



Appeal Decision

Site visit made on 10 April 2025

by R Kent BA (Hons) MTP DipM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2025

Appeal Ref: APP/X1165/W/24/3354095

448 Babbacombe Road, Torbay, Torquay TQ1 1HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Taylor against the decision of Torbay Council.
 - The application Ref is P/2024/0393.
 - The application sought planning permission for “*Proposed building to form 3 letting apartments within the gardens/grounds of existing site (revised scheme)*” without complying with a condition attached to planning permission Ref P/2009/0271/PA dated 8 September 2009.
 - The condition in dispute is No 3 which states that: “*The units hereby approved shall be occupied for holiday use only and shall not be occupied as a person’s sole or main place of residential occupation. The owners/operators shall maintain a register of the names of all occupiers of the units and of their main home addresses and shall make this information available at all reasonable times to the Local Planning Authority.*”
 - The reason given for the condition is: “*To ensure that the holiday accommodation is not used for unauthorised residential occupation, in accordance with Policy TU5 of the saved Adopted Torbay Local Plan 1995-2011*”.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a different decision.

Preliminary Matters

3. The National Planning Policy Framework (the Framework) was revised in December 2024 after the appeal was submitted and updated again in February 2025. I sought the parties’ comments on the relevance of the revised Framework to their respective cases and have taken their responses into account in my decision. In its response the Council confirmed that its most recent five year housing land supply position for 2024/25 is 2.69 years. It advised me that a further update is due to be carried out and the Council expects the housing land supply “is likely to reduce to around 2 years”.
4. The car park for the development is shown on ‘General Arrangement’ plan 401 04 revision C. Whilst I saw on site that car parking had been provided, I noted that the car parking had not been laid out as shown on the plan. Whilst I have determined the appeal on the basis of the plans before me, I have also taken account of the car parking as provided.

5. Whilst the apartments are not labelled on the plan they are referred to in the appellant's appeal statement as 448A, 448B and 448C. I also noted from my site visit that they also have the letters A, B and C displayed outside each apartment with the eastern apartment being apartment 'A,' the central unit being apartment 'B' and the western unit being apartment 'C.' I have adopted that lettering for the purposes of this appeal.

Background and Main Issues

6. In 2009 the Council granted planning permission¹ for the development of three letting apartments. Five conditions were imposed including condition 3, which restricts the occupancy of the units to holiday use as set out in the heading above. An application to remove the condition to allow unrestricted occupancy of the units was refused for six reasons and is now the subject of this appeal.
7. Against this background, the main issues in this appeal are the effect that removing the condition would have on:
- the provision of acceptable living conditions for the occupiers of the proposed dwellings with regard to privacy and outlook and on the living conditions of the occupiers of 448 Babbacombe Road² with regard to privacy;
 - the provision of suitable parking for vehicles with reference to highway safety;
 - the preservation or enhancement of the character or appearance of the Lincombes Conservation Area; and
 - the preservation of the settings of the Grade II listed building 446 and 448 Babbacombe Road and the Grade II listed gate piers and gate to No 448 Babbacombe Road.

Reasons

Living conditions

8. The holiday apartments have ground and first floor windows in their front elevation which face directly towards the rear of No 448 across a courtyard area which currently has outside furniture, a seating area under an awning and other paraphernalia located within it. The courtyard provides pedestrian access to the front doors of apartments A and B. No 448 has large windows in both storeys of its south elevation facing directly towards the apartments.
9. On my site visit, I viewed the outlook from the ground and first floor rooms of apartments A and B which face directly towards the rear of No 448. I also viewed all the apartments from ground and upper floor windows in the rear of No 448.
10. Despite net curtains and blinds in some windows, it was possible to gain clear views into the windows in apartment A, and more angled views into the windows of apartment B, from ground and upper floor windows in No 448. It was also possible to gain views into the ground floor windows of both units from the courtyard. Those windows in apartments A and B serve the habitable rooms in the apartments

¹ LPA planning application reference P/2009/0271/PA

² The building is also referred to as Rutland Lodge by the parties.

which, because of the terraced nature of the building and its position against a rear retaining wall, are the principal windows serving each apartment.

