The Planning Inspectorate

Appeal Decision

Site visit made on 21 November 2023

by J Evans BA(Hons) AssocRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2023

Appeal Ref: APP/X1165/D/23/3329227

24 Vicarage Road, Torquay 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 Michael Cotton against the decision of Torbay Council.
- The application Ref: P/2021/0782, dated 28 June 2021, was refused by notice dated 25 August 2023.
- The development proposed is described as the installation of cycle and canoe store and associated works.

Decision

1. The appeal is dismissed.

Procedural Matters

2. It was evident to me following my site visit that elements of the appeal proposals have been undertaken. The description on the decision notice also refers to the appeal proposal as 'part retrospective.' Section 73A of the Town and Country Planning Act 1990 (the Act) makes allowance for the submission of a planning application for development which has been carried out before the date of the application.

3. Section 55 of the Act describes development as the carrying out of building operations or the making of material changes of use rather than the retention of works or the continuation of a use. I have therefore not included the words 'part retrospective' in the description of the proposal, and I have reworded the description of the development to better reflect the proposal before me. I have considered the appeal on this basis.

Main Issues

4. The main issues are the effects of the development on the character and appearance of the area and designated heritage assets, including that of the Chelston Conservation Area (the CA) and the setting of the Grade II* listed St Mathews Church, and surface water drainage.

Reasons

Character and appearance

5. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, as amended, requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the CA. These

statutory requirements are reinforced through Policy SS10 of the adopted Torbay Local Plan 2012-2030 (the LP).

6. Paragraph 199 of the National Planning Policy Framework (the Framework) says when considering the impact of a proposed development on the significance of a heritage asset (including conservation areas), great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 202 of the Framework explains that where a development proposal will lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal.

7. I am also aware of the Chelston Conservation Area Character Appraisal (the CAA). This document does not form part of the development plan but was subject to public consultation and I consider it to be a useful and material document in the appraisal of the appeal proposals.

8. Paragraph 4.1.11 of the CAA explains that: *'The 1880s villas, fan out north and south from St Matthew's Field – an important green area of public open space, St Matthew's Road to the north, Vicarage Road to the south – and are a mixture of detached and semi-detached as dictated by the undulating topography. Almost all retain the majority of their original Victorian detail with very little later alteration.'*

9. The CAA refers to the appeal property on Map One as *'Other key buildings and building groups of architectural importance or which make a significant contribution to the townscape.'* Through Map Five the CAA details the front boundary wall of the appeal property as part of the identified *'Prominent Walls'* in the CA.

10. Following my visit to the appeal site, it was evident to me that the front boundary walls to the properties along Vicarage Road, as a consequence of their use of traditional materials, height and consistency are distinctive features that provide an important contribution to the character and history of their associated properties, and of the wider area, including that of the CA. The alterations to the front boundary wall of the appeal property, including the rebuilding and raising of its height and associated gate posts, which have an odd combination of exposed brickwork and stone, are not consistent with the boundary enclosures and gate posts found elsewhere along Vicarage Road in terms of proportions, style and appearance.

11. Further, the proposed works to provide for the cycle/ canoe store to be positioned behind the front boundary wall through the excavation, then raising of the front garden area, which would thereafter provide for a raised levelled area to be enclosed by railings with the store underneath, would result in an elevated and level building mass as perceived from Vicarage Road and St Matthew's Field opposite. These works would also not be reflective of the characteristics along the road, which predominately consist of sloping gardens leading upwards from the front of the properties recognised through the CAA as key buildings and building groups.

12. For the above reasons, the appeal proposals would appear unusual and incoherent as a result, unduly drawing the eye. They would create prominent

discordant features to the front of the appeal property that would materially impact upon the visual quality of the street scene and would fail to preserve the character or appearance of the CA.

13. In reaching my conclusions on this matter, I acknowledge that the property next door to the west of the appeal site has at some point in the past removed the front boundary wall, excavated the garden area back to provide for off street parking spaces and includes a level area to the front of the property enclosed by railings. However, I have no information as to the planning background behind these works, but nonetheless, these works are uncharacteristic of the area and out of context with the rest of Vicarage Road. They do not to my mind provide for a satisfactory justification for the harm that would arise from the appeal proposals. In any case, I am required to determine the appeal on its own individual merits.

14. Turning to the effects upon the setting of the Grade II* listed St Mathews Church. I agree with the appellant on this point that due to the nature of the proposals and the separation distances involved between the appeal site and this designated heritage asset, there would be no resultant effect upon its setting.

15. For the above reasons, the appeal proposals are harmful to the character and appearance of the appeal property and the surrounding area. The appeal proposals would also fail to preserve or enhance the character and appearance of the CA. This harm would be less than substantial as defined by the Framework and therefore should be weighed against any public benefits of the proposal. The benefits to the appellant, which includes providing for convenient and secure storage space for domestic items, such as cycles and canoes, alongside providing an area to screen recycling and refuse bins from public vantage points, would not outweigh the harm I have identified.

16. I therefore conclude that the appeal proposals would conflict with Policies DE1, DE5, SS10 of the LP, Policy TH8 of the adopted Torquay Neighbourhood Plan 2012 – 2030, Section 16 of the Framework and the CAA, which amongst other matters seek to ensure that development contributes positively to the townscape and conserves designated heritage assets.

Surface water drainage

17. The appeal site is located in the Torbay Critical Drainage Area (the CDA). A CDA is defined by the Environment Agency in areas within Flood Zone 1 where surface water or sewer run off may increase existing flooding problems within the wider catchment. The CDA for Torbay sets out that all new development will have to play its part in reducing current rainfall runoff rates. This requirement also applies to brown field sites that will have to match the same standards. The SUDS hierarchy should be followed, by using infiltration as far as is practicable.

18. The proposal involves a new built structure that removes part of the existing front garden area, which provides for the capture of the surface water on the appeal site.

19. The appellant's flood risk assessment provides no technical detail as to how the proposals would impact upon surface water drainage at the site and how they would meet the objective of the CDA in terms of playing their part in reducing

rainfall run off rates. The appellant does refer to a soakaway and a planned wildlife pond for water capture in their flood risk assessment, but I have no technical details of such, and any certainty that these would be an effective solution to surface water drainage at the site.

20. Without further detail, I cannot be satisfied that there is an appropriate surface water drainage solution at the site in accordance with the CDA.

21. Therefore, the proposals would not align with the CDA and Policy ER1 of the LP, which amongst other matters explains that development proposals will be expected to maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere.

Other matters

22. Reason for refusal 02 refers to cabling and gas piping being attached through the boundary walls, which without secure cabinets may represent a safety hazard as a result.

23. The appellant states that the proposal does not include any cabling and gas piping, and that these items pre-existed the proposals and are nonetheless implemented to the correct relevant standards.

24. As I am dismissing the appeal on other matters, it has not been critical for me to explore this matter further. Nonetheless, it seems to me that, if necessary, it may have been possible to address this matter through appropriately worded planning conditions if I had been minded to allow the appeal.

Conclusions

25. For all the above reasons, having regard to all matters raised, I conclude that the appeal should be dismissed.

J Evans

INSPECTOR