
Appeal Decision

Site visit made on 13 November 2024 by S Indermaur

Decision by Martin Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2025

Appeal Ref: APP/X1165/D/24/3351034

**Erlwood Cottage, Middle Warberry Road, Wellswood, Torbay, Torquay
TQ1 1RN**

- 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 Allison Wafer against the decision of Torbay Council.
 - The application Ref is P/2024/0245.
 - The development proposed is the formation of two storey rear extension from the basement floor level, single storey side extension with terrace and balustrades, and single storey rear extension to form canopy to garden; Facade renovation including window placement and an entrance portico; Renovation and enlargement of existing garage to form an annex; Site landscaping, removal of both chimneys, and dwelling roof replacement from concrete tile to slate.
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Decision

1. The appeal is allowed, and planning permission is granted for the formation of two storey rear extension from the basement floor level, single storey side extension with terrace and balustrades, and single storey rear extension to form canopy to garden; Facade renovation including window placement and an entrance portico; Renovation and enlargement of existing garage to form an annex; Site landscaping, removal of both chimneys, and dwelling roof replacement from concrete tile to slate, at Erlwood Cottage, Middle Warberry Road, Wellswood, Torbay, Torquay, TQ1 1RN, and in accordance with the terms of application Ref. P/2024/0245, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans, all dated 10/04/2024:
 - Location Plan - 23095_09001_PL01;
 - Proposed Site Plan - 23095_09002_PL01;
 - Proposed Basement Floor Plan - 23095_01006_PL01;
 - Proposed Ground Floor Plan – 23095_01007_PL01;
 - Proposed First Floor Plan – 23095_01008_PL01;
 - Proposed Roof Plan – 23095_01009_PL01;
 - Proposed Ancillary Building Plans – 23095_01010_PL01;
 - Proposed South Elevations - 23095_02006_PL01;

- Proposed East Elevations - 23095_02007_PL01;
 - Proposed North Elevations - 23095_02008_PL01;
 - Proposed West Elevations - 23095_02009_PL01; and,
 - Proposed Ancillary Building Elevations - 23095_02010_PL01.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
- 4) The development hereby permitted shall be implemented in accordance with the recommendations and conclusions of the Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement dated 22 July 2024, and prepared by Advanced Arboriculture.
- 5) The development hereby permitted shall be implemented in accordance with the recommendations and conclusions of the Preliminary Ecological Appraisal (Report ref: #09524/GLE) dated August 2024, and a Bat Presence/Likely Absence & Activity Survey (Report ref: #095a24/GLE) dated August 2024, both prepared by Green Lane Ecology.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. The appellant submitted a series of additional reports and surveys with the appeal in response to the Council's reasons for refusal. These included a Preliminary Ecological Appraisal, a Bat Emergence Survey, and an Arboricultural Impact Assessment, Tree Protection Plan and Arboricultural Method Statement. Given that the Council had not had the opportunity to consider this additional evidence, they were consulted as part of the appeal process and invited to comment on the new evidence.
4. In response to the consultation, the Council has commented only briefly to confirm their expectation that the recommendations set out within the various reports are secured by condition and subsequently adhered to. Having reviewed the conclusions and recommendations, I would agree with the Council's response and suggested approach and can see no reason to dispute the conclusions reached in the technical reports. I am satisfied that, subject to the use of appropriate conditions to secure the recommendations from the technical reports, that all arboricultural and ecological matters related to the proposed development have now been appropriately addressed.

Main Issue

5. As a consequence of the conclusions set out in the Preliminary Matters section of this decision, matters related to the impact of the development on protected trees and ecological features including protected species, are no longer disputed.

6. The main issue is therefore whether the proposal would preserve or enhance the character or appearance of the Warberries Conservation Area and the effect on the character and appearance of the dwelling and area.

