

Appeal Decision

Site visit made on 13 February 2024

by G Powys Jones MSc FRTPI

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

Decision date: 06.03.2024

Appeal Ref: APP/X1165/W/23/3327520

Barwood, Lower Warbury Road, Torquay, TQ1 1QP

- 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 Dean Edwards against the decision of Torbay Council.
 - The application Ref P/2023/0307, dated 31 March 2023, was refused by notice dated 19 June 2023.
 - The development proposed is a two bedroom dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The appeal property is located within the Warberries Conservation Area (CA), and reference is made in the representations to the 2006 CA Character Appraisal (CACA).
3. Part of the Council's second reason for refusal alleges that it had insufficient information to determine whether the dwelling would comply with national internal space standards. The appellant, to my mind, has sufficiently clarified this matter in his representations.

Main Issues

4. The main issues are: (a) whether the proposed development would preserve or enhance the character or appearance of the CA, and (b) the adequacy of future residents' internal living conditions with reference to light and overshadowing.

Reasons

Conservation Area

5. The appeal site originally formed part of the garden of a large Victorian villa, Stratton, which has since been subdivided, extended and altered to form 3 residential properties. The site now forms the lower part of the curtilage of the dwelling known as Barwood. Barwood itself is principally serviced from Lower Warbury Road, whilst the appeal site has more of a spatial affiliation with Babbacombe Road (A479), and a narrow access from that road to the site is evident. Although there were signs of recent clearance, the appeal site was not put to a productive use when I visited. A hedge runs along Barwood's Babbacombe Road frontage from its junction with Lower Warbury Road.

6. The CACA provides a detailed and well-researched historical account of the CA's evolution and development. The appeal site stands on the southern boundary of the CA¹ and falls within the Warberry Villas character area as defined in the Appraisal. This part of the CA was originally largely characterised by Italianate villas set in spacious grounds and gardens, and strong, obvious strands of that influence remain today, and which provide the basis for the designated asset's significance.
7. The appellant's Heritage Impact Assessment and the appeal representations echo the CACA in pointing to the changes that have taken place in this part of the CA during the latter part of the last century. The CACA also notes the extent to which the original villas have been subject to demolition, and the presence of new buildings. Nevertheless, nothing in the CACA nor in development plan policy suggests to me that the CA's preservation is unwarranted on account of the possible errors of the past. I saw that much remains to be admired in the locality in terms of character and appearance, and this is reflected in the CACA.
8. The appellant's views on the changes made to the original Stratton and the alleged effect on its heritage significance have been noted, but these are not shared in the CACA. The CACA says that:

'..The former Stratton survives well though sub-divided into three as Saville House (recently re-slatted), 441 & 443 Babbacombe Road².
9. Moreover, in the CACA's Map 1 the property is identified within the category described as:

Other key buildings and building groups of architectural importance or which make a significant contribution to the townscape.'
10. Having regard to what I saw, I share the CACA assessment of the significance of Barwood and its neighbours and their contribution to the CA, notwithstanding the changes made. Although subdivided and altered the building provides an important echo of the past given its scale and that many of its original features are retained. One of its striking characteristics is that it still stands in spacious grounds, and in greenery on Barwood's part of the subdivided plot. The building occupies a conspicuous and prominent position on a junction, albeit partly screened by vegetation.
11. The erection of a dwelling on the site would erode the space around the main dwelling, materially affect its setting. It would appear cramped in its visual context offending the characteristic sense of spaciousness experienced in this part of the CA. I acknowledge that in the design the appellant has adopted a reduced height and scale in an attempt to minimize the proposed dwelling's impact, but even so it would remain particularly noticeable when approaching the site from the west along the busy main A road. The development would thus harm the character and appearance of the CA by the erosion of a characteristic space, and by its impact on the setting of a building making a positive contribution to the townscape and the CA's character.

