



Appeal Decisions

Site visit made on 19 May 2023

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 20th June 2023

Appeal A: APP/X1165/Y/22/3310026

Woodbury, Acadia Road, Wellswood, Torquay TQ1 2PY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mrs Catherine Miller-Bassi against the decision of Torbay Council.
 - The application ref. P/2021/1293, dated 28 November 2021, was refused by notice dated 26 August 2022.
 - The development proposed is described on the application form as 're-instatement of 3no. existing flats into 1no. single family dwelling and associated works, retention of existing boundary fence, widening of existing vehicular entrance and erection of single detached garage following demolition of 20th century side addition.'¹
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Appeal B: APP/X1165/Y/22/3310021

Woodbury, Acadia Road, Wellswood, Torquay TQ1 2PY

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended against a refusal to grant listed building consent.
 - The appeal is made by Mrs Catherine Miller-Bassi against the decision of Torbay Council.
 - The application ref. P/2021/1294/LB, dated 28 November 2021, was refused by notice dated 26 August 2022.
 - The works proposed set out on the application form are the same as in respect of appeal A.²
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Appeal C: APP/X1165/W/23/3317197

Woodbury, Acadia Road, Wellswood, Torquay TQ1 2PY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mrs Catherine Miller-Bassi against the decision of Torbay Council.
 - The application ref. P/2022/1207, dated 3 November 2022, was refused by notice dated 10 January 2023.
 - The development proposed is described on the application form as 're-instatement of 3no. existing flats into 1no. single family dwelling. Retention of existing boundary fence, and formation of single detached garage following demolition of 20th century side addition. Resubmission of P/2021/1293.'
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¹ Alternatively described in correspondence from the appellant of 9 March 2022 as 're-conversion of dwellinghouse to single residential unit (internal alterations); demolition of 20th century side addition; erection of detached single garage; retention of existing fence.'

² The appellant's statement of case referencing the alternative description 'internal and external alterations, including alterations to internal layout, secondary glazing, removal and reinstatement of stairs, retention of existing boundary fence, installation of rooflight, and demolition of 20th century side addition (see accompanying application P/2021/1293). (Revised plans received 04/08/2022).'

Appeal D: APP/X1165/Y/23/3317193

Woodbury, Acadia Road, Wellswood, Torquay TQ1 2PY

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended against a refusal to grant listed building consent.
 - The appeal is made by Mrs Catherine Miller-Bassi against the decision of Torbay Council.
 - The application Ref P/2022/1208/LB, dated 3 November 2022, was refused by notice dated 10 January 2023.
 - The works proposed are described on the application form as 'internal and external alterations, including alterations to internal layout, secondary glazing, removal and reinstatement of stairs, retention of existing boundary fence, installation of roof-light, and demolition of 20th century side addition. Resubmission of P/2021/1294.'
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Decisions

1. Appeals A and B are allowed. Planning permission and listed building consent is thereby granted for the conversion of Woodbury to a single dwellinghouse, demolition and works to enable that use including internal and external alterations, erection of a detached single garage, fencing and boundary alterations at Woodbury, Acadia Road, Wellswood, Torquay TQ1 2PY in accordance with the terms of applications ref. P/2021/1293 and P/2021/1294/LB (as revised), both originally dated 28 November 2021, subject to the conditions in the first and second schedules to these decisions respectively. Appeals C and D are, however, dismissed.

Costs

2. Separately the appellant has made a complaint against the Council, and subsequently pursued certain matters to the Ombudsman. There is some overlap between the points made in that context and in respect of the appellant's applications for costs (the subject of separate decisions). Here my decisions focus on the planning and heritage merits of the proposals.

Preliminary matters

3. Appeals A to D relate to grade II listed Woodbury.³ I have therefore dealt with the appeals collectively, drawing distinctions between each as necessary. The appellant's Heritage Statement ('HS') identifies that the property was instead named 'Earlham' in 1863.⁴ The listed building, set within a spacious irregular plot, is bounded by Acadia Road, Babbacombe Road and Lincombe Hill. The principal access is via the first, a secondary access via the latter. Woodbury falls within the Lincombes Conservation Area ('LCA'). The Warberries Conservation Area extends to the opposite side of Babbacombe Road ('WCA'). I have therefore approached the appeals in the context of sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the 'LBC Act').
4. In respect of planning applications, each proposal must be determined in line with the development plan unless material considerations indicate otherwise. The development plan here includes policies of the Torbay Local Plan 2012-2030 (adopted December 2015, the 'TLP') and of the Torquay Neighbourhood Plan (made as part of the development plan on 19 June 2019, the 'TNP'). In

³ 'Gosforth Woodbury', list entry no. 1202962.

⁴ Prepared by K Metcalf Heritage (November 2022, Rev.B).

summary, and amongst other things, TLP policies HE1 and SS10 and TNP policy TH10 seek to ensure appropriate protection of heritage assets (in a similar manner to the foregoing statutory provisions).

