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# Appeal Decisions

Site visit made on 30 July 2012

**by Neil Pope BA (Hons) MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 28 August 2012**

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## **Appeal A Ref: APP/X1165/E/12/2173686**

**The Old Toll House, Abbey Crescent, Torbay Road, Torquay, Devon, TQ2 5TS.**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent on an application for the extension to the time limit for implementing a listed building consent.
  - The appeal is made by Mr P Harvey against the decision of Torbay Council.
  - The application Ref. P/2011/0802/LB, dated 21 July 2011, was refused by notice dated 21 October 2011.
  - The works proposed are the formation of a roof terrace and modifications to a lift.
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## **Appeal B Ref: APP/X1165/A/12/2173684**

**The Old Toll House, Abbey Crescent, Torbay Road, Torquay, Devon, TQ2 5TS.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission on an application for the extension to the time limit for implementing a planning permission.
  - The appeal is made by Mr P Harvey against the decision of Torbay Council.
  - The application Ref. P/2011/0799/PA, dated 21 July 2011, was refused by notice dated 21 October 2011.
  - The development proposed is the formation of a roof terrace and modifications to a lift.
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## **Decisions**

1. The appeals are allowed and listed building consent and planning permission are granted for the formation of a roof terrace and modifications to a lift at The Old Toll House, Abbey Crescent, Torbay Road, Torquay, Devon, TQ2 5TS. The consent and permission are granted in accordance with the terms of the applications, Refs. P/2011/0802/LB and P/2011/0799/PA, dated 21 July 2011, subject to conditions in the Schedule below.

## **Procedural Matter**

2. There is a minor discrepancy in the plans originally submitted as part of these appeals. This relates to the extent of the parapet wall on the south western elevation of the building. An amended plan (Ref. 6203:31E) has been submitted on behalf of the appellant. This is unlikely to prejudice the interests of any party and I shall take it into account in determining these appeals.

## **Main Issue**

3. Whether the proposal would preserve the Grade II listed building known as The Old Toll House or its features of special architectural or historic interest and preserve or enhance the character or appearance of the Belgravia Conservation Area (CA) which includes the Grade II registered Historic Park and Garden at Rock Walk Gardens and, if not, whether any harm would be outweighed by any benefits of the scheme.

## Reasons

4. The Old Toll House is a single storey stone and slate roofed building which was built in about 1841. This building has been used for a variety of purposes over the years, including public toilets, but is currently unused and in a poor state of repair. Previous alterations include some unsympathetic flat roof additions. The special architectural qualities of this designated heritage asset include its small rectangular plan form, very modest scale and its rock faced local grey limestone walls, brought to course, with hammer-dressed dressings.
5. This nationally important building forms part of the mid 19<sup>th</sup> century Abbey Crescent and is situated along the main road coastal route between Torquay and Paignton. It occupies a prominent position within the CA, set against the cliff face of Waldon Hill and adjacent to Torquay Harbour.
6. The CA is characterised by 19<sup>th</sup> century villas and hotels. The wealth and quality of surviving 19<sup>th</sup> century fabric, including architectural detailing, materials and the Victorian terraced cliff garden/walks at Rock Walk Gardens which abut the appeal site, form part of the special qualities of the area. The site lies within a part of the CA that is very popular with visitors and which includes many commercial/business premises and associated paraphernalia.
7. In 2005 the Council granted permission/consent for the demolition of part of the appeal premises and the extension and change the use to a café bar (Refs. P/2005/1368/PA and P/2005/1369/LB). This would include the erection of a two storey flat roof extension on the sides and rear of the listed building. The approved scheme would be designed with a modern vernacular and would incorporate a substantial amount of glazing. It would also include the removal of the existing unsympathetic extensions to the building and would provide a pleasing contrast with the host building. The Council has since resolved to grant an extension of the time limit for implementing these proposals, subject to the completion of a planning obligation in respect of sustainable transport contributions (Refs. P/2010/0974 and P/2010/1052).
8. The proposed roof terrace would make use of the flat roof extensions that were permitted in 2005 but which have yet to be built. The new roof terrace would be surrounded by frameless glass balustrading and would be served by a lift that would comprise a rendered shaft protruding through the permitted roof. The approved staircase would be extended to roof level and would be finished in matching stone. A horizontal concrete flat roof would be used to link the lift and staircase. The doors and windows to the staircase would be framed in dark grey aluminium to match the works permitted in 2005.
9. The appeal scheme would increase the height and prominence of the extensions that were permitted in 2005. Whilst this would not in itself be harmful, the modifications to the lift shaft and the staircase, including the linking concrete slab roof, and the sizeable roof terrace/balustrading, would appear somewhat overpowering and out of scale with the host building. This would detract from the special architectural qualities of the building and would diminish the contribution the building makes to the 19th century architectural qualities of the CA. This would be at odds with the provisions of policies BE1, BE5 and BE6 of the Torbay Local Plan (LP).
10. However, in the context of paragraph 134 of the National Planning Policy Framework ('the Framework'), the harm that I have identified to the listed

