

Appeal Decision

Site visit made on 8 August 2022

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 October 2022.

Appeal Ref: APP/X1165/W/22/3294655
19-21 King Street, Brixham, Devon TQ5 9TH

- 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 Jason Leech against the decision of Torbay Council.
 - The application, Ref. P/2021/0586, dated 13 May 2021, was refused by notice dated 1 November 2021.
 - The development proposed is a new dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (i) the effect of the proposed dwelling on the character or appearance of the Brixham Town Conservation Area, a designated heritage asset; (ii) the effect of the proposed dwelling on the living conditions for occupiers of Nos. 17-23 King Street as regards outlook and privacy; (iii) the adequacy of the living conditions for future occupiers of the proposed dwelling, and (iv) the necessity or otherwise of the development including a cycle storage and a car parking space. In my consideration of these issues I have had regard to not only the evidence of the main parties to the appeal, but also to the many representations made by local residents.

Reasons

Issue (i): Effect on the Conservation Area

3. On the first issue, I saw on my visit that the appeal site is an area of steeply sloping land between the rear of properties in King Street and a stone wall along the northern side of North View Road. Although ostensibly the rear garden of Nos. 19-21 King Street, the land has to all intents and purposes too steep a gradient to perform that function. At the time of my visit the site was scrubland with a scattering of boulders. In this condition I consider that it makes a negative contribution to both the North View Road street scene and this part of the conservation area.
 4. In the Council's view, the appeal dwelling is of a poor design and would be an overdevelopment of the site. As such it is considered that the development would be harmful to the landscape and townscape in the conservation area, thereby adversely affecting its significance as a designated heritage asset.
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However, I am only partly in agreement with that appraisal as, in itself, I regard the design of the proposed building as having substantial merit.

5. Firstly, it has to be appreciated that the steepness of the slope is likely to preclude any dwelling of a more traditional appearance in keeping with its surroundings, in particular the long Victorian/Edwardian terrace in North View Road. However, the principle of the introduction of modern design concepts in conservation areas is long established. The appellant's evidence refers to such developments in this locality, but in the absence of more detailed evidence including planning permission references, locations and/or photographs, I do not have sufficient information to assess the extent to which contemporary architecture has changed the character and appearance of the conservation area.
6. Be that as it may, the appeal scheme's modern design with the building's stepped flat roofed is the logical solution for the steep gradient of this site. With its clean lines, unassertive and simple functional form with no unnecessary embellishments and clutter and a pleasing use of limestone walls and sedum roofs, I consider the proposed dwelling to be of a good design. However, I also have some reservations in line with the Council's objections.
7. No. 2 North View Road immediately to the west has been extended in a similar contemporary style, including flat roofs and a principal elevation with extensive glazing on two levels. The photograph in the appellant's statement of this property as seen from the harbour shows the extended building as sitting unobtrusively on the hillside and blending with its context of period terraced houses. However, whilst this extension to No. 2 can be argued to support the principle of additional contemporary architecture on the appeal site, it also draws attention to constraints for the appeal dwelling.
8. Whereas the roof of No. 2's extension is set down somewhat from North View Road, the top roof of the appeal building appears level with it. I acknowledge that this additional height might be necessary to achieve the minimum level of accommodation for this one bedroomed dwelling of a modest size in terms of floorspace. However, combined with the double stack of large glazed windows and minimal separation between them on the upper part of the building, there would be a perception of a development imposing itself on the hillside and drawing the eye away from the historic context of the traditional terraces. This would particularly be the case if the elevation of the lower ground floor of the bedroom were to be visible in the views from the harbour – the grounds of appeal say that they would be hidden by the roofs of Nos. 19-21 King Street, but the submitted sections plan suggests otherwise.
9. In the event that the ground floor would be clearly seen in these views the combination of the whole building's four layers of glazing (with the recesses of the front elevation not readily apparent in this view to provide relief) would appear as inappropriately prominent in this context. I acknowledge that this could be resolved through the reduction of glazing on the ground floor to enable the limestone wall to blend in with the background, but these and the other necessary design changes to the fenestration are well beyond the scope of conditions on a permission for the current proposal.