5. Likewise paragraphs 189 and 199 of the National Planning Policy Framework ('NPPF') set out how heritage assets are an irreplaceable resource, and that 'great weight' should be accorded to their conservation, having regard to the importance or significance of the relevant asset. I have had regard to various other material considerations, including the Planning Practice Guidance ('PPG').
6. The appellant's correspondence of 9 March 2022 to the Council references a validation dispute. Notwithstanding any argumentation about the provisions of section 62 of the Town and Country Planning Act 1990 as amended (the '1990 Act'), or relevant provisions of the Town and Country Planning (Development Management Procedure) (England) Order 2015 as amended (the 'DMPO'), the appeals are not made pursuant to the article 12 process specified in the DMPO. The proposals to which appeals A to D relate have been amended since originally submitted schemes, which I address subsequently.
7. Separately applications ref. P/2023/0188 and P/2023/0189/LB were approved via Council decision notices dated 27 April 2023 (the '2023 scheme'). They represent further variants of the proposition to remodel Woodbury, being described in the appellant's correspondence of 31 May 2023 as 'a partial scheme' to those before me.

Main issue

8. Against the background above, the main issue is the effect of the proposal on historic significance.

Reasons

Special interest and significance

9. Woodbury features an array of neo-classical motifs including stucco pilasters and architrave, dentil cornices and ornamental eaves brackets. Those features combine with tuck-pointed rough-dressed local limestone to represent a fine example of an Italianate Riviera Villa. The south-eastern corner of the listed building represents a later Edwardian addition, albeit that is an addition of essentially the same aesthetic as the original building.
10. The plot of Woodbury is relatively spacious, stepped slightly and increasing in level broadly west to east. As is characteristic of the area it is replete with mature planting. The boundary is largely demarcated by an historic stone wall of modest height, rough-dressed also and finished with a crenelated or cock-and-hen detail. Similar walls prevail nearby, albeit that there are occasionally finer ornamental boundary features (such as the opposite side of Babbacombe Road leading to grade II* listed nos. 1-15 Wellwood Park Road).⁵ The aesthetic of Woodbury, its plot and the surrounding area is alluded to in the name Acadia Road. That is an evolution of Arcadia, Arcadian often applied to an earlier landscape architecture philosophy which has been loosely applied here.

⁵ List entry no. 1206876.

11. Internally, notwithstanding certain later alterations, the property features various quintessentially high Victorian design features. Picture rails, dado rails and intricately-detailed cornices are present. There are ornate ceiling mouldings in 'formal' or entertaining rooms, annotated on the supporting plans as reception rooms nos. 1 and 2. Decorative friezes above picture rails and anaglypta below dado rails are also present on occasion.
12. Adornment at Woodbury reflects a classic Victorian hierarchy of spaces; those used for entertaining are highly detailed, those used for more 'functional' or service purposes plainer. As a rule the formal elements of Woodbury are to the west, providing views of the tiered gardens heading downwards towards Babbacombe Road. The functional elements of the property are to the east, near the secondary access to the property, nestled in the rising landform.
13. The LCA contains certain older properties,⁶ and nearby there is evidence of human settlement stretching back millennia.⁷ Nevertheless in both era and aesthetic Woodbury is typical of nearby buildings and of the character and appearance of the LCA as a whole. It thereby contributes positively to it, and reciprocally the same is true. The LCA is extensive, arching around the undulating south-western headland of Torquay.
14. Dwellings, typically grand neo-classical villas also, are at low density. The area is interspersed with mature trees and established vegetation. The area therefore has a clear harmonious character and strong historic integrity. In broad terms the LCA represents a polite, planned architectural expansion of Torquay beyond Torre. It is broadly coterminous with the mid-nineteenth century construction of the railway line and the associated influx of wealth, leisure, and conspicuous display that came with it.
15. Beyond Babbacombe Road extends the Warberries Conservation Area ('WCA'), covering Warberry Hill. The LCA and WCA are two of 10 interlocking conservation areas at Torquay, themselves overlapping with various listed buildings and their settings. To varying degrees both reflect the rapid Georgian and Victorian expansion of the Town. The Conservation Area Appraisal ('CAA') for the WCA indicates that by 1851 the population of Torquay had expanded 91% relative to the previous decade, the town thereafter expanding a further 43% between 1851 and 1861.
16. Notwithstanding some later development, the interlocking conservation areas at Torquay reflect its economic heyday. The observation at paragraph 3.1 of the CAA in respect of the character areas within the WCA is equally true of the relationship between the WCA and LCA, in that rather than an abrupt change in character between areas, there is instead 'a blurring at the interfaces'.
17. Consequently, insofar as these appeals are concerned, the special interest and significance of Woodbury results principally from its form, layout, architectural detailing and ornamentation, the arrangement of its grounds and its relationship to the landscape and wider area (including consistency with the

⁶ Including grade II* listed Hesketh Crescent (early Victorian in a grand Georgian aesthetic).

