

Appeal Decision

Site visit made on 17 September 2024

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2024

Appeal Ref: APP/X1165/W/24/3341516

4 St. Matthews Road, Torquay, Torbay TQ2 6JA

- 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 D Thompson of Torbay Investments Ltd against the decision of Torbay Council.
 - The application Ref is P/2023/0458.
 - The development proposed is construction of a house with associated landscaping and access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has provided revised drawings that were not before the Council when it made its decision. For clarity, the appellant does not wish the amended floor plans to be considered with this appeal. They do however submit plans and information that show additional rooflights and tree protection measures. These submissions relate to matters that are in dispute between the parties.
3. The revised plans and arboricultural information would involve very minor alterations to the scheme that would not represent a fundamental change to it. The Council and its arboricultural consultee had an opportunity to comment on this information. Therefore, in accepting the plans and information, I am satisfied that the proposed amendments would not cause unlawful procedural unfairness to anyone involved in the appeal.
4. 3rd party concerns have been raised in respect of the validity of the appeal. The Council made its decision on the 6th of October 2023. Confirmation of the valid appeal was sent to the appellant on the 28th of March 2024, which is within the 6 month period. Accordingly, I find the appeal to be valid.

Main Issues

5. The main issues are:

- whether the proposed development would preserve or enhance the character or appearance of the Chelston Conservation Area (CA), including trees;

- whether the proposal would provide acceptable living conditions for future occupants, with particular regard to natural light and outlook; and
- the effect of the proposed development on the living conditions of the occupants of No 4 St Matthews Road with regard to the provision of external amenity space.

Reasons

Character and appearance

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 its detached or semi-detached, pitched roofed villas set in large grounds. These spacious surroundings provide a rich, almost parkland setting that includes tree lined footpaths and landscaped gardens.
7. The appeal site comprises a spacious, tree lined garden area associated with a large, detached property of the type synonymous with the CA. In fact, it is recognised as a key building in the Council's CA Character Appraisal. It has been divided into flats with some having their own private outdoor spaces. In that context it is understood that the appeal site is not currently used by residents.
8. Although overgrown at the time of my visit and positioned on different levels, the garden could nevertheless be accessed from the host property with relative ease. Furthermore, when viewed from the host property, the appeal site reads as a proportionate garden area that is typically well-spaced from properties to the south. As such, it maintains its historic and present sense of connection with its host property, making a significant contribution to its setting.
9. The proposed property would be of an unapologetically bespoke design. Its massing would respond appropriately to the site levels. This would go some way towards reducing the visual extent of built form in the rear garden area of its host. Additionally, the sandstone cladding would represent a positive application of locally distinctive materials.
10. Although likely to be constructed to a high quality, the curved frontage with its large amount of floor to ceiling fenestration, set amongst timber cladding would bear little resemblance to any locally distinctive built form or use of material. Consequently, the eye would be drawn to the incongruity of these aspects of the development from its point of access. Even if parts of the scheme would not be noticeable in the wider area, the Planning Practice Guidance says that 'the contribution that setting makes to the significance of the heritage asset does not depend on there being public rights of way or an ability to otherwise access or experience that setting'. Accordingly, these design features would be uncharacteristic and harmful to the setting of the CA.
11. The plans show a reasonable amount of external garden space and a property that would not be readily visible from the upper street side of its host. Although the property itself would take up about 20% of the overall

appeal site, there would nevertheless be a substantial amount of associated hard landscaping, including through opening up the site via the new access. Even with a green roof, the undisturbed, verdant nature of the appeal site would be permanently replaced with a considerable amount of built form. This severance of the larger plot would unsympathetically clutter and harmfully erode the historic grounds of a key building in the CA.

12. *Trees* - Within the lower corner of the appeal site is a tall and imposing tree that has been identified as a Monterey Cypress, or T005 on the plans. Its distinctive tones and form compliment the range of trees in its immediate setting. Furthermore, it can be seen from a number of public vantage points in the CA. The submitted Arboricultural Impact Assessment indicates that the tree is in good physical and structural condition with a good degree of life expectancy. I have no substantive evidence before me to demonstrate that it would be unlikely to survive for many years. As such, it makes a valuable contribution to the CA.
13. Access would be close to this tree, and it is likely that its root area and condition would be sensitive to change during the construction phase and beyond. However, the evidence shows that a variety of construction methods could be employed to protect the tree's roots from damage. Notwithstanding the Council's arboricultural consultee comments, the specific details in this respect could be secured using an appropriately worded condition.
14. It is said that the proposed property would be over 8m from the closest part of the canopy of T005, and about 13m from its trunk. Nevertheless, at a height of about 15m, it would have a towering and dominating presence over the property. The evidence shows that T005 would cast a shadow over bedroom 3 and parts of the living spaces at the height of summer. Consequently, despite daylight reaching other parts of the appeal site, the lower corner of the property would probably be shaded for much of the year. Additionally, given the likelihood that T005 will continue to grow for some time, this would mean its roots, overall height and canopy would also be likely to have an increasing presence in the close proximity of the property and its parking area. This aspect of the scheme has not been well designed.
15. In that context, although not proposed as part of this scheme, it would be difficult for the Council to resist applications to prune or fell trees in circumstances where safety or damage is at issue. For the reasons given, the development would be likely to significantly exacerbate these pressures from potential future occupiers, particularly in relation to pruning. This would, in turn, be likely to harmfully affect the quality of T005. As such, the longevity of the tree would be likely to be put under significant pressure through the lifetime of the development as proposed. Notwithstanding my findings on the root protection area, there would be conflict with Policy C4 which, amongst other things, seeks to protect natural features of historic or nature conservation value.
16. For the reasons given, I therefore conclude on this main issue that the proposal would fail to preserve or enhance the character or appearance of the CA, including trees. There would be conflict with policies C4, DE1, and SS10 of the Torbay Local Plan (LP), and Policy TH8 of the Torquay Neighbourhood

