
Appeal Decision

Site visit made on 28 June 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 03 August 2022

Appeal A Ref: APP/K1128/C/22/3297931

Appeal B Ref: APP/K1128/C/22/3297932

2 Compton Road, West Charleton, Kingsbridge TQ7 2BP

- 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 N Lamond against an enforcement notice issued by South Hams District Council ('the Notice').
- Appeal B is made by Mrs S Lamond against an enforcement notice issued by South Hams District Council
- The enforcement notice, numbered 026690, was issued on 30 March 2022.
- The breach of planning control as alleged in the notice is:
 - 3.1 On 25 May 2021 planning permission was granted by the Council under reference number 1187/21/HHO (the Planning Permission) for the construction of a new front porch, windows, landscaping and internal alterations at 2 Compton Road, West Charleton, subject to conditions; 3.2 The Council considers that a condition imposed on the Planning Permission and relating to the land described in paragraph 3.1 above, has not been complied with. The Council also considers that you should be required to comply with the conditions specified in this notice; 3.3 Condition 3 of the Planning Permission requires that the development should in all respects accord strictly with the approved drawings numbered 2570.SLP (Site Location Plan), 2570.03 (Site Block Plan), 2570.02 (Plans and Elevations as Proposed); 3.4 It appears to the Council that Condition 3 of the Planning Permission has not been complied with, because: (a) The new retaining wall has not been constructed in accordance with the approved drawings numbered 2570.SLP (Site Location Plan), 2570.03 (Site Block Plan), 2570.02 (Plans and Elevations as Proposed). but has instead been constructed approximately 25cm from the edge of the footway and the approved drawing numbered 2570.02 (Plans and Elevations as Proposed) indicates that the new retaining wall will be constructed approximately 70cm from the edge of the footway; and (b) the proposed planting also shown on drawing number 2570.02 (Plans and Elevations as Proposed) cannot be achieved due to the scale of the wall and the wall's proximity to the planting bed and therefore the landscape softening cannot be achieved; and 3.5 It also appears to the Council that Condition 4 of the Planning Permission has not been complied with, because Condition 4 requires that the building works would not be implemented until a landscaping scheme was submitted to and approved by the Local Planning Authority. The proposed planting indicated on the drawings submitted (and approved) pursuant to the Planning Permission as part of the application cannot be achieved due to the scale of the wall; its proximity to the planting bed and the footway and therefore the approved landscaping scheme cannot be achieved.
- The requirements of the notice are: 1. Remove the retaining wall in its entirety from the Land; and 2. Remove from the Land all material resulting from the removal of the retaining wall from the Land.
- The period for compliance with the requirements is 2 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2) (f) of the Town and

Country Planning Act 1990 as amended.

Decisions

1. It is directed that the enforcement notice is corrected by omitting paragraphs 3.1-3.5, inclusive, from section 3 of the Notice, 'The Matters which appear to constitute the breach of planning control', and replace them with 'Failure to comply with conditions 2 and 4 of planning permission Ref 1187/21/HHO granted on 25 May 2021'.

Subject to the correction, Appeals A and B are 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.

Procedural Matters

2. The Notice was issued on the basis of s171A(a) of the Act, that is to say carrying out development without the required planning permission. I wrote to the parties explaining that this should have read s171A(b), as what was being enforced against was the failure to comply with conditions 2 and 4 attached to planning permission 1187/21/HHO ('the planning permission'). The parties agreed that the Notice could be corrected without causing injustice.
3. The planning permission was granted on 25 May 2021 for a new front porch, windows, landscaping and internal alterations at No 2. This was subject to four conditions, two of which are relevant to this appeal.
4. Condition 2 reads "The development hereby approved shall in all respects accord strictly with drawing numbers (2570.SLP (Site Location Plan), 2570.03 (Site Block Plan), 2570.02 (Plans and Elevations as Proposed) received by the Local Planning Authority on 19th April 2021". The reason given was "To ensure that the proposed development is carried out in accordance with the drawings forming part of the application to which this approval relates".
5. Condition 4 reads "The building works shall not be implemented until a landscaping scheme has been submitted to and approved by the Local Planning Authority, indicating the boundary treatment of the proposed plots/development. The scheme submitted shall be fully implemented in the planting season following the completion of the development and the plants shall be protected, maintained and replaced as necessary for a minimum period of five years following the date of the completion of the planting." The reason given was "In the interest of visual amenity in order to protect and enhance the amenities of the site and locality."