⁷ Reflected, amongst other things in the palaeolithic caves of Kent's Cavern.

character and appearance of the LCA and WCA). Those facets, along with the harmonious character and appearance of the LCA and WCA honestly attest to mid nineteenth philosophies of architecture and landscape architecture, physically reflecting historic social and economic trends.

The history to Woodbury

18. The appellant's appeal statement in respect of appeals C and D provides additional detail in respect of the history to Woodbury which is not apparently within their appeal statement in respect of appeals A and B. However any evidence in respect of appeals C and D is inevitably of relevance to both pairs of appeals, and there has been suitable opportunity to consider it at appeal. The foregoing statement explains how Woodbury was, aligned with the relative economic decline of Torquay as a wealthy leisure destination, subdivided into 2, and thereafter 3, units in the mid twentieth century.
19. That subdivision remains appreciable in 4 principal ways. First, external steps have been created to a rear door, close to the relative high point of the plot and secondary access off Lincombe Hill. A gantry spans the differential in ground level to provide for first floor access there. Those steps appear to have been created out of shuttered concrete. The gantry is principally of rendered brickwork incorporating steel joists (now spalling). Secondly, an internal staircase has been created to allow for communication between former ground and first floor spaces, at what was 'maisonette no.3'.⁸
20. On account of the internal subdivision of the property, the original hallway stairs were removed. That alteration is attested to by scars in the building fabric; the detailed hallway cornice ends abruptly and inexplicably part way across a ground floor wall. A blocked half-landing remains in that location at first floor. Fourth, again by consequence of the foregoing, there are a number of non-original openings and studwork partition walls internally.⁹ Those are, consistent with the historic hierarchy of spaces at Woodbury, principally concentrated towards the east of the property.
21. Historic significance may not only be embodied in the original form of a building, but may also be reflected in changes over time. However in this instance mid twentieth century alterations have diminished integrity rather than reflecting anything by way of meaningful historic significance. From what I saw they may fairly be characterised as relatively insensitive alterations.
22. I am told, however, that for many years Woodbury has been occupied as a single dwelling (as it is now). The appellant explains that separate water and sewerage services were replaced by a single contract in 1998, and that from 2002 the listed building has been occupied as such.¹⁰ Whilst there is no formal record of the foregoing, for example a certificate of lawfulness of existing use under section 191 of the 1990 Act, there is equally no countervailing evidence to that history, nor contention from the Council that it is inaccurate.

⁸ Between what is annotated as bedrooms 3 and 4 on drawing 03 Rev.A, shown on plans as what is identified as a conveyance plan of 1962 in the HS.

⁹ Notably punching through an original external wall providing for a corridor to the external first floor access, and various partition walls inserted to create smaller rooms and bathrooms (HS, page 11).

¹⁰ Appellant's statement of case in respect of appeals C and D, paragraph 5.39.8 onwards.

23. Affixed by way of posts set behind the stone boundary wall, a profiled metal fence exists around much of the plot. It is finished in dark green and set in stepped form reflecting the changing topography. It reaches a modest height above the stone wall and was, at the time of my site visit, partially subsumed by planting. The appellant explains that there was a fence of comparable appearance, timber as opposed to profiled metal, in place for many years (the current iteration having been present now for some three years). Neither attracted enforcement action. The Council's officer report associated with appeals C and D similarly notes that a timber fence of broadly comparable design had existed here for many years.

The proposal, appeals A and B

24. The initial scheme in respect of appeals A and B, submitted on 28 November 2021, was amended on 9 March 2022 and thereafter also on 4 August 2022. All iterations preceded the Council's decision notices of 26 August 2022. At appeal the appellant helpfully set out the sequence of revisions.¹¹ Albeit that the intended use and proposed works are intertwined, the Council's decision notices do not raise objection to the use of Woodbury as a single dwelling.
25. Some plans remain from the original scheme, some have been amended once, and others two or more times. Some associated documents have been revised reflecting that process, and addenda to Design, Access and Planning Heritage Statement supporting the original proposal have also been produced. Rationally the iteration of the proposal responds to matters arising during the determination of the applications. Nevertheless the foregoing represents a complex nest of documentation.
26. In summary, in respect of appeals A and B, permission and consent is sought for the existing profiled metal fence panels as they stand. Otherwise, comparing plans 02 Rev.0 and 05 Rev.B, the sole changes to the plot of Woodbury would be the removal of the north-east projecting steps and gantry and the creation of a detached garage in roughly that location. The garage would be served by the existing secondary access to Lincombe Hill; comparing plans no. 02 Rev.0 and 05 Rev.B there would be no alterations to the width thereof.
27. Little would change in respect of the existing external elevations of Woodbury (comparing plans 03 Rev.0 and 07 Rev.A). The gantry would be removed, and the doorway it presently serves blocked up. Additionally what is annotated on the plan 07 Rev.A as an 'original window' next to the doorway referenced above would be reinstated. A single rooflight would also be installed, set hard up against a chimney stack within the north-eastern roof slope.
28. Internally the listed building would be remodelled. A central staircase would be introduced, providing the function of the mid twentieth century staircase proposed for removal. Plan 16 shows how alterations would interact with the existing cornice detailing. Extended or additional openings would also be created at walls A, B, C and E at ground floor (as annotated on supporting plan

¹¹ Via correspondence of 12 May 2023.

