
Appeal Decision

Site visit made on 1 July 2025

by J Hills MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2025

Appeal Ref: APP/X1165/W/25/3365086

Fosseway West, St Agnes Lane, Torbay, Torquay TQ2 6QD

- 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 Sean and Mrs Debbie Fitzgerald against the decision of Torbay Council.
 - The application Ref is P/2024/0835.
 - The development proposed was originally described as “new dwelling in lands of Fosseway West at St. Agnes Lane in Torquay.”
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development set out in the Council’s decision notice is for a *two storey 4-bedroom dwelling in the grounds of Fosseway West with amenity areas to include first floor terraces*. This is consistent with the description in the appellant’s appeal form, and I have dealt with the appeal on this basis.

Main Issue

3. The main issue is whether the proposed development would preserve or enhance the character or appearance of the Chelston Conservation Area (CA).

Reasons

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 characterised by its mainly rendered, detached or semi-detached, pitched roofed villas set in large grounds. Despite some limited infilling, these spacious surroundings are mostly preserved and provide a rich, parkland setting within a secluded garden suburb that includes landscaped gardens. Much of the overall character of the CA depends on the interplay of open spaces, private grounds and their extensive verdant coverage within its steep slopes and undulating topography.
5. The appeal site comprises a spacious, tree lined garden area associated with a large, semi-detached property of a style and age synonymous with the CA. The pair of properties stand tall on a sloping site where the prominent upper floor and roofscape reveal its grand scale when viewed from the town below. In fact, it is recognised as a key building in the Council’s CA Character Appraisal. Moreover, the appellant’s heritage appraisal draws attention to the importance its garden has

to the CA as a verdant open space that conserves the spacious character of the villas. I agree. The pair of semis has been divided into flats with some having their own private outdoor spaces and separate parking areas.

6. The extensive gardens have been informally subdivided and are set within a steep slope. It is claimed that as the part of the garden where the proposed mono-pitched property would be located is in an unkempt state with poorly detailed parking, there is an opportunity to develop it, whilst preserving views. The unkempt nature of this part of the wider garden is however likely to be relatively easy to reverse with some proportionate gardening works. There is also no reason why parking arrangements could not be made more visually appealing. It is worth noting here that vehicles come and go and are not permanent features in the landscape. These are not sound reasons to justify a new dwelling here.
7. It is acknowledged that the low roof profile and property set into the slope would be subservient in height when compared with its host, which would avoid a competing visual relationship. This is because it would be set at a far lower level. In that context, my attention has been drawn to a single storey extension to the host property with a higher ridge. That scheme was allowed at appeal¹. While I acknowledge the previous inspector's conclusion over the broader visibility of that scheme, they found that the important features of the CA, namely the characterful spacious plots, would not be affected. It is therefore not comparable with this proposal that seeks to sub-divide the plot. In any event, the scale and massing of the extension would be read within the context of the property it would adjoin, rather than as a separate entity.
8. Given the proposal would consume a good deal of the existing garden with its extensive built form and hard surfacing, the verdant gap between properties would be substantially eroded. This would be exacerbated by the extant permission. Even in its absence and accepting that generous gardens would be left over for the host, the spacious surroundings of this key building in the CA would be disproportionately cluttered and irrevocably compromised by the proposal.
9. It is asserted that the proposal would be barely perceptible from St Agnes Lane. If this were the case, a lack of public visibility is not determinative when considering proposals within conservation areas and it is always necessary to consider the intrinsic qualities which define the character of the area. However, there are angled viewpoints either side of the proposed dwelling where its bulk and form would be particularly noticeable. Notwithstanding the presence of nearby extensions, or possible future road fronted enclosures, the spacious gap between properties when viewed from St Agnes Lane would be somewhat diminished.
10. In that context, much is said about the existing screening of the appeal site to the south and south east. Be that as it may, the proposed hedge on the lower boundary would be unlikely to screen much of the 2-storey rear elevation above it. Even if more extensive screening could be created, this would be likely to take a very long time to establish itself. To require such measures using a planning condition would be disproportionate and unlikely to pass the test set out in paragraph 57 of the Framework. Moreover, future occupiers would probably want views from these elevations and balconies to remain unobstructed to maximise their outlook. In that respect, the submitted photomontage is consistent with my

¹ APP/X1165/D/24/3353165

own observations that despite some recessive materials including a green roof, the development would not be hidden.

11. Furthermore, whilst the design would incorporate some natural stone and could deliver a typically characterful boundary wall, its vast expanse of large fenestration and blocked design with vertical cladding would fail to exhibit locally distinctive architectural form found in the CA. Consequently, although small aspects of the overall scheme are well-conceived, the eye would nevertheless be drawn to the incongruity of the development as a whole.
12. For the reasons given, I conclude that the proposed development would fail to preserve or enhance the character or appearance of the CA. As such, there would be conflict with policies DE1 and SS10 of the Torbay Local Plan, and Policy TH8 of the Torquay Neighbourhood Plan. In part, these policies promote development that respects local character and integrates with the surrounding context, whilst conserving and enhancing heritage assets.

Other Matters

13. There are a number of listed buildings nearby including the grade II Torquay Railway Station, Hennapyn Road Bridge, and Signal Box at south end of east platform, all with a significance derived from their historic function and architectural detailing. Consequently, there is a statutory duty to pay special regard to the desirability of preserving their setting. The appeal proposal is separated from these buildings by an intervening road. While the proposal would have a harmful effect on the CA, separation distances and surrounding vegetation mean that the scheme would have a neutral, and thus, preserving effect on their setting. 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

14. I have found that the proposal would harm the character and appearance of the CA. I agree with the Council that there would be less than substantial harm to the designated heritage asset affected.
15. Paragraph 215 of the National Planning Policy Framework ('the Framework') says that in such circumstances the harm should be weighed against the public benefits. The proposal would deliver an additional dwelling in a sustainable location very close to the train station. It would make a modest but meaningful contribution to the supply of new homes in a situation where the Council is well short of being able to demonstrate a 5-year supply of deliverable housing sites. It would also provide a temporary boost to the economy during the construction phase and thereafter through consumer spend. These can all be considered as public benefits.
16. 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.

17. 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, while there are other assets which can be attributed greater weight, I consider that the harm to this heritage asset outweighs the benefits.
18. 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). 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. For the reasons above, there is a strong reason for refusing the proposed development.
19. 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, I conclude that the appeal should be dismissed.

J Hills

INSPECTOR