



Appeal Decision

Site visit made on 28 September 2021

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2021

Appeal Ref: APP/X1165/D/21/3280705

Dawn, Brim Hill, St Marychurch, Torquay TQ1 4TR

- 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 Tony Payne against the decision of Torbay Council.
 - The application Ref P/2020/1044, dated 19 October 2020, was refused by notice dated 21 July 2021.
 - The development proposed is extensions and renovations to the existing house and garage.
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Decision

1. The appeal is allowed and planning permission is granted for extensions and renovations to the existing house and garage at Dawn, Brim Hill, St Marychurch, Torquay, TQ1 4TR, in accordance with the terms of the application, Ref P/2020/1044, dated 19 October 2020, subject to the conditions in the attached schedule.

Preliminary Matter

2. The description of the development in the Council's decision notice includes reference to the various components of the proposal, including: a single storey lower ground floor extension to rear (SE) with terrace over; two storey side extension (SW); single storey upper ground floor extension to side (NE); raise roof ridge line and change roof profile to form attic room; and changes to fenestration. Whilst this detail is useful to understand the full extent of the works, I have used the more concise description of the development from the application form in the banner heading above.
3. I noted during my site visit that construction works had commenced on site to the rear of the dwelling. Whether these works comprise the commencement of an earlier permission for a similar scheme¹ is a matter disputed between the parties. No Certificate of Lawful Development has been submitted to verify that these works are lawful and it is not the role of this S78 appeal to determine either way. I have, nevertheless, taken the condition of the site into account in reaching my decision.

Application for costs

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

¹ Planning permission references: P/2016/0471 and P/2018/0131

Main Issue

5. The main issue is the effects of the proposal on the character of the host property, surrounding area and whether or not it would preserve the setting of the adjoining Maidencombe Conservation Area.

Reasons

6. The site comprises an existing split level, detached dwelling which is accessed from Brim Hill and which appears as a hipped roof bungalow in views therefrom. It sits on an elevated position so that its rear elevation of two storeys in height is visible from a distance below, in the vicinity of Rock House Lane. The dwelling also has an adjoining single storey garage within its modestly scaled frontage space, set back from the road behind a low block wall. The rear garden area is more generously proportioned, and is set on a terraced slope with vegetation and trees, some of which are protected by Tree Preservation Order.
7. The appeal dwelling lies adjacent to the Maidencombe Conservation Area (CA). Whilst not *within* the CA and thus avoiding the duties under Section 72 of the LBCA Act², the National Planning Policy Framework (2021) (the Framework) requires that any harm to, or loss of, the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification. As the proposal is within the setting of the CA, which is a designated heritage asset, it has the potential to harm its significance and has been assessed on this basis.
8. From my assessment and from the Maidencombe Conservation Area Character Appraisal (2005), the special qualities of the CA derive from the grouped historic buildings from the same era which still retain their traditional forms, thatched roofs and close-knit clustered siting relative to one another. In contrast to these, there are grand villas of later origins that sit higher up on the slopes. But it is the combination of these varied building types within their verdant and topographically challenging landscape which has been influenced by agriculture and proximity to the coast that all contribute to the significance of the CA. The 20th century infill housing, including the appeal dwelling, make a largely neutral contribution to the setting of the CA where visible in combination therewith.
9. Numerous changes are proposed to the dwelling but none would materially alter its character or appearance in a harmful manner considered relative to its modest and unremarkable form and aesthetic condition. Modest increases in scale and height to the roof, sides and rearward projection would be of limited overall consequence. Changes to the fenestration in the rear would modernise the dwelling and remove the current overly-fussy window bar and shutter arrangement.
10. Considered in the context of the streetscene from Brim Hill, I reach the same view that the changes would be modest in scale relative to the host dwelling and given the comparable sizes of dwellings in the surrounding area. The extensions and alterations have been designed so as to assimilate with the host dwelling, rather than compete with or subsume it. The pleasant quality of the streetscene would, therefore, be maintained.
11. Given the limited viewpoints from where the sides of the dwelling can be seen, I have focussed my attention on the impact of the proposal when viewed from the

² Listed Building and Conservation Areas Act 1990

rear. The upper parts of the dwelling are visible from the lower levels on Rock House Lane in the vicinity of Court House, The Linhay and Grooms Quarters, and it is from here that the dwelling is present in views from and facing towards the CA. This area is popular with walkers given the existence of the footpath and recreational spaces, leading to the beach, hence being sensitive to change.