Reasons for the Recommendation

7. The appeal property is a large detached two-storey dwelling with separate detached garage set within a substantial plot amidst mature gardens and landscaping. The dwelling possesses a multi-pitched roof and single-storey entrance porch on the principal elevation, with the façade finished in a cream stucco and painted render with concrete roof tiles, and double chimneys on the eastern side of the dwelling. The form of the dwelling and accommodation is arranged to respond to the changing levels within the site with the rear gardens steeply sloping downwards from the dwelling, resulting in the appearance of a substantial building of three-storey scale to the rear with the large terrace possessing a visible basement storey underneath and conservatory above.
8. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) places a duty upon the decision-maker, in the exercise of planning functions, to have special regard to the desirability of preserving or enhancing the character or appearance of conservation areas. The National Planning Policy Framework (the Framework) advises 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. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
9. Erlwood Cottage is located within a part of the Warberries Conservation Area (CA). The Warberries Conservation Area Character Appraisal (CACA) recognises that a part of the wider character of the area is derived from the sizeable mid-19th Century villas that stand in spacious and mature grounds. Whilst Erlwood Cottage represents a later mid-20th Century addition, the CACA neither considers it to be a key building nor one which makes a significant contribution to the townscape. It nonetheless responds well to and reflects the general pattern, spaciousness, and grain of development along Middle Warberry Road.
10. The appeal proposal comprises multiple elements of extension and alteration. However, the Council's concerns are focussed on the impact of the two-storey rear extension, and the alterations to the fenestration on the front elevation, including the addition of an entrance portico. Based on the submitted evidence and my observations on the site, I see no reason to disagree with the Council's position with regards the other elements of the works which are not at dispute, and therefore this decision focusses on the aforementioned rear extension and front alterations.
11. The proposed two-storey rear extensions would be, taken in isolation, substantial in size. However, when viewed in the context of the scale and form of the existing dwelling, they would not extend beyond the footprint of the existing rear terrace and additionally would replace the existing rear conservatory. Due to the contours of the land, the two-storey rear extension would not extend up to first floor level at the rear and would not overwhelm the existing dwelling despite the overall scale of the addition. The result would be that the proposed development would be subservient to the existing dwelling, the scale and form of which would still be easily read.

12. I recognise that the proposed extensions and alterations would not erode with any significance the existing spaciousness of the site presented by the mature and spacious large rear garden. The site itself is visually well-contained and largely enclosed by a belt of mature trees and hedgerow. This results in limited inter-visibility with neighbouring properties either to the south on Marlborough Avenue or the east or west, and from middle-long range views within the CA. Moreover, the dwelling is set down and back into the plot from the street level thus restricting views of the property from Middle Warberry Road.
13. Turning to the detailed design approach, and particularly the approach to fenestration, this would undoubtedly represent a departure from the existing design. However, when viewed in the context of the wide variations in design approach within the CA, it is evident that there are design cues taken from elsewhere within the wider CA. I appreciate that some of the proposed alterations to the fenestration both to the rear and front of the dwelling represent a more modern or contemporary design approach. However, in the context of the site and its relationship to the existing breadth of design variety within the CA, where vertical emphasis of fenestration and porticos are a recognisable feature elsewhere, I am not persuaded that the design approach would fail to preserve the character of appearance of the heritage asset.
14. For these reasons, the proposed development would preserve the character and appearance of the Warberries CA and would not result in any conflict with Section 72 of the Act. The design of the proposed alterations and extensions would also be acceptable in the context of the existing dwelling and streetscene. The proposal would accord with development plan Policies DE1, DE5 and SS10 of the Torbay Local Plan 2012-2030, as well as Policy TH8 of the Torquay Neighbourhood Plan. These policies require development to be of a good quality design, relate well to surrounding environment, in the case of domestic extensions be sympathetic to the existing dwelling and site, and conserve and enhance the distinctive character and appearance of Torbay's conservation areas. The proposals would also accord with the design policies and guidance contained within the Framework.

Conditions

15. In addition to the standard conditions relating to the commencement of development and the requirement for the development to be carried out in accordance with the approved plans, a condition securing external materials to match the surfaces of the existing dwelling is necessary in the interests of preserving the character and appearance of the CA, and the dwelling. I have also included conditions requiring the development to be implemented in accordance with the conclusions and recommendations set out in the submitted ecological and tree reports, in the interests of protecting biodiversity and preserving the character and appearance of the CA.

Conclusion and Recommendation

16. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed.

S Indermaur

APPEAL PLANNING OFFICER

Inspector's Decision

17. I have considered all the submitted evidence and my representative's report and on that basis the appeal is allowed, subject to the conditions as listed.

Martin Seaton

INSPECTOR