



Appeal Decision

Site visit made on 12 March 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10.05.2024

Appeal Ref: APP/X1165/D/23/3323736

10 Catherine Crescent, Paignton, Torbay TQ4 5JU

- 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 Mr Sam Bastock against the decision of Torbay Council.
 - The application Ref is P/2022/1280.
 - The development proposed is the installation of 6 foot fencing on existing property boundary wall.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The wording of the description of development in the banner heading above is taken from the application form but I have removed superfluous wording that does not relate to an act of development, in the interests of clarity.
3. A revised National Planning Policy Framework (the Framework) was published on 19 December and updated on 20 December 2023. Whilst this made certain revisions to aspects of national planning policy, the provisions in respect of the matters relied on by the main parties are unchanged. Therefore, I did not need to consult with the main parties regarding the revised Framework and in determining this appeal, I have had regard to the most recent version.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

5. Catherine Crescent is a residential cul-de-sac in Paignton. The appeal site, No. 10, occupies a corner plot forming one side of the entrance into the road. The boundary hedge that is the subject of this appeal curves around from Penwill Way into Catherine Crescent. On the opposite side of the entrance into Catherine Crescent is a similar boundary hedge.
6. The existing boundary hedge forms a characterful part of the street scene and together with the hedge on the opposite side of the road, they create a natural and softened approach into the cul-de-sac. It runs into another hedge that is the boundary of a neighbouring property and together they form a prominent and positive feature on Penwill Way. Furthermore, the hedge complements the black metal fence that is positioned in front of it.

7. The proposal is to replace approximately 37 metres of the boundary hedge with a timber fence that would be approximately 1.8 metres tall. The black metal fence, which has an approximate height of 1.5 metres, would be retained in front of the proposed timber fence.
8. The proposed fence would have a significant length and despite its position behind a black metal fence, it would rise above that fence by a not insignificant amount and its solid, bulky form would be clearly seen through the narrow uprights of said metal fence. Further, the visual intrusion would be exacerbated by the materials of the development distinctly contrasting with the metal fence. The removal of the existing hedge and its replacement with the fence of the scale and proportions indicated on the submitted plans would see the introduction of a dominant and incongruent feature within the street scene. As such, it would have a visually degrading impact and would be out of keeping with the character and appearance of the area.
9. My attention has been drawn to two properties that have timber fences along a boundary adjacent to a pavement, 8 Catherine Crescent and a residential property on the junction of Penwill Way and Broadlands Road. I am not fully familiar with the background to those developments, and they are either in a different locational context or consist of a lower quantum of development. As such, the examples put forward by the appellant are not directly comparable to the appeal proposal and do not justify the harm that would be caused by the proposed development. In any event, I am judging the appeal proposal on its own individual merits.
10. For these reasons, I conclude that the proposed development would cause unacceptable harm to the character and appearance of the area. Consequently, the proposal would conflict with Policy DE1 of the Torbay Local Plan 2012 – 2030 and Policy PNP1(c) of the Paignton Neighbourhood Plan 2012 – 2030, which collectively seek, in part, for development to be well designed, in keeping with its surroundings and integrate with the existing street scene and features. Additionally, the proposal would conflict with the Framework, which seeks, amongst other things, for development to be visually attractive and sympathetic to local character, including the surrounding built environment.

Other Matters

11. I note that there were no objections received in relation to the planning application. However, the absence of objections is a neutral factor in the determination of the appeal and, in any event, I have considered the proposed development on its merits based on all the evidence before me.
12. I also acknowledge that the appellant has mentioned suggested amendments to the scheme, but I am determining the appeal on the basis of the plans before me and cannot give weight to those alterations to the development proposed.
13. The appellant's concern about how their planning application was dealt with by the Council is outside the scope of the appeal.

Conclusion

14. Article 8 of the European Convention on Human Rights (ECHR) as enshrined in the Human Rights Act 1998 affords the right to respect for private and family life whilst Article 1 of the First Protocol of the ECHR concerns the peaceful

enjoyment of possessions. I have also had due regard to the Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010, as the evidence shows that certain occupiers of the appeal property have protected characteristics.

15. From what I saw on site, there are potential security and privacy issues with the current hedge. Whilst I have been provided with very limited evidence of such issues, it is likely that someone stood on the pavement could talk to, or watch, the appellant's children playing in the garden, as a result of the sparse foliage at the base of the hedge.
16. The proposed development would provide a greater level of privacy and security for the appellant and their family. However, I am not satisfied that the proposed development is the only means of achieving these benefits and that they cannot be achieved in a less visually harmful way.
17. Dismissing the appeal would interfere with the appellant's human rights under Article 8 and Article 1 of the First Protocol. However, these are qualified rights such that an interference may be justified where it is in accordance with the law and the public interest.
18. In this case, the interference would be in accordance with the law and in pursuance of the legitimate and well-established planning policy aims to protect the character and appearance of the area. As such, and with due regard to the PSED, I find that dismissing the appeal would be both necessary and proportionate.
19. For the reasons given above, the proposal would conflict with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Accordingly, the appeal should be dismissed.

K Reeves

INSPECTOR