



Appeal Decision

Site visit made on 3 January 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 January 2024

Appeal Ref: APP/X1165/W/23/3324342

1 New Street, Paignton TQ3 3HL

- 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 Ms Myers against the decision of Torbay Council.
 - The application Ref P/2023/0094, dated 27 January 2023, was refused by notice dated 5 April 2023.
 - The development proposed is described as “alterations to boundary fence removal of wall to enable works (all as drawings)”.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 and is a material consideration in planning decisions. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes albeit that the numbering of paragraphs has changed. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context.

Background and Main Issue

3. Notwithstanding the description of development on the Council’s decision notice and wording within its reason for refusal, the plans show a boundary fence and wall to the side of Coverdale Road rather than its rear. Furthermore, the scheme proposes a hinged folding gate of timber construction and not timber fencing.
4. The application proposes the alteration of an existing boundary fence citing “removal of wall” to enable works. The submitted evidence identifies that approximately 7.6m of a natural stone wall has already been removed, though the plans do not provide precise details of the extent of the removal. In that context, the existing drawings are based on a situation the Council considers to be unauthorised. However, this is not a matter for this appeal.
5. Therefore, notwithstanding the existing and proposed plans, I consider the main issue to be whether the proposed development would preserve or enhance the character or appearance of the Old Paignton Conservation Area (CA) with particular regard to a hinged folding gate and the partial removal of a boundary wall.

Reasons

6. The appeal site is located within the CA where there is a statutory duty to pay special regard to the desirability of preserving or enhancing the character or appearance of the conservation area; and where great weight should be given to the asset's conservation. The CA is characterised by the survival of much of its late 19th century development. This includes period detail where a range of materials including natural stone and bricks survive, as well as boundary walls and ornamental gate piers.
7. The appeal site comprises an unlisted red brick period property that is identified within the Council's CA Character Appraisal, May 2007 as a key Building that is recognised, amongst other things, for its hedged walls surrounding its own garden on three sides. At my visit, I observed that the remaining walls were not hedged, though the evidence demonstrates that the property would have been largely surrounded by stone walls. Walling that includes a detailed gate pier remains largely intact to the rear of the appeal site. Additionally, some of the boundary stone walling within part of the appeal site fronting Coverdale Road is visible from New Street which itself includes attractive garden walls and gate piers. These boundary features define the street spaces and make a significant contribution to the setting of the CA.
8. The proposal provides adaptable access arrangements that have been facilitated by the removal of a large section of wall. Furthermore, there is no public footpath to the side or rear of the appeal site, though there is a pavement and gated access off New Street to the front. However, although it is likely that an original gate opening resulted in restricted manoeuvrability for vehicles and wheelchair users, there is evidence that this would still have provided direct access to the property whilst retaining much of the boundary wall. Additionally, access to the rear of the property is available by a gate that is adjacent to a lane with some on street parking.
9. Whilst the removal of a section of wall would have avoided potential conflict with all road users in terms of safety, there is little evidence that the removal of such a large proportion of it represents the only way to achieve a safe and suitable access to the property for all users. Although the small brick pier on the remaining boundary wall to the side of Coverdale Road does not appear out of place, the removal of a large section of boundary wall nevertheless exposes one side of the property to the street. Whilst I observed the presence of other modern buildings without walled boundaries nearby, the absence of a large section of walled enclosure in this location substantially erodes an important feature of a Key Building that is part of a defining characteristic of the CA as a whole.
10. The proposed close boarded folding timber gate would provide additional adaptable access arrangements to the property, though when closed would appear as a stark and imposing boundary frontage, similar to the existing layout. This would result in an incongruous feature due to a use of materials untypical within the CA. Moreover, if left open, the sense of boundary enclosure would be further eroded.
11. The removed wall causes less than substantial harm to the CA's significance as a designated heritage asset due to its relatively small-scale, as would the proposed gate. Paragraph 208 of the Framework explains that in such circumstances, it is necessary to balance the harm against the public benefits

of the proposed development. The proposed gate would generate employment during the construction phase though this would be very modest given the small scale of the development proposed. Additionally, there would be some public benefit in terms of the safe functionality and relationship between public and private spaces. However, the adverse effects on the CA are a matter of considerable importance and weight. Overall, any such benefits would not be sufficient to outweigh the harm to the designated heritage asset.

12. Therefore, I conclude on the main issue that the proposal would fail to preserve or enhance the character or appearance of the CA with particular regard to a hinged folding gate and the partial removal of a boundary wall. Consequently, the proposal would be in conflict with policies DE1 and SS10 of the Torbay Local Plan 2012 to 2030 and Policy PNP1 of the Paignton Neighbourhood Plan, June 2019 which, together in this respect and amongst other things, seek to conserve and enhance locally distinctive features that make an important contribution to the character and appearance of the area. There would also be conflict with chapter 12 of the Framework which amongst other things, explains that decisions should ensure developments are sympathetic to local character and history.

Other Matters

13. The appellant's comments in respect of the processing of the application are duly noted. In that context, in considering this appeal, I have had due regard to the Public Sector Equality Duty set out under Section 149 of the Equality Act 2010, in particular the need to eliminate discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others. Following careful consideration of the family circumstances, I am satisfied that the impact of dismissing the appeal is proportionate and necessary.
14. The appellant refers to Article 9 of the UNCPRD, which concerns restrictions to the right to freedom of thought, belief and religion. However, I have been provided with no evidence of any conflict in this regard.
15. I am mindful of the rights of disabled persons to a family life and home under Article 8 of the Human Rights Act and Article 19 of the UN Convention on the Rights of Persons with Disabilities (UNCPRD) which recognises the equal rights of all persons with disabilities to live in the community, in particular to ensure that:-
- a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement.*
- (b) Persons with disabilities have access to community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.*
- (c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.*
16. However, as set out in the main issue above, I have found it likely that direct access to the property had previously existed and that little evidence has been

provided to demonstrate that the proposal represents the only or optimal way to secure the equal rights of all persons with disabilities to live in the community. This matter does therefore not outweigh the harm I have identified above.

17. Whilst the private costs of repairing or replacing a stone wall are acknowledged, the courts have taken the view that planning is concerned with land use in the public interest. Additionally, the lack of objection from the public or Council's highways officer would not be a reason in itself to allow inappropriate development. For the reasons given above, any associated costs or lack of objection to the scheme would not justify the harm identified to the CA.

Conclusion

18. For the reasons above, and taking into account all other matters raised, I conclude that the development would fail to accord with the development plan as a whole and therefore the appeal should be dismissed.

J Hills

INSPECTOR

