
Appeal Decisions

Site visit made on 15 November 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th March 2021

Appeal A Ref: APP/Z0116/C/20/3254053

47 Henleaze Avenue, Bristol BS9 4EU

- 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 Mr P Fairman against an enforcement notice issued by Bristol City Council ('the notice').
 - The enforcement notice, numbered 19/3027/WAL, was issued on 7 May 2020.
 - The breach of planning control as alleged in the notice is without the grant of planning permission the formation of a vehicle parking area (hardstanding) to the front of the building and removal of wall to facilitate this.
 - The requirements of the notice are (1) Remove the vehicle parking area (hardstanding); (2) Reinstate the garden to its previous condition; and (3) Rebuild the wall to its original condition.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/Z0116/W/20/3251414

47 Henleaze Avenue, Bristol BS9 4EU

- 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 P Fairman against the decision of Bristol City Council.
 - The application Ref 19/05744/F, dated 27 November 2019, was refused by notice dated 26 March 2020.
 - The development proposed is Vehicular access and hardstanding.
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Decisions

1. Appeal A It is directed that the enforcement notice is varied by the omission of "3. Rebuild the wall to its original condition" in section 5, 'What you are required to do' of the notice. Subject to the variation, the appeal is dismissed, 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.
2. Appeal B The appeal is dismissed.

Procedural Matters

3. The appeal form, for Appeal B, states that the description of development on the decision notice was not that which he gave on his application form. He says that this was changed without agreement. I have been given a copy of a letter relating to the registration of the application that was sent from the Council to the appellant, dated 9 December 2019. This gives the Council's revised

description and said, amongst other things, that if the Council had changed the description and the applicant did not agree with the changes, he should let the Council know in writing within 7 days of the letter. No reason as to why the change was necessary was given. In the circumstances, I have used the description from the application form. I have, however, omitted the term 'Retention of' as this is not development.

4. As set out above, there are two appeals on this site. They relate to the same development; Appeal A is made against an enforcement notice directed at the development and Appeal B seeks to gain permission for it. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Ground (c)

5. An appeal made under ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. It is for the appellant to prove his case on the balance of probability.
6. The appellant's case here relates to the demolition of the wall along the rear of the footway at 47 Henleaze Avenue. He says that, this is 'permitted development' by virtue of Class C of Part 11 of Schedule 2 of the General Permitted Development Order 2015 (as amended) ('GPDO').
7. The development permitted under this Class relates to any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure. This development is not permitted by Class C if the demolition is "relevant demolition" for the purposes of section 196D of the Act (demolition of an unlisted building in a conservation area).
8. Amongst its terms, section 196D of the Town and Country Planning Act 1990, which in turn takes the reader to sections 74 and 75 of the Planning (Listed Buildings and Conservation Areas) Act 1990, excludes certain buildings from the definition of "relevant demolition". Amongst these are any gate, wall, fence or means of enclosure which is less than one metre high which abuts a highway (including a public footpath or bridleway), waterway or open space, or less than two metres high in any other case.
9. Not all of the wall has been removed from the front of No 47. From that which remains, as well as photographs of the wall and a description of its height provided by the appellant, I find, on the balance of probabilities, that the part of the wall that was demolished was less than 1m high.
10. Its removal was, therefore, permitted development by virtue of Class C of Part 11 of Schedule 2 of the GPDO. Although the Council did not submit final comments and, therefore has not commented on this point, evidence put forward in Appendix 6 to the appellant's statement shows that the Council had used this methodology to determine that the removal of a similar wall at a property in TDCA was permitted development.
11. No case under this ground has been put forward by the appellant relating to the vehicle parking area (hardstanding). Indeed, he accepts that planning permission is required for this part of the development that has occurred.
12. I have powers to correct the notice under section 176(1) of the Act, including to make significant changes to the terms of the notice to provide an accurate

description of the alleged breach, provided the change would not cause injustice. I am satisfied that the deletion of the third requirement of the notice, to rebuild the wall, would not cause injustice to either party. To this limited extent the appeal on ground (c) succeeds.

