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## Appeal Decision

Site visit made on 27 September 2024

**by N Perrins MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4 November 2024**

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**Appeal Ref: APP/X1165/W/24/3343885**

**Flat 10 Park Hall, Parkhill Road, Torquay, Devon TQ1 2BL**

- 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 Giles Cooper-Smith against the decision made by Torbay Council.
  - The application Ref is P/2023/0806.
  - The development is for the formation of decked area on roof terrace including external steps and shed.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. I observed on my site inspection that the development has been completed and is, therefore, retrospective. I have assessed the appeal on this basis.

### Main Issues

3. The main issues are the effect of the proposed development in respect of (i) the character and appearance of the area including the St Johns Wood, Park Hill Urban Landscape Protection Area, (ii) the living conditions of neighbouring properties, (iii) biodiversity, and (iv) trees.

### Reasons

#### *Character and appearance*

4. The appeal site is part of a large residential block of flats located on the hillside of Vane Hill. The building, originally constructed as a Victorian villa, has been extended over the years. The flat subject of this appeal is within an extended part of the building in the southeast corner of the block. The appeal site is within the Torquay Harbour Conservation Area (CA) and borders the St Johns Wood, Park Hill Urban Landscape Protection Area (UPLA), which is an area of special landscape quality designated in the Torbay Local Plan 2012-2030 (LP).
5. I am aware of the site's planning history and the grant of planning permission for a single storey side and rear extension to the property Ref: P/2019/1299. The development subject of this appeal comprises a set of steps, decked area, summerhouse and wooden fencing that has been erected around the side and rear of the extension approved by Ref: P/2019/1299.

6. Park Hall is an attractive building comprising good quality architecture and materials. The extended parts, including the appeal property, have assimilated successfully in design terms with the original building using matching materials such as white painted render. Wooden decking, fencing and structures such as those constructed at the appeal site are not a common feature or material in use across the wider building or on the external amenity areas. The development's angular and formulised cut wood markedly differs from the appearance of the branch structure, bark and foliage of natural living trees.
7. I am aware from the information before me that the area where the development is located has been subject to previous works over the years such as tiered ground levels, a greenhouse, fencing, steps and railings. However, I understand that these works were less formal in their arrangement, design and appearance. In contrast, the development appears as a significantly more comprehensive, formal and developed layout than these previous works. The formality, scale and appearance of the development in what is a relatively tight corner of the block, therefore, appears as an incongruous overdevelopment of the site that detracts from the character and appearance of the building and its external areas.
8. The incongruity of the development in relation to its context is exacerbated by its elevated position as well as the extent to which it extends into the site on land directly adjacent to neighbouring properties. In particular, the summerhouse, decking and fencing has an unacceptably overbearing and dominant impact on neighbouring properties in terms of its overall height, scale, form, coverage and appearance.
9. Moreover, the development occupies previously less comprehensively developed informal space that is directly adjacent to woodland. Around other parts of the wider site the relationship provides space, relief and a verdant transition between the building and green infrastructure beyond. The development has unacceptably interrupted this transition and appears as an uncharacteristic and overly domestic form of development that does not integrate successfully with the landscaped character of the immediately adjacent woodland.
10. The Council contend that a part of the site is within the St Johns Wood Park Hill UPLA. Whilst I note that the appellant disputes that the site is within the UPLA the evidence before me suggests there is some degree of incursion into the designated UPLA area. Policy C5 of the LP states that development will only be permitted within the UPLAs where it does not undermine the value of the land as an open or landscape feature and makes a positive contribution to the urban environment and enhances the landscape character of the UPLA. For the reasons stated earlier, these requirements of Policy C5 are not met by the development.
11. Whilst the structure would weather over time, it will always retain its overall size and appearance that for the reasons stated do not integrate successfully with the adjacent building or woodland. I have also considered the appellant's position that the development is set at a similar height to the natural ground level prior to the construction of the extension. However, it's not just the height of the development that causes harm but its coverage, design and appearance, which together jars with and detracts from the character of the existing building and adjacent green infrastructure.

12. To conclude, the appeal scheme does not integrate successfully with the design, scale, character and appearance of the wider building, immediately neighbouring properties or adjacent woodland. Therefore, it is harmful to the character and appearance of the area. Accordingly, the development is contrary to Policies C5, DE1 and DE5 of the LP and Policy TH8 of the Torquay Neighbourhood Plan 2019 (NP). These policies require development to not undermine the value of UPLAs, have a clear urban structure and grain that integrates with the surrounding context, would not dominate or have adverse effects on the character or appearance of the original property or neighbouring properties and be of good design quality that respects local character.