06 Rev.C). Various partition walls would also be removed, both at ground floor and first floor level.

The proposal, appeals C and D

29. Certain changes were made to the proposal during the Council's determination of appeals C and D, albeit that none post-date the Council's decision of 10 January 2023.¹² As in respect of appeals A and B the appellant has set out the history to any revisions at appeal. The boundary treatment proposed via appeals C and D is to retain the metal panels, but also to face them with vertical timber cladding. Otherwise changes to the plot and external elevations would be as in respect of appeals A and B.
30. Unfortunately some of the annotations have changed between plans related to appeals A and B and C and D, which adds to complexity. For example walls D and E change between plan 06 Rev.C related to the former pair of appeals and plan 06 supporting the latter pair. In essence though, there is also an remodelling proposed. Likewise a central staircase would be installed. Enlarged or new openings would be created between rooms, and existing partitions removed.

The 2023 scheme

31. The 2023 scheme was not apparently reflected in the information submitted originally at appeal, but rather referenced in the appellant's correspondence of 30 May 2023. The 2023 scheme effectively reflects a fallback position, i.e. it represents development and works which are clearly more than a theoretical proposition. There is no indication that the 2023 scheme would not be effected regardless of the outcome of these appeals.
32. Given that materiality, it is necessary to describe the 2023 scheme and its relationship to the proposals before me. Reviewing the approved plans in respect of the 2023 scheme, none appear to show either the existing fencing or the proposed recladding thereof that are part of appeals A through D. Externally the only discernible difference between 2023 scheme and appeals A and B is the apparent omission of the proposed rooflight.
33. Internally the 2023 scheme bears closest similarity to the appeal A and B proposal, although it is not exactly the same. There would be a differential treatment to internal wall A dividing the hallway from what is presently the ground floor kitchen (in that the existing opening and doorway would be retained rather than altered). In respect of internal walls B and C 'original' or historic doorways would be reinstated as opposed to the bi-folding doors proposed via appeals A and B (comparing plan 06 Rev.D related to the 2023 scheme, and plan 06 Rev.C related to the appeal A and B proposal). In respect of all schemes some tying in and cosmetic finishing would also be required

¹² In that context my decision is based on the following plans: 01, 02, 03 Rev.A, 03 'Existing elevations' which the appellant indicates is mislabelled and should instead be 04, 05 Rev.B, 06, 07 Rev.B, 08 Rev.B, 09, 10, 10 which the appellant indicates is mislabelled and should instead be 11, 12 Rev.A, 11 which the appellant indicates should be 13, 12 which the appellant indicates should be 14, 15 which the appellant indicates should be 14 (which cannot be correct itself as that would duplicate the preceding reference), 16, 17 and 18. I note that some of the plan titles which the appellant has used to describe the plans differ to those on the plans themselves.

(along with secondary glazing being proposed).¹³ I understand, via correspondence dated 13 June 2023, that the appellant is appealing, or is intending to appeal, against certain conditions imposed in respect of the 2023 scheme.

The effect of the scheme, appeals A and B

34. In respect of internal wall 'A', shown on plan 06 Rev.C, which separates the entrance corridor from what is presently the ground floor kitchen, existing openings would be enlarged. That may entail the loss of some historic fabric, however that is ambiguous at best. That wall is in a logical structural position relative to the first floor arrangement. However there is nothing to indicate that it is historically significant; the appellant's HS indicates that, consistent with the arrangement of other comparable properties, it may be a later alteration to subdivide an originally more spacious hallway. It is of indeterminate age, relates more to the 'functional' east of the property, and already contains a doorway and large hatch. In that context alterations proposed there would be so minimal as to be neutral.
35. Walls B and C are part of the same, originally external, Victorian wall. Historic fabric would be lost there by virtue of the bi-folding doors proposed. However, the alterations proposed in those respects would be very limited, would relate to principally 'functional' aspects of the property, and would not undermine an appreciation of the historic hierarchy of rooms. As further shown in the diagram on paragraph 14 of the appellant's heritage statement, that wall contains both historic openings and has been extensively altered over time (incrementally rather than by virtue of deliberate agency). Loss of historic fabric there would be approaching negligible in terms of harm.
36. A new entrance would also be created off the hallway by the central stairway into what is presently annotated as 'reception 3', however that would effectively be to redress its blocking up associated with the subdivision of the property, thereby relating to the removal of mid-twentieth century fabric. The proposed rooflight would also affect what appears to be relatively recent rather than historic fabric,¹⁴ and would largely be occluded from view by virtue of being set tight against a chimney stack. Given the location of the proposed garage, and means of construction of the existing fence, subject to adherence to suitably-worded conditions, the proposal would not entail adverse effects in respect of protected trees (nor would the garage or new gate associated with it be incongruous relative to the prevailing context).¹⁵
37. The proposal in respect of appeals A and B is to retain the existing profiled metal boundary fence. I understand the appellant's rationale for seeking to do so, for privacy, security, noise attenuation (and as the fence already exists). Whilst I will return to the heritage balance in respect of the scheme, the fence as it stands is incongruous. It is industrial and engineered in form, comparable to the profile of shipping containers or security fencing. Although it is partially

¹³ Including via the addition of structural members as referenced in respect of appeals A and B through 'Structural Design Calculations' by Ryall Structural Engineers, ref. RS-251.

