



Appeal Decision

Site visit made on 6 April 2023

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2023

Appeal Ref: APP/X1165/W/22/3306764

3 Midvale Road, Paignton TQ4 5BD

- 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 outline planning permission.
 - The appeal is made by ALD Developments against Torbay Council.
 - The application Ref P/2022/0794 is dated 4 July 2022.
 - The development proposed is erection of two storey rear/side extension and conversion of building (including the extension) into 6 apartments.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The appeal was made on the 11 September 2022 owing to the failure of the Council to give notice of its decision within 8 weeks. The Council indicates that it refused the application on the 26 September 2022. As the jurisdiction for determining the application had transferred from the Council on the date of the submission of the appeal, it has been treated as an appeal against the Council's failure to reach a decision within the relevant period.
3. The Council's Statement of Case outlines reasons as to why planning permission would have been refused and these have formed the main issues in the appeal. Whilst the putative reasons for refusal included reference to undersized internal floorspace and external amenity areas for some flats, it has since been agreed that these aspects are acceptable, subject to conditions where necessary. Similarly, where discrepancies appeared to show parking spaces being undersized relative to the necessary standards, this issue has also been resolved. Lastly, as a planning condition could be used to control the size of any refuse and recycling storage facilities, I have not treated this as a matter in dispute between the parties.

Main Issues

4. The main issues are:
 - the effects of the proposal on the character and appearance of the host building and surrounding area, and whether it would preserve or enhance the 'Old Paignton Conservation Area'; and
 - the effects on the living conditions of neighbouring occupiers at 'Midvale', in relation to overlooking and loss of outlook.

Context

5. The appeal site is formed from the host building, No 3 Midvale Road, which is a semi-detached, two storey, Victorian building extended to the rear, which has most recently been in use as offices/educational facility. The adjoining building is in use as a care home and a school is situated to the south. The eastern side of Midvale Road is in residential use and is in a traditional linear form with linked terraces, alike many surrounding streets.
6. The proposal is to further extend the building to the rear and side and create 6 flats from both the existing building and the extended parts. The hard surfaced area to the front and side would be used for parking, manoeuvring and refuse storage. The area to the rear would be used to provide external amenity space.

Reasons

Character and appearance

7. The appeal site is located within the 'Old Paignton Conservation Area' (the CA). Under S72(1) of the Listed Building and Conservation Areas Act 1990 (the LBCAA), in determining the appeal, I am required to pay special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the CA as a designated heritage asset.
8. The CA encompasses the historic core around Winners Street and Church Street, which has Saxon origins and much early C19 development, but also the late C19 town centre and the area around the appeal site which largely comprises late C19/early C20 inner suburban development. The Old Paignton Conservation Area Character Appraisal (2007) (the CA Appraisal) explains that as Paignton became an archetypical Victorian seaside holiday resort, the development of period villas took shape, as did its spacious, well laid-out town centre. As a result, the character of the CA is shaped by the C19 two storey villas, sometimes with attic dormers, set amongst quiet streets that feature a landscape of mature trees and shrubs, with plots featuring ample gardens, often bounded by walls of local stone, topped by hedges. Despite subsequent infilling and a few instances of demolition and redevelopment within the past few decades, the special interest of the CA from this C19 expansion is still evident in its character and appearance.
9. The appeal building is a semi-detached villa building which the CA Appraisal dates to the period between 1870 and 1915 and is highlighted as being one of the key buildings or building groups of architectural importance or which make a significant contribution to the townscape. It is for this reason that the Council alleges that the building is a non-designated heritage asset (NDHA). It is a two storey villa, with two storey canted bay window, constructed from local stone and red brick with hipped, slated roof and a central canopy porch that extends over to the adjoining building, albeit infilled on that side. It is also set within an ample plot with stone boundary walls. Though its adjoining neighbour has been extended at ground level flush with the front wall, the pair retain a large degree of symmetry through their form, features and materiality.
10. The proposal would introduce a two storey extension from the mid-rear section of the building, extending back into the site which would widen out towards the back of the plot. The extension would have a flat roof, sitting below the eaves height of the existing rear extension. The extension would have a painted

render exterior with some sections of timber cladding and a combination of styles of glazed openings, including a large feature window on the first floor front elevation, which would also contribute to an overall picture of contemporaneity.

11. Due to its overall scale, mass and flat roof form, the extension would read as an expansive and incongruous addition to the building, at odds with the traditional form and appearance of the host building. The blocky form of the extension combined with the combination of the materials of construction and the variety of scales, style and orientation of glazed openings would exacerbate the differences between its component parts and with that of the host building, resulting in an overall disjointed appearance. These effects would not be offset by the extension being set back from the front elevation.
12. The submitted computer generated image in Figure 2¹ suggests that the impact on the CA would be minimal as views would only be obtained when looking directly into the site rather than obliquely from further along either end of the street. However, I equate this minimal impact as being an adverse impact, as the visual rhythm of the pair of dwellings and wider streetscape would be disrupted by such a voluminous, contemporary addition. Even if the plot coverage on the appeal site would remain below that of the adjoining site, I consider that the character and appearance of the CA would be weakened, rather than at least preserved, by the proposal.
13. I note that the proposals would result in the loss of a Walnut tree from a compromised position at the rear of the site. The two replacement trees proposed would offset the harm from this loss from an area of generally sparse tree cover. However, limited detail has been provided as to whether sufficient space could be provided to enable them to establish to contribute to the streetscene in the manner depicted in the computer generated image. However, this aspect is not determinative in terms of the overall effects on the quality of the streetscene and CA.
14. My attention has also been drawn to an alternative scheme at the Former Bakery Barn at Chilcote Close, St Marychurch, Torquay² from which the appeal scheme has allegedly taken reference. Despite the limited detail that has been provided from which to adjudge that scheme within its different receiving context, it appears to present as a more coherent whole, whereas the appeal scheme would present as more disparate parts combined together.
15. For the reasons set out above, the proposal would harm the character and appearance of the host building and the surrounding area, contrary to, in particular, Policies DE1 and SS10 of the Torbay Local Plan 2012-2030 (adopted 2015) (Local Plan) and Policy PNP1 (c) of the Paignton Neighbourhood Plan (adopted 2019) (PNP). These Policies collectively seek to ensure development is well-designed in terms of scale, design, height, density, landscaping, use and local materials; respects and enhances Torbay's special qualities and conserves and enhances both designated and non-designated assets.
16. Through diminishing the character and appearance of the host building as an NDHA and key building within the CA, the proposal would also fail to preserve or enhance the significance and special interest of the CA. Conflict therefore

