The Planning Inspectorate

Appeal Decisions

Site visit made on 8 September 2020

by P N Jarratt BA DipTP MRTPI

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

Decision date: 28 September 2020

Appeal A Ref: APP/W3330/C/20/3250694
Appeal B Ref: APP/W3330/C/20/3250695
Land at 68 South Street, Taunton, TA1 3AF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Timothy Birch-Donohoe and Appeal B by Mrs Hannah Donohoe-Birch.
- The enforcement notice, numbered E66/378/8, was issued on 3 March 2020.
- The breach of planning control as alleged in the notice is the carrying out of excavation and earthworks to remove material to the front of the land including the removal of a boundary wall and the formation of an access and the construction of timber balustrades to steps leading to the front door all on the land.
- The requirements of the notice are:
  a) Remove timber balustrades to the steps leading to front door.
  b) Reinstate front boundary wall to its previously existing height of 1.5 metres to be constructed of brick and stone.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g)

Decisions

1. The appeals are allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the carrying out of excavation and earthworks to remove material to the front of the land including the removal of a boundary wall and the formation of an access and the construction of timber balustrades to steps leading to the front door all on the land at 68 South Street, Taunton, TA1 3AF referred to in the notice, subject to the following conditions:

   1) The development hereby permitted shall be carried out and completed within 12 months in accordance with the following approved plans: John Gower Consulting Ltd 2018-05-0016-005 Rev E and 2018-05-0016-006 Rev C.

   2) The stone and brick boundary wall adjoining the highway shall be no less than 1.5 metres in height.

   3) No development shall commence until details/samples of the materials to be used in the construction of the development and the position, materials and width of the pedestrian access and gate hereby permitted have been submitted to and approved in writing by the local planning

authority. Development shall be carried out in accordance with the approved details/samples.

Procedural Matters

2. This appeal relates to 68 South Street as identified on the plan attached to the notice. An identical enforcement notice with the Council's same reference number was issued in respect of the same allegation for the adjoining property at 70 South Street as identified on the plan attached to that notice. That notice also subject to appeals (APP/W3330/C/20/3250696 and APP/W3330/C/20/3250697).

3. A single appeal statement from the joint agent for the appellants of both properties has been submitted. However, as the two properties are subject to separate enforcement notices, I have dealt with them in separate decision letters albeit that they both have similar reasoning.

4. Where an appeal on a legal ground is made, such as ground (c), the onus of proof rests with the appellant and the level of proof is on the balance of probability.

The site and relevant planning history

5. The appeal site is a mid-terrace property in an elevated position set back a short distance from the road. Prior to the works being carried out, the Council states that the front door was accessed by stone steps with a raised garden. There was a 1.5m high wall of stone and brick along the pavement boundary. Low railings were positioned to the edge of the garden closest to the road and there is a brick boundary wall forming part of a historic outbuilding in the front garden of No 66. The property is in an established housing area principally of terraced housing. This part of South Street is relatively narrow and parking restrictions apply.

6. A joint planning application by the occupants of both 68 and 70 South Street (38/18/0227) for the creation of lower front courtyards, erection of retaining walls, bin/bicycle store, front boundary railings with gates and replacement external stairs was refused in October 2018.

The appeals on ground (b)

7. An appeal on this ground is that the breach of control alleged in the notice has not taken place as a matter of fact.

8. It was evident from my site inspection that the works alleged in the notice have occurred as a matter of fact. The appeal on this ground fails.

The appeals on ground (c)

9. An appeal on this ground is that there has not been a breach of planning control. The appellants claim that excavation and earthworks within a domestic garden do not constitute development requiring planning permission although no argument is advanced in support of this contention. The meaning of development is defined in s55 which includes the carrying out of engineering operations.

10. Similarly it is argued that removal of a boundary wall does not constitute development but again this is incorrect. The demolition of gates, fences and

walls represent permitted development, subject to certain limitations, by virtue of Class C, Part 11, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended. The same proposition is put forward by the appellants in their contention that construction of a timber fence and balustrade does not constitute development. The appellants fail to acknowledge that these all constitute development in the context of s55 requiring planning permission albeit that permission is granted under paragraph 3 (1) of the Order.

11. The appellants state that no permanent access has been created and further boundary works have yet to be carried out. Whilst this may be the case, it appears to me that the works alleged to have taken place form part of a single building and engineering operation that has yet to be completed and no cogent case has been forwarded to indicate that these works have planning permission.

12. The appeals on this ground fail.

The appeal on ground (a)

13. An appeal on this ground is that planning permission should be granted for what is alleged in the notice. The main issue is the effect that the development has on the character and appearance of the area.

14. The area is characterised by mainly older, terraced property and in this narrower part of South Street, the houses generally have boundary walls of brick and stone retaining raised front garden areas. Some of the properties have fencing, hedges or railings above the retaining walls. The existing boundary treatment provides a distinctive sense of containment and enclosure to this part of the street and coupled with the stone steps to properties on the south side strongly define its character. The break in the continuity of these defining features through the removal of the boundary wall, loss of steps and excavation of the garden area behind of both the appeal property and its neighbour have opened up this part of the road and have adversely affected its character and appearance. This is contrary to Policy DM1 of the Taunton Dean Core Strategy which seeks to protect the appearance and character of the street scene.

15. I have had regard to the reasons put forward for the works having been carried out, namely the failure of sewer pipes and underpinning of the properties, together with the intentions of the owner/occupier of No 66 in respect of that property. However, these considerations do not outweigh the harm caused to the character and appearance of the area.

16. The scheme forming part of application 38/18/0227 proposed low railings and gates on the pavement boundary and to the flights of steps and in front of the houses. This proposal was refused by the Council in view of their unacceptable impact on the street scene. I agree that this would not overcome the harm caused through the loss of the boundary walls.

17. Following the refusal of that scheme, revised proposals were informally agreed by Council officers. These incorporated a stone/brick wall of about 1.5m high on the front boundary with wrought iron gates providing access to flights of steps with railings alongside the steps and in front of the house. The Council in their statement indicate that the replacement of the boundary fence with a

boundary treatment of a height and materials of the one that has been removed would help to reinstate the streetscape to its original appearance and character. They also acknowledge the interim use of the timber balustrades and their permanent replacement with an iron balustrade.

18. The revised proposals would mitigate the harm caused by the unauthorised development and subject to appropriate conditions, the scheme could be made acceptable and accord with Policy DM1 and I intend to grant planning permission accordingly. Conditions requiring the scheme to be carried out in accordance with revised scheme drawings with a minimum wall height and approval of details are necessary in the interests of the character and appearance of the area. In view of the current restrictions arising from Covid-19, Condition 1 provides a 12 month period for completion of the scheme.

19. The appeal on this ground succeeds. It is therefore unnecessary to consider the appeals on grounds (f) and (g).

Conclusions

20. For the reasons given above I conclude that the appeals should succeed on ground (a) and planning permission will be granted. The appeals on grounds (f) and (g) do not therefore need to be considered.

P N Jarratt

Inspector