



Appeal Decision

Site visit made on 27 September 2024

by N Perrins BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28TH NOVEMBER 2024

Appeal Ref: APP/X1165/W/24/3345200
38 Church Street, Paignton, TQ3 3AH

- 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 Andrew Toms against the decision of Torbay Council.
 - The application Ref: P/2024/0168.
 - The development proposed is change of use from shop / restaurant to dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from shop / restaurant to dwelling at 38 Church Street, Paignton, TQ3 3AH in accordance with the terms of the application, Ref: P/2024/0168 dated 7 March 2024, subject to the following 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 (i) Existing Elevations drawing No. 6071/102, (ii) Block Plans drawing no. 6071/104, (ii) Proposed Plans drawing no. 6071/105, (iii) Proposed Elevations drawing no. 6071/106, and (iv) Proposed Section AA drawing no. 6071/107.
 - 3) Prior to the commencement of development hereby permitted, details for the provision of storage of refuse and recycling awaiting collection shall be submitted to and approved in writing by the Local Planning Authority. The agreed refuse and recycling details shall be provided in accordance with the approved details and thereafter retained for the life of the development.
 - 4) Prior to their installation, technical details and / or samples of the proposed exterior materials including wall finishes shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details and shall be retained as such for the life of the development.
 - 5) No piece of external joinery shall be installed or undertaken unless full details of that piece have been first submitted to and approved in writing by the Local Planning Authority. Such details shall include cross-sections, profiles, reveal, surrounds, materials, finish and colour. The works shall be carried out in accordance with the approved details and shall be retained thereafter.

- 6) Prior to the first occupation of the development hereby permitted details of the proposed bicycle storage facility for cycles shall be submitted and agreed in writing by the Local Planning Authority. The cycle storage facilities shall be provided in accordance with the approved details prior to first occupation and maintained and retained as such for the lifetime of the development.

Procedural Matter

2. I have used the description of development from the Council's decision notice as the version used on the planning application form referred to A1 and A3 use classes, which have been replaced by Class E in the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

Main Issues

3. The main issues are the effect of the proposed development on:
 - (i) The living conditions of future occupiers, having particular regard to outlook, natural light, privacy, noise and disturbance, and outdoor amenity space;
 - (ii) The character and appearance of the Old Paignton Conservation Area; and
 - (iii) Refuse storage.

Reasons

Living conditions

4. The appeal property comprises the ground floor of an end of terrace property along Church Street. It is adjacent to Crown and Anchor Way, which is a lane that provides access to various properties beyond. The appeal property, currently vacant, was previously used for commercial purposes.
5. The proposal would convert the ground floor of the property to a 1no bed flat. Access would be through the existing doorway from Church Street that would lead into the main living area at the front of the property. Beyond the main living area would be a kitchen, toilet, cycle store and bathroom. The shopfront would be altered with the removal of the existing shop frontage including recessed doorway and signage and replaced with frontage alterations that include a timber sash window. Alterations are also proposed to the openings on the western elevation to provide timber sash windows.
6. The flat would have a minimum gross internal floor area of around 56sqm, which would meet the requirements for a one-person single storey dwelling as set out in the Nationally Described Space Standards (NDSS)¹. The supporting text to Policy DE3 of the Torbay Local Plan 2012-2030 (LP) confirms that regard will be had to the Government's NDSS when considering applications. As the NDSS are met in this case, the proposed floorspace is acceptable and in accordance with the requirements set out in Policy DE3 in this regard.

¹ Statutory guidance - Technical housing standards - Nationally Described Space Standards 27 March 2015

Outlook

7. The proposed window to the main, street facing, living area would provide future occupants with an outlook onto Church Street. The site is an edge of town centre location with existing residential frontages where an outlook onto street activity would be expected. In view of this, I do not find that there would be any material harm to future occupiers' outlook.
8. The Council's first reason for refusal refers to the proposal being near to an existing building, which is contended to result in an overbearing and somewhat overshadowed environment. This impact is not clearly explained in the Council's report other than a reference to the proposed windows on the western elevation that serve the kitchen and bathroom; albeit discussed in terms of noise and disturbance rather than outlook or light.
9. The kitchen and bathroom would be served by openings that look out across the access road to the blank façade elevation of the opposite building. Both the kitchen and bathroom are non-habitable rooms, which in edge of town centre locations are often not served by any windows. The bathroom window would also normally comprise obscure glazing. In this context, I do not find the outlook from the kitchen or bathroom to be materially harmful to the extent it would justify refusing planning permission.