¹ of the Designers Response Document (dated October 2022)

² P/2019/0141

also arises with section 72(1) of the LBCAA. Under the terms of the National Planning Policy Framework (the Framework), given the extent of the CA designation and the minor scale of the works in relation to it, I consider the degree of harm to the significance of the CA as a designated heritage asset would be less than substantial.

17. In circumstances where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, Paragraph 202 of the Framework requires the harm be weighed against the public benefits of the proposal. The main public benefits of the scheme would result from the provision of six new dwellings in a sustainable location. There would also be some investment into the fabric of the building as an NDHA and some shorter-term economic benefits from the construction phase of the development. In my view, taken together, these modest benefits do not outweigh the harm to the significance of the designated heritage asset.

Living conditions of neighbouring occupiers

18. A bungalow known as 'Midvale' is situated to the rear of the site and is positioned at a higher ground level than that of the appeal building. Its private rear amenity space backs onto the site and is separated from it by some vegetation on top of the existing stone boundary wall, but also benefits from the canopy cover of an existing Walnut tree within the appeal site. Three windows in the rear elevation of Midvale also face towards the rear of the site.
19. The rear elevation of the extension would be within around 5 metres of the intervening boundary of the site with Midvale. The removal of the Walnut tree would open up the views between the respective properties and though it does not appear that the vegetation on the intervening boundary wall would be removed, due to the extension's scale and siting, it would still be visible from windows and the garden of Midvale either side, through and above it. In my view, it would form a dominant feature and would consequently harm the outlook enjoyed by the neighbouring occupiers.
20. The rear elevation would contain 3 Juliette balconies at first floor level, each with quadruple width glazing in the form of double doors with glazed panels either side. Whilst I have taken account of the site's urban situation which typically lends to some degree of mutual overlooking, the presence of such a high number of sizeable, glazed openings in such close proximity to the rear elevation and garden of Midvale and at a modestly higher height would result in an unacceptable loss of privacy for the existing occupants which would not be mitigated by the low eaves height of the bungalow or retained vegetation.
21. For the above reasons, the proposal would harm the living conditions of neighbouring occupiers at 'Midvale', through both overlooking and loss of outlook, contrary to Policy DE3 of the Local Plan which seeks to ensure that development does not impact upon the amenity of neighbours in terms of noise, nuisance, visual intrusion, overlooking, and privacy, light and air pollution and overbearing effects.

Other Matters

22. I note that the principle of development is accepted given the site's accessible location and that it would involve the use of previously developed land. The absence of harms in relation to ecology and flood risk has also been noted.

23. The appellant highlights that a fallback position exists under the Town and Country Planning (General Permitted Development) Order 2015 to convert the existing building to dwellings, albeit without the proposed extension. This is not disputed by the Council, though my assessment of the scheme has identified harms arising from the extensions in any event.
24. The appellant has drawn my attention to the limited number of objections to the appeal application and subsequently to the appeal itself. I have taken these representations into consideration in reaching my decision.

Planning Balance and Conclusion

25. The proposal would give rise to harm in relation to its effects on the character and appearance of the area and failure to conserve the Old Paignton Conservation Area, and harm to the living conditions of neighbouring occupiers. Taken together, these aspects result in the scheme being in conflict with the development plan when read as a whole.
26. The Framework requires that Council's demonstrate an adequate 5 year supply of deliverable housing land with relevant buffer. It is agreed between the parties that the Council cannot demonstrate a 3 year supply of housing land, let alone a 5 year supply, although the scale of the deficit has not been precisely quantified by either party beyond this figure.
27. In such circumstances, the presumption in favour of sustainable development, set out in paragraph 11 d) of the Framework deems the policies relevant to the supply of housing to be out of date and engages the 'tilted balance'. This requires that where the policies which are most important for determining the application are out-of-date, granting permission unless (i) the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or (ii), any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole.
28. Footnote 7 sets out the areas and assets of particular importance afforded protection by the Framework and this includes designated heritage assets. I have identified that the public benefits from the scheme do not outweigh the harm to the significance of the CA as a designated heritage asset in this case. As such, the Framework policies that protect designated heritage assets disengage the tilted balance.
29. I acknowledge the social and economic benefits of the scheme would result from the provision of new housing which would boost the local housing supply and provide enhanced access to housing. The construction phase of the development would also generate economic benefits to the area, albeit of a more time-limited nature. Collectively, these benefits attract modest weight.
30. However, in my view, the modest benefits of the scheme do not outweigh this conflict and there are no other considerations of such materiality that indicate that a decision should be taken other than in accordance therewith.
31. For the reasons set out, the appeal is therefore dismissed.

Hollie Nicholls

INSPECTOR