



Appeal Decision

Site visit made on 3 January 2025

by **C Rose BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 January 2025

Appeal Ref: APP/X1165/W/24/3344516

36 Lucius Street, Torbay, Torquay TQ2 5UN

- 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 Mrs Paula Digby, Nicholls Basker & Partners against the decision of Torbay Council.
 - The application Ref is P/2024/0040.
 - The development proposed is proposed alterations and change of use from Class E to Class C.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above is taken from the application form as neither party has provided written confirmation that a revised description has been agreed.
3. During the course of the appeal an updated version of The National Planning Policy Framework (the Framework) was published on the 12 December 2024. In light of this, both main parties were given the opportunity to comment on any implications for the appeal. I have taken the responses into account.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area having regard to whether the proposal would preserve or enhance the character or appearance of the Belgravia Conservation Area (CA);
 - the effect of the proposal on the provision of employment space;
 - whether the living conditions of future occupiers of the proposed development would be acceptable with particular regard to the provision of natural light and refuse storage; and,
 - whether the proposal would help to close the gap between the most and least disadvantaged people and neighbourhoods.

Reasons

Character and appearance

5. The appeal site is located within the CA, a designated heritage asset. The Belgravia Conservation Area Character Appraisal (March 2006) (the Appraisal) outlines the essential characteristics of the CA which includes the creation and growth of Victorian suburbs along

- arterial routes and thoroughfares including Belgrave Road reflecting its status as a fashionable English watering-place. This is reflected in the size and lavish design of the original villas. The appeal site falls within the Belgrave Road Character Area.
6. Along with the appearance and traditional design features of the buildings, including the original use of timber doors and windows, I observed that the significance of the CA is derived from the above characteristics. This is the case despite the age of the Appraisal.
 7. The appeal property and adjoining terrace are not listed buildings. However, the property faces onto Lucius Street relating both visually and physically to the adjacent commercial centre by reason of the architectural detailing forming the shop frontage that is a continuation of the adjacent retail unit and reflective of frontages within the commercial area. This is the case despite the site being located just outside of the defined centre.
 8. By reason of its shop front, the appeal property has a different design to the other three corner properties at the junction of Belgrave Road with Lucious Street and Falkland Road. The appeal property has a physical and visual relationship with the adjoining terrace and terrace on the opposite side of Belgrave Road. As a result, it occupies a prominent location at the edge, and one of the entrances to, the CA and commercial centre.
 9. In light of the above, the appeal property and adjoining terrace have architectural and historic merit with the Appraisal identifying them as key buildings and building groups which make a significant contribution to the townscape. Therefore, the appeal property makes a positive contribution to the character of the CA by reason of its age, character, and frontage detailing. Furthermore, Section 8 of the Appraisal identifies that the character of the CA largely hinges on its significance as a distinctive entity within Torquay with the villas containing much original character. It goes on to state that elements that are detrimental to the character or appearance of the CA include 'the loss, or overbuilding of, original elevational detail'.
 10. I note that the appellant states that the proposed UPVC windows would be of a sliding sash design similar to others in the host building and nearby. However, the proposal would necessitate the loss of the existing traditional shopfront that is closely replicated by the adjoining and nearby commercial units forming an important feature to the building and for which the CA states such losses have been detrimental to the character and appearance of the area.
 11. I acknowledge the existence of replacement UPVC windows within the wider host building and to other units within the terrace and nearby buildings. I viewed examples of these during my site visit. However, I also viewed numerous examples of retained timber windows close to the appeal site on both Lucious Street and Belgrave Road. Furthermore, the retained historic features of the appeal premises, and its prominent location adjoining a commercial area, mean that the replacement of the existing timber shopfront with the three UPVC windows would detract from the overall appearance of the building, the wider terrace, and that of the wider LCA and its significance. Therefore, the existence of UPVC windows elsewhere in the area does not outweigh the harm from the loss of the shop frontage.
 12. I have had regard to comments stating that the glazing within the existing shop frontage is dangerous but have little detailed evidence in this regard. Even if it is dangerous, I see no reason why the glazing could not be replaced. If the appeal property was originally in residential use with a bay window and main entrance door, this is not reflected in the proposal. Furthermore, the existing shop frontage is representative of a considerable length of the history of the premises and therefore of historic merit and value in itself.
 13. There is a statutory duty under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. Paragraph 212 of the