12. The proposal does not seek to materially alter the lower levels of the site which are currently vegetated, and where a number of individual trees are situated. The combination of the height and distance, sloping nature of the intervening landscape and its vegetated qualities mean that only the upper parts of the dwelling are visible from areas within the CA. What is currently seen would be largely similar to what would be experienced with the extensions and alterations in situ and it would not appear as a four storey dwelling as alleged in some objections. The minor increase in height, addition of the uppermost inset balcony and elevational changes would be most notable, but I regard these as being compatible in scale, form and appearance with the host dwelling so as to preserve the current experience of viewers within the CA towards it.
13. Consequently, and taking into account that the proposals are very similar to those previously permitted, I consider that there would be no harm to the setting of the CA. As the effects of the proposal on the character of the host property and surrounding area would also be acceptable, it would comply with Policy TH12 of the Torquay Neighbourhood Plan (2019) (NP). This Policy seeks to ensure that development within the Maidencombe Village Envelope respects local character and conserves or enhances heritage and landscape assets. For similar reasons, the proposal would accord with, in particular, Policy TH8 of the NP and Policies DE1, DE3, and SS8 of the Torbay Local Plan (2015) which collectively seek to ensure development is of good quality design and respects the local character and identity of its surroundings.
14. Whilst not a matter detailed in the Council's reason for refusal, I have also considered the potential setting effects on the Grade II listed Court House. Whilst there would be a degree of visual change of the appeal dwelling as an elevated background feature to the listed building, these would be of a minor magnitude and would not detract from the setting, or thus, significance of the listed building, in compliance with S66 of the LBCA Act.

Other Matters

15. I note the submitted concerns in relation to the potential for the extensions to appear overbearing and to undermine the privacy enjoyed by neighbouring occupiers, including from those houses below the site. Given the siting of the extensions and alterations, intervening distances and boundary treatments, along with obscure glazed windows where necessary, there will not be harmful effects in these regards.
16. Concerns raised in connection with the potential for slippage or erosion of the sloping ground do not appear to be of a concern for the Council's Structural Engineer who has noted the foundation design and indicates that the works undertaken meet engineering requirements. I find no reason to reach an alternative conclusion in this regard.
17. The suggestion that allowing the proposal would create a precedent appears unfounded. The Council's evidence suggests that a very similar scheme was approved in 2016, but it does not appear to have generated numerous proposals

of a similar nature. In any event, the principle of extending a residential dwelling is uncontentious and each case should be assessed on its own merits.

18. I note that many objectors seek to discredit the availability of the numerous 'fallback positions' that may exist, such as through the implementation of the 2016 permission if it were considered extant, and the alternative schemes available through permitted development rights. However, the validity of these fallback options are of limited consequence as I have found the appeal scheme to be satisfactory and compliant with the development plan in its own right.
19. The potential for light pollution to arise from the proposal has been considered, but given the existing extent of glazing and orientation of the dwelling, the effect of the alterations and minor numbers of additional windows would not lead to material harm to either neighbouring occupiers, biodiversity or the surrounding landscape.
20. I have had regard to the correction of annotations on the plans and details about the ridge height of the dwelling. I do not share the concerns of some objectors about the plans being inaccurate or misleading.
21. The concerns in relation to surface water have been taken into account and result in the necessity for planning conditions to ensure that any increased surface water is addressed on the site to avoid an increased risk of flooding.
22. It has also been put to me that the number of objections, including those that cite numerous policies of the development plan and the conflict therewith, increases the weight that should be attributed to them. Though I have taken into account the representations and note the materiality of their content, in my view, they do not indicate to me that permission should be withheld.