Ground (a) and the appeal under Section 78

Main Issues

13. The main issues are the effect of the development on: the character and appearance of The Downs Conservation Area (TDCA); and highway safety.

Reasons

Character and appearance of The Downs Conservation Area (TDCA)

14. TDCA covers an extensive area. It includes part of the gorge of the River Avon, is centred around the large open spaces of the Downs and includes residential areas that fringe the Downs. Henleaze Avenue is a tree-lined residential street that lies within one of these residential areas. It is largely comprised of pairs of two-storey semi-detached dwellings. These share many features, such as bay windows on their front elevations and the use of a common palette of materials. Notwithstanding that many have been altered, often through the introduction of dormer windows, there is still a strong degree of uniformity in the built form along the street.
15. The buildings are set back from the highway. The majority of the properties have front gardens that are set behind low stone walls. A smaller number have had their walls removed and their gardens hard surfaced to provide parking spaces. The materials used in these parking areas varies, some being more sympathetic than others. The appellant suggests that 16 of the 47 properties in the street have had their gardens changed in this way. These include the property next door to No 47 and those directly opposite.
16. Notwithstanding the creation of these parking areas, there are still nearly twice as many properties in the street that retain their front gardens, which are for the most part well-tended. These low-walled gardens are locally distinctive, being an integral part of the streetscape and are of great importance to its character and appearance.
17. Section 72(1) of the Planning (Listed Buildings and Conservations Areas) Act 1990 sets out that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area ('the statutory test'). This is reflected in the terms of Policy BCS22 of the Bristol Development Framework Core Strategy, Adopted June 2011, ('CS') and Policy DM31 of the Council's Site Allocations and Development Management Policies Local Plan, Adopted July 2014, ('LP').
18. I have found that the removal of the low wall to the front of the property was permitted development under the terms of the GPDO. The variation of the notice has to be reflected in the ground (a) appeal and is a material consideration in the s78 appeal.
19. A photograph in the Appellant's statement¹ shows the nature of the wall before its removal. It was clearly in a relatively poor state of repair; however, some of

¹ Page 3

its coping stones were still present as were the quoins in the opening from the pavement. These were of the same stone as the door surround, window surrounds and quoins on No 47. Even in that state, its materials and the manner in which it enclosed the front garden still added to the character and appearance of both the building and the wider street scene.

20. Amongst the photographs within the appellant's statement is one that shows the front garden after the wall had been removed, but before the hardstanding had been laid². This appears to show a crazy paving path leading from the pavement to the front door. The same material appears to have been used in the central part of the front garden, in front of the bay window at No 47. The latter area appears to have been largely bounded on three sides by planted beds. This appears to have also been the case on the Henleaze Road side of the path to the front door. Thus, whilst the crazy paving was somewhat out of keeping, this was mitigated both by the small area that it covered and the flanking greenery.
21. A French drain has been installed at the rear of the footway. Behind this, a course of dark brick paviours runs around the border of the hardstanding that is otherwise formed from light grey square concrete paving slabs. From the evidence that I have seen, the hardstanding is larger than the previous area of crazy paving. It takes up the overwhelming majority of the former front garden area. By reason of the relative lack of soft landscaping and the use of unsympathetic concrete slabs, it forms a stark and incongruous feature in the street scene.
22. As a whole, the development has resulted in the loss of the traditional garden and front wall arrangement that contributed to the local character and distinctiveness of the area. Consequently, their loss and replacement with the hardstanding has had a harmful effect on the property and TDCA. Although the same stone that is used in the quoins, window and door detailing at No 47 has been used in the small remaining sections of the front wall, which should be applauded, this does not mitigate the harm that I have identified.
23. However, given my finding in the ground (c) appeal, I have to assess the development on the basis that the notice cannot require the wall to be replaced. The result of this would be that the front of No 47 would lack a feature that is important in the Henleaze Avenue streetscape. To this extent it would look a little out of keeping with the majority of properties in Henleaze Avenue. This, however, is insufficient reason to justify the loss of the garden area. Its reinstatement would mitigate some of the overall harm that I have identified and would be a marked improvement on the current situation.
24. The creation of the hardstanding has a negative effect on the significance of a designated heritage asset but only affects its immediate surroundings. As such, it results in "less than substantial" harm in the words of the National Planning Policy Framework, ('the Framework'). Nevertheless, such harm needs to be given considerable importance and weight.
25. As set out in the Framework, where a proposal would result in less than substantial harm to the significance of a designated heritage asset this harm should be weighed against the public benefits of the proposal.