Reasons

Appeal A

Ground (a) and the Deemed Application

6. An appeal made under Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
7. The corrected Notice alleges that the retaining wall that has been constructed at 2 Compton Road has been undertaken without compliance with conditions 2 and 4 attached to planning permission 1187/21/HHO. The appeal that is made

- on ground (a) is that planning permission should be granted without complying with the conditions. Therefore, the main issue is whether conditions 2 and 4 are necessary, having particular regard to the character and appearance of the area.
8. 2 Compton Road ('No 2') is a detached dwelling that lies on rising ground at the junction of that road and Lyte Lane; the latter road rises quite steeply away from the A379. The house is set at a considerably higher level than Lyte Lane, but level with Compton Road. As a result of this topography, the property is prominent in the local scene.
 9. A photograph and written details in the document 'Landscaping Proposal' that was submitted with application 4515/21/ARC, and forms Appendix 5 to the Appellant's statement of case, describes the part of the land between the house and Lyte Lane prior to the construction of the existing retaining wall. It appears that a steeply sloping vegetated bank ran from the ground level of the house to the road below. The evidence shows that there had been concerns regarding the stability of this bank and this had led to the provision of a temporary solution to the problem. The Landscaping Proposal seems to show two separate low 'walls' of railway sleepers that created something of a terraced appearance at the lower end of the bank.
 10. Amongst the works approved by the planning permission was that to retain the land at No 2, above Lyte Lane. Approved drawing 2570.02 showed how this was to be done. My reading of the 'Ground Floor plan – as proposed' and 'General Section' on this sheet is that a low upstand would be located immediately behind the footway. As the section refers to this as "Extg. Planter Retained", it may be that this is the lower of the sleeper walls. Behind this, the land would have sloped upwards towards the house for a short distance and was to be planted. At the upper end of this, a new vertical retaining wall was to be constructed; the land above this was to be infilled to the level at the front of the house with further planting being undertaken in the infilled area.
 11. The Council says that the retaining wall would have been set back from the rear of the footway alongside Lyte Lane by a maximum of 70 cms. The Appellant does not dispute this, so I take it to be the case.
 12. The evidence shows that work on the planning permission was implemented prior to the submission of details required by condition 4. The work that has been undertaken does not accord with the drawings listed in condition 2. An application¹ to discharge condition 4 was submitted after this implementation. At the time of the submissions, the application had not been determined.
 13. I saw that a retaining wall has been constructed a very short distance behind the footway, suggested² to be between 25 and 30cms. It rises in an unbroken manner, seemingly vertically, from Lyte Lane. The parties agree that it is up to 65cms higher than that which was approved. At the time of my visit, no finish had been applied to the concrete block wall.
 14. The wall is prominent in the local scene. As one ascends Lyte Lane, it is immediately visible and forms a high, stark feature. It dominates the local scene and is an incongruous feature that causes significant harm to the character and appearance of the area. I find that even were it to be finished in

¹ Council reference 4515/21/HHO

² 'Planter Dimensions' drawing, Appendix 3 to the Appellant's statement of case

the stone that was proposed in the approved application, it would still cause significant harm to the area.