¹⁴ Limited Structural Report, PCA Consulting Engineers, June 2021, ref. 16317, section 3.1.

¹⁵ Arboricultural Impact Assessment, Dart Tree Consultancy, 4 July 2022 Report AIA-WOO-22, noting that a detached garage has previously existed on the plot, including as indicated in conveyancing plans of 1962 reproduced in the HS.

obscured by vegetation, and also by certain street trees, at the time of my site visit it was nevertheless readily perceptible from various vantage points.

38. The existing fence jars with the prevailing nature of boundary features here as described above. I was unable to identify comparable fences in the vicinity during my site visit. An existing example of metal fencing brought to my attention by the appellant demonstrates only that there is metal fencing of a different design somewhere else in Torbay Council's administrative area, outside of the LCA.¹⁶ By consequence of the foregoing the fence as it stands detracts from historic significance in terms of material and design (both in relation to Woodbury, the LCA and the setting of the WCA).
39. In other respects, however, the proposal would be beneficial in terms of significance. The removal of the rear external steps and gantry would improve the historic coherence of the property. That would similarly be the case of the insertion of a central staircase, effectively remedying deleterious mid twentieth century subdivision. Likewise the removal of non-original partition walls, blocking up of an anachronistic doorway served by the external steps and gantry, reinstating a window and window reveals would also be beneficial.

Consideration, appeals A and B

40. In summary, taken as a whole and aside from the metal fence, on balance works proposed would benefit significance rather than detract from it in line with the relevant provisions of statute, policy and the NPPF cited above. Given the terms of section 7 of the LBC Act, material changes of use do not necessarily require listed building consent, albeit in the abstract may be contingent on other works. I note that the Council state that they are current unable to demonstrate an adequate forward supply of housing land in line with NPPF paragraphs 68 and 74. On paper the proposal would reduce housing supply.
41. However the implications of the use proposed, insofar as legitimate to take into account in this context, would be neutral. There is no countervailing evidence to indicate other than that Woodbury has been occupied as a single dwelling since around 1998 or 2002. That pre-dates the adoption of the TLP or making of the TNP by more than a decade. There is also no indication that three or two units here have been 'counted' in terms of the formulation of development plan housing requirements. As census data and population projections will have influenced plan-making to some degree, the opposite is in all likelihood the case. Furthermore Woodbury was created historically as a single dwelling; returning it to such would be beneficial in terms of historic integrity. That, in conjunction with the foregoing heritage benefits, would offset any negative housing supply implications with regard to the specific history to Woodbury. That reasoning is arrived at independently.¹⁷
42. However there is a logical disjuncture between the heritage benefits of the scheme and their relationship to the existing fence. Assessing the heritage

¹⁶ There is no information before me as to whether that fencing, associated with Villa Marina albeit next to the grade II listed Redcliffe Hotel is authorised, or if it is as to the particular circumstances that justified it.

¹⁷ There being no substantive details before me as to the circumstances applicable to the Avonleigh scheme referred to by the appellants (permission ref P/2010/1169) or at 1 and 1A Wellswood Park (P/2021/0899).

implications of a scheme is not a process of establishing a quantity of benefits on the one hand and a quantity of harm on the other. There must be some connection between the two in order to clearly justify any harm. In that context, whilst retaining the metal fence as it stands would be personally beneficial to the occupants of Woodbury, there is insufficient justification for that based on the evidence before me.

43. I appreciate that the topography falls along Acadia Road down towards Babbacombe Road before rising again towards Warberry Hill. By consequence Woodbury is comparatively exposed, and therefore some form of screening here would, I accept, be logical. That said there is no substantive evidence before me in respect of anti-social behaviour, and privacy and disturbance are to large extent dependent on personal perception. Moreover the current appearance of the fence may attract anti-social behaviour as much as it would serve to dissuade it (by potentially giving the impression of a secured, shuttered and thereby vacant property).
44. Training climbing plants may soften the appearance of the fence. However that cannot be relied upon to entirely occlude it, plants being impermanent. Moreover a condition to that effect is unlikely to be either sufficiently precise or enforceable. Summarising the above, the public benefits of the fence as it stands are not clearly justified, and there is also no indication that an alternative approach to improving privacy and security could not be achieved (for example one which is less harmful).