² Page 13

26. The appellant has set out that the hardstanding would allow him to park and charge an electric vehicle. Furthermore, he says that being able to use the hardstanding for this would preclude the need for wires running from No 47 across the highway to a vehicle. I saw a vehicle being charged in this way at another property in Henleaze Avenue when I visited the site. In support of this position, the appellant cites the increasing number of electric vehicles, the Government's 'Road to Zero' strategy that includes a focus on residential charging, and the relative dearth of electric charging points in the city.
27. Whilst this is a matter of importance, on balance I find that it does not outweigh the harm to the designated heritage asset that the development has caused.
28. The appellant also points out that the development would allow for a vehicle to park off the highway, to the wider public benefit. No 47 benefits from a garage, accessed from Henleaze Road through a door set into the side wall of its rear garden. Access to the garage is between parked cars and across the pavement. Although this is not ideal, the road is subject to a 20 mph speed limit and the speeds of vehicles entering and leaving the garage would be very low. From what I saw, I do not find that its use is particularly dangerous to highway users. Although access is hampered at times by parked cars, this is a matter that might be addressed through other legislation. Although not determinative, it seems that this garage might also be used for the charging of electric vehicles. On balance, I do not find that these benefits outweigh the harm that I have identified to the character and appearance of TDCA.

Conclusion on Character and Appearance

29. I therefore conclude on this main issue that the development causes harm to the character and appearance of the host property and TDCA contrary to the terms of the statutory test, CS Policy BCS22, LP Policy DM31 and the Framework. It is also contrary to the terms of CS Policy BCS21 and LP Policy DM27 that require developments to provide high quality urban design, and LP Policy DM23 that states that the development of front gardens should not result in harm to an area's character and appearance.
30. Both the notice and the s78 decision notice refer to LP Policies DM28 and DM30. However, as the former relates to the public realm in development proposals and the latter deals specifically with extensions and alterations to buildings, I do not find them to be relevant here. The two notices also refer to PAN 2 'Conservation Area Enhancement Statements', but as I do not appear to have been provided with this I have not been able to take it into account.

Highway safety

31. Henleaze Avenue is, along with other streets in the area – including Henleaze Road, subject to a 20-mph speed limit. Drivers of vehicles that I saw on Henleaze Avenue and Henleaze Road appeared to adhere to this limit. Double yellow lines run along Henleaze Road outside the appeal site running into Henleaze Road to a point in front of the parking area that has been formed at No 47.
32. The appellant has provided evidence, in the form of a report by ADL³ in support of his case that the development has not resulted in any significant harm to

³ ADL Traffic and Highways Engineering Ltd 28 February 2020

highway safety. The ADL report notes the presence of other dropped kerbs and parking spaces in the street, including those at 43 and 45 on the same side of Henleaze Avenue and those on its other side at numbers 42, 44 and 46. The latter lies opposite the appeal site. It also sets out that there have been no reported collisions at the junction between Henleaze Road and Henleaze Avenue for a considerable period of time. It suggests that a driveway for one vehicle will generate four movements per day, two in each direction.

