



Appeal Decisions

Site visit made on 8 September 2020

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 08 October 2020

Appeal A: APP/D0840/C/18/3203077

Land at the Longstore (Sailmakers Workshop), Square Sail Shipyard, Charlestown Road, Charlestown, PL25 3NJ.

- 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 Forestay Ltd against an enforcement notice issued by Cornwall Council.
 - The enforcement notice, numbered EN16/02139, was issued on 16 April 2018.
 - The breach of planning control alleged in the notice is failure to comply with condition No. 2 of a planning permission Ref. PA15/02224 granted on 9 June 2015.
 - The development to which the permission relates is Redevelopment of two light industrial sheds to provide shops, restaurant and office space. The condition in question is No. 2 which states that: The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Application". The notice alleges that the condition has not been complied with in that development along the north elevation of the building known as The Longstone is not built in accordance with the approved plans.
 - The requirements of the notice are: a) remove the metal walkway and stairway, white meter boxes and block work edging from the north elevation of the building known as The Longstore; b) Revert and alter the development including the removal of the new window and door openings to accord with the approved plans drawing numbers 104A, 105A submitted and approved under PA15/02224 attached to this notice; and c) Remove all debris resulting from requirements a) – b) from the land.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered
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Appeal B: APP/D0840/C/18/3203080

Land southwest of the Longstore (Sailmakers Workshop), Square Sail Shipyard, Charlestown Road, Charlestown, PL25 3NJ.

- 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 Forestay Ltd against an enforcement notice issued by Cornwall Council.
 - The enforcement notice, numbered EN16/02139, was issued on 16 April 2018.
 - The breach of planning control as alleged in the notice is an unauthorised car park with gabion basket support, with steel lighting columns and steel railings some of which fall outside of the red outlined site plan for PA15/02224.
 - The requirements of the notice are: a) Break up/remove the unauthorised car park and associated paraphernalia including the gabion basket retaining wall, steel lighting and steel railings; b) Restore the land back to its former condition; and c) Remove all debris resulting from requirements a) – b) from the land.
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- The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decisions

Appeal A

1. It is directed that the enforcement notice be corrected by; in section 1 of the notice, the deletion of the words "within paragraph (a)" and the insertion in their place of the words "within paragraph (b); and, in section 3 by the deletion of the word "Longstone" and the insertion in its place of the word "Longstore"; and varied by the deletion in section 5, requirement (a) of the words "metal walkway and stairway," and the words "and block work edging"; and by the deletion of requirements b) and c) in their entirety, and by the insertion in their place of the words "b) Remove all debris resulting from requirement a) from the land."
2. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. 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.

Preliminary matters

4. The breach of planning control alleged in the Appeal A notice is a failure to comply with a planning condition, which is defined at paragraph (b) of section 171A(1) of the Act rather than paragraph (a) as set out in the notice, while section 3 of the notice refers to the 'Longstone' rather than the Longstore. These errors can be corrected without injustice.

Appeal A - ground (a) and the deemed planning application

5. The appeal concerns planning permission PA15/02224 for the 'Redevelopment of two light industrial sheds to provide shops, restaurant and office space'. The development, now complete and in use, lies close to Charlestown Harbour and within the Charlestown Conservation Area (CA) and the Charlestown World Heritage Site (WHC), hence section 72(1) of the 1990 Act requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of those areas.
6. The finished development is a long building with its long axis roughly perpendicular to the harbour and public highway, which lie to the north-east. It has a mono-pitch roofed single storey element at the harbour end, the main part behind being two-storey with a dual pitched profiled steel roof. Its more public side is the south-eastern side which contains the more active uses facing an open courtyard space adjoining the public highway around the harbour, the focal point of the CA and WHS and a major tourist attraction.