11. Even though the apartments are currently used by holiday makers, it is reasonable that permanent occupants of a dwelling should have a greater degree of privacy than temporary occupants who only experience the accommodation for a temporary period whilst on holiday. Permanent occupiers, on the other hand, would be likely to experience the living conditions for much longer periods year round.
12. Some degree of overlooking is to be expected in built up areas where the density of housing tends to be greater. Taking that into account, the more oblique view towards apartment B from the windows in No 448 would not cause an unacceptable loss of privacy. The proximity of the windows in No 448 to apartment A however would cause harm to the living conditions of permanent future occupiers of that apartment through loss of privacy.
13. The evidence does not demonstrate the status of the covered seating area or which properties have access to the courtyard separating the apartments from No 448. Its location close to the ground floor windows of apartments A and B means that if it were used for communal use, it would also result in a loss of privacy to the occupants of those apartments.
14. Whilst No 448 is sited to the south of the apartments, the space between it and apartments B and C, together with the lower height of the conservatory on the western side of No 448 is sufficient to allow daylight to reach the windows of those apartments. This is sufficient to prevent an overbearing or oppressive effect being created on the outlook from those units.
15. The space between apartment A and No 448 is currently occupied by the timber framed awning covering the seating area referred to above. Whilst I am not aware of the planning status of the awning, its size and position means it would dominate the outlook from the proposed dwelling in apartment A. Coupled with the scale of the two storey building opposite this would have an oppressive effect on the outlook from the north facing habitable rooms of unit A which have no other significant source of daylight. Together with the effect on privacy, there would be substantial harm to the living conditions of future occupiers of that dwelling.
16. I have given careful consideration as to whether an appropriately worded condition to manage the use of the space between the buildings, including the removal of the awning, could be imposed to safeguard the living conditions of future occupiers of the proposed dwellings. However, even if such a condition could be reasonably imposed, it would not overcome the loss of privacy and the harm to the outlook from unit A caused by its proximity to the south elevation of No 448. I have also considered whether the use of unit A could be restricted by condition to self-contained ancillary accommodation to No 448 as suggested by the appellant. However, I have not seen full details of the use to which that apartment would be put. A different use for that unit would involve a significant change in the proposal which would conflict with Planning Practice Guidance which indicates that it is not appropriate to use a condition to modify a development in a way that makes it substantially different from the application.
17. Whilst not referred to in the reasons for refusal, the Council's response to the appellant's appeal statement refers to overlooking of the habitable rooms in No

448 from the proposed dwellings. As No 448 is used for holiday accommodation, the occupiers of the building are not permanent residents and, as referred to above, its occupants can reasonably be expected to move on at the completion of their stay. The relationship of the windows in No 448 to those in the apartments in the appeal building is an existing situation. Although the apartments would be occupied by permanent residents if the appeal were allowed, I have seen no convincing evidence to demonstrate why that would result in an increased loss of privacy to the transient occupants of No 448.

18. Whilst the appeal building was built within the grounds of No 448 and as a consequence reduced the amenity space available for use by its occupants, this is now the established position. Notwithstanding this, I have not been referred to any development plan policies which indicate the quantum of useable amenity space which should be provided for the existing or proposed uses. On this basis, from the submitted evidence, the proposal would not result in an unacceptable loss of outdoor amenity space for No 448.
19. However, for the reasons given, I conclude that removing the condition would result in unacceptable living conditions for future occupiers of the proposed dwellings. It therefore conflicts with Torbay Local Plan 2012-2030 (TLP) policies H1 and DE3 regarding applications for new homes and which require development to provide a good level of amenity for future residents.

Parking

20. The car park serves the holiday apartments, which are the subject of this appeal, and the adjacent building, No 448. Policy TA3 of the TLP requires the appropriate provision of parking spaces in all new development with development expected to meet the guideline requirements set out in Appendix F to the policy. As the proposal would result in a change in the nature of the use of the apartments and the creation of 3 unrestricted dwellings, policy TA3 is relevant to the appeal.
21. The TLP parking requirements indicate that dwelling houses should have two car parking spaces per dwelling. This would generate a guideline requirement for six spaces to serve the proposed dwellings. I have not been provided with clear evidence of the type of holiday accommodation No 448 provides or the parking requirements which that use generates. As a result, I cannot be sure that the seven parking spaces shown on the plan would be sufficient to accommodate the parking generated by the proposed use as unrestricted dwellings together with that generated by the existing use of No 448. As a result, nor can I be sure that the proposal would not cause an increase in on-street parking arising from the development as required by policy TH9 of the Torquay Neighbourhood Plan 2019 (TNP).
22. Moreover, the layout of the on-site parking spaces on the 'General Arrangement' plan shows a row of three parking spaces at right angles to another row of four parking spaces. Although previously approved by the Council, the plan does not demonstrate that there would be sufficient manoeuvring space within the site for vehicles to be able to enter and exit the site in a forward gear, particularly if all the spaces were full. In particular, vehicles using parking space No 4 would be constrained by its juxtaposition with parking spaces 5 to 7 which, when in use, would substantially limit the manoeuvring space for vehicles using space No 4.