33. The ADL report includes a number of 'swept path' analyses, showing the tracks followed by vehicles undertaking certain manoeuvres. These include movements into and out of the appeal site, similar movements involving the parking space at No 46, opposite, and movements through the junction of Henleaze Road and Henleaze Avenue.
34. The Council has put forward little evidence in support of its position. The Officer's report into the case states that the ADL report had been put to the Council's Transport Development Management Team and that it objected on grounds of highway safety due to the proximity of the junction and vehicular movement both entering/leaving the site to both other road users and pedestrians. No further explanation of this has been given by the Council.
35. From the evidence before me, and from what I saw at my site visit, although the parking space is fairly tight the tracking shows that it is possible to access and leave the property without an unacceptable effect on highway safety arising. Given the local circumstances, visibility to the site from both Henleaze Road and Henleaze Avenue is adequate. This is also the case for pedestrians using the pavements at the junction. Furthermore, the manoeuvres that arise from the use of the appeal development are little different from those that already occur along Henleaze Avenue, including from No 46 opposite the site. They would not, therefore, come as a surprise to highway users.

Conclusion on Highway Safety

36. For the above reasons, I find that the development does not have an unacceptable impact on highway safety. It is, therefore, in accordance with the terms of CS Policy BCS10, LP Policy DM23 and the Framework.

Other Matters

37. In my assessment of this issue, I have taken the comments of third parties into account, including that of the Henleaze Society. Most of the points raised have been covered in my reasoning. In respect of those that have not, the reported drainage and subsidence issues that have been raised were not put forward as reasons for the issuing of the notice or for refusing planning permission. On the basis of the very limited evidence that I have before me, I cannot find against the development for these reasons. That this is an appeal against development that has been undertaken without planning permission cannot be used as a reason for dismissing the appeal. The development has to be assessed on its planning merits. Reference has been made to The Henleaze Character Appraisal, though as I do not seem to have been provided with a copy of this I cannot take it into account. Lastly, here, I have been referred to the possible introduction of an Article 4 Direction relating to the development of front gardens in the area. As it was not introduced at the time that the notice was served, it has played no role in the ground (a) appeal. As I have not been

made aware of its introduction thereafter, it has not played a part in my s78 decision.

38. A third party has stated that the creation of the hardstanding would lead to the loss of an on-highway parking space. This was not raised by the Council in its reasoning in either of its notices, and I have insufficient evidence before me to justify finding against the development for this reason.

Planning Balance

39. I have found that the development would not have an unacceptable effect on highway safety. However, neither this, nor the other material considerations put forward, are sufficient to outweigh the harm that I have found to arise to the character and appearance of The Downs Conservation Area.

Conclusion on Ground (a) and s78

40. For the reasons given above, and having taken all material considerations into account, I conclude that the appeals should fail.

Ground (f)

41. This ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control.
42. The case made is that the notice lacks required detail. It does not state whether the paved material would be acceptable, given that there was crazy paving on the site previously, and would require the wall to be rebuilt to its previous dilapidated condition. No mention is made as to whether there should be a pedestrian gate. The requirements are described as draconian. It is suggested that if the wall was rebuilt it would largely screen the garden and, therefore, the hardstanding that has been laid could remain. Failing this, the existing hardstanding might be covered with some other material, such as artificial grass or some other landscaping measure.
43. The requirements of the notice do not lack detail. The notice can only require the reinstatement of land to its previous condition. Given the harm to the character and appearance of the area that I have identified in my decision on the ground (a) and s 78 appeals, I agree that the hardstanding should be removed and the garden areas reinstated as it was previously. This would require the use of a crazy paved finish, but it is within the powers of the Council to reach an agreement on the use of alternative materials. That the notice is silent on whether a gate should be installed does not render it lacking in detail; it simply means that it does not require the provision of a gate.
44. I have not been given any information regarding the form and position of artificial grass or other landscaping measures. However, in any event, I find that reverting the situation back to what it was prior to the operations taking place is not excessive.
45. The Council seeks to remedy the injury to amenity that the development has caused. The requirements of the notice are commensurate with that aim and are not draconian.
46. For the above reasons, the appeal on ground (f) fails.

Overall Conclusion

47. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

Inspector