



Appeal Decision

Site visit made on 9 October 2024

by H Faulkner BSc (Hons) MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2024

Appeal Ref: APP/X1165/W/24/3344353

135 Grenville Avenue, Torbay, Torquay TQ2 6DW

- 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 Samuel Harvey against the decision of Torbay Council.
 - The application Ref is P/2023/1030.
 - The development proposed is described on the application form as follows "I am putting in for planning for my outbuilding attached to my garage/garden room to the rear of property which I was granted planning permission for in 2021, I have already built my outbuilding attached to my garage/garden room as I did not think I needed planning permission for as thought it would fall under permitted development for an outbuilding but it seems it has been built higher than permitted development allowance as it highest point is 2830mm from the ground. My garage/garden room I was granted planning permission for a flat roof with an external height of 3 metres and I built under that to its highest point of 2830mm. My outbuilding is attached to my garage with a flat roof so I kept it same height so would not have a step down as its better for rainfall and thermal properties etc if the roof is the same height. Off the ground to soffit height I have 2.4 metres and I have a larger fascia as I installed a warm roof system as what I was recommended to do so from my builder and building control, I have 175mm joists with 150mm of cellotex with 2 layers of 18mm OSB and Ferrin timber 70mm to nothing, which is why my height stands at 2830mm at the roof highest point I need planning permission for proposed height as for everything else my outbuilding comes under permitted development."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The decision notice describes the development as erection of a single storey extension to outbuilding (retrospective). There is no record of the appellant agreeing to this change to the description. However, the Council's description is a more succinct version and reflects the above wording therefore I have considered the appeal on this basis.
3. Amended plans have been submitted with the appeal. These show changes to the internal layout and include the provision of a door and window in the south elevation, albeit only on the floor plan and not the elevation drawing. Interested parties have not been given the opportunity to make representations on these changes giving rise to procedural unfairness. For that reason, I will not accept the amended plans.
4. The first reason for refusal relates to the plans being inaccurate and not reflective of the structure as it has been built. The first reason for refusal relates to the plans being inaccurate and not reflective of the structure as it

has been built. Notwithstanding the situation on site, I have made my assessment on the drawings before me, and upon which the Council based its decision. The alleged inaccuracy relates to the internal layout of the building. However, this has not prevented my assessment of the main issues outlined below.

Main Issues

5. The main issues are:

- The effect of the proposed development the character and appearance of the area;
- The effect of the proposed development on the living conditions of the occupiers of 133 Grenville Avenue (No 133) with regards to outlook and overshadowing; and
- Whether the proposed development adequately deals with surface water run-off.

Reasons

Character and Appearance

6. The appeal property is an end terrace property within a housing estate. At the rear of the houses on this part of Grenville Avenue, Raleigh Avenue and Davis Avenue there is a parking area. This provides parking as well as rear access to the properties. The houses backing on to the parking area are two storey houses arranged in semi-detached pairs and terraces. Single storey garages have been erected in the gardens of some of the properties and are visible from the parking area.
7. When viewed from the rear the building appears as a garage, when the shutter is down, and its width is not excessive within the context and when compared to other garages. However, the building with its L-shaped form, covers a significant proportion of the garden, running nearly the full length of one of the side boundaries. This would be clearly visible from surrounding properties particularly from first floor windows.
8. The design of the building is simple, and the materials are consistent with the existing house. However, the scale of the building, particularly its footprint, is excessive in this context. When compared to the footprint of the existing house and the size of the garden, the building appears cramped. There are no other outbuildings or garages of a similar scale within the immediate vicinity. The building would therefore be out of character with the surrounding area and has a harmful visual impact.
9. Planning permission was granted for a smaller building on the site. The application subject to this appeal sought to extend that building which the appellant claims provides part of the rationale for the overall height of the building. Even though permission exists for a smaller structure, I have to consider the visual impact of the building as a whole, which I have found to be harmful in this case.
10. The Council take the view that the building, along with the other developments approved on the site, would be overdevelopment. However, even if the

extension to the house were not complete, the building would on its own, due to its footprint and scale, be out of character with the area.