23. This would be likely either to result in vehicles reversing into or out of the site from Babbacombe Road or future occupiers of the buildings being deterred from using the on-site spaces thereby leading to an increase in on-street parking demand. Given the busy nature of Babbacombe Road and the restricted visibility caused by kerb side trees and on-street parking, which I saw on my site visit, vehicles reversing into or out of the site would be likely to result in a hazard to the occupants of those vehicles and to other road users.
24. I recognise that the parking requirement is a guideline and allows flexibility in locations, such as town centres, where there is a greater choice of transport. The site, however, is not within the town centre. Whilst it has facilities within walking and cycling distance, including nearby bus stops with services into the town centre, and it is suggested that future occupiers of the development would therefore generate fewer vehicle movements than the use as holiday apartments, the evidence before me does not demonstrate that there would not be an increase in on-street parking arising from the proposal. As a consequence, I conclude that the parking arrangements for the proposed dwellings would result in a moderate level of harm to local parking arrangements and the users of the highway.
25. For the reasons given, on the basis of the submitted evidence, the proposal would not make appropriate provision for car parking and would conflict with policies TA3 of the TLP and TH9 of the TNP which require the provision of appropriate parking facilities.

Conservation Area (CA)

26. Section 72 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 the CA.
27. The Lincombes Conservation Area was designated in 1975. The CA gains its significance from the 19th century terraces and villas set against a backdrop of steep hillsides covered in lush vegetation. Babbacombe Road forms the northern boundary of the part of the CA in which the site lies.
28. The one and a half storey apartment building is located to the rear of the site and set behind the building line of the substantial villas fronting Babbacombe Road. Its light rendered upper storey and grey roof slates reflect the appearance of No 448 and it is not prominent in views of the CA from the tree lined road. As a consequence, it is not a prominent feature of the CA. The Framework indicates that not all elements of a CA will necessarily contribute to its significance. That is the case with this modern building. Whilst the use as holiday accommodation appears to have swayed the Council's decision to grant planning permission for the building in 2009, the building now forms an established part of the CA.
29. No external alterations are proposed to the fabric of the building. The Council suggests that the site would become "very cluttered with the paraphernalia associated with modern living," including bins being stored permanently or semi-permanently on the verge outside the property. However, the evidence does not demonstrate that the waste and recycling requirements of a permanent dwelling would be significantly different to that of a holiday apartment. Nor does it demonstrate what other items might be located on the site as a result of a change in the nature of the occupancy of the apartments or which of those items would not be expected to be found with a holiday apartment.

30. The proposal relates to an existing building for which the Council itself granted planning permission in 2009. In doing so, the Committee report drew attention to the site being within the CA. Whilst the evidence before me does not include the formal minutes of the Committee meeting or demonstrate how the Council carried out its statutory duties under s72 of the Act, the scale of the appeal building was agreed through that planning permission. I have seen no convincing evidence to show that the change from holiday accommodation to permanent occupancy of the apartments could be construed as resulting in an over development harming either the CA or the local character of its surroundings on the north side of Babbacombe Road. From the evidence before me, the proposal would not cause harm to the character and appearance of the CA as a whole or its significance as a heritage asset.
31. For the reasons given, removing the condition would continue to preserve the character and appearance of the CA as a whole and would comply with policies SS10 and DE1 of the TLP in so far as they relate to the design of development and seek to sustain those areas which make an important contribution to Torbay's heritage. It would also accord with policy TH8 of the TNP which requires development to respect local character.

Setting of listed building

32. Section 66(1) of the Act requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
33. Nos 446 and 448 Babbacombe Road were originally a single villa, since divided into two properties. Dating from the 19th century, the listed building gains its significance from its plastered finish, distinctive quoins, slate roof, bay windows and Edwardian conservatory. The pair of gate piers and a gate dating from around the 1870s have significance as rare surviving examples of their type.
34. The building containing the apartments is located in the grounds of No 448 and within the surroundings from which both the listed building and the listed gateway are experienced. However, as the apartment building already exists, it has already had an effect on the space around No 448 and how the listed structures are appreciated, particularly in public views of the site from Babbacombe Road.
35. As referred to above, the proposed removal of the condition would not result in any change to the fabric of the building or its external appearance. Although it would result in the occupancy of the apartments no longer being restricted only to holiday use, I have not been provided with any compelling evidence to demonstrate why a change in the nature of the occupation would have a harmful effect on the significance of the listed building or the listed gateway or on the ability to appreciate them.
36. The covered sitting out area, enclosures and other paraphernalia which currently fill some of the courtyard between the apartments and the listed building are indicative of the effect that the holiday use has on the immediate setting of the listed building. As referred to above, I have given consideration to the use of a suitably worded planning condition to restore the space between the two buildings if the appeal were to be allowed. Whilst such a condition would not resolve the