10. On this issue I conclude that the proposed dwelling would not preserve the character and appearance of the conservation area and would conflict with Policies SS10 of the Torbay Local Plan ('the Local Plan'); Policies BH5 and BH6 of the Brixham Peninsula Neighbourhood Plan, and with Government Policy in Section 16 of the National Planning Policy Framework 2021 ('the Framework').

Issue (ii): Effect on the living conditions for occupiers of Nos. 17-23 King Street

11. The Council considers that the proposed balcony, stairs and amenity areas would result in the overlooking of the amenity areas and habitable rooms of the host buildings, Nos. 19-21 King Street, and those of the neighbours on either flank at No. 17 and 23. By the same token it is considered that in the outlook from those buildings the proposed dwelling would be overbearing.
12. However, the steepness of the slope significantly restricts the existing outlook from the living rooms and amenity areas of these buildings. Furthermore, the fact that the main bulk of the proposed building and the view from its living area is towards the top of the site near North View Road would mean that there would not be sufficient proximity to have an overbearing effect. In addition, the outlook is over the roofs of the King Street properties to the picturesque harbour, rather than down towards the rear of the buildings.
13. In addition, the appeal scheme includes privacy screens and boundary planting which would intervene with the line of sight from the proposed lower floor bedroom, that by virtue of its use would have a far lower propensity for overlooking than a living room. Moreover, screening and planting could be the subject of conditions on a permission. Accordingly, on this issue I consider that there would be no unacceptable harm caused to neighbours' living conditions in conflict with Local Plan Policy DE3 and paragraph 130f) of the Framework.

Issue (iii): Adequacy of living conditions for future occupiers of the dwelling

14. On this issue the Council has referred to the scheme having a 'contrived access' and inadequate arrangements for refuse and recycling and cycle storage (the latter is also referred to in Issue (iv) below). However, allowance must be given to the site constraints and indeed recognition that most of the houses in the centre of Brixham will have similar inconveniences. In the event I consider that with the proposed design there are no significant difficulties and arguably less than for the occupier of any flat. The existing pedestrian access from North View Road is to be used and there would be just one short flight of steps to the outside waste bin storage area and the kitchen, where most of the waste would be generated. On this issue I therefore conclude that the proposal would again comply with Local Plan Policy DE3 and with paragraph 130f) of the Framework.

Issue (iv): Cycle storage and parking provision

15. In Brixham town centre with its steep slopes and narrow roads I consider it unlikely that a future occupier would prioritise cycle storage and I do not regard it as being necessary. As regards parking, the absence of a car parking space has both pros and cons. On the one hand it could discourage vehicular movements in the steep, narrow and often pedestrian crowded roads close to this location near the harbour and town centre. On the other hand it could entail on-road parking close to the access with an element of inconvenience for the dwelling's occupier and other road users.

16. However, both Local Plan Policy TA2 and Appendix F indicate an element of flexibility and pragmatism on parking provision, with the Appendix suggesting that in some circumstances the residential standard could be reduced. Paragraph 111 of the Framework also says that development proposals should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. Having regard to these factors and given the site constraints, I do not regard issue (iii) as carrying determinative weight against the scheme.

Other Matter

17. Had I had been minded to allow the appeal and grant planning permission I would have been unable to do so because a planning obligation to make a contribution to 'Berry Hill Grassland' has not been made. The absence of this obligation at this stage of the planning process is contrary both to Government policy in the Planning Practice Guidance and to Local Plan Policy NC1. Given the modest size of the contribution it may have been possible for the applicant / appellant to have simply made the payment, but in any event this is a matter for the discretion of the Local Planning Authority and discussion with them.

Conclusions

18. On balance, I conclude that I should dismiss the appeal because of the harm that would be caused to the character and appearance of the Brixham Town Conservation Area in conflict with the policies referred to in paragraph 10 above.
19. This is firstly because my largely favourable findings for the appellant on the other issues do not outweigh this conclusion. Secondly, despite the scheme resulting in 'less than substantial harm' as referred to in paragraphs 201-202 of the Framework, this harm would not be outweighed by any public benefit.
20. Finally, paragraph 11d)ii of the Framework is not engaged in this case because the adverse effect on the designated heritage asset would not be significantly and demonstrably outweighed by the benefit of one additional dwelling when assessed against the policies in this Framework taken as a whole.
21. For the reasons explained, the appeal is dismissed.

Martin Andrews

INSPECTOR