



Appeal Decision

Site visit made on 21 August 2025

by Elizabeth Lawrence BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 September 2025

Appeal Ref: APP/X1165/D/25/3369202

193 Marlton Road, Paignton, TQ3 3NB

- 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 Ms Jessica Jinks against the decision of Torbay Council.
 - The application Ref is P/2025/0037.
 - The development proposed is described as formation of first floor extension, pergola, decking, retention and formation of boundary treatments and associated works (part retrospective).
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Decision

1. The appeal is dismissed insofar as it relates to the front wall and associated piers. The appeal is allowed insofar as it relates to the formation of first floor extension, pergola, decking and side fence at 193 Marlton Road, Paignton, TQ3 3NB in accordance with the terms of the application, Ref P/2025/0037, and the plans submitted with it, so far as relevant to that part of the development hereby permitted and subject to the following conditions:
 - 1) The first floor extension 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 and report, in so far as they relate to the first floor extension hereby permitted: EX.1 dated 11.12.2024, EX.2 dated 11.10.2024, EX.3 dated 11.12.2024, PR.1 dated 09.07.2024, PR.3 dated 11.12.2024, EX.4 dated 11.12.2024, EX4 dated 10.12.2024, EX5 dated 11.02.2025, AB.1 dated 28.01.2025, AB.2 dated 28.01.2025 and the Bat and Nesting Bird Assessment Report undertaken by Redstone Ecology, dated August 2024.
 - 3) The materials to be used in the construction of the external surfaces of the first floor extension hereby permitted shall match those used in the existing dwelling.

Preliminary matters

2. The description for the development as set out in the application form and the council's decision notice refer to part of the proposal being retrospective. As permission cannot be granted retrospectively, I have deleted this from the description used in this decision. The elements of the proposal that have already been built or partially constructed include the pergola and associated decking and the boundary fence. The decision also refers to the boundary treatments without identifying each aspect. In this decision I refer to the proposed boundary

treatments as side fence and front wall and associated piers. This is in the interests of precision.

3. At the time of the appeal site visit a dark grey brick wall and associated tall brick piers had been constricted along the front boundary of the appeal site. This wall and associated piers differs in height, form and design from the front wall shown on the submitted drawings. For the avoidance of any doubt, I confirm that this decision deals solely with the wall and associated piers shown on the application drawings and not the wall which currently exists.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the street scene and the area.

Reasons

5. Marlton Road includes a broad range of the single and two storey dwellings whose front and rear gardens vary in size and depth. This together with the steeply sloping topography, curved alignment of the road; mature soft planting within gardens and the wider landscape; and the expansive views towards the coast contribute to the informal and suburban character and appearance of the street scene and the area around the appeal site.
6. Front and side boundary treatments vary, often reflecting the topography within the street scene. In the area where the appeal site is located there is a diverse range of tall walls to the front of elevated sites and lower walls with vertical timber slatted fences or hedges above or to the rear of the walls. Side boundaries include a mixture of low and tall walls, fences and hedges. The walls are constructed from stone, red brick or have a rendered finish. Wall piers are built from the same range of materials and are typically modest in mass, form and appearance.
7. Along this part of Marlton Road some of the gardens include soft planting, whilst others are dominated by parking spaces and hard landscaping. Conversely, a short distance to the southeast of the appeal site soft landscaping dominates the street scape. To the north of the junction with Dolphine Court Road the character similarly becomes gradually more verdant, creating a gentle transition between the town and the open countryside.
8. The existing tall fences and walls within the vicinity of the appeal site have blended in to the street scene with varied degrees of success depending on their location, height, materials, design and existence of soft planting. Rather than set a precedent for the proposal they highlight the need to assess each proposal on its individual merits and in accordance with the prevailing planning policies.
9. The appeal property occupies a prominent position in the street scene, adjacent to the junction of Marlton Road, James Avenue and Dolphine Court Road. The appeal dwelling is a comparatively narrow two storey dwelling with a simple hipped roof. At ground floor level it has a side extension with a part flat and part hipped roof that faces James Avenue and a front bay with a hipped roof.
10. Amongst other things policy DE1 of the Torbay Local Plan 2012–2030 (LP), seeks to ensure that developments are well designed and respect Torbay's special qualities. Policy PNP1(C) of the Paignton Neighbourhood Plan (PNO), states that proposals should strengthen local identity by retaining attractive and distinctive

natural and man-made features. Proposals should be in keeping with their surroundings and respect local scale, design, height, landscaping and important landscape or townscape vistas. Paragraph 135 of the National Planning Policy Framework 2024 (the Framework) similarly requires proposals to be visually attractive and sympathetic to local character and history.

