



Appeal Decision

Site visit made on 23 November 2021

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 03 December 2021

Appeal Ref: APP/X1165/W/21/3279565

Briary Towers, 42 Vicarage Road, Torquay, Devon TQ2 6HX

- 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 Stephen Aldred of Briary Towers Management Services Ltd against the decision of Torbay Council.
 - The application Ref P/2021/0224, dated 22 February 2021, was refused by notice dated 27 May 2021.
 - The development proposed is the vertical extension to existing single storey extension.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - Whether the proposed development would preserve or enhance the character or appearance of the Chelston Conservation Area (the Conservation Area); and,
 - The effect of the proposed development on the living conditions of the occupiers of the neighbouring dwelling at Brierley with reference to overlooking and loss of privacy.

Reasons

Conservation Area

3. The appeal property comprises a detached nineteenth century villa with associated external amenity space, located within the Conservation Area. The appeal building exhibits an impressive and attractive frontage which incorporates two storey bays and an eye catching tower. To the rear of the appeal building is an existing single storey, flat roofed, extension. The submissions before me indicate that the appeal building is a former residential care home which has now been converted to provide a number of flats.
4. The main parties have referred me to a recent appeal¹ (the Previous Appeal Decision) which concerned development at the appeal site. From the evidence before me, and consistent with the findings of the Inspector in the Previous Appeal Decision, the significance of the Conservation Area appears to be derived from its nineteenth century growth as a garden suburb and the architectural quality of buildings including the Grade II* Listed Building at

¹ Appeal Reference: APP/X1165/W/18/3217752

St Matthew's Parish Church located close to the appeal site. Given its siting, location and architectural importance of the building and its neighbouring substantially sized villas, I find that the appeal building does make a positive contribution to the character and appearance of the Conservation Area.

5. In accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area in reaching this decision. Moreover, paragraph 199 of the National Planning Policy Framework (July 2021) (the Framework) states that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
6. Whilst it is acknowledged that some of the design details of the appeal scheme have changed from that which was considered by the Inspector in the Previous Appeal Decision as discussed below in the second main issue, the appeal scheme before me seeks to similarly replace the existing flat roofed single storey extension to the rear of the appeal building, with a two storey extension that would occupy the same footprint as the existing extension.
7. I have noted the Appellant's submissions with regards to the visibility and prominence of the appeal building and site from within the surrounding area. In these respects, from observations made on my site visit, I would concur that the building is relatively well screened in close views from the adjacent Vicarage Road. Furthermore, while it is noted that the Council's Officer Report and the Previous Appeal Decision referred to views of the appeal building from "St Nicholas Road", I was not able to locate such a street within the area surrounding the appeal site.
8. Nonetheless, and again noting the Appellant's submissions and evidence, at the time of my site visit I was able to see the appeal building in views from within St Matthew's Road and from Greenway Road located northeast of the site. In these respects, whilst the appeal building was not highly prominent in the distance views from within Greenway Road, it was possible to view the distinctive roof form and abovementioned tower. Views from within St Matthew's Road were from a lower land level and whilst it was not possible to see the entire appeal building from that viewpoint, it was possible to discern the impressive tower and attractive side elevation of the appeal building.
9. Notwithstanding the above, on my visit I was also able to see that the eastern section of the front of the appeal building was very prominent in views from the sloping and stepped public lane which connects Greenway Road to St Matthew's Road located to the north east of the site and across from St Matthew's Field. Furthermore, although the rear of the appeal building would not be prominent or highly visible in views from the public realm north and northeast of the site, views of the proposed extension would be possible from the gardens and dwellings which are located southwest of the site within Herbert Road and Seaway Lane and from the neighbouring property located southeast of the site.
10. In terms of its mass and height, the existing single storey extension is modest and unobtrusive. However, the proposed two storey extension, in my view, would be a substantial feature which would not be a subservient addition to the existing building and which, in views from the public realm described above, would dominate the space to the rear and side of the original villa. In these

views the proposed extension would appear as an unduly dominant and bulky addition, which would draw the eye detracting from the character and appearance of the host building and the positive contribution that the front of the existing building makes to the character and appearance of the Conservation Area.

11. Furthermore, and as noted above, the appeal proposal would be visible from the dwellings and gardens located to the rear of the appeal property and, irrespective of whether or not there are sea views over the appeal building from the rear, I find that the bulk and height of the proposed extension would be overly dominant and would compete with the height and distinctive roof form of the original villa, being harmful to the character and appearance of the host building and harmful to the character and appearance of the Conservation Area.
12. I recognise that characteristic features and detailing to the front of the appeal building would be retained and the suggested use of materials to match the existing building. Nevertheless, the bulk and massing of the proposed extension would, in my view, be disproportionate. The resulting effect would be to make a substantial change to the appearance of the appeal building, with the mass and dominance of the proposed extension being accentuated by the inclusion of wide and shallow pitched gables which do not reflect the distinctive steeper pitched and narrower gables with decorative bargeboards that are exhibited on the existing building. Given the above reasons, I find that the proposal would neither preserve nor enhance the character or appearance of the Conservation Area.
13. I accept that there are some comparable sizeable extensions nearby and that the appeal building is not highly prominent in distance views from within the wider surrounding area. For those reasons, and as the effects of the proposal would be relatively localised, within the terms of the Framework the harm arising may fairly be described as less than substantial, and relatively limited due to the prominence of the site and given the presence of the extensions to nearby and neighbouring dwellings as referred to me by the Appellant.
14. Nevertheless, the proposal would fail to preserve the character or appearance of the Conservation Area and less than substantial harm does not equate to less than a substantial objection. Moreover, as noted above, the Framework makes clear that any harm to the significance of a designated heritage asset should require clear and convincing justification. Accordingly, and in line with the provisions of paragraph 202 of the Framework, this harm should be weighed against the public benefits of the scheme.
15. Whilst I sympathise with the Appellant's wish to provide additional living space for a family which occupies one of the flats at the appeal property, the benefits of providing additional floorspace are essentially personal in nature. Nonetheless, I have also considered that the proposed extension would provide some limited economic benefits by providing employment opportunities during construction and would provide limited environmental benefits in terms of efficient use of land. However, in my view, these benefits would not outweigh the identified harm that would be caused to the Conservation Area, and the resultant conflict with the policies of the development plan, to which I attach significant weight.