harm to the living conditions of future occupiers of unit A, the removal of the covered sitting out area and other paraphernalia would nevertheless improve the immediate surroundings from which the listed building is experienced.

37. Such a condition would also accord with TLP policy TO2 which seeks to restore buildings or land to their original historic form when their holiday use ceases. The explanation to the policy gives examples of the cosmetic features which should be removed. The awning and other paraphernalia I have referred to are such features. The policy however does not require the removal of an entire building when its holiday accommodation use ceases. Even if it did, I have seen no compelling evidence of any formal mechanism by which the Council might secure the removal of the apartment building to restore the previous setting of the listed building.
38. For the above reasons, the proposal would preserve the setting of the Grade II listed building 446 and 448 Babbacombe Road and the listed gateway to 448 Babbacombe Road and would not harm their significance. Hence the proposal would not conflict with the requirements of the Act or TLP policies HE1 and SS10 which require that special regard be had to the desirability of preserving the setting of listed buildings and the conservation of heritage assets.

Other Matters

39. Reference is made to the manner in which the planning application was handled by the Council. This is a matter which can be pursued through other processes and does not have a bearing on my consideration of the appeal.

Planning balance

40. For the reasons given, if condition 3 was removed there would be a substantial level of harm to the living conditions of future occupants of apartment A and moderate harm to local parking arrangements and users of the highway.
41. The Council can only demonstrate 2.69 years supply of deliverable housing sites which it expects to reduce to around 2 years. This is well below the minimum level required. Consequently, with reference to paragraph 11 d) of the Framework, consideration of the presumption in favour of sustainable development is required.
42. The proposal would result in an increase of 3 dwellings close to the town centre and other services and facilities. Given the shortfall in the housing land supply and the Council's 'Hotels to Homes' initiative, this would be a significant benefit which given its small size attracts moderate weight in favour of the proposal. Whilst it would also have the benefit of making more efficient use of an existing, under used building, I have not seen evidence of the extent of its under use as holiday accommodation or the reasons for it. As a result, this benefit therefore carries only limited weight in favour of the proposal. Similarly, I have not been provided with any clear evidence that the apartment building would deteriorate without funds generated through the proposal. This benefit therefore also carries only limited weight.
43. The TLP and the TNP form the development plan for the area in which the site is located. The harm to the living conditions of future occupants of the proposed unrestricted dwellings conflicts with TLP policies DE3 and H1. The harm caused to

local parking arrangements and users of the highway conflicts with policies TA3 of the TLP and TH9 of the TNP.

44. Paragraph 232 of the Framework states that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework. The Framework requires that parking, amongst other matters, is integral to a design of a scheme and, at paragraph 115, requires that developments should ensure safe and suitable access to the site for all users. Paragraph 135 of the Framework also expects that a high standard of amenity for future users of developments is provided. Policies TA3, H1 and DE3 of the TLP and policy TH9 of the TNP are therefore broadly consistent with the Framework and hence conflict with them is given substantial weight in this appeal.
45. Whilst the proposal would accord with other policies of the development plan, the conflict with the policies identified above means that there would be conflict with the development plan when read as a whole.
46. Applying footnote 7 of paragraph 11d) i. of the Framework, there are no policies in the Framework that protect areas or assets of particular importance which provide a strong reason for refusing the development. In these circumstances, paragraph 11 d) ii. of the Framework is engaged.
47. The harm which I have identified carries substantial weight against the proposal. It would significantly and demonstrably outweigh the moderate weight given to the benefit to the housing land supply and the limited weight given to the other benefits of the proposal when assessed against the policies in the Framework taken as a whole and having particular regard to the key policies found at paragraphs 115 and 135.

Conclusion

48. Whilst I have not found conflict with the development plan in respect of the effect of the development on the setting of the listed structures or its effect on the CA, the harm I have identified to local parking arrangements, users of the highway and to the living conditions of future occupiers results in conflict with the development plan as a whole.
49. The material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

R Kent

INSPECTOR