
Appeal Decision

Site visit made on 14 May 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2020

Appeal Ref: APP/D0121/W/20/3244178

68A Birnbeck Road, Weston-Super-Mare BS23 2EF

- 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 Mr Michael Charles against the decision of North Somerset Council.
 - The application Ref 19/P/1671/FUH, dated 12 June 2019, was refused by notice dated 14 November 2019.
 - The development proposed is the removal of the front wall to allow car parking on the front hardstanding.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. In my heading above I have used the full name of the appellant given on the appeal form as only a surname is given on the planning application form.

Main Issues

3. The main issues are the effect of the proposal on:
 - The character and appearance of the area having particular regard to the significance of the Great Weston Conservation Area (CA), and;
 - Highway safety.

Reasons

Character and appearance

4. The CA covers a considerable section of Weston-Super-Mare and its significance is largely derived from the seaside setting of the town and how the buildings and spaces reflect its evolution over time. The concentration of Victorian residential development reflects the expansion and popularity of the town as a tourist destination. The Great Weston Conservation Area, Conservation Area Appraisal and Management Plan, December 2018 (CAAMP)¹ mentions that stone boundary walls are an important characteristic throughout the CA but particularly so in the residential streets. The illustrative examples include a photograph of a stone boundary wall in Birnbeck Road a short distance from the appeal site.

¹ Pages 8-9, An Introduction, CAAMP

5. The appeal site concerns the frontage of 68A Birnbeck Road. At present the area is paved and has a stone boundary wall and piers presenting directly onto the road. It is within a row of buildings that also have stone boundary walls such that, aside from relatively narrow gaps for pedestrian entry and notwithstanding some variations in height, there is a continuous stone wall frontage along this part of Birnbeck Road. Consequently, the walling comprises a feature that is a distinctive and intrinsic part of the CA and therefore, makes a positive contribution to the character and appearance of the CA.
6. In considering the impact of the proposal, I am mindful of my statutory duty² to give special regard to the desirability of preserving or enhancing the character or appearance of the CA.
7. The development would remove the wall and a pier thereby rendering the frontage adjacent to the road open³ leaving a wide gap. This would be harmful to the attractive enclosure provided by the wall in the wider street scene. Furthermore, the presence of a parked vehicle in the space directly in front of the buildings would detract from the otherwise enclosed spaces that formalise the relationship of the terrace with the street. The adverse impact would be particularly stark given that it would be so visible from Birnbeck Road. As such, it would fail to comply with paragraph 127 c) of the National Planning Policy Framework (the Framework) which requires planning decisions to be sympathetic to local character and history, including the surrounding built environment and landscape setting.
8. The harmful effect of the loss of boundary walls in Birnbeck Road is mentioned in the CAAMP⁴. Moreover, the appeal decisions⁵ referred to by the Council reveal continued pressure for the removal of walls in the area. This is reinforced by the planning history for the appeal site which indicates that condition 2 of planning permission 02/P/0991/F, which required the building and retention of the wall, was imposed partly in response to repair harm previously caused by the creation of an opening wide enough for vehicular access⁶.
9. Taking these factors together, the development would neither preserve or enhance the character or appearance of the CA. Hence it would be detrimental to the significance of this designated heritage asset. However, in view of the modest scale of the proposal the harm would be less than substantial.
10. Paragraph 196 of the Framework indicates that where the development 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. In providing an off-street parking space the proposal may reduce competition for on street spaces which is likely to increase in the future and would be more convenient for the occupants of No.68A. However, such benefit would be marginal in scale and predominantly benefit the occupants of No.68A rather than possessing notable wider public value. Although the appellant suggests that on street parking may have a more harmful effect on the significance of heritage assets, there is little evidence to demonstrate this. Furthermore, it is not suggested that the proposal would

² Section 72 Planning (Listed Buildings and Conservation Areas) Act 1990

³ Existing and Proposed Elevations

⁴ Page 11, Seafront Appraisal

⁵ Appeal references APP/D0121/A/10/2120634 & APP/D0121/A/05/1193424

⁶ Delegated report reference 02/P/0991/F

- reduce the on-street parking that takes place in the vicinity but rather the competition for it.
11. Therefore, overall, the public benefits arising from the proposal attract only limited weight and do not surmount the great weight I must give to conserving the significance of designated heritage assets under paragraph 193 of the Framework.
 12. The appellant refers to a fallback position which relates to potential alterations that might be carried out as permitted development within the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the Order). He suggests that this would allow the removal of the wall where it is less than 1m in height and the formation, laying out and construction of a means of access.
 13. However, I have concerns with this assertion as Article 3(4) of the Order limits the provisions of the permitted development granted under the Order such that it would not permit development contrary to any condition imposed by any planning permission granted. Conditions 2 and 3 of planning reference 02/P/0991/F respectively require the retention of the wall and prohibit the creation of an access onto Birnbeck Road. I have seen little substantive evidence to support the appellant's suggestion that removal of permitted development rights must be done via a direction that specifically removes that right under paragraph 4(1), which I understand to be a reference to Article 4(1) of the Order. Neither has this been proven by way of a Certificate of Lawfulness.
 14. Accordingly, although I have had regard to the caselaw to which I am referred⁷, based on the evidence presented, I am doubtful as to whether there is a realistic prospect that the fallback position advanced could be lawfully pursued without the need for a specific consent. In any event, even if it could be carried out, the scheme before me would remove the stone piers in addition to the wall and result in a wider gap. Therefore, it is not shown that the proposal before me would be preferable by reducing the degree of harm. Accordingly, even if the fallback position were to exist, it would not attract weight in support of the appeal proposal.
 15. My attention is drawn to a parking area for 3 vehicles close to the appeal site but on the opposite side of the road. However, I observed that this example was in the minority and furthermore, illustrates the harmful and prominent impact that such breaks have on the continuity and appearance of stone boundary walls. As such, it does not count in favour of additional gaps.
 16. I accept that the wall at the appeal site was constructed relatively recently and is lower than the surrounding walls. Nevertheless, as already outlined it makes a positive visual contribution which would not be the case if it were removed entirely and replaced with the presence of a parked vehicle. Although Birnbeck Road may not be a major thoroughfare, this does not negate or overcome the harm to the character and appearance identified and I am not aware that this would restrict the application of the statutory duty referred to above.
 17. Accordingly, I find that the proposal would be unacceptably harmful to the character and appearance of the area and would adversely affect the

