

Appeal Decision

Site visit made on 17 September 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2024

Appeal Ref: APP/X1165/W/24/3342682

Palm Tree Court, Palm Tree View, Paignton, Torbay TQ4 7FD

- 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 Ms Juliet Williams of Palm Tree Court RTM Co against the decision of Torbay Council.
 - The application Ref is P/2023/0978.
 - The development proposed is removal of Juliette balconies and construction of balconies to Apartments 5, 6, 7 & 8.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the living conditions of nearby residents at Daveys Elm View (DEV), with particular regard to privacy.

Reasons

3. The appeal site comprises a modern block of flats positioned on steeply sloping ground in an urban area. It is built well above and in close proximity to the rear gardens and elevations of some properties along DEV. The Council is concerned that the proposed balconies would result in an unacceptable reduction in privacy caused by overlooking towards these properties and their gardens.
4. Like the appeal proposal, there are other properties directly facing DEV that have balconies and decking areas. However, based on the evidence and my observations, these are either set further back or at a lower height when compared with the proposal. Additionally, the configuration of garden space and extent of intervening vegetation along and to the rear of DEV is not uniform. In respect of vegetation, I saw that sections of it were less dense between the appeal site and DEV. Therefore, regardless of the townscape context and the unlikely possible future removal of fences or vegetation, other existing developments and their effects on privacy are not comparable with the appeal proposal.
5. There is no evidence of minimum set separation distances within the Torbay Local Plan 2012-2030 (LP). In that context, it is acknowledged that the

outlook from existing Juliette balconies towards the rear gardens and properties of DEV generates overlooking. However, the proposed balconies would add a wide viewing platform over a modest, but useable depth. As such, it is likely there would be the propensity to spend significant periods on these balconies. This, together with the 1.5m protrusion towards the private spaces of DEV, would substantially increase the amount of overlooking that currently exists, particularly from the proposed upper floor balconies. Consequently, the privacy of occupants of DEV would be materially altered and harmfully diminished.

6. For the above reasons, the proposed development would harm the living conditions of nearby residents at DEV, with particular regard to privacy. As such, there would be conflict with Policy DE3 of the LP which says that all developments should not unduly impact upon the amenity of neighbouring uses, with regard to overlooking and privacy, amongst other things. There would also be conflict with paragraph 135 of the National Planning Policy Framework, which says, in part, that decisions should ensure that developments create places with a high standard of amenity for existing users.

Other Matters

7. My attention has been drawn to some appeal decisions at 2 Dutchy Drive and 8 Sandringham Gardens. However, these are not in the same location as the appeal proposal. Furthermore, I have been provided with very little information in respect of the details and site-specific nature of those schemes. In any case, I have assessed the appeal on the evidence before me and my own observations.
8. I have paid regard to the planning history. However, this has no bearing on my decision which is based on the planning merits of the proposal.
9. Even if no neighbour objections were received, this is not a reason in itself to allow unacceptable development.

Conclusion

10. For the reasons above, and taking into account all other matters raised, I conclude that the proposed development would fail to accord with the development plan as a whole and there are no considerations individually or cumulatively that outweigh this. Therefore, the appeal is dismissed.

J Hills

INSPECTOR