



Appeal Decisions

Site visit made on 14 November 2016

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: **21 November 2016**

Appeal A Ref: APP/N1160/C/16/3149766

84 and 86 Somerset Place, Plymouth, PL3 4 BG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Ms S Aston against an enforcement notice issued by Plymouth City Council.
 - The enforcement notice, numbered DM/CW/15/02302/OPR, was issued on 14 April 2016.
 - The breach of planning control as alleged in the notice is the complete demolition of front boundary walls in excess of 1.0 metre in height, and the associated adjacent works in the garden to form a vehicle parking area.
 - The requirements of the notice are:
 - 1) Rebuild all demolished sections of front boundary wall to their exact height, and appearance, as the demolished sections of boundary wall.
 - 2) Reinstate adjacent garden area to its exact form, and appearance, as it existed immediately prior to the unauthorised development being commenced.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
 - **Summary of decision: appeal dismissed and permission refused.**
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Appeal B Ref: APP/N1160/W/16/3149761

84 and 86 Somerset Place, Plymouth, PL3 4 BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms S Aston against the decision of Plymouth City Council.
 - The application Ref 15/02335/FUL, dated 4 January 2016, was refused by notice dated 17 March 2016.
 - The development proposed is a retrospective application for the removal of wall to form hardstandings to provide off-street parking.
 - **Summary of decision: appeal allowed and permission granted.**
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Procedural matters

1. Although the appellant described the development on the application form as "form car hardstanding to provide off-street parking", the decision notice describes it as "retrospective application for the removal of wall to form hardstandings at 84 and 86 Somerset Place". I consider that the description used by the Council more accurately describes the development and I have used it in the banner heading above.
 2. The parties have submitted a Statement of Common Ground, although this is unusual for a written representations appeal. Its purpose according to the
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parties is to seek an agreement on whether it would have been likely that the work to create a permeable hardstanding, the vehicle access and the proposed rebuilding of the boundary walls to leave a 5m wide access would have been deemed as permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015. An appeal that matters giving rise to the alleged breach of planning control did not constitute a breach of control should have been made on ground (c) (although I am not precluded from considering it even if no appeal on this ground has not explicitly been made). Notwithstanding this, in this case, the parties are referring to a theoretical situation where the development proposed is not the development that occurred as this involved the complete demolition of front boundary walls in excess of 1.0 metre in height, and the associated adjacent works in the garden to form a vehicle parking area. If the appellant wishes to pursue the lawfulness of a proposed development, this should be done under s192.

Appeals A and B

The appeal on ground (a), the deemed application and the s78 appeal

Reasons

3. Nos 84 and 86 Somerset Place form part of a terrace of dwellings within the Stoke Damerel Conservation Area and the main issue in this appeal is the effect of the development on the character or appearance of the Conservation Area. The appeal properties have long, narrow gardens fronting Somerset Place which is a relatively narrow road with on-street parking. To the rear of the properties is a lane that provides access to private garages.
4. The appeal properties are two storey and appear to be post-war infilling in contrast to the design and appearance to other nearby buildings, such as the adjoining three storey terraced dwellings and the semi-detached houses on the south side of Somerset Place. The Conservation Area is characterised partly by the local shops on Devonport Road but primarily by its residential nature where there is a variety of housing types both in terms of age and design including streets of small two storey terraced houses, larger three storey terraced property and more recent housing. Some residential properties have off-street parking as does the care home adjacent to the appeal site.
5. It appears from the photograph attached to the Council's statement that prior to the carrying out of the unauthorised works, the application site had low rendered and pebble dashed stepped walls with capping and two sets of slightly higher capped pedestrian gate piers. The walls were of no particular intrinsic merit in themselves but when considered in the context of the wider Conservation Area, they would have made a small but positive contribution to its character and appearance.
6. These walls have been demolished and a hardstanding has been constructed on the appeal site which has involved some excavation to achieve a level parking area, albeit that the construction of the hardstanding has not been completed and the surface consists of stone chippings and other material. To the rear of the parking area is a newly constructed retaining wall with concrete fencing posts and timber fence panels. The retaining wall returns on either side of the parking area but has not been completed.