⁷ Mansell v. Tonbridge & Malling Borough Council [2017] EWCA Civ 1314, Appendix III, Appellant's Appeal Statement

significance of a designated heritage asset. This would be contrary to policies CS5 and CS12 of the North Somerset Council Core Strategy, January 2017 (CS) which, amongst other matters, seek to conserve the historic environment and achieve high quality design having regard to the significance of heritage assets.

18. In addition, it would conflict with policies DM3, DM32 and DM38 of the North Somerset Council Development Management Policies, Sites and Policies Plan Part 1, July 2016 (SPP). Policy DM3 seeks to protect the significance of conservation areas whereas policies DM32 and DM38 require, amongst other matters, development that is sensitive to its setting that enhances rather than harms local distinctiveness.

Highway safety

19. Paragraph 108 of the Framework stipulates that planning decisions should ensure that safe and suitable access to the site can be achieved for all users with paragraph 109 confirming that development should only be prevented or refused on highway grounds if, amongst other things, there would be an unacceptable impact on highway safety.
20. The proposed parking space would be arranged parallel to the footway at a point where the alignment of Birnbeck Road is sinuous and on a slight incline. When this is combined with the existence of the boundary walls with the adjacent properties both parallel and perpendicular to the road, it means that a driver exiting the space would be poorly aligned to properly view approaching traffic and pedestrians from both directions. They would need to look behind them and would be likely to encroach onto the footway to obtain a clearer view of the carriageway thereby undertaking back and fore manoeuvring in order to do so.
21. Furthermore, access into the space, due to the obstacles presented by the nearby boundary walls would also be likely to require manoeuvring, with a driver potentially reversing along the footway in order to execute a parallel parking movement.
22. Given the position of the site near to the seafront and close to dwellings and hotels, it is likely that pedestrians would regularly use the adjacent footway, especially given that there is no footway on the opposite side of the road. Such manoeuvring in close proximity to the carriageway and encroaching onto the footway would unacceptably prejudice highway safety.
23. Whilst I have considered the visibility splays shown on plan number 2019-B-006-002, these are shown from the edge of the site and reflect the visibility possible if the vehicle was in a perpendicular position relative to the road. For the reasons outlined, this does not reflect the likely position of the driver unless considerable manoeuvring had already taken place from the parallel space.
24. Reference is made to the parking area opposite functioning without causing harm. However, unlike the scheme before me, those spaces are arranged perpendicular to the road and so access, and egress would be easier to negotiate. Moreover, they are not adjacent to a footway which reduces the likely conflict with pedestrians. Furthermore, there is little substantive evidence to support the appellant's assertion that a dropped kerb would be more

successful in preventing obstructive coach parking than the existing double yellow lines.

25. My attention is drawn to the likelihood of significant new residential development in the area. Be that as it may, given that policy CS11 of the CS recognises that adequate provision for car parking should be made, it does not follow that this will inevitably prevent the appellant from accessing suitable parking in the future and therefore, this attracts limited weight.
26. I therefore conclude that the proposal has an unacceptable impact on highway safety contrary to policy DM24 of the SPP which supports development provided that it would not prejudice highway safety.

Other Matters

27. There is a statutory duty⁸ to give special attention to the desirability of protecting the setting of listed buildings. The Council state in the officer's delegated report that the proposal adversely affects the setting of the Grade II listed 1-20 Claremont Crescent. However, this is not referred to in the refusal reasons on their decision notice nor elaborated on in their statement of case. The significance of this terrace, now comprising largely of hotels, derives primarily from the aesthetic appearance of the buildings whereby the convex elevations face towards the sea. Whilst part of the concave elevation of the terrace can be seen from the appeal site opposite, the separation distance with intervening road and difference in levels, combined with the modest nature of the proposal is such that it would not significantly affect the surroundings in which this group of historic buildings is experienced, and therefore, would not harmfully impact on their significance.
28. I note that Weston-Super-Mare Town Council did not object to the proposal. However, this was qualified that there should be no highway concerns, which in this instance, is not the case. I have also had regard to the representations in support. However, nothing in their content would lead me to find otherwise.

Planning Balance and Conclusion

29. I acknowledge that the proposal would make parking more convenient for the appellant and would marginally reduce the competition for on street parking for other drivers. However, these modest benefits are of limited weight.
30. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁹. The benefits that the proposal would bring do not outweigh the significant weight given to the conflict with the development plan policies outlined. Accordingly, they do not justify my determining the development other than in accordance with the adopted development plan and Framework.
31. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

⁸ Section 66 Planning (Listed Buildings and Conservation Areas) Act 1990

⁹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.