*Living conditions*

13. The summerhouse and surrounding decked area and fence are located directly opposite, and within very close proximity, to the bathroom of the neighbouring property Flat 9. This is an unacceptably close arrangement that creates an intrusive and oppressive relationship that adversely impacts the privacy and outlook from Flat 9's bathroom window.
14. I acknowledge that the summer house does not have side windows that face towards neighbouring properties when compared to the previous greenhouse. However, the previous greenhouse and patio area appeared to have a much less formal arrangement than the current development and, in my view, would not likely have been used for recreational purposes to the same extent as the development in this case. The decking around the summerhouse can be stood on and intrusive visibility afforded adding to the overly intrusive relationship of the development with the affected neighbouring windows.
15. I note the appellant advises that Flat 9's bathroom window can't be fully opened and there is not a direct line of sight into the bathroom. However, the information before me demonstrates that the development can be made out through the bathroom's obscure glazed window due to its proximity and there is visibility into part of the bathroom when that window is open. The information also identifies the development can see into at close proximity, and be seen from, the adjacent bedroom window, which adds to my concerns.
16. Overall, even with the views of the development being oblique or obscured and the summerhouse not having side windows, the development by reason of its prominence, proximity and unneighbourly arrangement causes harm to living conditions of the affected neighbouring properties in terms of real or perceived loss of privacy.
17. The decking provides a relatively large area of outdoor amenity space in very close proximity to neighbouring properties. As such, when it is being used it would have the potential to create unacceptable levels of noise and disturbance to neighbouring properties. I do not agree that the absence of a balustrade would prevent people from using the decking for leisure purposes and that it only provides direct access for comings and goings to the summerhouse, given the development's coverage. I note that the appellant has confirmed they would accept a condition to include restrictions for this area, such as preventing a BBQ. However, having regard to the tests for planning conditions such as in respect of being reasonable and enforceable, I am not satisfied that conditions would overcome my overall concern that the development's scale and proximity to neighbouring dwellings would be likely to result in undue harm to living conditions from noise and disturbance.

18. The development has removed an existing fire escape route for Flats 6 and 8. In response, the appellant considers that the development includes alternative routes through the provision of ladders and gate to provide escape routes. The information before me, however, does not persuade me that this is a safe arrangement for residents to rely on as a fire escape route. For example, what would happen if the ladders were damaged or if residents are not physically able to use a ladder in the event of a fire. The removal of the previous fire escape route results in an unacceptably less safe environment for residents and, therefore, harms the living conditions of neighbouring properties.
19. Whilst I have found there to be harm to living conditions for the reasons stated, there is no information before me that demonstrates the Council's case that there is likely to be an unacceptable loss of light to neighbouring properties. An absence of harm in this regard would be a neutral matter.
20. To conclude, the development harms the living conditions of neighbouring properties and is contrary to Policies DE1, DE3 and DE5 of the Torbay Local Plan. Amongst other things, these policies require development to avoid noise pollution and not unduly impact upon the amenity of neighbouring properties

#### *Biodiversity*

21. The Council contend that there is insufficient information to determine whether the development is acceptable in terms of impact on biodiversity with particular reference to protected species, flora and fauna. The development has been built around an existing structure within the boundaries of the appeal site and largely using existing ground levels and previous development as foundations. As the appellant highlights, the development also includes gaps in the balustrades that would allow wildlife to still move through the site.
22. It is not clear that protected species are likely to be present and affected by the development, so I do not find the Council's case is sufficiently reasoned in this regard. I note the suggestion of significant cutting back of trees and there is no contemporary substantive assessment provided to me with this appeal of the condition of the trees, the specification of the works, and any effect upon tree health.
23. In the Final Comments, the appellant suggests that a suitable survey has been undertaken and works undertaken in accordance with it. Were this to be the case, and those works not deemed harmful, I could not conclude that the development has had a materially harmful impact on flora and fauna to the extent that it would justify refusing planning permission in this regard.

#### *Trees*

24. There is a difference in opinion between the parties as to whether the development is within the TPO boundary or not. Notwithstanding this, the trees clearly have an important contribution to the character and amenity of the area. It appears that some pruning has taken place to facilitate the development that would warrant the impact on trees being confirmed with further information. However, as I find the development to be unacceptable for other reasons sufficient to dismiss the appeal, and it is not substantively put to me that the works would constitute a benefit to tree health, I do not need to consider this matter further in this decision.

## **Other Matters**

25. The site is near to the Grade II\* Listed Atlantic Court and Grade II Listed Royal Torbay Yacht Club and within the Torquay CA as well as. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving listed buildings or their settings or any features of special architectural or historic interest which they possess. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas.
26. The Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. In considering the duty under Section 66 (1) and the relevant policies, I conclude that there is a neutral effect upon the settings and significance of any of the identified listed buildings.
27. I have found harm to the character and appearance of the area and the UPLA, which are located within the CA. I have received substantive interested party evidence in respect of the character and appearance of the CA. Were I minded to have otherwise allowed the appeal, I would have considered this matter further. However, as I find the proposal unacceptable for other reasons, no planning permission will be granted by my decision, and it has not been advanced the development is beneficial to the character, appearance or significance of the CA, I have not considered this matter in detail. A finding of no harm to the CA would be a neutral matter in the balance.
28. I note concerns were raised about the impact of the development on drainage and flooding. The Council concluded that this could be dealt with through conditions in the event of planning permission being granted. Having carefully considered all the information before me, I agree with the Council's conclusion in this regard, although as I have found the development to be unacceptable in other respects do not need to consider this further in this decision.

## **Conclusion**

29. To conclude, the development harms the character and appearance of the area and living conditions of neighbouring properties in conflict with several development plan policies. Therefore, the development conflicts with the development plan read as a whole. There are no material considerations advanced that outweigh the conflict with the Development Plan. Therefore, for the reasons given, the appeal is dismissed.

*N Perrins*

INSPECTOR