Plan. In part, these policies promote development that respects local character, whilst conserving and enhancing heritage assets.

Future occupants

17. The Council is concerned that there is a lack of information in respect of natural light reaching habitable rooms. However, it is accepted that the newly proposed rooflights would improve matters. I find no reason to disagree. At my lunchtime visit on a clear day, I saw that direct and dappled sunlight behind tree canopies, along with a good amount of daylight, reached into various parts of the appeal site. This would be likely to be improved somewhat by the new access arrangement. T005 would overshadow habitable rooms. However, its separation distance would mean that it would be unlikely to oppressively cut out natural light reaching bedroom 3 and the kitchen/living room.
18. The ground floor window to the master bedroom would have a restricted outlook. Furthermore, it is acknowledged that there will be darker times during less favourable weather conditions and the winter months. This would be likely to make the outlook experience a little gloomier. However, views out towards the terraced garden could still be appreciated from the master bedroom, which would not be unpleasant. This, together with the rooflight, would mean that the outlook from the master bedroom would be acceptable.
19. I therefore conclude on this main issue that the proposed development would provide acceptable living conditions for future occupants, with particular regard to natural light and outlook. As such, there would be no conflict with Policy DE3 of the LP, which, in this respect, seeks to ensure developments are designed to provide a good level of amenity for future residents.

Existing occupants

20. No 4 is divided into flats. I observed that some commensurate outdoor space was already provided for some at ground floor level. Even for those without access to such spaces, the requirements for such provision would be far less for occupants of flats, when compared with a large family home. Additionally, the appeal site is in an urban area where there is good access to open space. Therefore, regardless of any current private restrictions or otherwise on the use of the appeal site, living conditions of existing occupants would be unlikely to be harmfully compromised.
21. As such, the proposal would not harm the living conditions of existing occupants with regard to the provision of external amenity space. There would be no conflict with Policy DE3 of the LP, which, in this respect, seeks to ensure developments are designed to provide a good level of amenity for neighbouring uses.

Other Matters

22. My attention has been drawn to 2 previous appeal decisions at this site. These decisions were materially different to this proposal in that they were both made in outline with all matters reserved for later consideration. They are also of some age and do not refer to the current development plan. The differing conclusions drawn in respect of the effects on the CA within these previous appeals demonstrates that each case turns on its individual merits.

As such, I have based my decision on the current site-specific circumstances and the evidence before me.

23. I have paid regard to comments made in respect of the processing of the application. However, this has no bearing on my decision that is based on the planning merits of the proposal.

Planning Balance and Conclusion

24. I have found that the proposal would not harmfully affect the living conditions of existing or future occupiers. However, this would be a neutral factor that would not outweigh the identified harm to the character or appearance of the CA.
25. Accordingly, the proposal would lead to less than substantial harm to the significance of the designated heritage asset affected. Paragraph 208 of the National Planning Policy Framework ('the Framework') states that in such circumstances the harm should be weighed against the public benefits. The proposal would deliver an additional dwelling in a sustainable location. It would make a modest contribution to the supply of new homes in a situation where the Council is unable to demonstrate a 5-year supply of deliverable housing sites. It would also provide a temporary boost to the economy during the construction phase. These can all be considered as public benefits.
26. Against the benefits I must weigh the harm to the heritage asset. The Framework states that great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to significance. Any harm to the significance of a designated heritage asset should require clear and convincing justification.
27. In the heritage balance, I have given significant weight to the benefits of housing delivery and some, more limited, weight to the economic benefits. However, the adverse impact on the CA is a matter of considerable importance and weight. Overall, I consider that the harm to the heritage asset outweighs the benefits.
28. Paragraph 11 d) of the Framework indicates that, where the requisite housing land supply cannot be demonstrated, permission should be granted unless: i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Footnote 7 states that policies in the Framework relating to designated heritage assets qualify as protection policies under the first limb of paragraph 11 d). Consequently, the tilted balance in the second limb does not apply and the proposal does not benefit from the presumption in favour of sustainable development within the Framework.
29. I therefore conclude that the proposal conflicts with the development plan taken as a whole and there are no material considerations individually or cumulatively to justify a decision otherwise than in accordance with the

development plan. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

J Hills
INSPECTOR