Effects on Bats

23. Though also highlighted by numerous objectors, there is a potential for the scheme to affect bats, given the previously recorded usage of the site by a Common Pipistrelle bat in 2016. Whilst further bat emergence/re-entry surveys conducted in 2020 did not record any bat usage, the appeal dwelling is still categorised as an important site and the works could potentially cause disturbance or injury to bats which triggers the requirements of the Habitats Regs³, including that the appellant should apply for a European Protected Species Licence (EPSL) before the commencement of works. As the competent authority for this appeal, this is a matter to which I have to pay regard.
24. Under the Habitats Regs, the licensing authority (Natural England) can grant licences that would result in a breach of protection to European Protected Species. Such licences can be granted where necessary in the interests of preserving public health or public safety or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment. The licensing authority must also be clear that there is no satisfactory alternative and that there will be no detriment to the favourable conservation status.
25. From the evidence, I am of the view that the extension to the dwelling would result in energy efficiency improvements and accessibility benefits for the current and future occupiers, securing the long-term continued use of the

³ The Conservation of Habitats and Species Regulations, 2017, as amended

dwelling. It would also result in economic benefits throughout the construction phase; all of which combine to indicate that the proposal is imperative for reasons of overriding public interest. As the works could not be undertaken in a manner that would avoid such harm or be transferred to another site, there is no satisfactory alternative. Additionally, given that planning conditions could maintain the favourable conservation status of the protected species, it is plausible that a licence could be granted subject to an application being made. Conditions would also be imposed to secure the recommended mitigation and enhancement measures in relation to bats.

Conditions

26. In addition to the statutory time limit, a condition is required specifying the approved plans in the interests of certainty. As it appears the development has already started, the statutory time limit for commencement is not required. However, this indicates that further works shall be prevented until the necessary EPSL has been obtained.
27. For reasons set out above, conditions are required in connection with the means of surface water drainage. Similarly, conditions are required in connection with the use of obscure glazing, including an obscure glazed privacy screen, to prevent harm to the living conditions of neighbouring occupiers.
28. In the interests of the character and appearance of the area, conditions are necessary in relation to construction materials, prior to their first use.

Conclusion

29. The proposal complies with the development plan and the appeal is therefore 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:
 - OS Map/Site Location Plan, Ref 589-01 Rev A, dated 24/02/2021
 - Proposed Internal (UGF & LGF), Ref 589-21 Rev K, dated 24/02/2021
 - Proposed Internal (FF), Ref 589-22 Rev F, dated 24/02/2021
 - Proposed Elevations (SE & NW), Ref 589-25 Rev H, dated 24/02/2021
 - Proposed Elevations (NE & SW), Ref 589-26 Rev J, dated 24/02/2021
 - Proposed Layout, Ref 589-06 Rev G, dated 02/06/2021
 - Proposed Sections, Ref 589-17 Rev A, dated 02/07/2021
 - Proposed Elevations (SE inc Existing), Ref 589-27, dated 02/07/2021
 - Materials Schedule, Ref 586-M1 Rev B, dated 20/04/16
 - Stone facing wall specification, Ref 586-M2, dated 23/07/2018
 - Lighting Plan, Ref 589-05 Rev B, dated 16/10/20
 - Lighting Specification, Ref 589/M3, dated 23/07/18
 - Proposed Layout/Bat Mitigation, Ref 589-EC1 (A), dated 02/07/21
- 3) The extensions hereby approved shall be constructed in accordance with the Materials Schedule drawing 586-M1 dated 20/04/16 and the Stone facing wall specification drawing 586-M2 dated 23/07/18. The natural stone walls shall be constructed from stone laid on its natural bed in a sand/lime mortar.
- 4) The new extensions hereby permitted shall not be brought into use until the two upper ground floor windows (utility and W/C) on the south-west facing side elevation facing Bryn, Brim Hill, and the south-west facing lower ground floor en-suite window also facing Bryn, Brim Hill have been fitted with obscure glazing to a level at least equivalent to Pilkington Level 3 and fixed shut or fitted with a 100 mm opening restrictor. The windows shall be permanently retained in that condition thereafter.
- 5) The new extensions hereby permitted shall not be brought into use until the upper ground floor windows (bathroom) in the side extension on the north-eastern elevations facing towards Headlands, Brim Hill have been fitted with obscure glazing to a level at least equivalent to Pilkington Level 3 and fixed shut or fitted with a 100 mm opening restrictor. The windows shall be permanently retained in that condition thereafter.
- 6) The new upper ground floor terrace hereby permitted shall not be brought into use until the obscure glazed privacy screen shown on the approved plans in the south-west elevation facing Bryn, Brim Hill has been installed

