to noise, outlook, pollution disturbance and privacy. Additionally, the suitability of proposed parking and waste storage is challenged. The appellant has had the opportunity to comment and therefore would not be prejudiced by these matters forming the basis for the main issues.
3. The appeal site comprises a Victorian period hotel with a later 1980's extension. The proposal includes the change of use of the later extension to 3 self-contained flats with external alterations. The site is within the Roundham & Paignton Harbour Conservation Area (CA). Consequently, there is a statutory duty to pay special regard to the desirability of preserving or enhancing the character or appearance of the area.
4. The Council raises no concerns over the effect of the proposal on the CA and I find no reason to disagree. Given the modest extent of the alterations proposed, the scheme would have a neutral effect on the designation. It would therefore preserve the character and appearance of the CA.

Main Issues

5. The main issues are (i) whether the proposed development would provide acceptable living conditions for future occupants, with regard to privacy, outlook, noise and pollution disturbance; and (ii) whether occupants of the

proposed development would have reasonable access to parking and waste storage.

Reasons

Living conditions

6. The proposed communal garden area would be positioned below 1st and 2nd floor hotel windows. 2 of these windows are obscure glazed. Collectively, these windows face inwards towards the proposed flats, rather than directly down over the proposed gardens. Whilst some overlooking in this space would still occur, the plans show that these windows would be obscure glazed. Furthermore, within the flats, the proposed 'oriel' windows as described by the appellant, would be obscure glazed on the parts that would face the hotel. Even if their hotel windows were opened, guests would not be able to look into the proposed accommodation.
7. The hotel freezer/prep room windows are obscure glazed on their lower sash panes, though the plans show they would be obscure glazed. Although it is possible these could be opened from the bottom up, a top-down opening is equally achievable and practicably more likely. Additionally, given the nature of the layout of the room, it is not likely to be in constant use. This, together with the fact that some of the proposed gardens would be communal, means it would not be necessary to impose further restrictions on the openings of these windows. Therefore, for the above reasons, subject to an appropriately worded obscure glazing condition, the privacy of future occupants would not be harmfully compromised.
8. The number of windows for each of the flats would be limited. However, the orientation of proposed oriel openings and living room windows would avoid overshadowing or overlooking towards the hotel building and carpark. Instead, they would facilitate attractive views towards gardens and the distant townscape. Additionally, I saw that there was a good degree of light entering the hallway windows. This would avoid a gloomy outlook from this side of the flats. As such, the outlook for future occupants would be acceptable.
9. The plans show a centrally located kitchen in the main hotel, distanced from the proposed flats. They do not propose new flue vents. At my visit, I observed that the freezer/prep room was being used. Existing ventilation, extraction arrangements were not obvious, though there was a square vent next to one of the prep room windows. Given the active use of this room, there were no noises or odours noticeably emanating from the hotel building.
10. The laundry room would be separated from the proposed flats by a substantial wall and corridor. In that respect, the appellant claims that the proposal would meet sound reduction standards in accordance with Building Regulation requirements. There is little reason to disagree.
11. Whilst my observations only represent a snapshot in time, recognising there may be busier times, for the above reasons, I find it unlikely that unacceptable noise or pollution disturbance would occur. Further control in this regard would therefore not be necessary.
12. Therefore, I conclude on this main issue that the proposal would not harmfully affect the living conditions of future occupants with regard to privacy, outlook, noise and pollution disturbance. Consequently, there would be no conflict with

Policy DE3 of the Torbay Local Plan 2012-2030 (LP) which, in this respect requires development to be designed to provide a good level of amenity for future occupiers.

Parking and waste

13. The scheme would provide the required number of parking spaces and electric vehicle charging points. However, their proposed location at the bottom of the appeal site would be somewhat disjointed from the entranceway to the flats. Future occupants would be required to walk a short distance along the adjoining street or up through the hotel steps and its frontage to reach their entrance. This would not represent an optimal arrangement.
14. Notwithstanding this, the appeal site is in a sustainable location where future occupants would not need to rely solely on the private vehicle. As such, although convenient to have parking spaces next to the entranceway, it would not be essential to make the development acceptable in planning terms.
15. Furthermore, the upper car park area is small and closely associated with the hotel entrance. The availability of more limited spaces here would assist with the general functioning of the hotel in terms of deliveries or drop offs for example.
16. Whilst 3 hotel parking spaces would be lost, so too would a number of available rooms for guests. The reduction in parking spaces would therefore be a reasonable adjustment.
17. For the above reasons, appropriate car parking provision would be delivered, as required by Policy TA3 of the LP. The implementation of these spaces could be secured using an appropriately worded condition.
18. Each flat would have facilities for refuse storage and future occupants could make use of the external communal wheelie bin facility. This is near the kerbside and not an unreasonable distance for future occupants to navigate. Adequate space would be available for the likely waste generated, though no dedicated storage is shown, which would be a requirement of Policy W1 of the LP. As such, it would be reasonably necessary to secure this provision using an appropriately worded condition.
19. Therefore, I conclude on this main issue that occupants of the proposed development would have reasonable access to parking and waste storage. There would consequently be no conflict with policies W1 or DE3 of the LP.

Conditions

20. I have made some amendments and omissions to the Council's suggested conditions in the interests of clarity and to ensure compliance with the Framework.
21. For clarity, I have imposed a plans condition. In the interests of accessibility, I have imposed conditions requiring cycle storage and parking spaces including electric vehicle charging points to be implemented prior to first occupation of the flats.
22. I have imposed an obscure glazing condition to protect the privacy of future occupants. Additionally, it is necessary to require the submission of details for refuse storage in the interests of effective waste management. It is acceptable

that this scheme is submitted and implemented prior to occupation rather than as a pre-commencement condition.

Conclusion

23. For the reasons given above the appeal should be allowed.

J Hills

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: 202218/34; 202218/35; 202218/36; 202218/38 dated July 2023 and 202218/42 dated August 2023.
3. Prior to first occupation of the development hereby approved, parking spaces shall be provided in accordance with approved plan 202218/35, dated July 2023. Each space shall be clearly marked, either by use of signage or paint on the ground as being "Private" and for use of "Flat 1", "Flat 2" and "Flat 3" respectively. Each parking space shall have an electric vehicle charging point. Once implemented, each space and charging point shall be retained and maintained for the sole use by each corresponding flat thereafter.
4. Prior to the first occupation of the development hereby approved, the cycle store and cycle hoops shown on drawing 202218/35 dated July 2023 shall be provided. Once provided, the cycle store and cycle hoops shall be retained and maintained as such thereafter.
5. Prior to first occupation of the development hereby approved, obscure glazing shall be installed in accordance with approved plans 202218/35 and 202218/36, dated July 2023 and identified as OB. Once installed, these windows shall be retained and maintained as such thereafter.
6. Prior to first occupation of the development hereby approved, a scheme for the storage of waste and recycling shall be submitted to the local planning authority and approved in writing. The approved scheme shall be implemented prior to occupation of the development and retained and maintained as such thereafter.