National Planning Policy Framework (the Framework) states 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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

14. As the physical changes to the building would be limited to the ground floor, I consider that the harm to the CA would be 'less than substantial'. Under such circumstances, Paragraph 214 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
15. The public benefits would include an efficient use of land, the development of an under-used building, meeting an identified housing need, boosting housing supply and by providing a variety in the size, type, and tenure of housing in a mixed community with some reduced noise for adjoining residents. It would also result in some construction jobs, additional local workforce, and increased local expenditure and taxation from future residents. However, the public benefits of one small dwelling and re-use and refurbishment of the building would be limited. Furthermore, there is little other evidence before me to demonstrate that identical public benefits could not be achieved through alternative means that would not involve the loss of the shopfront therefore avoiding harm to the wider CA and the character and appearance of the area. Consequently, I find that the public benefits do not outweigh the harm that I have identified.
16. It follows from the above that I conclude that the proposed development would harm the character and appearance of the area and fail to preserve or enhance the character or appearance of the Belgravia Conservation Area. The proposal would be contrary to Policies DE1 and SS10 of the Torbay Local Plan, The Plan for Torbay: 2012 to 2030 (LP) and Policy TH8 of the Torquay Neighbourhood Plan. These policies seek, amongst other things, that development should be well-designed, respect existing street frontages and built form, sustain and enhance buildings which make an important contribution to Torbay's built setting and heritage, not undermine the character of the centre as a whole, prevent unacceptable fragmentation of retail premises and respect the local character and reflect the identity of its surroundings. 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.

Employment space

17. LP Policy SS5 states that proposals for the loss of employment space will be considered on the basis of the impact on the economic prosperity of Torbay, the appropriate mix of uses within a locality and on amenity.
18. In this regard, the proposal would provide a much-needed additional dwelling aiding the economic prosperity of Torbay, retain an appropriate mix of uses within the locality, and would not harm amenity.
19. Nonetheless, LP Policy SS5 further states that 'Where there is no reasonable prospect of a site being used for other (non-Use Class B) employment purposes or such a use would conflict with the Local Plan, alternative uses that support sustainable local communities will be supported.' I have also had regard to LP paragraph 4.2.29 that states that care needs to be taken to avoid the redevelopment for residential uses undermining the supply of employment land or premises.
20. In relation to this, and while I accept that LP Policy SS5 does not state that a marketing campaign must be submitted, I do not have details of the current length of vacancy of the property and have not been provided with other detailed evidence demonstrating that there is no reasonable prospect of the site being used for employment purposes. As a result, I

cannot conclude that there is no reasonable prospect of the site being used for other employment purposes.

21. I acknowledge that the commercial use has caused some noise and disturbance to adjacent residents in the building, is small in size, and located outside of the commercial centre, but these matters do not demonstrate that there is no reasonable prospect of the site being used for other employment purposes, particularly given that such uses have historically taken place within the building. Furthermore, some noise and disturbance from commercial uses adjacent to residential properties near to a commercial centre is not uncommon with such noise and disturbance limited by the small size of the property.
22. Given the location of the site within a conservation area and comprising external alterations to the building, in the absence of a consent or further evidence that the proposal benefits from permitted development rights to convert to a residential use, I give the prospect of any fallback limited weight.
23. For the above reasons, I cannot conclude that the proposal would not harm the provision of employment space. As such, it is contrary to LP Policy SS5, the aims of which I have outlined above.

Living conditions.