The effect of the scheme, appeals C and D

45. The description of the appeal C and D scheme, reproduced from the appellant's application form in the banner heading above, is incorrect. Neither application ref. P/2022/1207 nor P/2022/1208/LB are straight resubmissions of applications P/2021/1293 and P/2021/1294/LB. There is some overlap, however; my reasoning in respect of the effects of the appeals A and B scheme stands in relation to the garage, steps and gantry and beneficial effects of redressing mid twentieth century interventions more broadly.
46. However, notwithstanding the complexity of the plans, internal alterations differ in the appeal C and D scheme compared to the appeal A and B scheme. As in respect of appeals A and B, given the existing nature of the wall between the hallway and kitchen and original east-facing external Victorian wall, the implications of the scheme there would, in summary, be approaching negligible in terms of effects to historic integrity. However in respect of the appeal C and D proposal there would be a substantial intervention instead in wall 'E' as shown on plan 06. That is an original wall between what is annotated on existing plans as dividing 'reception 1' from 'reception 3' (the partition within the former shown in the conveyancing plan of 1962 now absent).
47. That intervention would remove a substantial proportion of fine detailing from a higher status room, including the dado rail, skirting and anaglypta. The intervention proposed there, to create a partially open-plan kitchen/ dining room would also be at odds with the historic hierarchy of rooms described

above.¹⁸ Whilst such arrangements may exist at other properties of similar era, they do not here. By virtue of the loss of historic fabric, of architectural detailing, and by comprising the historic layout of the property, the appeal C and D proposal would be to the detriment of significance.

48. The appellant has, in respect of appeals C and D, proposed cladding the existing fence with vertically-arranged timber.¹⁹ That would in my view significantly lessen the discordant appearance of the fence as it stands. Wood is a material which naturally changes and softens over time. Wood also has greater affinity with historic craftsmanship than engineered steel. The officer report associated with the appeal C and D applications notes that 'in this instance the existence of the timber fence for a significant amount of time without enforcement action being taken establishes the potential for sympathetic fencing in this location'. In that context, whilst the level of screening provided for by the fence is not entirely in keeping with prevailing boundary features, maintaining the fence and cladding it with timber would be neutral in terms of significance taking account of the particular nature of the plot of Woodbury and its history.

Consideration, appeals C and D

49. NPPF paragraph 200 sets out how 'any harm' should require 'clear and convincing justification', as further set out via NPPF paragraph 201 with reference to the public benefits of a scheme. By the same token as my reasoning in respect of use applies here, so too does the reasoning in paragraph 42 of these decisions. In that context, there is nothing to indicate that the use of Woodbury as a single dwelling would be inherently unviable, or unduly compromised, without the internal interventions proposed (indeed the appeal A and B scheme and 2023 scheme serve to disprove that proposition). That is notwithstanding that any harm I have identified in respect of any appeals may fairly be termed less than substantial with reference to the terminology used in the NPPF.
50. Many individuals accept quirks and compromises as the corollary of living in a property with a rich history. In essence works to 'wall E' reflect a preference in terms of internal arrangement rather than a public benefit. The 2023 scheme furthermore lends no support to the alteration of wall E. There is therefore no clear and convincing justification in terms of the public benefits that would lead me to conclude that the alterations proposed via the appeal C and D scheme should be allowed.

Conclusions

51. Drawing my reasoning together, the internal works proposed via appeals A and B are justified (with reference to the relevant provisions of statute, the development plan, and NPPF set out in paragraphs 3 to 5 above). Conversely the internal works proposed via appeals C and D are not. Nonetheless, following my reasoning in paragraph 48 above, the boundary treatments

¹⁸ Albeit I acknowledge the social conventions that existed during the Victorian era of formality and informality no longer apply to any meaningful extent.

¹⁹ As shown on drawing no.18 and reflected in figure 35 of the associated Design and Access and Planning Statement (albeit that the two types of cladding shown there differ).

proposed via appeals C and D would have a neutral effect, as opposed to the harm that would result from the retention of the metal boundary fence as it stands.

52. Whilst I note points made by the appellant in respect of the observations of the Victorian Society and Council for British Archaeology, which I address also in the costs decision, it is unclear whether either organisation expressly considered effects of the boundary fence (as opposed to implications for the listed building itself). In that context I note that it is the appellant's contention that the fence, or works to it, do not need listed building consent (with reference to the construction of section 1(5) of the LBC Act). Be that as it may, reference is made in each of the application forms in respect of the applications to which appeals A through D relate to the 'retention of existing boundary fence'.²⁰
53. For exactitude I have therefore amended the description of development and works permitted relative to that set out in the application form (paragraph 1 of these decisions). Inherent in the foregoing reasoning is that I am asked to consider a complex amalgamation of plans covering numerous iterations. I may reverse or vary any part of the decision of the Council, and deal with the application as if made to me in the first instance.²¹ Legislative provision to impose conditions is broad,²² and there is no indication that differential boundary treatments advanced via appeals A and B relative to appeals C and D are exclusively related to other elements of their respective schemes.
54. Consequently, I conclude that, subject to conditions requiring the retained metal fence to be timber clad or faced, and other conditions in the first and second schedules to this decision, having had regard to statutory provisions, the development plan as a whole, and all other relevant material considerations, appeals A and B should be allowed, but appeals C and D should be dismissed.