11. It has been suggested by the appellant that if the height of the building were lower it would be Permitted Development and the visual impact would be similar to what has been constructed. I have no evidence before me that such a building would not require planning permission. No detailed assessment against the regulations has been provided and there is no Certificate of Lawfulness in place. Therefore, in the absence of this information I do not consider that this is a realistic fallback position.
12. The overall building harms the character and appearance of the area and is therefore contrary to Policies DE1 and DE5 of the Torbay Local Plan and TH8 of the Torquay Neighbourhood Plan. Amongst other things these require development to be well designed and relate to the surrounding environment in terms of scale and massing, and not to appear cramped or dominant in the context of the original property.

Living Conditions

13. The garage originally approved in the rear garden had a square form and was proposed to be sited at the end of the garden. The building that has been constructed on the site runs right along the boundary with No 133. The garden of No 133 tapers to one end and there is a thick hedge on the other boundary.
14. Due to the narrow width of the garden, the position of the building on the boundary, along with its length and height results in an oppressive impact on the occupiers of the neighbouring property when using their garden. Moreover, due to its height, excessive length and proximity along the shared boundary, the building would appreciably overshadow part of No 133's garden. This would have a detrimental impact on occupiers' enjoyment of the space. Whilst there may have been a hedge previously on the boundary its impact is not directly comparable as opportunities to prune or reduce its height would have been likely. Moreover, it would have likely had a softer appearance compared with the proposed scheme.
15. Even if an outbuilding could be constructed in a similar position under Permitted Development it would be lower in height and therefore have less of an impact in any event.
16. Whilst there may have been no objection from this neighbour it does not mean that they support the scheme. The effect on neighbouring properties remains a policy consideration.
17. In conclusion, the proposed development would have an unacceptable effect on the living conditions of occupiers of No 133 Grenville Avenue with regard to visual intrusion and overshadowing. Therefore, the development is contrary to policy DE3 of the Torbay Local Plan which seeks to provide good levels of amenity for neighbouring occupiers.

Surface water run-off

18. The site is within a Critical Drainage Area with Policy ER1 of the Torbay Local Plan requiring all developments to provide a basic Flood Risk Assessment (FRA). The FRA submitted with the application took the form of a proforma provided by the Council. This was completed to state that an FRA is not

required. It goes on to say that flood risk will be mitigated through the use of Aco drains around the boundary leading into a combined sewer. The section of the form which relates to how surface water would be disposed of is incomplete.

19. The appellant claims that the building has been in place for approximately four years with no drainage issues and that Building Control and South West Water have both been involved and inspected the drainage.
20. The Council state that surface water drainage should be dealt with through the use of soakaways and if this is not possible then surface water discharge into a combined sewer is accepted if the discharge rate is appropriate. No evidence has been provided to demonstrate that soakaways have been considered in the first instance. There is also no information relating to the discharge rate into the sewer. As a result, it is not possible to conclude surface water run-off has been suitably addressed.
21. On this basis there is limited certainty that the proposed development would be appropriately flood resistant and resilient, with residual risks safely managed so as to not have an unacceptable effect on flood risk or the safety of future users of the building, and that it would not increase the risk of flooding elsewhere.
22. To overcome these concerns I have considered applying a planning condition to agree an appropriate method of surface water drainage at the site. However, given the degree of uncertainty relating to the use of soakaways or appropriate alternative drainage methods at the site, the use of a condition would not be reasonable in this case.
23. As the scheme fails to fully assess and demonstrate that drainage has been appropriately dealt with it is therefore contrary to Policy ER1 of the Torbay Local Plan which seeks to limit flood risk.

Other Matters

24. The Council has raised a concern that the building over hangs the neighbouring property and this could result in difficulties in relation to repairs and drainage. The plans provided show the building within the boundary and I have assessed the appeal on this basis. Issues in relation to access for maintenance are civil matters rather than planning ones. In respect of drainage, it has been concluded above that this has not been adequately dealt with at this stage.
25. The use of the building is referenced in the officer report. As this was not a reason for refusing this scheme this has not been considered as part of the appeal. The assessment has been solely based on the effects of the physical aspects of the building.
26. Reasoning for the height of the roof has been provided by the appellant including this being agreed by Building Control for thermal insulation purposes. Whilst this may be the case and this would have its benefits the proposal requires planning permission in any event and needs to be considered accordingly with the issues above weighing against the scheme.

Conclusion

27. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given the appeal should be dismissed.

H Faulkner

INSPECTOR