Natural light

10. I observed on my site visit that the existing street facing window provides adequate levels of natural light to the front section of the property. Whilst this opening would be reduced, it would remain of a sufficient size to provide adequate natural light to the proposal's main habitable room.
11. There would be lower levels of natural light to the kitchen and bathroom due to the proposed windows facing out across a covered access road. However, it is not unusual for non-habitable rooms to be served by less natural light than habitable rooms as would be the case here. In view of this, I am not persuaded that the level of natural light to the kitchen and bathroom would be unacceptable, or a sufficient basis to justify refusal of planning permission.

Privacy

12. The Council are concerned that the proposal does not include a set back from the pavement, absent which they contend would allow for significant views into the flat thereby affecting privacy. Given that the site is an edge of town centre location, lesser standards with respect to privacy are, however, to be expected.
13. Moreover, this is ostensibly a matter for a future occupant, and capable of being resolved through installation of blinds and / or curtains. This approach is evidenced by the various examples of ground floor residential nearby that are using curtains and other privacy treatment, all of which would be available to be used by the future occupiers of the appeal property. As such, the proposal is acceptable in terms of privacy.

Noise and disturbance

14. The site is in a town centre location where residents would expect to live with some level of associated background ambient noise and activity. The Council's main area of concern is the impact on the kitchen and bathroom, which are

adjacent to an access road used frequently by cars, pedestrians and other vehicular movements. However, given that the kitchen and bathroom are non-habitable and only subject to periodic and secondary use, I do not find that noise and disturbance from movements along the access road would result in unacceptable harm to residential amenity.

15. The Council also refer in its fourth reason for refusal to the impact of noise and disturbance from the rear courtyard area. However, the street facing frontage bedroom window would be subject to a level of ambient noise that is entirely normal and acceptable for an edge of town centre location. In this context, I do not find it likely that the courtyard, which is on the opposite side of the building to the bedroom window, would result in any unacceptable impacts from noise and disturbance to future occupiers of the proposed dwelling.

Outdoor Amenity Space

16. The supporting text to Policy DE3 advises that new flats should be served by a minimum of 10 square metres of external / amenity space, which can be provided communally. The site is in a town centre location and near public open space at Victoria Park and Palace Avenue, which would provide future residents with an adequate and acceptable level of access to outdoor space in accordance with the requirements of Policy DE3.
17. To conclude on this matter, and for the reasons stated, the proposal would be acceptable in terms of outlook, natural light, privacy, noise and disturbance and access to adequate outdoor amenity space. As such, I find that the proposal accords with Policy DE3 of the LP.

Character and appearance of the Conservation Area

18. The site is within the Old Paignton Conservation Area (CA). The duty under Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas.
19. In assessing the impact of the proposal on the significance of the CA, the Old Paignton Conservation Area Appraisal (CAA) identifies that there are a diverse range of buildings within a well laid-out street pattern that have informed the historical development of the area. The CAA identifies the terrace of properties that the appeal site is within as key buildings within the CA. The CAA refers to these buildings as displaying later Victorian characteristics. Nos 36-38 are identified as a typical late-19th century pair with accommodation over two floors over the shop, albeit the shopfront at the adjoining property No 36 has since been replaced by a sash window. The shopfront at No 38 is heavily influenced and marred by a deep planted timber fascia, which is alien to its building and surroundings.
20. From the information before me and my own observations, the significance of the CA, insofar as it relates to this appeal, stems from its historical development and buildings and spaces that can be found there, which historically have included shopfronts at ground floor. The appeal building's contribution to the significance of the CA is, therefore, that it forms part of a terrace of buildings that reflect the evolution of the settlement over the years including presently retaining its shopfront at ground floor. The appeal site and its overall design contribute positively to the distinctive Victorian character of

the CA albeit evidently in need of some renovation in parts. The building forms part of the wider Church Street frontage, which is a key thoroughfare which retains some traditional and positive features.