Conditions

Appeal A

55. In addition to requiring commencement within the relevant statutory period, it is necessary to ensure the approved plans are adhered to for clarity, and so as to ensure that the proposal is implemented in line with my assessment.²³
56. Given the proximity of mature trees to the north-eastern elevation of the listed building and its plot, the importance thereof to prevailing character, and with

²⁰ Notwithstanding that 'retention' is neither development nor works with reference to the construction of the LBC Act nor 1990 Act.

²¹ 1990 Act, section 79(1).

²² Ibid., section 70(1).

²³ For the avoidance of doubt plan nos. 02 Rev.0, 03 Rev.0, 03 Rev.A are existing plans, and notwithstanding any reasoning above, those references and any others in condition 2 are to that which is annotated on the plans themselves. I have omitted plans 11, 11, 12 and 13 as, although they show the fence panels as existing, following my reasoning in paragraph 54 above I have instead required adherence to plans 16, 17 and 18 associated with appeals C and D. I have accordingly specified that plan 05 Rev.B does not apply to the boundary wall in that context.

reference to the statutory duty on me in this respect,²⁴ safeguarding trees via condition is also necessary and reasonable.

57. For similar reasons it is necessary to specify that external works, finishes and any making good matches those characteristics of the property as it stands. Agreed external materials and finishes in respect of the garage and fence are also, for the same reason, necessary to condition. As noted above in respect of the roof structure of Woodbury, there is in my view no necessity that the garage is finished in natural slates affixed by way of nails as required via condition 05 to application ref. P/2023/0188.
58. To mitigate effects to neighbours associated with the demolition of the stairs and gantry and the construction of the garage close to the boundary of the plot, adherence to a site specific construction and demolition plan is also necessary (as required via condition 5 in the first schedule below). Similarly it is necessary to specify reasonable hours of construction (first schedule, condition 6).
59. Reflecting that Torbay is designated as a Critical Drainage Age, notwithstanding that development will in any event need to comply with the relevant of the Building Regulations 2010 as amended, it is nevertheless necessary and reasonable to impose a condition requiring adherence to the approach to drainage supporting the scheme. That would bring the proposal into compliance with TLP policy ER1 and NPPF paragraph 167.
60. Similarly with reference to TNP policy TE5 and the general biodiversity duty,²⁵ it is further necessary to specify via condition 8 to the first schedule that the proposal shall accord with the environmental recommendations in the supporting bat and bird assessment.
61. I note that the first schedule of conditions associated with appeal A relate to development, as opposed to works governed by conditions set out in the second schedule. In that context, and with reference to the approach to imposing conditions in the NPPF, PPG and relevant statute,²⁶ I have amended the wording of certain conditions put to me without altering their fundamental aims.

Appeal B

62. Conditions 1 and 2 to the second schedule are necessary for essentially the same reasons given in paragraph 55 above.
63. Condition 02 attached to the Council's decision in respect of listed building consent ref. P/2023/0189 reflects what the council describe in their statement of case, at paragraphs 8.5(c) and (d), as a 'Method Statement' and 'Schedule of Works'. Given that listed buildings are an irreplaceable resource, ensuring that works proceed with suitable caution is appropriate. It is therefore

²⁴ Section 197 of the 1990 Act.

²⁵ Section 40 of the Natural Environment and Rural Communities Act 2006 as amended.

²⁶ Noting the provisions of section 100Za of the 1990 Act which relate to imposing planning conditions and those in the DMPO.

legitimate and necessary to impose a variant of condition 02, which sets out precisely what is required (second schedule, condition 3). For clarity, that condition would include a description of the methodology by which demolition and construction would be undertaken, including the use of intended tools. Whilst specifying that works are undertaken by hand tools is a relatively common condition in respect of listed buildings, to avoid insensitive works by larger machinery, provision is made within that condition for a suitably-sensitive methodology to be employed.

64. Via correspondence of 13 June 2023 the appellant contends that condition 03 attached to listed building consent ref. P/2023/0189, which relates to detailed plans of certain alterations, is unnecessary (or unnecessarily prescriptive). Whilst it is not for me to comment on that condition specifically, in this instance many of the plans showing alterations are of limited scale and detail, such that requiring greater precision is necessary.²⁷
65. In that context, for the same rationale as in respect of condition 3 in the second schedule below, it is reasonable and necessary to specify that detailed drawings are provided in respect of certain works (condition 4). Likewise it is reasonable to make provision that if hidden historic features are revealed during undertaking works, which are neither reflected in the application nor foreseen pursuant to other conditions below, they are suitably addressed and recorded (as would be achieved via condition 5 to the second schedule).
66. At paragraph 8.5(f) of the Council's statement of case there is the suggestion that, if listed building consent were to be allowed, that should be subject to a 'scheme of building recording'. In light of the information submitted in respect of Woodbury to date, along with the provisions of other conditions in the second schedule to these decisions, that degree of specificity is, however, unnecessary. As with conditions in the first schedule, I have amended the wording of certain conditions put to me in respect of appeal B without altering their fundamental aims.

