



Appeal Decision

Site visit made on 3 June 2025

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5th June 2025

Appeal Ref: APP/X1165/W/24/3354566

Hollington House, Acadia Road, Torquay, Devon TQ1 2PY

- 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 David Lewis against the decision of Torbay Council.
 - The application Ref is P/2024/0308.
 - The development proposed is described in the application as “Part demolition of extg extension (lower roof). Erection of two storey link and four flats.”
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant has provided revised drawings and information relating to trees that was not before the Council when it made its decision. The revised plans and arboricultural information involve clarification 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.

Main Issues

3. The main issues are:
 - whether the proposed development would preserve or enhance the character or appearance of the Lincombes Conservation Area (CA), including trees;
 - the effect of the proposed development on the living conditions of the occupants of 444 Babbacombe Road (No 444) with regard to privacy;
 - whether the proposal would provide acceptable living conditions for future occupants, with particular regard to privacy, outlook, outdoor space and internal space standards; and
 - the effect of the development on highway safety with regard to parking provision.

Reasons

Character and appearance

4. 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 widespread and the part of it within which the appeal site is located is characterised by its detached or semi-detached, pitched roofed villas set in large grounds. While some properties have been extended over the years, these spacious surroundings and gaps between buildings are largely maintained, providing a setting reflective of a 19th century garden suburb.

5. The appeal site comprises a large, detached villa within generous tree lined grounds on a prominent street corner. It is typical of the type of building found in the CA. Indeed, although not part of an adopted document, it is recognised as a key building within the Council's draft CA Character Appraisal. This is because it is said to be a better example of such a villa, with its good porch detailing and balustrade. There is no dispute that the building has been historically extended in a rather unsympathetic manner, which is exposed somewhat by the sloping topography.
6. The proposal would introduce a 2 storey side extension to the already extended host property at the lower and ground floor levels. It would be set down from the tallest part of the original building and would see the moderate height reduction of a small section of the existing uncomplimentary flat roof extension. Even so, the extension would nevertheless result in a form of development that would consume a great deal of the plot's overall width. Although not a dominant feature in itself, it would still be of a notable massing and scale. Overall, despite the retention of some gardens and potential additional landscaping, the scheme would make the property feel cramped within its plot. This would irrevocably erode the characterful, spacious gap found between properties, which is an important feature of the CA.
7. Efforts have been made to emulate some of the design features and materials of the original building, including the brackets, belt courses and arched windows. Moreover, unflattering aspects of the extended original building would be masked by the extension. However, the proposed fenestration design includes many new openings across 2 of its elevations. This overly complicated arrangement does not compliment the host property's more simplistic Italianate style. While the green roof would go some way towards softening its overall appearance, the extension would create an unusually elongated adjunct. For the reasons given, its appearance would be at odds with the architectural proportions of this historic villa.
8. *Trees* – The appeal site is covered by a blanket Tree Preservation Order and there are some large, characterful trees within it. Of particular note is a large sycamore positioned in the south west corner of the garden and identified as T009 on the Tree Appraisal and Planting Plan submitted with this appeal. The evidence shows that the tree is in good physical and fair structural condition with a good degree of life expectancy, subject to a cyclic pruning regime. 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.
9. The collective evidence relating to the effect of the proposal on trees or protection measures is rather limited. Importantly though, the Planting Plan shows that a significant part of the extension would encroach onto the tree's root protection area. While the benefits of additional planting are acknowledged, in the absence of any compelling evidence to the contrary, I cannot be certain that the development could be progressed without irreparable harm to this tree. Accordingly, the use of a planning condition would not be appropriate.

10. 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 (NP). Amongst other things, these policies promote development that respects local character, whilst conserving and enhancing heritage assets.

Living conditions of No 444

11. A large array of windows on the south elevation of the proposed extension would face towards the rear windows of No 444 with a separation distance of about 22m. While the buildings would be at a slight angle from one another, direct overlooking from the upper floor of the proposal would not be avoided. It is acknowledged that the separation distance might be acceptable as a rule of thumb, though the extension would be much taller and on higher ground than its neighbour. This means that the overall effects of overlooking would be significantly increased.
12. In that context, main living and bedroom windows would allow future occupants a relatively clear view into the private spaces of No 444. Existing or proposed planting could not be relied upon in the longer term to permanently screen the development. Accordingly, the proposal would harmfully compromise current levels of privacy enjoyed by the occupants of No 444. While a planning condition could be used to obscure glaze these windows in their entirety, this would result in a poor outlook for the future occupants of these upper floor flats and would therefore not be appropriate.
13. I therefore conclude on this main issue that the proposal would harm the living conditions of the occupants of No 444 with regard to privacy. As such, there would be conflict with LP Policy DE3 which seeks to ensure development is designed to provide a good level of amenity for occupiers.