16. In relation to this main issue, for the reasons given above, I conclude that the proposal would harm the character and appearance of the appeal building and would be harmful to the character and appearance of the Conservation Area. The appeal scheme would conflict with the provisions and aims of Policies DE1, DE5 and SS10 of the Torbay Local Plan (December 2015) (the Local Plan) and Policy TH8 of The Torquay Neighbourhood Plan (June 2019) which, together and amongst other matters, requires that development integrate successfully, respecting and enhancing the character of the built environment including areas and buildings of historic interest. Furthermore, the appeal scheme would fail to accord with those paragraphs of the Framework which concern the conservation and enhancement of the historic environment.
17. The Appellant has referred me to a number of developments within the locality and within the wider surrounding area of Torbay, and which it is maintained were permitted by the Council or were unauthorised developments that have a harmful effect on heritage assets. However, I have only limited information concerning those developments and very limited information regarding the relevant development plan policies that applied at the time of their consideration. Whilst it is noted that the Appellant maintains that those developments are harmful, I have determined this appeal scheme on its own merits and, even in the event that the developments referred to by the Appellant would be considered harmful to heritage assets such as the Conservation Area, this would not justify permitting unacceptable development in the present.
18. Nonetheless, I have noted the presence of the developments referred to me by the Appellant and, in this regard, have considered those developments in terms of how the appeal property and surroundings currently contribute to the character and appearance of the Conservation Area. I have further considered and noted those developments referred to me by the Appellant in terms of the overall effect of the appeal scheme on the character and appearance of the Conservation Area which, as detailed above and in my view, can properly be described as being less than substantial harm given, amongst other things, the presence of those nearby developments as referred to me by the Appellant.

Living Conditions

19. Policy DE3 of the Local Plan seeks to ensure that development provides a good level of amenity for occupants and that proposals do not unduly impact on the amenity of nearby residents with regards to, amongst other matters, overlooking and privacy as well as outlook for neighbouring properties.
20. The appeal site is surrounded by residential development. With regards to overlooking and loss of privacy, I would concur with the Council's findings that, by reason of separation distances between the buildings and given the position and level of openings for habitable rooms at 40 Vicarage Road, there would be no unacceptable overlooking or loss of privacy for occupants of the dwellings located to the rear of the appeal site or at 40 Vicarage Road.
21. It is maintained by the Council that the appeal proposal would have a detrimental effect on the living conditions of residents of the property located immediately north west of the site. It is noted that within the Council's Officer Report and within the Previous Appeal Decision, the property located to the north west of the appeal site is identified as 44 Vicarage Road. This is disputed

by the Appellant who has identified the property as being 44 St Matthew's Road. For the purposes of this appeal, I shall refer to this property as 'Brierley'.

22. With regards to overlooking and loss of privacy for occupants of Brierley, the submitted elevation plans do not include any balcony in respect of the appeal proposal before me. However, it is noted that the appeal scheme proposes two modestly sized windows at first floor level on the north west elevation of the proposed extension which, the evidence before me indicates, would serve a bedroom and its associated en suite bathroom. In respect of the window for the bathroom, concerns regarding overlooking or loss of privacy could be satisfactorily overcome by including a condition that required that opening to use obscured glass.
23. As I observed on my site visit, the abovementioned proposed bedroom window would appear to replicate the modestly sized windows on the rear extension of Brierley and which appeared to be similarly orientated towards the rear garden area of the appeal property, at first floor level. In my view, given the existing boundary landscaping and planting which provides screening between the appeal site and Brierley, the limited extent of the proposed bedroom window and by reason of the degree of mutual overlooking that already exists between the appeal site and Brierley, I find that the inclusion of this window would not have an unacceptable impact on the living conditions of occupants at Brierley.
24. In reaching my decision on this main issue, I have had regard to the findings of the Inspector in the Previous Appeal Decision in respect of the loss of privacy to occupants of Brierley. However, as stated, the appeal proposal appears to be different to the one before the Inspector in the Previous Appeal Decision and in particular in relation to the size and spread of the proposed openings at first floor level and in respect of the absence of any balcony. Consequently, the two proposals do not appear directly comparable.
25. For the above reasons, I find no conflict with Policy DE3 of the Local Plan with regards to unacceptable overlooking or loss of privacy and, furthermore, I do not find that the appeal scheme would fail to accord with those paragraphs of the Framework which concern high standards of amenity for existing or future users.

Other Matters

26. I note the Appellant's frustrations with the Council's communication and the way in which it handled the planning application. However, these matters do not impact on the planning merits of the proposal. Furthermore, whilst I note that the Appellant contends that "the Inspectorate must now determine whether there has been deliberate actions by the local LPA in deferring site meetings, negating design approvals to protect the potentially libellous case being exposed from their historic publication", such matters fall outside the scope of an appeal under section 78 of the Town and Country Planning Act 1990.

Conclusion

27. For the reasons given above I conclude that the appeal should be dismissed.

Mr A Spencer-Peet INSPECTOR