building and CA would be less than substantial. Furthermore, the scheme would not detract from the significance of, or intrude into, the setting of the adjoining Rock Walk Gardens. The public enjoyment of this attractive walk/garden would be unfettered.

11. Paragraph 134 of 'the Framework' states that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
12. In this instance, the proposal would form part of a scheme that would secure the re-use of an important building within the CA. It would assist in arresting the decline of this designated heritage asset and would add to the vibrancy of this part of the CA. The roof terrace could be used by smokers and/or other customers and would provide additional commercial floorspace. In all likelihood, this would strengthen the viability of the proposed café/bar. In turn, this would enhance the local economy and could increase the potential for some limited additional employment. These are important public benefits of a scheme which accords with the thrust of the 2010 Ministerial Statement 'Planning for Growth'.
13. When all of the above matters are weighed, the benefits of the scheme outweigh the harm that I have identified. I am unconvinced by the Council's argument that since it approved the scheme in 2008 (Refs. P/2008/0981/LB and P/2008/0980/PA) there has been a material change in circumstances to justify withholding permission. The economic climate remains difficult and the above Ministerial Statement and 'the Framework' weigh in favour of extending the time limits for implementing this scheme. The development plan also appears to be unaltered since 2008.
14. I conclude on the main issue that the proposal would detract from the special architectural interest of the Grade II listed building known as The Old Toll House and its contribution to the character and appearance of the CA, but this limited harm would be outweighed by the benefits of the scheme.

*Planning/Listed Building Conditions*

15. For the avoidance of doubt and in the interests of proper planning it would be necessary to attach a condition specifying the approved plans. To safeguard the character and appearance of the building and the CA, a condition would be necessary requiring the submission and approval of more detailed drawings/samples of the balustrading and lift shaft. To ensure the listed building is restored as an integral part of the scheme, a condition would be necessary preventing the use of the roof terrace until details/timetable for repairing The Old Toll House have been agreed. Planning conditions to the above effect would accord with the advice in Circular 11/95 'The Use of Conditions in Planning Permissions'.
16. I conclude that these appeals should succeed.

*Neil Pope*

Inspector

## SCHEDULE OF CONDITIONS

### Listed Building Consent (Appeal A)

1. The works hereby authorised shall begin not later than three years from the date of this consent.
2. The works shall be undertaken in accordance with the details shown on drawing Nos. 6203:31E and 6203:32.
3. Works shall not commence until details of the following have been submitted to and approved in writing by the Local Planning Authority:
  - a) 1:20 scale drawing of the balustrading to the roof terrace;
  - b) a 1:20 scale drawing of the lift shaft and connecting link to the staircase;
  - c) samples of the materials to be used for the balustrading and the lift shaft and the connecting link.The works shall be undertaken in accordance with the approved details/samples.
4. The roof terrace shall not be used until details of the repair works to The Old Toll House and a timetable for undertaking these repairs have been submitted to and approved in writing by the Local Planning Authority.

### Planning Permission (Appeal B)

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development shall be undertaken in accordance with the details shown on drawing Nos. 6203:31E and 6203:32.
3. No development shall commence until details of the following have been submitted to and approved in writing by the Local Planning Authority:
  - a) 1:20 scale drawing of the balustrading to the roof terrace;
  - b) a 1:20 scale drawing of the lift shaft and connecting link to the staircase;
  - c) samples of the materials to be used for the balustrading and the lift shaft and the connecting link.The development shall be undertaken in accordance with the approved details/samples.
4. The roof terrace shall not be used until details of the repair works to The Old Toll House and a timetable for undertaking these repairs have been submitted to and approved in writing by the Local Planning Authority.

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