



Appeal Decision

Site visit made on 25 July 2024

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2024

Appeal Ref: APP/X1165/W/24/3337736

480 Babbacombe Road, Torquay, Torbay TQ1 1HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Sandra Conaghan against the decision of Torbay Council.
 - The application Ref is P/2023/0808.
 - The development proposed is change of use from cafe to residential accommodation. Replacement of glazed frontage with composite door and UPVC windows.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development used in the banner heading above is that stated on the notice of decision and on the appeal form. I have used this description as it more succinctly describes the development proposed than that given on the application form.

Main Issues

3. The main issues are:
 - the effect of the proposal on the character and appearance of the area having regard to the Lincombes Conservation Area (LCA); and,
 - whether the living conditions of future occupiers of the proposed development would be acceptable, with particular regard to outlook, and daylight.

Reasons

4. The appeal proposal seeks the change of use of the building from a vacant café to residential accommodation along with the replacement of the existing shop front. The premises are at road level within a terrace of commercial uses in a built up area. There are flats above and below the appeal property and the immediate area is designated as a Local Centre.

Character and appearance

5. The appeal site is located within the LCA, a designated heritage asset. The Lincombes Conservation Area Character Appraisal (Draft 2002) (the Appraisal) outlines the essential characteristics of the LCA which includes the predominance of 19th century villas and terraces, many in generous plots and

mainly set on steep hillsides. Along with the appearance and traditional design features of the buildings, I observed that the significance of the LCA is derived from these essential characteristics.

6. While the appeal property and adjoining terrace are not listed buildings, it forms a small parade of commercial units with some interesting architectural detailing in a prominent location off Babbacombe Road. As a result, the terrace has architectural and historic merit and is identified as an important feature on Map 5 of the Appraisal as part of a number of 'Important building groups, normally of similar date, character or frontage detail'. Therefore, the appeal property makes a positive contribution to the character of the LCA by reason of its age, character and frontage detailing. Furthermore, Section 9 of the Appraisal identifies a number of elements that are detrimental to the character and appearance of the LCA. These include, 'a gradual loss of distinctive architectural features', and 'the loss of the majority of traditional shop-fronts, and replacement with plain facias at variance to the fine period detailing of the upper floors'.
7. I note that the appellant states that the proposed UPVC windows would be of a sliding sash design of a similar width to height ratio and style to existing whilst the proposal would retain the tiled plinth and reproduce the door head feature across the top of the door and windows. However, the plans indicate that the proposed windows would nevertheless be noticeably smaller than those elsewhere on the building frontage, would not benefit from similar period surround detailing and would not be as recessed. Furthermore, the proposal would necessitate the loss of the existing traditional shopfront that is closely replicated by the adjoining commercial units forming an important feature to the building and for which the LCA states such losses have been detrimental to the character and appearance of the area.
8. I acknowledge the existence of replacement UPVC windows within the wider appeal building and to other units within the terrace. I viewed examples of these during my site visit and with a specific example at No.7 Lisbourne Square drawn to my attention by the appellant. However, No.7 does not benefit from a traditional shop frontage. The retained historic features of the appeal premises, and its more prominent location, mean that the replacement of the existing timber shopfront with the two smaller and less detailed UPVC windows and door would appear quite obvious and out of place when viewed in association with the immediately adjoining timber shopfronts and wider Local Centre. As a result, the replacement of the existing frontage to the appeal property with the proposed windows and door would clearly detract from the overall appearance of the building, the wider terrace, and that of the wider LCA and its significance. It would also harm the Local Centre by reason of visually undermining the character of the centre and visually fragmenting the existing retail frontage. Therefore, the use of UPVC windows elsewhere in the area does not outweigh the harm identified.
9. There is a statutory duty under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. Paragraph 205 of the National Planning Policy Framework (the Framework) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight

- should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
10. As the physical changes to the building would be limited to the ground floor frontage, I consider that the harm to the LCA would be 'less than substantial'. Under such circumstances, Paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
 11. The public benefits would include the provision of a small dwelling in a sustainable and accessible location and bringing an empty unit back into use. The public benefit of one small dwelling and re-use of the building would be very limited. Furthermore, and while I acknowledge the stated problems with constructing a new internal wall behind the shopfront, there is little other evidence before me to demonstrate that these public benefits could not be achieved through alternative means that would not involve the loss of the shopfront therefore avoiding harm to the host building, wider LCA and the character and appearance of the Local Centre. Consequently, I find that the public benefits do not outweigh the harm that I have identified.
 12. It follows from the above that I conclude that the proposed development would harm the character and appearance of the area having regard to the Lincombes Conservation Area. The proposal would be contrary to Policies DE1, SS10 and TC4 of the Torbay Local Plan, The Plan for Torbay: 2012 to 2030 (LP) and Policy TH8 of the Torquay Neighbourhood Plan. These policies seek, amongst other things, that development should be well-designed, respect existing street frontages and built form, sustain and enhance buildings which make an important contribution to Torbay's built setting and heritage, not undermine the character of the centre as a whole, prevent unacceptable fragmentation of retail premises and respect the local character and reflect the identity of its surroundings. The proposal would also conflict with the aims of the Framework, which places great importance on the design of the built environment and on the conservation of heritage assets such as conservation areas.
 13. The Council's notice of decision in relation to this main issue also references Policies DE5 and TC1 of the LP. However, Policy DE5 relates to extensions to domestic dwellings and as the proposal relates to an alteration to the existing frontage rather than extending it, the proposal does not comprise an extension. With regard to Policy TC1, this mainly relates to Town Centres and retailing setting out what the LP supports with regard to these matters. Although the proposal does not meet any of the listed principles, Policy TC1 does not cover changes of use in local centres. These are specifically covered separately under Policy TC4. As a result, I do not find conflict with Policies DE5 or TC1 in relation to this appeal.

Living conditions

14. The floorspace forming the proposed dwelling is currently accessed from the road frontage via a door set within the larger shop front with access via doors out onto a balcony to the rear. There is a further window to the rear serving a kitchen. The kitchen window and the balcony and its associated doors look out over a small outdoor area to the rear of the flat below and beyond this over a rear service area.
15. The proposed dwelling would benefit from windows facing directly onto the pavement similar to a number of other dwellings in the immediate area. While

occupiers may wish to restrict the outlook to the frontage through the use of net curtains or frosted glass to gain privacy, the dwelling would also benefit from an unrestricted and sufficiently private outlook from the double doors serving the rear balcony and from the window serving the proposed kitchen. In light of this, and given the tight nit character of the area, the dwelling would benefit from a suitable outlook.

16. While the proposed dwelling would be relatively small, it would exceed the minimum size standards under Policy DE3 of the LP and as detailed in the Nationally Described Space Standards. Given its small size and compact open plan bed/sitting/dining layout, I am satisfied that the dwelling would be served by adequate natural light via a combination of the proposed windows and door to the front elevation and via the rear doors. Some natural light would also enter from the kitchen window. Furthermore, due to comparable window arrangements to the other flats adjoining the appeal site, levels of natural light would not be too dissimilar.
17. 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 Policies DE3 and SS11 of the LP. 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, help to create cohesive communities within a high quality built environment and meet the needs of residents and enhance their quality of life. The proposal would also accord with the Framework that seeks to provide a high standard of amenity to meet the day-to-day requirements of existing and future occupiers and users.

Other Considerations

18. I have had regard to the stated concerns on behalf of tenants in the flats occupying the building but given the location of the site within a mixed residential and commercial area and small size of the unit restricting such impacts, this is neutral in my consideration. I also acknowledge that the dwelling would benefit from its own separate access, suitable storage and would not harm the living conditions of nearby occupiers. Nonetheless, as these are requirements of local planning policies and national guidance, these matters are also neutral in my consideration.
19. My attention has been drawn to a planning application in 2004¹ at the appeal premises that was granted for a Change of Use from Café to Residential Auxiliary Accommodation. However, this application was considered against policies in a previous development plan and pre-dates the Framework. As such, I cannot be sure that it is directly comparable to the current proposal that I am required to consider on its merits.
20. It is not a matter of dispute between the parties that the Council cannot currently demonstrate a five-year supply of deliverable housing sites and I have no reason to take a different view. However, when the proposal is considered relative to paragraph 11 of the Framework it falls under footnote 7. In that respect, I have found above that the proposal would harm the significance of the LCA and that the harm would not be outweighed by public benefits, which provides a clear reason for refusing the development proposed

¹ Application P/2004/2081

under paragraph 11 d) i) of the Framework based on application of its policies in Chapter 16 relating to designated heritage assets. It follows that in such circumstances it is not necessary to go on to assess the proposal against the subsequent paragraph 11 d) ii).

Conclusion

21. Although I have found no harm with regard to the effect of the proposal on the living conditions of future occupiers, the proposal would cause harm to the character and appearance of the area and significance of the LCA. In my view, this is the prevailing consideration, and the proposal should be regarded as being in conflict with the development plan, when read as a whole.
22. Material considerations, including the Framework, do not indicate that the proposal should be determined other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude the appeal should be dismissed.

C Rose

INSPECTOR