

Appeal Decision

Site visit made on 24 May 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Appeal Ref: APP/X1165/W/21/3269036

Park Crescent, Cambridge Road, St Marychurch, Torquay TQ1 4FW

- 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 Regal Heritage Ltd against the decision of Torbay Council.
 - The application Ref P/2020/0417, dated 1 May 2020, was refused by notice dated 8 September 2020.
 - The development proposed is construction of one new dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effects of the proposal on the character and appearance of the area, and whether it would preserve the setting of the adjacent Grade II listed Park Crescent or preserve or enhance the character or appearance of the St Marychurch Conservation Area;
 - the effects on the living conditions of occupiers of Park Crescent with regards to the availability of outdoor amenity space and disturbance from the use of the adjoining access;
 - the suitability of the access to the site in terms of emergency access;
 - the effects of tree removals; and
 - whether there would be adequate biodiversity enhancement measures.

Reasons

Character, appearance and heritage effects

3. The appeal site comprises the former gardens belonging to the dwellings of Park Crescent that previously existed prior to their conversion to 8 apartments. The remnants of the stone boundary walls still exist amongst some of the overgrown vegetation. The site is accessed from the south-eastern corner, via a narrow lane and gated opening, but is otherwise enclosed with a number of gardens backing onto the site which have either timber fences or wall enclosures. The site has a range of semi-mature trees of varied species.
4. The appeal site is within the St Marychurch Conservation Area (CA) and also within the setting of the Grade II listed buildings at Park Crescent, Nos 2 – 8 Cambridge Road. Consequently, Under Sections 66(1) and 72(1) of the Listed

Building and Conservation Areas Act 1990, I am required to pay special regard to the desirability of preserving the listed building, its setting, or any features of special architectural or historic interest, and, also, pay special attention to the desirability of preserving or enhancing the CA's character or appearance.

5. From the listing description and from my own observations, the special and historic interest of the listed buildings derives from their C1840 origins, their concave crescent arrangement with gardens to the front and picturesque Tudor-style design, despite their irregularity with the general style and layout of neighbouring buildings. The buildings are two storeys and have a number of matching or similarly complementary features, including detailed chimney stacks, symmetrical front window arrangement with tall iron casement units, cusped bargeboard gables, deep eaves, arched doorways and some canted porches. Due to the high wall enclosure to the south-west and lack of public access to the rear, the setting of the listed buildings is largely limited to where they can be experienced from the front. The appeal site appears logically as the rear gardens to the buildings, but the rear elevations, whilst not unattractive, were not designed with the same attention to detail and are not as distinctive.
6. From the St Marychurch Conservation Area Character Appraisal (2005), the distinct character areas of the CA are separated by function; with the commercial, retail and religious area largely separated from the residential surrounds. The town centre and ecclesiastical quarter includes many notable and listed buildings, including the Grade II* Church of Our Lady Help of Christians and St Denis. Beyond this quarter, there are streets of well-maintained 19th century terraced housing which was allegedly built to house the workers, and in a separate sub-area, the 19th century villas, which were built to take advantage of important outward views. It is this layered, historical and hierarchical cohesive assemblance of buildings and their layout within the respective streets that define the significance of CA, with the attractive detailing of buildings providing a rich and high quality appearance. There are some characterful buildings which are not in the general style of the rest of the CA, and some other more prominent local landmarks which also enrich and enliven the area overall.
7. In relation to the appeal scheme, the site comprises the former rear gardens of the listed terrace, Park Crescent, built in a neo-Tudor style with long gardens to the front. Whilst I understand that the buildings were historically separated from the site by a wall, which to some extent reduced the connection between them and interrelated significance, such an occurrence is not uncommon in such situations to allow rear access to terraced properties. Consequently, despite the unsympathetic timber fence, the site is still understandable as what were gardens to the original dwellings and retains some degree of historical significance in this context. Additionally, insofar as it also provides some degree of separation between other buildings, with evident greenery in public glimpses of the site and from other dwellings within the CA, it makes a positive contribution thereto.
8. The appeal proposal seeks to introduce a detached bungalow with linked garage and car port onto the site, with a car parking area and a garden. The bungalow would be constructed from high quality materials, including reclaimed stone from the site.