21. The proposed timber sash window on the front elevation would require the complete replacement of the existing shopfront. The existing recessed door to the property would be replaced with the doorway being brought forward in the frontage. The proposal would markedly change the appearance of the property from its existing shopfront and result in the loss of a feature that contributes positively to the overall character and significance of the CA.
22. Whilst the replacement frontage is consistent in design terms with the evolving character and appearance of this part of the CA that has a mix of commercial and residential frontages, I find that the loss of the shopfront would detract from the significance of the CA to a limited extent and in doing so causing less than substantial harm.
23. As such, the proposal is contrary to Policy SS10 of the LP's requirement that all heritage assets will be conserved, proportionate to their importance. However, given the evolving character of the area with a diverse mix of commercial and residential ground floor uses that provides a transition to stronger retail frontages in the main town centre area, I find that the proposal is at the lower end of the less than substantial harm spectrum.

Heritage Balance

24. The CA is a designated heritage asset. 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 asset, great weight should be given to the asset's conservation. Paragraph 208 of the Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
25. Similarly, Policy SS10 also states that proposals affecting heritage assets will be assessed against eight criteria including, relevant to this appeal, whether the impact of the development, alteration or less is necessary to deliver demonstrable public benefits.
26. The proposal would provide an additional residential unit with acceptable living conditions for future occupants in a situation where the Council are unable to demonstrate a five-year supply of housing. I attribute significant weight to the benefit of providing an additional dwelling in this context.
27. The occupation of the appeal property would be more likely to avoid further deterioration in its condition and opportunity for renovation from a permanent use of the building, which would be a benefit to the overall character and appearance of the CA that I attribute moderate weight.
28. There would be economic and social benefits as a result of the conversion of the ground floor of the building. However, these would be limited due to the scale of the works and limited duration.
29. The appeal proposal would also convert a vacant shop unit in an area that has experienced steady commercial decline over the years. Several of the other

ground floor uses nearby have been converted to residential with some properties nearby replacing shopfronts with facades similar to the appeal proposal. This indicates that the optimum viable use of this part of the terrace is now residential rather than commercial as well as such development forming part of the character of the CA. The design of the proposal would also see the new sash window positioned sensitively to match design aspects of the bay window at first floor. In this regard, the replacement sash window would integrate with the existing street scene as required by Policy DE1 of the LP. I also find that the development is necessary in order to deliver the identified public benefits.

30. In conclusion, the proposal would provide public benefits that outweigh the less than substantial harm to the CA. As Policy SS10 includes provision for benefits to be considered in the assessment of heritage impact, I find that the proposal as a whole accords with Policies DE1 and SS10 of the LP and Policy PNP1 of the Paignton Neighbourhood Plan.

Refuse storage

31. No details have been submitted setting out the waste arrangements for the proposal, which is contrary to Policy W1 of the LP. However, this could be resolved by a suitably worded condition, which the appellant has confirmed they would accept. As such, the proposal to secure waste arrangements would accord with Policy W1.

Conditions

32. I have considered the Council's conditions against the tests set out in Planning Practice Guidance. I have included the standard time limit condition and one to list the approved plans, which are necessary for precision.
33. It is necessary to include a condition to secure waste arrangements. I have amended the Council's wording to require the details to be submitted prior to the commencement of development rather than prior to occupation. This is necessary to ensure the optimum arrangements are identified in compliance with Policy W1 before any works take place.
34. I have included the Council's condition to require details of exterior materials and joinery to be agreed first with the local planning authority given the site is in a CA where such details are important in terms of safeguarding its character visual amenity. I made an amendment to the joinery condition to remove reference to the details needing to be shown to full or half scale, which was an unnecessarily onerous requirement. I also agree that a condition requiring details of the proposed bicycle storage facilities is necessary to ensure suitable bicycle details can be provided in the area shown on the approved plans.

Conclusion

35. For the reasons given above, the proposal is consistent with the policies of the development plan as a whole and there are no material considerations that would lead me to a different conclusion. I conclude that the appeal should be allowed, subject to the conditions specified.

N Perrins

INSPECTOR