



Appeal Decisions

Site visit made on 26 July 2024

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2024

Appeal A Ref: APP/D0840/C/23/3331253

Appeal B Ref: APP/D0840/C/23/3331254

77 Falmouth Road, Redruth, TR15 2QT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Miss Lauren Thomas and Appeal B is made by Mr Darryl Jacka against an enforcement notice issued by Cornwall Council.
 - The notice was issued on 11 September 2023.
 - The breach of planning control as alleged in the notice is undertaking engineering operations to demolish front boundary wall and create an off-road parking area.
 - The requirements of the notice are to:
 - (1) Rebuild the front boundary stone wall to match the position, height and materials of the removed wall as shown on the photograph attached to the notice.
 - (2) Remove all materials arising from compliance with (1) above from the land.
 - The period for compliance with the requirements is 4 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (a), (c), (e) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

1. It is directed that the enforcement notice is corrected by the deletion of the word 'stone' in Requirement 1. Subject to this correction the appeals 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.

Preliminary matter

2. Where an appeal is made on legal grounds such as on grounds (c) and (e), the onus of proof rests with the appellant and the level of proof is on the balance of probabilities.

The appeal site and relevant planning history

3. The appeal site is a two-storey terraced house with a modest sized front garden with walls to the shared side boundaries. The small frontage wall, which characterises the other dwellings in the terrace, has been removed enabling access for a vehicle to park off-road in front of the house. Falmouth Road is the B3300, a classified road. The site is within the Cornwall and West Devon Mining Landscape World Heritage Site (WHS).

4. Planning application reference PA18/05220 for the removal of front boundary wall fronting Falmouth Road to allow off-road parking was refused in August 2018 for reasons similar to those for the enforcement notice being issued.

The appeal on ground (e)

5. An appeal on this ground is that the notice has been served incorrectly. The appellants state that the notice was not served on the mortgage company, Santander UK PLC, as required under s172.
6. The Council obtained Land Registry details which showed the appellants to be the proprietor and Santander shown as being on the charges register. The Council considered that Santander was not materially affected by the notice and were not served. They are satisfied that the notice was served on the owner/occupiers and any other person with a legal/equitable interest in the land which would have covered Santander Bank.
7. There is no indication of how Santander has been substantially prejudiced by the notice not being served on them but, in any event, I agree with the Council's view that they were not materially affected by this.
8. The appeal on this ground fails.

The appeal on ground (c)

9. An appeal on this ground is that there has not been a breach of planning control. The appellants assert that planning permission is not required to demolish the wall as the site is not within a conservation area and does not involve development under s55; that the removal of the wall was for safety reasons; and, that the original intent was not initially to create off-road parking.
10. However, the demolition of the wall does constitute development although the Town and Country Planning (General Permitted Development) (England) Order 2015, (GPDO) at Schedule 2, Part 11, Class C, grants a general permission.
11. The formation or laying out of a means of access to a highway is an engineering operation under s336 which excludes the development from the permission under Part 11, Class C which refers to building operations. Part 2, Class B of the GPDO provides for the formation, laying out and construction of a means of access to a highway which is not a trunk or classified road in connection with development permitted by any Class in the Schedule (except Class A). Falmouth Road is a classified road.
12. Although the appellants have sought to justify the works by claiming that the wall was unsafe, little evidence in support of this claim has been submitted. Additionally, the facts indicate that the appellant's intentions have been to create an off-road parking space. The appellants sought permission from the Highway Authority for a Vehicle Crossing Licence in March 2023 and the former garden area has been cleared to provide a parking area. Furthermore, the planning application in 2018 appears to contradict the appellants' claim.
13. The appellants take issue with the Council's statement that there is a terminal for an electric charger installed on the site. However I note that the appellants' appeal statement is headed 'For retrospective alterations to front garden and

boundary wall to create off-road parking provision and electric charge point for one vehicle’.

14. The appellants have not shown on the balance of probabilities that the works carried out do not constitute a breach of planning control. The appeals on this ground fail.

The appeal on ground (a)

15. An appeal on this ground is that planning permission should be granted for what has occurred.
16. The main issues are, firstly, the effect of the works on the character and appearance of the area, and secondly, the effect on highway safety.
17. The appeal site is in a row of cottages set at the rear of their front gardens which is included in the Historic Environment Record and is described as being of historical note and significant to the character of the local area. The road is one of the earliest suburban areas of Redruth. The front boundary walls provide a unity and link the houses although there is a subtle variety in both the style of the wall and the houses behind. The loss of the boundary wall creates an intrusive break in the frontage disrupting the pattern and rhythm of the wall and gates in the row.
18. It is acknowledged that elsewhere in the area there are examples of parking areas in front gardens but I am not aware whether all of these have the necessary permissions. In any event, they do not provide a justification for further damaging development that affects the character and appearance of the area.
19. I conclude on the first issue that the works are contrary to Cornwall Local Plan Policy 12 concerning design and Policy 24 regarding historic environments. They are also contrary to the Cornwall and West Devon Mining Landscape WHS Management Plan. Although the level of harm is less than substantial, this is not outweighed by the public benefit arising through the removal of a parked vehicle from the local streets.
20. Falmouth Road is one of the principal routes into Redruth. Despite the claims of the appellants that it is possible to turn a vehicle within the site, it is evident from the size of the parking area of 5.8m by 6.9m, that it would be necessary for vehicles to manoeuvre on the carriageway of Falmouth Road either to reverse into the space or to exit the parking area. The submitted visibility splay shows visibility to be restricted by boundary walls on either side of the access and part of the splay crosses land not in the appellants’ ownership, although I note that the appellants have installed a convex mirror to assist egress. Whilst there are double yellow lines outside the appeal property, these are restricted in extent and any vehicles parking outside of these lines would further restrict vision. I note also that the appellants have investigated the installation of a vehicle turntable which is a further indicator of the inadequacy of the dimensions of the site to permit the turning of a vehicle.
21. Accordingly, I conclude on the second issue that the development does not accord with Cornwall Local Plan Policy 27 regarding a safe and suitable access.
22. The appeals on this ground fail.

The appeal on ground (f)

23. An appeal on this ground is that the steps required by the notice are excessive.
24. The purpose of the requirements of a notice is to restore the land to its condition before the breach took place. It is necessary for the requirements to match the matters alleged and in this case the allegation is quite clear and the requirements do no more than restore the land to its previous condition albeit that there is a reference to a 'stone' wall, which the appellants claim is incorrect. Other than the cap to the wall being stone, the appellants state that it was built of less than satisfactory or suitable materials and layered in cement, although such materials are not specified.
25. As the Council correctly point out, the appellants should be well aware of the design and materials of the wall. However, as the allegation does not make reference to a stone wall, I shall correct Requirement 1 to delete reference to 'stone'.
26. I consider that the requirements of the notice, as corrected, do not exceed what is necessary to remedy the breach. To this extent, the appeal on this ground succeeds.
27. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.

Conclusion

28. 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 s177(5) of the 1990 Act, as amended.

P N Jarratt

INSPECTOR