to a height of 1.7m to at least the equivalent of Pilkington Level 3. The privacy screen shall be permanently retained in that condition thereafter.

- 7) Notwithstanding the details submitted in the 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. Technical details of the soakaway design shall be submitted to and approved in writing by the Local Planning Authority prior to any works in connection therewith.

Due to the topography of the land and the risk of re-emergence of flows downstream, the soakaway design must also demonstrate that flows discharging from the soakaway will not result in an increased risk of flooding to property and land downstream of the proposed development. If demonstrated that the ground conditions are not suitable for soakaways or will result in an increased risk of flooding to surrounding buildings, roads and land, prior to continuation of any further development, details of an alternative means of surface water drainage shall be submitted to and approved in writing by the Local Planning Authority.

The details of the alternative means of surface water drainage shall include evidence of how surface water will be dealt with in order not to increase the risk of flooding to surrounding buildings, roads and land. 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 for conditions of up to the 1-in-100 year critical rainfall event plus 40% allowance for climate change.

The new extensions hereby permitted shall not be brought into use until the approved surface water drainage system has been completed as approved and it shall be continually maintained thereafter.

- 8) No works on the roof of the existing dwelling shall commence until the Local Planning Authority has been provided with a copy of a European Protected Species License issued by Natural England authorising the works to go ahead. Thereafter, no destructive works are to be carried out to the roof between 1st June and 31st August of any year.
- 9) The development hereby permitted shall be implemented strictly in accordance with the recommendations and requirements stated in the Preliminary Ecological Assessment (Green Lane Ecology, February 2021), the Bat Survey & Mitigation/Compensation Measures (Green Lane Ecology, October 2020) and Bat Low Impact Licence Method Statement (along with any variation required by Natural England under any European Protected Species License it may issue). Confirmation shall be provided in writing to the Local Planning Authority that these recommendations have been implemented prior the extensions being brought into use.

- 10) The new extensions hereby permitted shall not be brought into use until the recommendations of the approved Bat Activity/Emergence Survey Mitigation & Compensation report dated July 2016, the bat roosting opportunities shown on the ecology mitigation plan reference: 589-EC1(B) have been provided. These enhancements shall include:
- 15-20mm gaps will be created between the fascia board and the external wall with a south-westerly aspect. An internal wall will prevent bats from entering the roof void whilst allowing them access to the top of the wall. It is imperative that bats are prevented from coming in to contact with modern breathable roof membrane.
 - Two voids with access gaps into wall cavities will be incorporated into a south facing and north-easterly facing wall.
 - Two Schwegler 1FR bat tubes will be incorporated into the walls in two locations, one to face south and west.
 - Two gaps in the stonework to allow crevice dwelling bats to inhabit the stone wall.

The approved enhancements shall thereafter be permanently retained.

- 11) External lighting shall be installed in strict accordance with the approved lighting plan (Reference 589-05B dated 16/10/20) and lighting specification (Reference 589/M3, dated 23/07/18). No additional external lighting shall be installed on, or in association with, the building except for low-intensity, PIR motion-activated lights on a short timer (maximum 1 minute), sensitive to large objects only (to avoid triggering by bats or other wildlife). Any lights should be mounted at a height no greater than 1.9m from ground level, directed/cowled downward and away from the site hedges and trees. The lights should produce only narrow spectrum, low intensity light output, UV-free, with a warm colour/temperature (2,700K or less) and a wavelength of 550nm or more.