Tom Bristow
INSPECTOR

²⁷ For example as shown on plan 10 Rev.B which is scaled at 1:50 at A0.

FIRST SCHEDULE OF CONDITIONS (APPEAL A)

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 undertaken in accordance with the following approved plans: 02 Rev.0, 03 Rev.0, 03 Rev.A, 05 Rev.B (other than in respect of the boundary wall details shown thereupon) 06 Rev.C, 07 Rev.A, 08 Rev.B, 09 Rev.0, 10 Rev.B, 12 Rev.A, 16 and 16, 17, 18 submitted in support of application ref. P/2022/1207.
3. The development hereby permitted shall be undertaken in accordance with the approach set out in Arboricultural Impact Assessment, Dart Tree Consultancy, 4 July 2022, report AIA-WOO-22, including the construction exclusion zone as shown on the Tree Protection Plan therein.
4. All new external works, finishes and making good associated with the development hereby permitted shall match those materials, finishes and details which already exist. Before their installation in the construction of the garage and fence hereby permitted, details or samples of the proposed external materials and detailing shall have been submitted to, and agreed in writing by, the local planning authority. The garage and fence hereby permitted shall be constructed in accordance with the agreed materials and detailing, which shall thereafter be retained.
5. No demolition of the side addition shown on the approved plans, nor construction of the garage hereby permitted, shall take place until a site-specific construction and demolition management plan ('CDMP') has been submitted to and agreed in writing by the local planning authority. The CDMP shall include details of measures to minimise noise, vibration and dust associated with the foregoing. The agreed CDMP shall be adhered to throughout construction.
6. No demolition or construction work, or ancillary activities such as deliveries, related to the development hereby permitted shall take place outside of the following hours: 08:00 to 18:00 Mondays to Fridays inclusive, 08:00 to 13:00 on Saturdays. No demolition or construction work, or ancillary activities such as deliveries, related to the development hereby permitted shall take place at any time on Sundays or on Bank or Public Holidays.
7. The development hereby permitted shall be undertaken in accordance with the approach set out in the supporting Flood Risk Assessment (C Miller-Bassi MSc MRTPI, 6 March 2022). Once undertaken in accordance with the foregoing, that approach shall thereafter be maintained.

8. The development hereby permitted shall be undertaken in accordance with the recommendations of the supporting Bat and Bird Assessment (Orbis Ecology, ref. ORBCMBBJ, dated 28 February 2022).

SECOND SCHEDULE OF CONDITIONS (APPEAL B)

1. The works hereby authorised shall begin not later than three years from the date of this consent.
2. The works hereby authorised shall be undertaken in accordance with the following approved plans: 02 Rev.0, 03 Rev.0, 03 Rev.A, 05 Rev.B (other than in respect of the boundary wall details shown thereupon) 06 Rev.C, 07 Rev.A, 08 Rev.B, 09 Rev.0, 10 Rev.B, 12 Rev.A, 16 and 16, 17, 18 submitted in support of application ref. P/2022/1208/LB.
3. The works hereby authorised shall be undertaken in accordance with a schedule of works (which shall previously have been submitted to, and agreed in writing by, the local planning authority). The schedule of works shall include, including by way of photographic representation as appropriate, details of (i) the extent of works relative to the existing fabric of the listed building (ii) materials to be used to match existing materials and finishing (iii) a method statement in respect of demolition, construction, tools and processes to be involved, and any tying-in, making good or cosmetic finishes, (iv) measures to protect the existing fabric of the building, and (v) the timing or scheduling of such works. In addition any secondary glazing shall be temporary and removable.
4. Notwithstanding condition 2 above, no works hereby authorised shall take place until the following details have been submitted to, and agreed in writing by, the local planning authority: (i) new windows and doors, window and door reveals, and any reinstatement and revealing of existing features (ii) carpentry, joinery and internal finishes, including any interaction with existing fabric. Such details shall be represented at a minimum of 1/10 scale in respect of plans, or represented by virtue of photography/ photographic montage of suitably-detailed resolution. Works shall be undertaken in accordance with agreed details and thereafter retained as such.
5. If, during undertaking the works hereby authorised, unforeseen or hidden historic features are revealed or encountered, they are to be retained in-situ. In that eventuality any historic features should not be affected by the works proposed and a further specific schedule of works (aligned with the detail specified in condition 3) shall be submitted to, and agreed in writing by, the local planning authority. Any relevant works shall thereafter proceed in line with the agreed specific schedule of works.