7. Adjacent to the appeal site is a care home which has a low wall and hedge as its boundary with Somerset Place and it has a parking area accessed from Somerset Place through a narrow entrance. The properties to the east of the appeal site have distinctly different boundary treatments, with a variety of high walls, gate piers, fences and hedges, all of which visually separate the gardens of those houses from the public realm of the highway on Somerset Place.
8. The loss of the boundary wall has affected the appearance of the Conservation Area by creating a large gap in an otherwise continuous frontage of boundary walls, fences and other treatments, broken only by modestly sized openings. The development also replaces garden land with the parking of cars. Although this gap is harmful to the Conservation Area, it represents less than substantial harm to the significance of the Conservation Area in the context of paragraph 134 of the National Planning Policy Framework (the Framework). This is not outweighed by any public benefits of the proposal, which in this case would be through the provision of off-street parking although this would be off-set due to the loss of on-street parking.
9. There have been a number of objections to the unauthorised work from local residents with their main concerns being the loss of on-street parking, the loss of the boundary wall and impact on the Conservation Area, and the impact on road safety.
10. I conclude that the demolition of the wall is contrary to the Framework. It also fails to accord with Policy CS03 of the Plymouth Core Strategy which seeks to protect the historic environment and also fails to satisfy the general planning considerations set out in Policy CS34.
11. For the reasons given above and having had regard to all relevant matters I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal B

12. The application drawings indicate that part of the demolished boundary wall would be re-instated to 600mm in height with a 5m wide opening to provide access to a parking area of concrete blocks. A hedge is proposed behind the re-instated wall behind. To the rear of the parking area, a short flight of steps leads to gates flanked by a 1m high fence above a low embankment. This varies from the works presently carried out on site as the fence has been constructed above a retaining wall.
13. The proposed re-instatement of part of the demolished boundary wall would substantially reduce the width of the opening created by the demolition of the original wall. This would limit the impact that the hardstanding and the loss of the wall have on the Conservation Area. The containment of the street provided by the higher boundary treatment of the properties to the east of the appeal site would be unaffected as the general openness of the parking area would relate more to the openness of the care home site. I consider that character and appearance of the Conservation Area would be maintained on the completion of the development.
14. Similar objections have been made by local residents to the planning application as have been made to the unauthorised development. Although concerns have been expressed about loss of on-street parking and road safety

issues, the highway authority has not objected to the proposal subject to conditions.

15. In view of the lack of harm arising to the character and appearance of the Conservation Area, and having had regard to all other relevant matters, I consider that the development as proposed to be completed would accord with the Framework and Policies CS03 and CS34 of the Plymouth Core Strategy subject to the imposition of a number of conditions which are reasonable and necessary to make the development acceptable.
16. The purpose of condition 1 is to require the appellant to comply with a strict timetable for dealing with the partial re-instatement of the boundary wall and surfacing of the hardstanding which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already partly taken place. Therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.
17. Conditions 2, 3 and 4 are necessary to define the extent of the outstanding works required to make the development acceptable in the interests of amenity and highway safety. Condition 5 requires the hardstanding to be used for residents and visitors parking only to ensure that the continued benefits of the scheme are maintained. A condition controlling sight lines is unnecessary in view of condition 1.

Conclusions

18. Although I have upheld the enforcement notice and refused planning permission for the development that has been carried in Appeal A, I have allowed the appeal on the refusal of the planning application in Appeal B. The appellant is referred to s180 which indicates that where, after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

Formal Decisions

Appeal A Ref: APP/N1160/C/16/3149766

19. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/N1160/W/16/3149761

20. The appeal is allowed and planning permission is granted for the removal of a wall to form hardstandings to provide off-street parking at 84 and 86 Somerset Place Plymouth, PL3 4 BG in accordance with the terms of the application, Ref 15/02335/FUL, dated 4 January 2016, and the plans submitted with it, subject to the following conditions:
 - 1) Unless within three months of the date of this decision a scheme for the proposed design and materials of the replacement boundary wall and

permeable hardstanding is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within three months of the local planning authority's approval, the use of the site for car parking shall cease and all materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within six months of the date of this decision, the use of the site for car parking shall cease and all materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2937-OS; 2937-01; 2837-02 and 2937-03 except where otherwise provided for under the approved scheme in condition 1 above.
- 3) Before the parking area is brought into use a dropped kerb and a footway crossing of no more than 5 metres shall be provided.
- 4) The parking area shall be constructed using a permeable material and drained to a private soakaway.
- 5) The parking area hereby approved shall not be used for any purpose other than the parking of vehicles belonging to residents or visitors to 84 or 86 Somerset Place.

P N Jarratt

Inspector