Living conditions of future occupants

14. Parts of the proposed lower ground floor windows could be conditioned to be obscure glazed to avoid any harmful overlooking from the communal garden into their habitable rooms.
15. The Council is concerned that 2 of the current flats would have some reduced amenity through the loss of large west facing windows. However, the proposed reconfiguration of space would provide 6 full height windows on each of the side elevations. This would deliver suitable light and outlook for these occupants.
16. While a good proportion of the current communal garden would be taken up by the development, the evidence shows that each unit, including all existing accommodation would be provided with about 27sqm of green space. This complies with NP Policy THW4.
17. LP Policy DE3 expects a good level of amenity for future occupiers which is assessed, amongst other things, through standards of accommodation. The supporting text to the policy explains that regard will be had to the Government's Nationally Described Space Standard when considering applications. It adds that *these space standards are intended to be operated flexibly with regard to viability and other considerations. However, the creation of small apartments by*

subdivision/conversion will be resisted where this would result in an unpleasant or unhealthy living environment or exacerbate concentrations of deprivation.

18. While not having the force of policy, this supporting text provides helpful guidance on an accepted approach to assist in creating a high standard of amenity for existing and future users as set out in paragraph 135 of the National Planning Policy Framework (the Framework). It is common ground that the overall space standards would be met for the proposed flats. However, 2 of the flats would have double bedrooms that fall some 0.78sqm below the expected 11.5sqm. There is little before me to demonstrate any strong reason why new flatted development of the type proposed could not, at the very least, be designed to meet these standards. The scheme would consequently provide some bedrooms that would be unnecessarily cramped and substandard for its future occupants.
19. Drawing these matters together, while there would be no harm in respect of privacy, outlook, or the provision of outdoor space, this would not be outweighed by the harm caused by deficiencies of internal space provision. I therefore conclude on this main issue that the proposal would harmfully affect the living conditions of future occupants with regard to internal space standards. As such, there would be conflict with LP Policy DE3.

Highway safety

20. The Council and interested parties are concerned that there would be insufficient parking at the appeal site. The appellant acknowledges that the existing arrangement has its shortcomings. However, the plans show that there would be an additional 8 spaces on top of the existing 5. Each new unit of accommodation would have the required single parking space, which would mean that a further 4 spaces would be freed up for some existing residents. Subject to a suitably worded condition that could also secure EV parking and cycle stores, this would reduce overall pressure associated with on-street parking as required by NP Policy TH9 and the intentions of LP Policy TA3.
21. I therefore conclude on this main issue that the proposal would have an acceptable effect on highway safety with regard to parking provision. There would be no conflict with LP policies DE3 and TA3, or NP Policy TH9.

Other Matters

22. The Council is concerned that the existing waste arrangements for the 13 units of accommodation are unacceptable. While noted, this is of little relevance to the appeal proposal. The plans do show how bins and waste would be managed and there is no compelling evidence to demonstrate how the proposal would be unacceptable in this regard.
23. My attention has been drawn to developments at The Briary and St Helens in respect of nearby gap filling developments. The Briary extension is however at the far end of the property, which leaves a generous gap, unlike the appeal scheme. The St Helens permission was considered to benefit from refurbishing a key building, maintaining its character. However, I have concluded above that this scheme would not have a preserving effect. These examples are not comparable and can only be afforded very little weight.

24. There are a number of listed buildings nearby. Consequently, there is a statutory duty to pay special regard to the desirability of preserving their setting. The appeal proposal would be separated from these buildings by topography, intervening built form, and dense vegetation. Despite the proximity of the grade II listed Erith House, it would have no effect on its setting or that of other nearby listings. Furthermore, the Council has not raised any concerns in this respect. Accordingly, I am satisfied the proposal meets the requirements set out in s.66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 (The Act).

Planning Balance and Conclusion

25. I have found that the proposal would not have a harmful effect on highway safety. However, this would be a neutral factor that would not outweigh the identified harm to the character or appearance of the CA, or the living conditions of existing and future occupants.
26. Accordingly, due to its relatively small scale, the proposal would lead to less than substantial harm to the significance of the designated heritage asset affected. Paragraph 215 of the Framework states that in such circumstances the harm should be weighed against the public benefits. The proposal would deliver 4 additional units of accommodation 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.
27. 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.
28. 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.
29. 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 strong 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). The harm to the CA is representative of a strong reason for refusing the proposed development. 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.
30. 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