



Appeal Decision

Site visit made on 15 April 2025

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

an Inspector appointed by the Secretary of State

Decision date: 1st May 2025

Appeal Ref: APP/X1165/W/24/3351533

Land to the Rear of St Helens, Ridgeway Road, Torquay TQ1 2HE

- 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 Tony Horsey, Ortus against the decision of Torbay Council.
 - The application Ref is P/2024/0205.
 - The development proposed is construction of a new detached dwelling with private amenity space and parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposal would preserve or enhance the character or appearance of the Lincombes Conservation Area (CA) and whether it would preserve the setting of a non-designated heritage asset;
 - the effect of the proposal on the living conditions of the neighbouring occupiers at Kim House, with particular regard to privacy and outlook; and,
 - the effect of the proposal on biodiversity.

Reasons

3. The appeal site falls within the CA. The significance of the CA is derived from its spacious sylvan residential character resulting from large houses and villas set in sizable, landscaped gardens with mature vegetation, particularly tree planting. The generous planted plots, with development generally set in from its boundaries, follow the hillside topography and create a tranquil residential setting, with dwellings often set behind boundary/retaining walls. This can be appreciated both at close range and at a longer distance from across the valley.
4. The Lincombes Conservation Area Map 1 – Designations, includes the property adjacent to the site at St. Helens as 'Other key buildings and building groups of architectural importance or which make a significant contribution to the townscape'. The main parties have identified St. Helens as a non-designated heritage asset. I have no reason to disagree. Its significance is derived from its built form, and large verdant plot size that reflects the wider development of Torquay and the CA.
5. The appeal site previously formed part of the plot to St. Helens, a large pitched-roof villa with rendered walls, slate tiled roof, and timber sash windows typical of the key

buildings in the CA. St. Helens benefits from planning permission for alterations and a large extension to its side and rear of a modern contemporary appearance to create a number of apartments.

6. At the time of my site visit, construction works related to the alterations and extension to St. Helens were underway with the appeal site void of any significant planting with the exception of one Category 'B' tree. This tree would be removed as part of the appeal proposal with compensatory tree planting proposed. I note that there is a disagreement between the main parties with regard to the felling of previous trees the subject of Tree Preservation Order 1973.009 (TPO) related to St. Helens and that this is subject to a separate investigation by the Council.
7. The appeal proposal seeks to subdivide the original plot of St. Helens and erect a two-storey dwelling with external amenity space and a new access off Ridgeway Road. Due to the topography of the site, in some elevations the dwelling presents as a single-storey structure. It comprises a contemporary façade and materials pallet similar to the extensions being constructed to St. Helens.
8. The proposal would split the large original plot to St Helens creating a new smaller and narrower one in fairly close proximity to St. Helens on the site boundary. As a result, and given the increased bulk and form of St. Helens as being extended, this would significantly erode the sense of plot spaciousness which is a key characteristic of the area. The resultant plot would appear markedly smaller and narrower than those prevailing in the area and in addition to its staggered form and plot coverage, the proposal would fail to assimilate well with the prevailing spatial characteristics. It would also result in the loss of the remaining tree that as a Category 'B' tree still has a significant lifespan remaining.
9. Furthermore, due to the increased footprint of development in combination with the site levels and extensions to St. Helens, there would be minimal space retained for meaningful new and replacement tree planting of a scale that reflects the verdant nature of the CA. In this regard, it is noted that the replacement trees proposed are restricted in size with limited space to grow significantly given their close relationship to the proposed dwelling within its main outdoor space and close relationship to the built form of St. Helens. As a result, the development would not reflect the spacious sylvan residential character of large houses/villas set in sizable, landscaped gardens with mature tree planting. It would also harm the significance of St. Helens by virtue of the resulting scale of development undermining the spacious verdant nature of the plot and wider area. In addition, should it be subsequently determined that the six trees the subject to the TPO have been felled without the necessary consent and require suitable replacement, for the reasons given above, there would be inadequate space to achieve this on the appeal site whilst respecting the character and appearance of the CA.
10. I acknowledge that as a result of the site levels, height of the proposed dwelling and construction of the extension to St Helens, the proposed dwelling would not be highly visible from Higher Erith Road and has been designed to appear as development behind boundary/retaining walls. However, the boundary/retaining wall with St Helens would not be at the road edge with the proposal visible from Ridgeway Road through the proposed raised access, in some views from across the valley as identified by the main parties, and from neighbouring properties including St. Helens. While I acknowledge that views across the valley are limited with the proposal viewed in association with St Helens and its extensions seeking

to appear as an additional retaining wall, it would nonetheless add to the overall built form on the site.

