



Appeal Decision

Site Visit made on 9 November 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2021

Appeal Ref: APP/X1165/W/21/3279027

443 Babbacombe Road, Torquay TQ1 1HW

- 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 Miss Toni Keech against Torbay Council.
 - The application Ref P/2020/1273 is dated 10 December 2020.
 - The development proposed is Demolition of garage and erection of replacement building to contain garage, annexe accommodation and office.
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Decision

1. The appeal is allowed and planning permission is granted for Demolition of garage and erection of replacement building to contain garage, annexe accommodation and office at 443 Babbacombe Road, Torquay TQ1 1HW in accordance with the terms of the application, Ref P/2020/1273 dated 10 December 2020, and subject to the conditions set out in the schedule to this decision.

Application for costs

2. An application for costs was made by Miss Toni Keech against Torbay Council. This application is the subject of a separate Decision.

Preliminary Matters

3. A revised version of the National Planning Policy Framework (the Framework) was published in July 2021. However, as the appeal was submitted after this, the main parties had the opportunity to comment on its relevance to the appeal proposal. Consequently, no parties will have been prejudiced by my having regard to the latest version in reaching my decision.
4. As the proposal is in a conservation area, I have paid special attention to the desirability of preserving or enhancing the character or appearance of that area, as set out in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Background and Main Issue

5. The appeal is against a failure of the Council to give notice of its decision on the planning application Ref P/2020/1273 within the prescribed period. As such, there is no decision notice. However, the Council's Planning Officer Report, which was submitted as part of their appeal questionnaire documents, sets out its concerns with the proposed development and includes the refusal reason it would have provided had it made a formal decision.

6. Accordingly, I consider the main issue to be the effect of the proposed development on the character and appearance of the surrounding area and the Warberries Conservation Area (WCA).

Reasons

7. Described as a garage by the appellant, the single-storey detached outbuilding on the appeal site is in a poor state of repair. Due to its set back from the public highway, its limited scale and the presence of larger surrounding built form, including the building to the rear which rises above it, the garage does not read as a particularly prominent feature in the locality. Nevertheless, elevated above Babbacombe Road due to the area's topography, it is visible in public views and its dilapidated appearance and lack of architectural merit means that it does not contribute positively to its surroundings. The building located behind the garage and set on higher ground, known as Fonthill, is a large, modern block of flats built in a traditional style. To the west of the site is Sunset Villa, a large, contemporary apartment block.
8. The dwelling on the site, No 443, is part of a sub-divided villa that is identified by the Warberries Conservation Area Character Appraisal 2006 (Character Appraisal) as a key building within the Warberry Villas character area of the WCA. The Character Appraisal sets out that this area is overwhelmingly dominated by large Italianate-style villas dating from the 1840-60s. The significance of the designated heritage asset stems from, amongst other aspects, these buildings, which the Character Appraisal sets out give the *raison d'être* to the conservation area designation.
9. With a bigger footprint and greater height, the proposed building would be significantly larger than the existing garage that it would replace. Its presence would also be heightened by its elevated position above Babbacombe Road. However, the first-floor would be partly accommodated within the roof while the limited height of its eaves and its pitched roof would serve to reduce its overall mass. Set within the context of the sloping topography, the backdrop of the relatively high boundary treatment to its rear and greater height, mass and scale of Fonthill beyond, it would not appear as an unacceptably large, prominent or dominating feature. With larger buildings surrounding it, the proposed development would also read as a secondary feature in relation to the scale of built form in the locality. Furthermore, with coach houses present in the WCA and referenced in the Character Appraisal, the proposed building's coach house design would sufficiently relate to its context, which includes a coach house dwelling identified as an important building, while its materials and overall appearance would be in keeping with traditional building form in the locality.
10. Accordingly, and with its set-back position and it only taking up a relatively small part of the overall plot, the proposed building would not read as a crowded or incongruous form of development. Although visible in public views due to its siting, it would therefore not detract from the streetscene or the significance of the WCA. In coming to this view, I have taken into account: the design of the first-floor, with the central set of doors to Juliet balcony and no other windows in the front elevation; the height of the roof in relation to the size of the proposed building; and the previous scheme refused at appeal.
11. For the above reasons, I conclude that the proposed development would not harm the character and appearance of the surrounding area or the WCA, whose

significance would be preserved. I therefore find that it accords with Policies DE1 and SS10 of the Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan, The Community's Plan to 2030. Amongst other aspects, these: set out the Council's approach to conservation of the historic environment, including conserving all heritage assets and allowing sympathetic development within Torbay's conservation areas; and require development to be of good quality design which respects local character and Torbay's special qualities and reflects the identity of its surroundings. The proposal would also be consistent with the provisions in the Framework in relation to achieving well-designed places and conserving and enhancing the historic environment.

