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# Appeal Decision

Site visit made on 10 March 2021

**by Mrs H Nicholls FdA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15 April 2021**

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**Appeal Ref: APP/X1165/W/20/3259178**

**The Focsle, 54 Higher Street, Brixham TQ5 8HW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr Perry against Torbay Council.
  - The application Ref P/2019/1353, is dated 20 December 2019.
  - The development proposed is conversion of existing building comprising a maisonette and 2 flats into a single dwelling and construct a new self-build infill dwelling.
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## Decision

1. The appeal is allowed and planning permission is granted for conversion of existing building comprising a maisonette and 2 flats into a single dwelling and construct a new self-build infill dwelling at The Focsle, 54 Higher Street, Brixham, TQ5 8HW, in accordance with the terms of the application, Ref P/2019/1353, dated 20 December 2019, subject to the conditions in the attached schedule.

## Preliminary Matter

2. The appeal was submitted against the failure of the Council to determine the application within the prescribed period. Since the appeal was lodged, the Council has indicated that, had it been in a position to determine the application, it would have refused it for a single reason relating to its effect on the character and appearance of Brixham Town Conservation Area.
3. As part of the appeal, revised plans were submitted showing the omission of Juliet balconies from the north-east elevation and their replacement with windows. Where amendments are proposed, regard should be had to the 'Wheatcroft'<sup>1</sup> principles - including whether the amendments would materially alter the nature of the application and whether anyone who should have been consulted would be deprived of that opportunity. As the plans detail minor amendments, and the nature of concerns are clear from consultation on the original plans, I do not consider that any interests would be prejudiced if I take the amended plans into account. I shall therefore determine the appeal on the basis of the originally submitted plans and those submitted with the appeal.

## Application for costs

4. An application for costs was made by Mr Perry against Torbay Council. This application is the subject of a separate decision.

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<sup>1</sup> Wheatcroft Ltd V SSE [1982]

## **Main Issue**

5. From the evidence put to me, the main issue is whether the scheme would preserve or enhance the character or appearance of Brixham Town Conservation Area (the CA).

## **Reasons**

6. The appeal site comprises an existing four storey semi-detached town house currently in use as three separate residences and the adjoining courtyard situated wholly within the CA. Under Section 72(1) of the Listed Building and Conservation Areas Act 1990 (the Act), I am required to pay special regard to the desirability of preserving or enhancing the character or appearance of the CA. As the appeal building adjoins and lies opposite a number of grade II listed buildings (Nos 27, 28, 29, 48, 50, 56, 58 and 60 Higher Street), I am also required under the Act to pay special regard to preserving those buildings and their settings.
7. The Brixham Town Conservation Area Character Appraisal (BTCACA) (2016) defines the special qualities of the CA as deriving from its origins as two settlements which were eventually combined into one. The appeal site falls within the Lower Brixham area (Brixham Town) part of the CA which was dominated by the fishing industry into the modern era. The tight-knit terraces of buildings that respond well to the area's steep topography suggest an organic evolution of the settlement and combine to create a characterful and vibrant urban form. The buildings contain architectural features that are either simplistic, reminiscent of their maritime setting or appealingly quirky.
8. The appeal site is a rarity within the streetscene insofar as part of it comprises a vacant space, albeit enclosed with a stone wall and arched gateway opening and which is suggested was once occupied by a building, since demolished. The fourth storey of the building is a later addition and sits under a flat roof which stands higher than the roof of the adjoining building (No. 56 Higher Street). No 1 Higher Steps on the other side, currently separated by the enclosed courtyard, has a higher ridge height on its pitched roof than that of the flat roof appeal building.
9. The appeal proposal would extend into the existing courtyard and would involve extensive remodelling of the existing building throughout, including the ground floor rear extension, resulting in the provision of two adjoining townhouses. The fourth four spanning across the two buildings would be under a twin gable roof with a flat roof section spanning much of the intervening valley and with dormers on either side, inset from the front, rear and sides.
10. Whilst the proposal would result in additional building mass and an enlarged roof form overall, it would not appear as 'blocky' as the current standalone and entirely flat roof form. It would span between the two neighbouring buildings with a stepped effect between the comparative ridge heights. The twin gabled, narrow fronted pair of dwellings would have a vertical emphasis and maritime quality with varied principal elevations that would befit the surrounding CA.
11. The amended plans detail the omission of the Juliet balconies and their replacement with windows on the north-east elevation. Given the visibility of this elevation in longer views of the town's roofscape, the windows would be more in scale with the roof form overall and would be more discreet than the

full length doors. The use of conservation-style rooflights would also ensure that the glazed elements were appropriate in scale and style with the roof.

12. In view of the above reasoning, the proposal would enhance the character and appearance of the CA and would also enhance the coherence of the streetscene, thus enhancing the settings and significance of the aforementioned listed buildings. The proposal therefore complies with, in particular, Policy DE1 and EN5 of the Torbay Local Plan (2014). These Policies collectively seek to conserve all heritage assets proportionate to their importance and secure well-designed development that respects and enhances Torbay's special qualities. It would also accord with Policies BH5 and BH6 of the Brixham Peninsula Neighbourhood Plan (2019) which, amongst other things, allow dormers only where they include windows that are subordinate in size and sympathetic in terms of materials, form and expression.