11. I have had regard to the proposed landscaping scheme, and whilst this would screen parts of the dwelling in time, the access and parking area would be difficult to screen fully given its raised height and the purpose of landscaping should be to secure effective integration of the proposal into the area rather than screening the increased bulk and mass of the built form on the site. Moreover, the proposed contemporary façade, flat-roof design, minimal openings and materials palette would not respect the predominant design of large, tiled pitched roof villas with sash windows sitting fairly centrally within their plots when viewed from close range and from adjacent buildings. This would be the case despite the extensions to St. Helens being of a similar contemporary design as this was granted as a subservient extension to a refurbished villa that was considered to enhance the site with space retained for significant planting.
12. I acknowledge the presence of some infill development in the area, but I have been advised that many of these were completed before the CA was designated, approved under different development plan policies and with greater space between buildings for planting. As such they are not directly comparable to the appeal proposal. Moreover, I am required to consider the proposal on its merits.
13. Therefore, for the reasons stated above, the proposals would lead to a harmful intensification of the use of the site and a subsequent reduction in the spacious sylvan character of the CA and setting to St. Helens. Thus, the proposed development would cause harm to the character and appearance of the area, the host dwelling and would fail to preserve or enhance the character or appearance of the CA as a whole. As a result, it would adversely affect the significance of the wider Conservation Area and that of St. Helens as a non-designated heritage asset. I give great weight to the conservation of these heritage assets.
14. Accordingly, the proposals would result in 'less than substantial harm' to the CA and St. Helens as designated and non-designated heritage assets. It is important to note that 'less than substantial harm' does not equate to a less than substantial planning objection. Paragraph 215 of the Framework requires that 'less than substantial harm' should be weighed against public benefits of the proposals. While I acknowledge the proposals result in some public benefits through the provision of a new build family dwelling in a sustainable location that could be built out quickly, provision of a dwelling towards the Council's Housing Land Supply, and economic benefits from construction and subsequent spend from occupiers, these benefits do not outweigh the 'less than substantial harm' to the Conservation Area as a whole.
15. It follows from the above that the proposal would fail to preserve or enhance the character or appearance of the CA and fail to preserve the setting of a non-designated heritage asset. As such, it is contrary to policies DE1, SS10 and C4 of the Torbay Local Plan: The Plan for Torbay: 2012 to 2030 (LP) and policy TH8 of The Torquay Neighbourhood Plan June 2019 (NP). Amongst other things, these state that development should be well-designed, respecting and enhancing Torbay's special qualities, sustain and enhance areas and other features which make an important contribution to Torbay's built and natural setting and heritage, not allow development where it would seriously harm protected trees, natural features of significant landscape, historic or nature conservation value, and that

development must be of a good quality design, respect the local character in terms of height, scale and bulk; and reflect the identity of its surroundings.

16. My attention has been drawn to the Planning Officer Report stating that the proposal conflicts with LP policy DE5. However, as this relates to extensions and is not reflected in the Decision Notice, it is not determinative in relation to this appeal.

Living conditions

17. The appeal site lies in close proximity to Kim House. Kim House benefits from a roof terrace close to the eastern site boundary of the appeal site. The roof terrace is raised above ground level and separated from the appeal site by steps and boundary planting. The proposal seeks to introduce an access and raised parking area close to the boundary and roof terrace to Kim House.
18. The plans submitted as part of the appeal demonstrate that the parking area would be raised above the level of the roof terrace to Kim House. As a result, and given its close proximity, the appeal proposal would provide an opportunity to overlook the roof terrace and windows to Kim House from the access and parking spaces.
19. However, suitable boundary treatment to the access and parking spaces at a minimum height to prevent overlooking could be secured by condition alongside general site landscaping should the appeal be allowed. This would ensure that there would be no direct overlooking of the roof terrace and the wider Kim House property from the proposed access and parking area.
20. Furthermore, given the distances between the raised access, parking area and existing roof terrace, off-set alignment and with intervening boundary planting, I do not find that the proposal would result in an overbearing outlook from the roof terrace or remainder of Kim House that has its main outlook across the valley.
21. It follows from the above that, subject to conditions, the proposal would not harm the living conditions of the occupiers of neighbouring occupiers at Kim House, with particular regard to privacy and outlook. As such, the proposal complies with LP policy DE3, which, amongst other things, states that all development should not unduly impact the amenity of neighbouring and surrounding uses.

Biodiversity

22. As a result of the dispute between the main parties regarding consent for the felling of trees, there is a dispute regarding the biodiversity requirements for the proposal.
23. The Ecological Impact Assessment (EIA) details mitigation for the proposed development and I have not been provided with clear evidence that the findings of this report, and associated mitigation, are unreasonable or inadequate in isolation of the dispute over the felling of the trees. I do however note that the mitigation and Council's request for inclusion of compensatory oak trees is not detailed on the landscaping plan. Nonetheless, the EIA provides a suitable starting position for securing biodiversity mitigation and enhancement that could be secured by condition alongside a revised landscaping plan.
24. I am mindful that it is possible that following the appeal decision it could be determined that the six trees previously on the site subject to the TPO have been felled without the necessary consent and require further ecological mitigation. To cover such a situation, I see no reason why suitable conditions could not be worded

to ensure the submission of a final scheme of ecological mitigation for approval before any works commence.

25. As a result, and subject to conditions, I find that the proposal would not have a harmful effect on biodiversity. As such, it is not contrary to LP policy NC1 and NP policy TE5. Amongst other things, these seek to conserve and enhance Torbay's biodiversity, positively incorporate and promote biodiversity and as necessary provide mitigating arrangements in order to protect and enhance those species and habitats.

Other Considerations

26. 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 provisions of 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 the asset of particular importance, this provides a strong reason for refusing the development and there is no need for me to carry out the assessment in Paragraph 11. d) ii. of the Framework.
27. Nevertheless, I have had regard to the addition of a suitably sized dwelling which would contribute towards the supply of family homes in the area, could be built out quickly, makes an efficient use of land that I have been advised is expensive to keep, and is located close to a range of services and facilities with adequate car parking where the principle of residential development is acceptable. However, these benefits are limited by the small scale of the proposal and must be considered in that context.
28. Conversely, I have found that the proposal would fail to preserve or enhance the character or appearance of the CA and fail to preserve the setting of a non-designated heritage asset. As such, in any case, the adverse effects would significantly and demonstrably outweigh the benefits.

Conclusion

29. Although, subject to conditions, I have found no harm to the living conditions of neighbouring occupiers or to biodiversity, I have found that the proposal fails to preserve or enhance the character or appearance of the CA and fails to preserve the setting of a non-designated heritage asset. In my view, this is the prevailing consideration, and the proposal should be regarded as being in conflict with the development plan, when read as a whole.
30. 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