Other matters

12. The application form describes the proposed building as providing a garage, annexe accommodation and office, and the submitted plans show, amongst other aspects, separate entrances to each of these elements, the first-floor including a living/kitchen area and an en-suite bedroom, and a ground-floor WC, study and small seating area. The proposed development could therefore theoretically be used as separate, self-contained accommodation and office space. However, the appellant indicates that the annexe accommodation would provide additional accommodation ancillary to the main dwelling and the office would be for home use by them, and this is what has been applied for. I have therefore determined the appeal on this basis, and I note that Council Officers have likewise considered the proposed development as providing ancillary accommodation rather than a new dwelling and the proposed office/study space as being ancillary to the main dwelling. A planning condition can also be used to ensure that the proposed development is used in this manner.
13. A number of other matters have been raised by interested parties and I have taken them all into account. This includes matters such as: the planning history of the site, including similar previous schemes being refused and whether the existing outbuilding and site access have planning permission; the outbuilding not being used as a garage; loss of green space and trees; restrictive covenants; the party wall act and concerns relating to party walls and construction works causing structural issues; the development, due to its height and its proximity to Fonthill, harming the living conditions of adjoining occupiers in relation to matters such as views, light levels, outlook, the peaceful enjoyment of garden apartments and overlooking/privacy; insufficient access for a car and the proposed garage space likely being turned into a domestic room with patio doors; the proposed development not being needed by the appellant; precedent setting; a future planning application likely being submitted to change the permitted use of the appeal proposal; road safety concerns from increasing traffic flows, additional vehicle movements and demand for parking; noise disturbance; the content of and statements within the Design and Access Statement; and surrounding properties being devalued.
14. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed. Some issues, such as in relation to structural matters are also dealt with separately and commonly covered by other legislation, while others such as restrictive covenants and party wall issues are civil rather than planning matters.

Conditions

15. I have had regard to the various planning conditions that have been suggested by the main parties. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents and for clarity and consistency.
16. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty. Conditions relating to external materials are necessary in the interests of the character and appearance of the area. A condition relating to surface water drainage is necessary to ensure that there is appropriate drainage installed on the site.
17. A condition restricting the use of the development to purposes ancillary or incidental to the use of 443 Babbacombe Road, is necessary to prevent the approved building from becoming an independent residential or commercial unit in the interests of the living conditions of adjoining occupiers and highway safety. A condition relating to the use of the garage is also necessary for the same reason.
18. The PPG indicates that conditions removing permitted development rights should only be used in exceptional circumstances. The Council has suggested two such conditions, and given the constrained nature of the site and its proximity to surrounding residential uses, the conditions preventing future extensions to the approved dwelling and the insertion of new openings/windows in its north elevation are necessary and reasonable in order to protect the living conditions of adjoining occupiers.

Conclusion

19. For the above reasons, the appeal is allowed.

T Gethin

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Survey - Site plan (Drawing No 764-02B, received by the Council on 04/01/21); Survey - Plan & Elevations (Drawing No 764-03A); Proposal - Site Plan (Drawing No 764-12C, received by the Council on 14/12/20); Proposal - Elevations (Drawing No 764-15C, received by the Council on 14/12/20); Proposal - Floor Plans (Drawing No 764-13C, received by the Council on 14/12/20); Materials Schedule page 1 (Drawing No 764-M1(a)); Materials Schedule page 2 (Drawing No 764-M2(a)).
- 3) The development hereby permitted shall be finished in the materials indicated in the approved plans and materials schedule.
- 4) The doors and windows in the development hereby permitted shall be made of timber as indicated in the approved drawings and shall be retained as such for the lifetime of the development. Full details of the windows and doors including details shown at a scale of 1:10, 1:2 or 1:1 of reveals, cills and profiles shall be submitted to and approved in writing prior to their installation. Development shall take place in accordance with the approved details.
- 5) Surface water from the development hereby permitted shall be managed in accordance with the specification set out in the submitted Flood Risk Assessment (dated 30/11/20), via infiltration using a soakaway or other sustainable drainage system designed in accordance with BRE365 for the critical 1:100 year storm event plus 40% for climate change. The surface water drainage scheme shall be fully implemented before the development hereby approved is brought into use.
- 6) The development hereby permitted shall only be used for purposes which are ancillary or incidental to the residential use of 443 Babbacombe Road and shall not be used to provide an independent unit of residential or commercial accommodation.
- 7) The garage hereby permitted shall be used only for the parking of motor vehicles associated with the occupation of 443 Babbacombe Road, including the annexe hereby approved, and shall be retained and made available for the parking of motor vehicles for the lifetime of the development.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order with or without modification), no windows or other openings shall be inserted in the north elevation of the development hereby permitted.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order with or without modification), no roof alterations or extensions to the development hereby permitted shall take place.

END OF SCHEDULE