7. The deviations from the permitted plans are all on the opposite side, referred to by the Council as the north elevation. The character of this side of the building is markedly different, being largely utilitarian and what would be considered the service side of the building. Leaving aside, so far as possible, the matters raised in the Appeal B notice, the deviations from the plans are the insertion of additional openings, the erection of a metal walkway and associated metal railings giving access to the upper floor at the south-western end from ground level and from the adjoining higher level car park, and the installation of 4 external meter boxes. The Council does not have a particular concern with the additional opening themselves, but it considers the exposed concrete lintels used to be unsympathetic in form and appearance. Exposed blockwork under the walkway has now been stone-faced, which the Council accepts satisfactorily mitigates any harm caused.
8. One difficulty that arises in this appeal concerns the approved plans, specifically in the area now occupied by the walkway. A bank is shown on the plans running from the raised ground at the rear alongside the building up to the first floor level for about one third of its length. That bank is shown as providing level access to the upper floor openings, and of course it precludes ground floor openings along its length. The walkway now performs the access function for the upper floor, while allowing usable openings from this side to the ground floor units. The plans show no details of how the bank would be constructed, or of what, or how it would be finished other than details of a natural stone endwall, or even its full extent and how it would integrate with the road alongside. This complicates the comparison of what has been built with what was approved, but in the absence of any suggestion that what was proposed might have caused harm to the character and appearance of the area, the CA and the WHC, I shall focus on the impact of matters to which the Council still objects. The main issue therefore is the effect of the metal walkway and stairway, the meter boxes and the new window and door openings on the character and appearance of the CA and WHS.
9. First I note that what has been approved incorporates elements of the previous old building, but it is clearly modern in character, albeit generally sympathetic, in terms of form and fabric, to its location within the core of the CA and WHS. The more important façade in this respect is the south-eastern side which is within the setting of listed buildings along the harbourfront, most notably being in close proximity to a Grade II former boatshed, now a restaurant. Exposed galvanised steel is used extensively on this frontage, most prominently in the balcony to the first floor restaurant premises, and also in a staircase between the Longstore and the adjoining building. In this context, and in view of the different, service dominated, character of the north-western side of the building, I consider that the metal walkway and stairs and the short length of associated railings do not appear incongruous or out of place. Similarly, the concrete lintels blend well with the utilitarian character of this side of the building, which does not seek to present as anything other than a new building. I note the appellant's suggestion that the lintels could be faced with timber to overcome the Council's objection, but it is not necessary to make them acceptable. As such these aspects of the development maintain and preserve the character, appearance and distinctiveness of the CA and WHS, and hence accord with Policies 1, 2, 12 and 24 of the Cornwall Local Plan Strategic Policies 2010-2030, which together aim to preserve and enhance the character and distinctiveness of Cornwall and its heritage assets. They are also in line

with the expectations of the WHS Management Plan 2013-2018 and the Cornwall and West Devon Mining Landscape World Heritage Site SPD 2017 that development be of high quality that is respectful of its setting, maintaining the distinctiveness of the mining landscape.

10. The same cannot be said however of the external plastic meter boxes, which, albeit now painted to reduce their visual impact, give a cluttered appearance to the relatively clean and simple lines of this side of the building. Boxing them in would not significantly mitigate the harmful appearance of clutter on this side of the building. Further, in the context of the historic environment the presence of the overtly modern boxes is jarring and detracts from the character and distinctiveness of the CA and WHS, contrary to the policies set out above. I consider that the 'boxing-in' solution would be similarly harmful. In terms of the National Planning Policy Framework (NPPF) historic environment policies, the harm due to the installation of the meter boxes is "less than substantial", which means that the development can be found to be acceptable, but only if the public benefits outweigh the harm, having regard to the importance of the heritage asset. The harm to the WHS attracts very substantial weight in view of its importance, and whatever public benefit arises from the role of the cabinets in their current position in supporting the commercial use of the building is likely to be very limited, and falls well short of justifying the harm.

Conclusion

11. As I have found some parts to be acceptable in planning terms, but the meter boxes not, it is open to me to make a split decision, granting permission for parts and refusing it for others. It also means the notice will be upheld, the appeal on ground (f) being bound to fail in view of my conclusions above and the grounds pleaded. In these circumstances however, and given that the breach is one of non-compliance with a condition, rather than granting a new free-standing permission and have another arise from compliance with the notice by virtue of s173(11) of the Act, it is better to delete from the requirements of the upheld notice the references to items other than the meter boxes, so that compliance with the notice will result in deemed planning permission under s73A and s173(11) of the Act for those operations which could have been required to be removed, namely the operations along the north elevation of the Longstore which I have found to be acceptable or to which the Council no longer objects, insofar as they are not in accordance with condition 2 of planning permission PA15/02224.

Appeal A – ground (f)

12. Following ground (a), this ground concerns the meter boxes only. As alluded to above, it is suggested under this ground that painting the meter boxes to blend better with the stone facing of the northern elevation would make them acceptable, but I have already rejected that contention. It has also been suggested that they could be enclosed in timber boxes, but I have not been provided with further details, nor has any real justification been provided for the need to have them sited outside of the building, and the presence of boxed structures on the exterior of the building could itself involve harm to the character and appearance of the building and area. The requirement to remove them is not excessive in view of the clear purpose of the notice being to remedy the breach of planning control, and I have already considered their

planning merits and those of the suggested alternative remedies. It follows that the appeal on this ground cannot succeed.

Appeal B

13. Appeals against this notice were brought on grounds (b), (c) and (d), the essential arguments being that the use of the land as a car park was lawful, and that a car park in this broad location was envisaged within application PA15/02224. The Council now advises that this is the case, hence these grounds were withdrawn¹. In any case the notice is directed at operational development.
14. There remains an argument that the engineering operations to form a car park are authorised, at least in part, by the Longstore planning permission. The plans show some form of embankment alongside the building giving level access to the first floor, as noted earlier, and a car park at that level linking to the embankment was clearly envisaged, as set out in the Design and Access Statement. But notwithstanding the significant departures from the approved plans that are the subject of Appeal A, nothing in the approved plans shows anything that could be construed as the operational development comprised in the construction of the car park as it now stands, nor is there anything else in the approval that might be considered as granting permission for it. What remains of this argument I deal with under ground (f), though it was indicated as being part of ground (c)².