11. To the side of the appeal property the proposed vertical boarded fence has been erected immediately to the rear of an existing long established low stone wall. Together they form a continuous enclosure along most of the side of the property. The low wall abuts the pavement and the fence runs along the edge of the wall and very close to/contiguous with the highway. Having regard to these factors I find that the siting of the fence readily falls within the term 'adjacent' to the pavement which forms part of the adopted highway. Accordingly, the proposed fence requires planning permission. The term adjacent is defined in various dictionaries as including close, near and contiguous.
12. The pavement around the junction with James Avenue is particularly wide. As a consequence the area around the junction is open and spacious even with the existence of the appeal fence and the wall around the property on the opposite side of the junction. Most of the proposed fence has started to weather and together its pale colour, curved top and siting just behind the stone wall give it a soft appearance which respects the street scene. On its own this aspect of the proposed boundary treatment would blend in appropriately with the street scene. At the same time, it would provide a reasonable level of privacy and security for the occupiers of the appeal property.
13. The proposed front wall would be modest in height and form. Subject to the use of appropriate materials which respect those used in the locality, this aspect of the proposed front boundary treatment would blend in readily with the street scene. However, due to their combined size, mass and height the associated wall piers would appear heavy, bulky and prominent within the street scene where they would have an uncharacteristic urbanising impact. Both on their own and together with the proposed wall the proposed piers would have an unduly enclosing impact and would appear overbearing alongside the proposed tall fence. The proposed Laurel hedge would fail to offset this harm. For this reason, the proposed wall and associated piers would materially detract from the character and appearance of the street scene and the area.
14. This harm would clearly outweigh the benefits for the appellant and their family that would result from the proposed front wall and associated gate piers. It is also not a matter that could be adequately dealt with by condition.
15. Conversely, the proposed pergola would be modest in size, height and form, would respect the host dwelling, and would be largely screened from the street scene. The proposed side extension would be set back from the front elevation of the host dwelling. It would sit above the existing single storey side extension and its fully hipped roof would be set below the main ridge line of the dwelling. The proposed side extension would respect the form, proportions and materials of the host dwelling and visually would break up the deep side elevation of the dwelling. For these reasons the proposed side extension would appropriately complement the host dwelling, which would appear more balanced in width and depth within the street scene.

16. I conclude on the main issue that the proposed wall and associated piers would unacceptably detract from the character and appearance of the street scene and the surrounding area. They would therefore be contrary to LP Policy DE1, PNP Policy PNP1(C)B and paragraph 135 of the Framework. Conversely the proposed fence, pergola, decking and side extension would respect the host dwelling, the street scene and the area. Accordingly, they would comply with the above policies.
17. In view of the acceptability of the proposed fence, pergola, decking and side extension I have considered the possibility of making a split decision. As these aspects of the proposal are physically and functionally separate from the front boundary wall and associated piers a split decision is possible and appropriate.

Conditions

18. The council has not suggested the imposition of any conditions. In relation to the proposed pergola, decking and fence I agree that none are necessary as the structures have been constructed. In relation to the proposed first floor extension, I consider that the standard 3 year time limit should apply along with conditions which require the development to be carried out in accordance with the approved plans and bat and nesting bird report, and that the materials to be used in the construction of the external surfaces of the first floor extension should match those used in the host dwelling. This is in the interests of certainty; to ensure the development respects the character and appearance of the host dwelling and the street scene and to protect wildlife. I consider that these conditions are both necessary and reasonable.

Conclusion

19. Having regard to the conclusion on the main issue and all other matters raised the appeal is dismissed in-so-far as it relates to the proposed wall and associated piers. The appeal is allowed insofar as it relates the proposed pergola, decking, first floor side extension and fence adjacent to the side boundary of the property.

Elizabeth Lawrence

INSPECTOR