9. Though I note that only one dwelling is proposed in this case rather than the earlier schemes that allegedly comprised either two or three dwellings, the reduced scale and mass of the proposal, along with the increased distance from the listed buildings, would still detract from the open and green qualities of the site and sever the remainder of the relationship with the listed buildings. Though the dwelling would be single storey and not particularly dominant in terms of form or scale, the collective mass of the dwelling and associated structures, along with their design which would fail to reflect the historic character of the surrounding buildings, would be incongruous and harmful to the character and appearance of the area. Such harm would not be mitigated by the planting of a line of trees to effectively create a green wall between the site and listed buildings, nor any other landscaping measures.
10. Whilst it is suggested that the introduction of a dwelling would preserve, or more likely enhance the CA and setting of the listed buildings, I do not consider that this would be so for the reasons set out above. The potential for improved management, or the prevention of further deterioration or antisocial use of the site are not sufficiently persuasive in this regard and nor am I satisfied that the appeal proposal is the only means of achieving such outcomes.
11. For the above reasons, the proposal would be harmful to the character and appearance of the area and would also fail to preserve the setting of the adjacent Grade II listed Park Crescent and appearance of St Marychurch Conservation Area, and thus, would harm their significance. It would therefore conflict with Policies DE1, HE1 and SS10 of the Torbay Local Plan (2015) and Policy TH8 of the Torquay Neighbourhood Plan (2019). These Policies collectively seek to secure development of a good quality design, respectful to local character, and conserves both the distinctive character and appearance of Torbay's conservation areas and any listed building or its setting.
12. Under the terms of the National Planning Policy Framework (the Framework), the harm to the setting of the listed buildings and appearance of the CA would fall under the category of 'less than substantial' harm. Under Framework paragraph 196, less than substantial harm to the significance of designated heritage assets should be weighed against the public benefits of the proposal. I return to this below.

Effects on neighbouring occupiers

13. As the proposal would be single storey and enclosed by sufficient boundary treatments, there would be no ability for harmful overlooking to occur. The effects on living conditions of neighbouring occupiers would potentially arise from the loss of garden space and from the use of the access lane which passes Nos 7 and 8 in terms of noise and disturbance.
14. My attention has been drawn to the permission for the conversion of the Park Crescent buildings into 8 apartments. I have been provided with limited details of such, although the appeal site was allegedly shown as providing gardens for 3 of the approved apartments. It appears that the conversion scheme has been completed to a high standard, but that these gardens were never provided and the site has instead been left to become overgrown.
15. The appellant indicates that each of the apartments have been provided with the requisite 20 sqm of garden space required for such and have also been transferred without any access rights to the appeal site. The manner in which

the site has been divided in ownership terms is of less a concern to me than the lack of evidence to prove that there is sufficient access to outdoor amenity space of a quantum and quality to provide satisfactory living conditions for the occupiers of Park Crescent.

16. In terms of the use of the access lane, the appeal site is not regularly accessed via pedestrians or vehicles. The use of the lane by future occupants of the dwelling would incur regular passing by Nos 7 and No 8 with consequent noise of tyres on the gravel in close proximity, and with many close interactions past the windows and doors which are otherwise sited in a relatively private area. The courtyard to No 8 which also benefits from a degree of seclusion would become a frequently overlooked area, with consequent harm to the living conditions of occupiers thereof. Such harm would not be mitigated by the close proximity of the site to locally accessible facilities to which future occupiers may wish to walk or cycle, rather than travel by car.
17. In view of the above, and in the absence of evidence to the contrary, the proposal would result in a harmful loss of outdoor amenity space and would separately harm the living conditions of occupiers of Nos 7 and 8 Park Crescent through increased noise and disturbance, contrary to Local Plan Policy DE3. This Policy seeks to ensure provision of useable amenity space, including gardens and outdoor amenity areas and should not unduly impact upon the living conditions of neighbouring occupiers with regard to noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution.

Suitability of access for emergency vehicles

18. The access to the site would be via an existing gravelled lane which passes between a high stone boundary wall and the eastern side elevation of Park Crescent. The access lane is not a substantial length and for much of this, it is of a suitable width, but parts of it are narrow and there is a pinch point where it is only approximately 2.4 metres wide.
19. I note that the same access was considered suitable in terms of emergency access for No 8 of the flats within Park Crescent and there would be very limited additional distance between that and the appeal proposal. In view of this, and the absence of details of the Council's Highways' Standing Advice about the minimum required width of access, in relation to the limited scale of the scheme, I cannot conclude that the access would be too narrow to provide safe and suitable access to the proposed dwelling. Furthermore, I note from the appellant's evidence that separate compliance with the Building Regulations could be achievable through the installation of an internal sprinkler system.
20. In this regard, the scheme could provide suitable emergency access in compliance with Policy TA2 of the Local Plan which seeks to ensure that new development provides vehicular and pedestrian access to a safe standard.

