



Appeal Decision

Site visit made on 22 October 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/X1165/W/23/3333004

Former Korean Martial Arts, 37 Tor Hill Road, Torquay TQ2 5RY

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under Section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Brian Jones against the decision of Torbay Council.
- The application Ref is P/2023/0524.
- The application sought planning permission for change of use from martial arts studio to 3 maisonettes (ground and first floor only), to include roof extension and alterations without complying with a condition attached to planning permission Ref P/2021/1303, dated 25 March 2022.
- The condition in dispute is No P1 which states that: *The development hereby permitted shall be carried out in complete accordance with the approved plans listed below: 1654-01 - (Version - A (inc Block Plan)) - Date on plan: 20/10/2021 - OS Map/Site Location received 30.11.2021; 1654-11 - (Version - F (GF)) - Date on plan: 01/03/2022 - Proposed Internal received 15.03.2022; 1654-12 - (Version - E (1st)) - Date on plan: 01/03/2022 - Proposed Internal received 15.03.2022; 1654-13 - (Version - B (Roof) revised) - Date on plan: 12/11/2021 - Proposed External received 15.03.2022; 1654-14 - (Version - H (front)) - Date on plan: 14/03/2022 - Proposed Elevations received 15.03.2022; 1654-15 - (Version - H (rear)) - Date on plan: 14/03/2022 - Proposed Elevations received 15.03.2022; 1654-16 - (Version - B (side) revised) - Date on plan: 29/11/2021 - Proposed Elevations received 15.03.2022; 1654-17 - (Version - B (side) revised) - Date on plan: 29/11/2021 - Proposed Elevations received 15.03.2022; 1654-18 - (Version - C revised) - Date on plan: 29/11/2021 - Proposed Sections received 15.03.2022; 1654-19 - (Version - C) - Date on plan: 14/03/2022 - Proposed Elevations received 15.03.2022.*
- The reason given for the condition is: *For the avoidance of doubt and to ensure a satisfactory completion of development.*

Decision

1. The appeal is dismissed.

Preliminary Matter

2. At the time of my site visit, it appeared that the development that is the subject of the appeal had been carried out. However, for the avoidance of doubt, I have determined the appeal on the basis of the details shown on the plans.

Background and Main Issue

3. Planning permission for the change of use of the ground and first floors of a former martial arts centre at 37 Tor Hill Road to three maisonettes was

granted by the Council on 25 March 2022¹. The original permission included eight conditions. The appellant disputes one of these conditions (condition P1). The condition is the plans condition and the reason given by the Council for the imposition of the condition is for the avoidance of doubt and to ensure a satisfactory completion of development.

4. The appellant applied to the Council to vary the approved plans as the height of the building and the dimensions of the first floor windows differ from the details shown on the plans². The Council refused the application on 25 August 2023. The reason given for the refusal is that the proposed variation would result in development that is detrimental to the character and appearance of the host building and the Tormohun Conservation Area (the CA).
5. Bearing in mind this background, the main issue in this appeal is whether disputed condition P1 is reasonable and necessary in the interests of the character and appearance of the area, with special regard to the CA.

Reasons

6. The CA designation encapsulates a suburb of Torquay that is centred around the original Saxon and medieval settlement. The Tormohun Conservation Area Character Appraisal (August 2005) explains that the CA consists in the main of 19th Century terraced housing with a few examples of the typical Torquay villas of the mid-19th Century clustered around Tor Hill. From what I have seen and read, as far as it relates to the appeal before me, I consider the special interest of the CA is, in part, derived from its attractive townscape, its overall quality of construction and the consistency of materials in most streets.
7. The appeal site consists of a two storey building with a flat roof set behind a parapet wall. It is attached to another building that is three storeys and also has a flat roof. The appeal building, as approved, is therefore similar in form and proportions to the adjoining three storey building. On the appeal site's opposite flank is a row of terraced properties with pitched roofs. The building line of those properties sits back from the front elevation of the appeal building, which results in the building being particularly noticeable when driving down Tor Hill Road. This makes the appeal building potentially sensitive to increases in massing within the context of this area of the CA.
8. The proposed alteration to the dimensions of the first floor windows are minimal and would not be particularly perceptible from the public realm given their position at first floor level and that windows can diminish in size the higher they are in a building. However, the increase in height of the building would result in a larger expanse of blank wall between the first floor window heads and the top of the parapet wall, and the building would therefore no longer reflect the proportions of the adjoining building, which it is most akin to within the street scene. The building would sit at odds with the adjoining building. Furthermore, the larger expanse of blank wall at a high level and the increase in the overall height and massing of the building would disrupt the well-proportioned form of the front elevation. The proposal would also result in an increased visual dominance amongst the surrounding built form and the building would become out of keeping with the character and appearance of this area of the CA.

¹ Torbay Council application reference P/2021/1303

² Torbay Council application reference P/2023/0524

9. Whilst I acknowledge the appellant's reasons for increasing the height of the building, the proposed development would fail to preserve or enhance the character or appearance of the CA. In terms of the harm to the CA, the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation.
10. Given the scale and nature of the proposals, I consider that the degree of harm would be less than substantial in this instance, but nevertheless of considerable importance and weight. Under such circumstances the Framework indicates that this harm should be weighed against the public benefits of the proposal.
11. Turning to the proposal's benefits, it would contribute dwellings towards the housing stock in the district. However, even whilst acknowledging the Council's seemingly chronic and substantial short fall in housing delivery, the number of additional units would not make a significant difference to the housing supply situation and is a benefit that attracts moderate weight. There would also be associated social and economic benefits through providing support to the local economy and local community facilities. However, such contributions are limited given the small-scale nature of the development.
12. The above stated benefits are therefore insufficient to outweigh the less than substantial harm to the CA and the considerable and important weight it carries.
13. For these reasons, the proposed variation of disputed condition P1 would result in unacceptable harm to the character and appearance of the area and would fail to preserve or enhance the character or appearance of the CA. Consequently, the proposal would conflict with Policies SS10 and DE1 of the Torbay Local Plan 2012 – 2030 and Policy TH8 of the Torquay Neighbourhood Plan (Adopted June 2019), which collectively seek, in part, for development to be well designed, respect local character, and sustain and enhance buildings and areas that make an important contribution to Torbay's built setting and heritage. The proposal would also conflict with the aims of the Framework, which places great importance on the design of the built environment and on the conservation of heritage assets, such as conservation areas.
14. It follows that disputed condition P1 is reasonable and necessary in the interests of the character and appearance of the area, with special regard to the CA.

Other Matter

15. I understand that there have been no objections from interested parties. Nevertheless, I have considered the development on its merits based on all the evidence before me.

Planning Balance

16. The Council accepts it cannot demonstrate a five-year housing land supply. In these circumstances, Paragraph 11(d)(i) of the Framework states that permission should be granted unless 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 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. Designated heritage assets which include conservation areas are an example of such areas/assets.

17. I have already concluded that the proposed development would cause unacceptable harm to the character and appearance of the area and would fail to preserve or enhance the character or appearance of the CA. As such, the proposal conflicts with the development plan when taken as a whole.
18. The harm to the CA, which is not outweighed by the public benefits identified earlier, means that the heritage policies in the Framework provide a clear reason for refusing the development proposed. Paragraph 11(d)(ii) is not therefore engaged.

Conclusion

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. As such, the appeal should be dismissed.

K Reeves

INSPECTOR