15. These ill-effects are not mitigated by the presence of other retaining walls in the area. A number of these have been drawn to my attention by the Appellant. Given their proximity to the site, and that the development on these roads is a coherent whole, I find that those referred to on Lyte Lane and Compton Road to have most relevance. They are built at the rear of the footway and are of rendered blockwork painted white. They are, however, all lower than that at No 2, including those on the turning head at the end of Compton Road. Furthermore, none is in a position as prominent as that at No 2.
16. It is argued that the increased width of the garden between the front of the house and the retaining wall, as built, would provide a wider and safer pedestrian access to the house. It would be wider and might well be safer. However, I have not been provided with evidence to show that what was approved, and applied for by the Appellant, was inherently unsafe. Even if it was, it has not been demonstrated that there was not another, less harmful way of addressing the danger than the wall that has been erected.
17. For the above reasons, the development that is the subject of the Notice is contrary to Policies SPT1, DEV10 and DEV20 and DEV23 of the Plymouth & South West Devon Joint Local Plan 2014-2034 ('JLP'). Amongst other things, these require that development achieves good standards of design that contribute positively to the townscape, without causing significant adverse visual impact. These accord with the Government's aims to achieve well-designed places expressed in chapter 12 of its National Planning Policy Framework.
18. Given its location within the AONB, JLP Policy DEV25 is relevant. However, the ill-effects of the development, though significant, are limited to its estate setting. It has no ill-effect on the wider landscape nor the scenic beauty of the AONB. The development is not, therefore, contrary to this policy.
19. I do not find that it is contrary to JLP Policy DEV1. From its text, I take the health and amenity of local communities in its title to relate to their living conditions, rather than the visual qualities of an area. Similarly, as it relates to new housing, Policy DEV10 is not relevant here.
20. Three of the JLP's Strategic Objectives, SO6, SO8 and SO10, are referred to in the Reasons for Issuing the Notice. They refer to delivering a prosperous South West Devon, maintaining the vitality and viability of the area's small towns and villages and delivering growth in Plymouth's eastern corridor growth area, respectively. No evidence of ill-effects in this regard has been put forward and, as the harm I have referred to would be limited in its geographical area, the development causes no strategic harm.

Appeals A and B

Alternative scheme

21. The Appellant has submitted an alternative scheme that might be assessed under either this ground or Ground (f). The scheme that has been put forward is part of the matters referred to in the Notice and, given the Ground (a) appeal, should be considered.

22. Save for reducing its height by 65cms to accord with the maximum height of the approved wall, the wall that has been built would remain. Larch board planters would be erected at the rear of the footway, stepping down with the fall of the road. These would be between 600 and 700mm high, measured from footway level, and would be 250-300mm deep. They would be filled with soil, with drainage below ground level. Hedge plants would be grown in these. Higher up, evergreen honeysuckle would be trained along the wall. Behind the wall, at terrace level, a privet hedge would be planted.
23. It is not clear from the submissions whether the wall above the planters would be finished in natural stone, as originally approved. If this is the case, the width available to the hedging in the planters would be likely to be reduced.
24. Although the resultant height of the wall would be that of the approved retaining wall, that wall would have been set further back from the footway, with the majority of the area between the footway and the wall being planted. The result would have been a much-reduced area of wall and a far 'softer' appearance that would not have harmed the area's character and appearance. That development would have been appropriate to the area.
25. The proposed planting would provide some screening of the wall. However, given the proximity of the public highway, it would still be seen through the foliage. The planters and two distinct forms of planting would, to my mind, simply be seen as an attempt to hide a high wall that is at odds with the area's character and appearance. As the larch board planters would be very close to the face of the wall, they would appear as a single entity with the wall behind. The scheme would not to my mind mitigate the harm that the wall causes.
26. For the above reasons, I find that what is proposed in the alternative scheme would also be contrary to JLP Policies SPT1, DEV10 and DEV20 and DEV23.

Other Matters

27. I have taken third party representations into account. Those that relate to the effects on the character and appearance of the area have been addressed, above. That it is thought that it would be a better use of Council resources to cut back brambles nearby on Lyte Lane and collect garden waste and recyclables on a regular basis are immaterial to the appeal.

Appeals A and B

Ground (f)

28. An appeal under Ground (f) is that that the steps required by the notice to be taken, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach. Here, the purpose of the Notice is to remedy the breach.
29. The alternative scheme that was put forward has been addressed under Ground (a). I have found that this would be harmful to the character and appearance of the area. I can see no obvious alternative to that proposed by the Council and, therefore, the Ground (f) appeal fails.

Conclusion

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