Tree removals

21. The collection of approximately 28 trees on site is protected by virtue of the wider CA designation. Most specimens are modestly-sized fruit trees and from the submitted arboricultural assessment, only one tree is considered in sufficient health and of such amenity value that it has been graded as a Category A tree. Few others are Category B trees and the remainder of the trees are of a relatively low individual value. Despite the low categorisation,

lack of trees of either a domineering height or significant canopy spread, the collective value of the trees and greenness of the site is a positive feature.

22. The proposal seeks to removal all trees on site and appears to include a row of approximately 7 trees along the southern boundary of the site with the listed building.
23. Whilst the indicative tree planting would reintroduce trees on the site, there appears to be little recognition of the value of the existing trees. Despite that a number of trees, including those of the higher categories, would not appear to interfere with the proposed building footprint, general layout or availability of garden space, all trees are intended to be removed, completely denuding the site. The constrained aspirations to offset such harm through the planting of a limited line of trees would not adequately mitigate for the loss of trees.
24. In view of this main issue, the tree removals would be harmful to the character and appearance of the area and bring the scheme into conflict with, in particular, Policy C4 of the Local Plan which requires retention and protection of existing hedges, trees and natural landscape features where possible.

Effects on biodiversity

25. The 'Wildlife Survey' submitted with the appeal application details that in addition to a 'Reptile Mitigation Strategy', the proposal should incorporate native species for new tree planting, two bat boxes within the building and maintain an area of rough grass around the edge of the site.
26. The summary of the Wildlife Survey is that the lack of management has led to favourable conditions for wildlife and it is described as a 'wildlife haven'. Whilst it appears that the sum total of the mitigation measures "*will make a contribution towards offsetting the loss of biodiversity which will be a consequence of the site being developed*", this appears to fall short of the requirement of Local Plan Policy NC1, which states that proposals will be expected to deliver a net gain in biodiversity through the creation or provision and management of new or existing habitats.
27. There is insufficient evidence to suggest that the proposal would include sufficient measures to not only offset the loss, but to create a biodiversity net gain proportionate to the scale of the proposal. Consequently, in the absence of evidence to the contrary, the proposal would conflict with Local Plan Policy NC1 and Policy TE5 of the TNP in respect of its inability to conserve or enhance the site's biodiversity.

Planning balance and conclusion

28. The proposal would result in harm to the character and appearance of the area; to the living conditions of neighbouring occupiers; through tree losses and harm to the biodiversity of the site. These harms bring the scheme into conflict with the development plan, when read as a whole.
29. There would also be harm to the significance of designated heritage assets, which attracts great weight in the overall balance.
30. In terms of the benefits, the appeal proposal would deliver a single dwelling in an accessible location which is suited to increased densities and where the principle of development is acceptable. The delivery of one dwelling would be

beneficial in social and economic respects, through increased access to housing for prospective purchasers, through construction phase economic benefits and longer-term reliance on goods and services by future occupiers. There would also be a degree of environmental benefit from the use of an urban site, helping to reduce the reliance on greenfield land.

31. The weight to be attributed to the benefit of delivering an additional dwelling to the local housing stock is greater in this case because I acknowledge that the Council, by its own admission, is falling short of its required 5-year housing land supply (5YHLS) and that the proposal would make a contribution to this shortfall being addressed. Insufficient evidence has been provided to enable me to quantify the extent of the shortfall.
32. It has not been suggested that the 'tilted balance' set out in paragraph 11 d) of the Framework is engaged owing to the absence of a 5YHLS. However, had it been so, I would have found that the Framework policies set out in paragraph 11 d) i), and associated footnote 6, which protect assets of particular importance such as designated heritage assets, provide a clear reason for refusing the development in any case.
33. Taking all of the above factors into account, I do not consider that the benefits in this case outweigh the identified harms.
34. As such, the appeal is dismissed.

Hollie Nicholls

INSPECTOR