24. The appeal property is currently served by an entrance door, large shop frontage window, and by a window within the rear room. There is no associated outdoor space, and the property has a relatively small footprint.
25. As a result of the small footprint, the proposed self-contained unit would comprise a combined sleeping, cooking and seating area with a separate toilet/shower room. The plans annotate the space with a combined floorspace of 39m². Despite the small size, it would provide adequate facilities for a likely single occupier. In addition, the proposed plans demonstrate that adequate space would be provided to meet basic furniture needs and provide suitable circulation space.
26. The Nationally Described Space Standards (NDSS) prescribe minimum gross internal floor areas and storage. For a 1 bed 1 person unit with a shower room, the NDSS states that the floor area may be reduced from 39m² to 37m². As a result, the proposal complies with the NDSS and provides suitable internal living space. Even if this is not the case, the failure to meet the technical requirements does not necessarily mean that living accommodation would be unacceptable or sub-standard. Moreover, in the absence of a development plan policy securing these standards, they carry limited weight.
27. With the unit benefitting from three frontage windows serving the main living area, and with a window serving the toilet/shower, and in the absence of any detailed evidence to the contrary, I find that the unit would be served by adequate levels of natural light and outlook.
28. While I note that the plans do not detail the provision for refuse storage, the appellant advises that this could be shared with the adjoining building. In light of the adjoining building being in the same ownership, I find that the provision of suitable refuse storage could be secured by a condition.
29. Given the central location of the site, I find the lack of outdoor space and car parking acceptable. It is noteworthy that the Council came to a similar decision in this regard.
30. For the above reasons, and subject to a condition regarding the provision of refuse storage, I conclude that the living conditions of future occupiers of the proposed development would be acceptable with particular regard to the provision of natural light and refuse storage. Accordingly, the proposal complies with LP Policy DE3. Amongst other things, this seek to ensure that all development is designed to provide a good level of

amenity for future residents or occupiers, assessed using criteria including the impact of light and the satisfactory provision for storage of containers for waste.

People and neighbourhoods

31. LP Policy SS11 states that development will be assessed against its contribution to improving the sustainability of existing and new communities within Torbay, and especially the way in which it closes the gap between the most and least disadvantaged neighbourhoods. It further states that development must help to create cohesive communities within a high quality built and natural environment where people want to live and work.
32. Criteria for assessing development in this regard includes closing the gap between the most and least disadvantaged people in Torbay. In this regard I have considered the location of the site with the Tormohun Ward which is in the top 10% of communities within England suffering from multiple deprivation.
33. I have found above that the proposal would not harm the living conditions of future occupiers. Furthermore, given the need for housing in the area and the small size of the unit resulting in it being attractive to those on lower incomes, I find that the unit would provide much needed accommodation. In this regard, it would aid those most disadvantaged.
34. While I note the Council's concerns regarding the small size of the unit being likely to attract renters on a transient basis, the unit would nonetheless aid those in need of rental accommodation or as a step to other accommodation as demonstrated by some of the interested party comments. Furthermore, I have not been provided with strong evidence that transient rental accommodation in this location would in itself result in a harmful increase in the gap between the most and least disadvantaged people and neighbourhoods in Torbay.
35. It follows from the above that the proposal would help to close the gap between the most and least disadvantaged people and neighbourhoods. As such, the proposal complies with LP Policy SS11, the aims of which I have outlined above.

Other Considerations

36. I have had regard to the referenced caselaw drawn to my attention by the appellant¹. However, I do not have full details of the circumstances of this case. As such, I cannot be sure it is directly comparable to the current appeal proposal. Moreover, I am required to consider the appeal on its merits.
37. The proposal would make an efficient use of land, promote the development of an under-used building, meet an identified housing need, and boost housing supply by providing a variety in the size, type, and tenure of housing in a mixed community. It would also result in some construction jobs, additional local workforce, and increased local expenditure and taxation from future residents and is well located close to a range of services and facilities. However, given the very small scale of the proposal, the benefits would be limited.
38. Both parties agree that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. I have found above that the proposal would cause harm to the CA with no public benefits outweighing this harm. This is contrary to the policies in Chapter 16 of the Framework that protects such heritage assets. Given footnote 7 to Paragraph 11 d) 1. of the Framework, and the harm I have identified to an asset of particular importance, this provides a strong reason for refusing the development proposed. As such, there is no need for me to carry out the assessment in Paragraph 11. d) ii. in relation to assessing whether any adverse impacts would significantly and demonstrably outweigh the benefits

¹ Waveney DC v SoS (5/11/02)

when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

Conclusion

39. Although I have found no harm with regard to the living conditions of future occupiers and that the proposal would help to close the gap between the most and least disadvantaged, I have also found harm to the character and appearance of the area and significance of the CA, and to the provision of employment floorspace. In my view, these are the prevailing considerations, and the proposal should be regarded as being in conflict with the development plan, when read as a whole.
40. Material considerations, including the Framework do not indicate that the proposal should be determined other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude the appeal should be dismissed.

C Rose

INSPECTOR