
Appeal Decisions

Site visit made on 9 November 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 06th December 2021

Appeal A Ref: APP/X1165/C/3274532

Appeal B Ref: APP/X1165/C/3274533

Land at 20 Western Road, Torquay TQ1 4RL

- The appeal is 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 Mrs Nicola Laywood against an enforcement notice issued by Torbay Council ('the Notice').
 - Appeal B is made by Mr Andrew Laywood against an enforcement notice issued by Torbay Council.
 - The enforcement notice, numbered 2019/0297/EN, was issued on 9 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the demolition of a wall on the boundary with Western Road in the approximate position marked with a blue line on the attached plan and shown on the photographs numbered 001 and 002 ('the Wall').
 - The requirements of the notice are Reinstatement of the wall to the same height and style of the original wall and using the same materials as used prior to its removal. A Street View image of the wall prior to its removal is annexed to this notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. 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.

Reasons

Ground (a)

2. An appeal under this ground is made on the basis that the breach of planning control, the demolition of a wall, should be granted planning permission. The main issue in the appeal is the effect of the removal of the wall on the character and appearance of the St Marychurch Conservation Area (SMCA), a designated heritage asset.
3. The 'statutory test' of proposals in a conservation area is set out in S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
4. Western Road is a gently sloping residential street that is lined on both sides by dwellings. These dwellings are of a variety of types and sizes, ranging from

modest terraced houses through to large, detached buildings set within generous gardens. Much of the character of the road arises from its strong sense of enclosure. In part, this is the result of dwellings being set tight to the rear of the footway, as they are at the road's northern end, or by way of the walls that are found to the front of most of the other properties.

5. Notwithstanding that these walls are often punctuated by parking spaces, the strong sense of enclosure is an important element in the streetscape of this part of the SMCA. The value of the stone walls in the SMCA is set out in the Council's St Marychurch Conservation Area Character Appraisal
6. 38 Western Road is a large, detached property, for which planning permission¹ was granted for its conversion to two self-contained apartments ('the 2019 permission'). It is unclear from the evidence whether this development has occurred, but I refer to the 2019 permission where relevant.
7. The highest part of the property's frontage onto Western Road is open, with two parking spaces and a small, single garage. The middle part of its frontage comprises a stone wall which is topped with stones set vertically in a manner that is common in the area. At its lower end, the frontage is again largely open to the road. It is here that the removal of the section of stone wall referred to in the Notice occurred. A close-boarded timber fence has been erected across part of this opening. There is limited space between the back of the footway and the front wall of Number 38 where the wall was removed. Part of this is gravelled and at the time of my site visit was being used to park a small 'Smart' car.
8. The Appellants state that one of the stipulations of the 2019 permission was that sufficient parking was made available for that development and an existing garden flat. The Council supplied a copy of the decision notice for the 2019 permission, which has two conditions attached. The first was the statutory commencement condition, and the other required the development to be carried out in accordance with the approved plans. The Council also supplied a copy of two of the approved plans², which are amongst those in the list approved in the decision notice for the 2019 permission. This shows that the removal of the wall, which required planning permission³, was not allowed by the 2019 permission.
9. The proposed elevations drawing shows that the wall along the lower part of the frontage, which had a pedestrian access point, was to be retained. This is also shown in the proposed plot drawing, as was the provision of three parking spaces at the upper end of the plot.
10. Western Road is narrow along its length, and I could envisage that access for emergency services and refuse vehicles might be hampered at times. Creating a parking space might 'free up' that part of the carriageway directly in front of it, thus providing some additional, albeit very limited, space for larger vehicles on this part of the road. However, this is not what the Appellants envisage as they say the provision of a further off road parking space "allows us to park one vehicle off road with a second vehicle across the driveway". In these

¹ Council Reference P/2019/0438

² 734P012 Issue G – 'Proposed Elevations (S and E)' and 7348P011 Issue G – 'Proposed Plot'

³ By reason of Class B of Part 11 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

circumstances, the removal of the wall and provision of the parking space would not improve accessibility for larger vehicles, as claimed.

11. I have been told that the wall had a severe crack that made the stretch of wall seriously unstable. As I have not been given any evidence in support of this, nor that the wall was beyond repair and thus had to be removed, I give this limited weight in my deliberations. I give similar weight to the submission that much of the wall to the front of the property has been retained. As I have not been told that planning permission has been granted for the removal of that section of wall, which would be required, I give this argument little weight, too.
12. My finding on the main issue are that the walls that are found at the rear of the footway on Western Road are a distinctive and important feature of this part of the SMCA. Although only a relatively small length of wall has been removed, this represents a harmful erosion of a feature that contributes to the character and appearance of the SMCA, both of which have been harmed by the development. Whilst providing a measure of enclosure, by reason of its form and materials, the timber fence does not mitigate the harm.
13. In the words of paragraph 202 of the National Planning Policy Framework, ('the Framework'), this harm is less than substantial. In such circumstances, I have to weigh this harm against the public benefits of the proposed development. Assisting accessibility for emergency and refuse vehicles would be a public benefit. However, for the reasons given, above, this would be extremely limited. It would not outweigh the harm to the character and appearance of the SMCA that has arisen from the removal of the wall.
14. My conclusion on the Ground (a) appeal is that the development causes demonstrable harm to the character and appearance of the SMCA. It is, therefore, contrary to the terms of the statutory test and Policy SS10 of the Torbay Local Plan 2021-2030, ('LP'), adopted December 2015 which reflects that test. Furthermore, the development does not respect and enhance Torbay's special qualities and is thus contrary to the terms of LP Policy DE1.

Ground (g)

15. An appeal made under this ground is that the period given to comply with the requirements of the notice falls short of what should reasonably be allowed.
16. The Appellants' case is that 12 months should be allowed. This would allow for extensive building work to be carried out on the property, before the reinstatement of the wall. If the wall were to be reinstated before this was completed, they say the wall would hinder the access for the machinery and building materials needed to complete this work and any future maintenance needed.
17. I have not been given any information of the nature of the building works, nor how long these would be likely to take. Therefore, it has not been demonstrated that the period for compliance is too short. In the circumstances, given the small length of wall that is involved, 6 months is a reasonable period in which to undertake the works. Whilst this is my finding, it should be noted that the LPA has power to extend the period for compliance under s173A(1)(b) of the Act.
18. For the above reasons, the Ground (g) appeal fails.

Conclusion

19. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice 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