¹ The Lincombes CA adjoins to the south on the other side of Babbacombe Road

² 441 Babbacombe Road is now called Barwood

12. The appellant specifically drew my attention to the fairly recently built flat developments close to the west and north-west of the appeal site. These were present when the CACA was published. Whilst they undoubtedly represent change, the CACA suggests that, given current conservation policies, the demolition of historic villas and their replacement would probably not be allowed now. To my mind, the existence of the flats does not provide a convincing justification for the further erosion of the CA's intrinsic qualities.
13. I have taken account of the appeal decision³ affecting neighbouring land, but it can be distinguished in my view from the present circumstances in that it involved the replacement of an extant building rather than the erection of a building on a clear site. The erection of a further building within the original curtilage of the former Stratton, as proposed, would detract from the prevailing sense of speciousness around the original building, as altered.
14. I therefore conclude that the proposed development, for the reasons set out above, would harm the character and appearance of the CA. Accordingly, a clear conflict arises with those provisions of policy SS10 of the Torbay Local Plan (LP) and policy TH8 of the Torquay Neighbourhood Plan requiring development to conserve and enhance the CA and to respect local character.
15. I find, however, that the harm caused to the significance of the designated asset would be less than substantial. Having regard to the requirements of the Framework⁴, the harm should be weighed against the public benefits of the scheme. The appellant considers that a public benefit would arise by the provision of what is described as an 'affordable' dwelling in circumstances where the Council cannot demonstrate a 3 year housing land supply. This would prove a modest benefit, but insufficient in my judgment to outweigh the harm I have found and, taking account of the CA designation, that referred to as the '*tilted balance*' does not apply.
16. As to the appellant's reference to the '*optimum viable use*' mentioned in the Framework this, it seems to me, in the context of the relevant paragraph is directed to the designated heritage asset rather than to an undeveloped portion of a garden. Whilst I recognise that the profit from the scheme would assist with maintenance cost this is insufficient justification to overcome the harm to the significance of the designated asset.

Living conditions

17. As already explained, a hedge runs along the site's southern frontage. The intention is to retain the hedge to provide screening for the proposed dwelling and to provide privacy for future residents. The Council's concerns centre on the proximity of the hedge to the dwelling. It is considered that the presence of the hedge would harmfully affect the levels of light experienced within the dwelling's habitable rooms because of overshadowing. As a result, the Council feels that future residents' living conditions would be unacceptably substandard.
18. Reports or observations have been produced by two sets of tree specialists, representing the two principal parties. Both agree that shading could prove a

³ APP/X1165/W/21/3279027

⁴ National Planning Policy Framework, paragraph 208 (The Framework)

problem, but both also share the view that the hedge would require future care and management. I saw that the hedge grew close to the adjacent busy road, and unless properly managed it would be affected by high sided vehicles. I have no doubt that future residents, were the dwelling built, would also wish to see the hedge properly managed. I see no over-riding reason why the hedge's height and width could not be controlled and managed if it were done acceptably under appropriate supervision.

19. That being the case, the hedge need not necessarily be as high or bulky as the Council possibly anticipate. Even so, the dwelling's principal elevation would face west so that its ground floor rooms would receive what I regard as an acceptable level of direct sunlight, when the sun shone, from late afternoon onwards for most of the year.
20. Given the large size of the glazed openings at the front on the ground floor, I do not consider that the rooms served would suffer from inadequate daylight, and the room closest to the hedge would have two small side windows to assist.
21. The two bedrooms' principal windows also face west and would also be lit by east-facing skylights which to my mind, bearing in mind the rooms' primary function, would ensure that lighting levels would be acceptable.
22. I therefore conclude that, were the dwelling built, its residents would experience acceptable lighting conditions. Accordingly, I find no conflict with the provisions of LP policy DE3 directed to providing a good level of amenity for future residents or occupants.

Other matters

23. I have noted the references to other development plan policies but those to which I have referred are considered the most relevant having regard to the particular circumstances of the case. I have also taken account of the various other references to the *Framework*.
24. The Council raised no objections to the proposed access, but representations received from third parties indicated concerns on highway safety grounds. I am obliged to consider such concerns. Accordingly, the opportunity was provided to the principal parties to provide further information in respect of the proposed access.
25. There is no doubt that an established access exists, but it is very narrow and judging from the condition of the ground it is rarely used, and certainly not recently.
26. Thus, the use made of the access would likely increase if planning permission were granted, this in circumstances where lateral visibilities for emerging drivers onto the busy A road are very poor particularly to the left. However, in the light of my overall conclusions set out below, any potential highway safety issues do not need to be considered further.
27. All other matters raised in the representations have been considered but none are of such significance as to outweigh those considerations that led me to my overall conclusions.

Overall conclusions

28. I find in favour of the appellant in respect of the second main issue, that of future residents' living conditions. However, I find against the appellant on the first main issue, that of the impact of the proposal on the character and appearance of the CA. This is sufficient reason to dismiss the appeal.

G Powys Jones

INSPECTOR