### **Other Matters**

13. A number of adjoining neighbours would wish to see controls in relation to construction working hours and practices. Given the potential for disruption, I consider that such a condition is necessary. Such a condition could not, however, prescribe an end date for the completion of works.
14. I note the comments from neighbouring occupiers in respect of a potential loss of privacy. I share the view of the Council that the built-up nature and topography of the area lend to an existing degree of intervisibility that would not be materially worsened by the appeal proposal, including the raised terrace, and does not necessitate the use of obscure glazed windows.
15. The potential for any undermining of the stability of adjacent buildings is a matter addressed via Building Regulations and any dispute about boundaries is also a matter that falls outside of the planning process.
16. The Council has not raised any concerns in respect of parking, or indeed with matters pertaining to drainage, ecology or living conditions that could not otherwise be addressed by way of planning condition.
17. The site lies within the sustenance zone of the South Hams Special Area of Conservation (SAC) which is designated for its population of Greater Horseshoe Bats. Having regard to the Habitat Regs<sup>2</sup> and related Habitat Regulation Assessment Guidance (October 2019) in context with the nature and location of the development, I have screened out the likelihood of significant effects on the integrity of the SAC from the proposal. Consequently, I do not need to take this matter further.

### **Conditions**

18. I have reviewed the suggested conditions in light of the requirements of the National Planning Policy Framework and Planning Practice Guidance. I have undertaken minor editing where necessary.
19. In addition to the statutory time limit, a condition specifying the approved plans is necessary in the interests of certainty.

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<sup>2</sup> Conservation of Habitats and Species Regulations 2017, as amended

20. In the interests of the character and appearance of the CA, a condition is necessary seeking details of external materials, including specifications for windows.
21. In the interests of managing surface water flood risks, a condition is necessary to ensure that surface water drainage infrastructure is implemented in accordance with a specification that accommodates climate change effects.
22. In the interests of the biodiversity value of the area, it is necessary to condition the implementation of biodiversity protection and enhancement measures.
23. Lastly, a condition is necessary to ensure that bicycle and bin stores are provided and maintained as detailed in the plans, owing to the need to promote sustainable travel and manage refuse for environmental and aesthetic reasons.

### **Conclusion**

24. The proposal complies with the development plan, read as a whole. The aforementioned benefits to heritage assets is also a matter that attracts great weight in the overall balance. Thus, for the reasons set out above, and taking into account all other matters raised, the appeal is allowed.

*Hollie Nicholls*

INSPECTOR

## **SCHEDULE OF 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:
  - Location Plan, Ref 040 PB 10, dated December 2019
  - Proposed roof/block plan, Ref 16a, submitted 7 January 2021
  - Proposed GF & FF plans, Ref 17a, dated December 2019
  - Proposed SF & TF plans, Ref 18a, submitted 7 January 2021
  - Proposed elevations, Ref 19a, submitted 7 January 2021
- 3) Prior to the commencement of the development hereby approved, a Construction Method Statement shall be submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period and shall provide for:
  - The parking of vehicles of site operatives and visitors;
  - Loading and unloading of plant and materials;
  - Storage of plant and materials used in constructing the development;
  - The erection and maintenance of security hoarding;
  - Measures to control the emission of dust and dirt during construction;
  - A scheme for recycling of waste resulting from construction works, with priority given to reuse of building materials on site wherever practicable;
  - Measures to minimise noise nuisance to neighbours from plant and machinery; and
  - Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 4) Prior to the installation of any external building materials, details (including samples where relevant) of wall finishes, roofing materials, windows, doors, eaves, fascias and rainwater goods 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 thereafter.
- 5) Notwithstanding the submitted flood risk assessment, surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 40% for climate change.

If demonstrated that the ground conditions are not suitable for soakaways, prior to commencement of the development, details of an alternative means of surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The submitted means of surface water drainage shall ensure that all off site surface water discharges from the development must be limited to the "Greenfield" run off rate for the 1 in 10 year rainfall event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus a 40% allowance for climate change. On site all surface

water shall be safely managed up to the "1 in 100 year critical rainfall event plus 40% allowance for climate change".

The dwellings shall not be occupied until the approved surface water drainage system is complete and it shall be maintained thereafter.

- 6) In accordance with the recommendations of the submitted ecology report (George Bemment Associates, dated 2 January 2020) a detailed soft landscaping plan shall be submitted to and approved in writing by the Local Planning Authority that details an appropriate re-planting scheme to the rear of the site. As per the recommendations this shall include:
- permanent plant containers affixed to the base, sides and tops of the walls so that the integrity of the wall is not compromised; and
  - the provision of a range of plant species with wildlife value;

All planting, seeding and turfing detailed in the approved landscaping scheme shall be carried out in the first planting and seeding season following the completion of the development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 7) Prior to the completion of the new dwelling hereby approved, no less than 3 bird boxes shall be provided in suitable non-south facing wall positions in accordance with the recommendations within the submitted ecology report (George Bemment Associates, dated 2 January 2020).
- 8) In accordance with the recommendations in the submitted ecology report (George Bemment Associates, dated 2 January 2020), no vegetation clearance shall be carried out during the nesting season (mid-February – September) unless a formal bird survey has been undertaken by a suitably qualified and experienced ecologist and a report of this kept. The survey shall include the details of the check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting birds on the site.

The development shall be carried out in accordance with such details.

- 9) In accordance with the recommendations within the submitted ecology report (George Bemment Associates, dated 2 January 2020), the following precautionary measures shall be followed:

Prior to the commencement of works it will be the responsibility of the owner or Project Manager to ensure that the appointed Contractors have been formally notified in writing of the potential for encountering bats on site. A 'Tool Box Talk' by the ecologist is required at the commencement of works in relation to the removal of the roof covering. The workforce shall be briefed regarding legislation, Best Practice and what to do in the unlikely event that a bat / bats are encountered.

If bats / evidence of bat use is discovered during works, works must cease immediately and further advice must be sought from the ecologist.

- 10) The dwellings hereby approved shall not be occupied or brought into use until the bin and bicycle storage areas detailed on plan ref: 17a, dated December 2019 have been provided. Once provided, the approved storage arrangements shall be retained as such thereafter.