Appeal B - ground (a) and the deemed planning application

15. It seems that parts of the car park are at similar levels to those before the development, but the car park as it now stands has been formed by the construction of a sloped retaining wall formed of gabion baskets, whereas previously the land graded down to the road. The gabion wall is now topped by railings and lighting columns. The main issue in this ground is the effect of the development on the character and appearance of the CA and WHC.
16. Though towards the rear of the site, a large section of the gabion wall, notably where it is at its highest, is visible from the busy roadway around the harbour, and much of the wall can be seen from points along the higher ground above the eastern side of the harbour. In the CA and WHC structures of this size and purpose are relatively common, but the fabric and appearance of the wall have a distinctly modern character which does not sit well with the authenticity of the harbour and its environs which is central to the significance of the heritage assets. As such it is a prominent discordant structure that detracts from the quality of the built environment.
17. The railings in themselves are not an incongruous feature in the CA, which has a variety of railing types, including some of similar design and materials. Similarly, the lighting columns now installed, which have replaced the more contemporary ones originally installed, are not uncommon in the CA. I note from the CA appraisal that the provision of free standing street lights leads to clutter and over-illumination, but the lights in this case do not lead to noticeable street clutter, being away from the busier areas of the CA, and there would be scope to address any illumination problems by way of condition.

¹ Appellant's statement dated 4 August 2020

² Para. 11, appellant's Statement of Case

18. But however acceptable the railing and light structures might be in their own right, they are part and parcel, physically and functionally, of the operational development comprising the car park, where their siting atop the gabion structure adds to its prominence. A suggested solution to the visual impact of the structure is to use planting to screen and/or soften its appearance. There is limited scope for significant planting however, and even if planting such as has taken place, a strip of tree planting near the building and some climbing/draping plants further along, were to fully establish, the gabion wall and associated structures would still have a significant discordant visual presence within the CA and WHS.
19. In NPPF terms, the harm to the significance of the heritage assets would be less than significant, and hence must be weighed against the public benefits of the development. The public benefits put forward largely concern the contribution of the Longstore development to local tourism, trade and employment. However, while I do not doubt that the availability of car parking is an important support to the Longstore businesses, the land may lawfully be used for car parking in any event, and I have not been provided with evidence to indicate that parking sufficient to meet the needs of the Longstore requires the development that has taken place. Nor indeed is there any evidence provided to support the contention that the car park provides a significant public benefit by taking pressure off the public car park in Charlestown.
20. I appreciate that the metal stairway giving access to the walkway and upper floor, and level access to it from the lawful car parking land may require some further works to retain the functional relationship, but as far as I can see this can be achieved under the terms of the existing permission in conjunction with the planning permission that would be granted under s173(11) of the 1990 Act on compliance with the Appeal A notice as varied. In that context I consider that the car park as constructed is not essential for the public benefits of the Longstore development to continue to be delivered. So far as detriment to the amenity of Charlestown through disturbance, noise and amenity arising from works required by the notice, that would be short term only. It has also been suggested that the condition of the land before the construction of the car park commenced detracted from the appearance of the area, but whatever the origin of the exposed bank that immediately preceded the development, the retention of the gabion wall in its stead would not amount to a public benefit. In short, there are not public benefits of the development that would outweigh the harm to the significance of the heritage assets.
21. By introducing an overtly modern structure of prominent and discordant appearance the car park development fails to maintain and preserve the character, appearance and distinctiveness of the CA and WHS, and hence it conflicts with Policies 1, 2, 12 and 24 of the Cornwall Local Plan Strategic Policies 2010-2030, and the aims of the WHS Management Plan 2013-2018 and the Cornwall and West Devon Mining Landscape World Heritage Site SPD 2017. The conflict with the development plan, read as a whole, is not outweighed by other considerations, so the appeal on ground (a) must be dismissed and planning permission refused.

Appeal B - ground (f)

22. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach or, as the case may be, the injury to amenity.

It is clear from the notice that the purpose is to remedy the breach of planning control. The appellant argues under this ground that each of the requirements exceeds what is necessary to remedy the injury to amenity, but while that is not a relevant argument in a case such as this, the planning merits of the development have already been considered under ground (a).

23. So far as remedying a breach of planning control, s173(4)(a) of the 1990 Act, in the context of the building and engineering operations that comprise the breach in this case, requires that the land be restored to its condition before the breach took place. The requirements do no more than that, and hence do not exceed what is necessary to remedy the breach of planning control. In coming to this view I note the appellant's view that reference to the removal of the 'unauthorised car park' is unclear given that car parking on the land is lawful. However, the notice is aimed only at the operational development involved in the provision of the car park as it now stands. As such the requirements are clear and go no further than the relevant purpose set out in s173(4)(a).
24. The appeal on this ground fails accordingly.

Paul Dignan

INSPECTOR