



Appeal Decision

Site visit made on 12 January 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2022

Appeal Ref: APP/X1165/C/21/3282728 and 3282729

Land at 'Tumbleweed', Shinner's Steps, Brixham, TQ5 9RY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr David Blackmore and Mrs Samantha Blackmore against an enforcement notice issued by Torbay Council.
 - The notice was issued on 9 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission the construction of a boundary fence, including scaffolding pole supports, exceeding 2m in height above ground level on the western boundary of the Land ('the Unauthorised Works'). The Unauthorised Works are shown on the annexed photographs.
 - The requirements of the notice are to: Remove the Unauthorised Works, including the scaffolding pole supports, from the Land.
 - The period for compliance with the requirement is: within 3 months.
 - The appeals are proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeals are allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of a boundary fence, including scaffolding pole supports, exceeding 2m in height above ground level on the western boundary of the Land at 'Tumbleweed', Shinner's Steps, Brixham, TQ5 9RY as shown on the plan attached to the notice.

Preliminary Matters

2. It is unclear from the paperwork whether fees were paid for both of appeals which have only been pleaded on ground 'a'. I will proceed on the basis that ground 'a' is continuing with respect to both appeals.
3. I carried out a site visit without anybody from the Council in attendance following agreement by both main parties that this would be acceptable. The appellant simply let me into his garden and I did not discuss any issues relating to the merits of the development with them.

The Appeal on ground (a) and the deemed planning application

Main issue

4. The main issue is the effect of the development on the character and appearance of the appeal site and surrounding area.

5. As part of this main issue, I will pay special attention to the desirability of preserving or enhancing the character or appearance of the Brixham Town Conservation Area (CA). Furthermore, adjoining the appeal site to the immediate north, there is a Listed Building (LB), at No 61 Fore Street (the Globe Hotel as it was known at the time of the listing schedule). I will therefore also have special regard to the desirability of preserving the setting of the LB.
6. The National Planning Policy Framework (the Framework) defines the setting of a heritage asset as "the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."

Reasons

7. The appeal site is within a tight-knit part of Brixham on the hillside which rises up steeply from the harbour area and Fore Street. Both sides of the valley provide a distinctive setting to the town and the harbour area. A range and style of buildings from a variety of eras have been developed around this bowl-like setting of the town. There is however a lack of formality to the pattern of development and appearance of buildings generally, particularly on this southern side of the town.
8. The dwelling on the appeal site 'Tumbleweed' and the adjoining dwelling at 'Juniper' are striking, modern designs which incorporate traditional materials such as natural stone and render. Such materials are prevalent in the wider area. Significantly however, these buildings also include modern materials such as glazed balconies with stainless-steel detailing as well as large areas of modern grey-boarding on walls and mono-pitched 'green' roofs.
9. On this southern side of the town, the hillside around the appeal site includes other modern buildings of varying scales, some others with flat or mono-pitched roofs. When I viewed from the town car-park, the rear parts of the lower commercial buildings in Fore Street also provide the fore-ground to the hillside with a utilitarian informality. The northern side of the valley which is also within the CA, has a more ordered, regular appearance and is also dominated by the large, prominent church.
10. The fence that is subject to the allegation on the notice is positioned on-top of a traditional stone wall on the south-western boundary of the appeal site. The fence is visible from the wider CA particularly as the adjoining site is largely undeveloped in contrast to the generally tight-knit character of the area where boundary walls and fences are often obscured by substantial buildings. Notwithstanding this, the fence is of a similar hue to the dappled brown colouring of the stonework below and in the background. The fence is also seen alongside the more distinct, modern external grey boarding that clads the much of the dwelling. The development is visually sympathetic within an area where timber is a common material within domestic settings.
11. The LB is at a much lower level than the appeal site and fronts onto Fore Street. The existing modern glazed balcony on top of the stone retaining wall separates the rear boundary of the plot of the LB from the appeal site. The unauthorised fence is to the side boundary of the appeal site. The fence is

substantially disconnected visually from the LB and its plot due to this positioning and the substantial height difference between the 2 properties.

12. The photographs appended to the notice show the fence in a newer, brighter state with timber that has not weathered to its current brownish, less stark tones. There are also some supporting metal poles evident in the photograph and the development on site has been added to and now includes further timber to obscure these.
13. The fence has a minor visual impact which, given that it is seen alongside a very strident modern building, respects the visual qualities of the site and the surrounding area. It is sympathetic to the surrounding built forms within the town. As such, in relation to the first main issue, the development does not cause any harm to the character and appearance of the site and surrounding area. This preserves the character and appearance of the CA as well as the setting of the LB. Policies DE1, SS10 and HE1 of the adopted Torbay Local Plan 2012-2030 as well as the advice within the Framework, are complied with. Policies BH5 and BE1 of the Brixham Neighbourhood Development Plan are also therefore complied with.

Conditions

14. The Council confirms that there are no conditions that they would wish to see attached. As the development is already undertaken, there are no standard conditions that are necessary to impose either.

Conclusion

15. For the reasons given above, I conclude that the appeals succeed on ground (a). I shall grant planning permission for the construction of a boundary fence, including scaffolding pole supports, exceeding 2m in height above ground level on the western boundary of the Land as described in the notice.

Andy Harwood

INSPECTOR