



Appeal Decision

Site visit made on 7 November 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2024

Appeal Ref: APP/X1165/C/24/3341395

3 Manor Road, Paignton TQ3 2HT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mrs Teresa Langer against an enforcement notice issued by Torbay Council.
 - The notice was issued on 23 February 2024.
 - The breach of planning control as alleged in the notice is:
Without planning permission,
 - (i) The demolition of the boundary wall and metal railings along the north-eastern boundary of the site as depicted in the attached photograph labelled "Photograph 1", to create a means of access onto a classified highway, in the approximate location identified by a blue line on the attached plan titled "Map 2", and
 - (ii) The erection of an outbuilding on the eastern boundary of the above land in excess of 2.5 metres in height within 2.0m of the boundary when measured from ground level shown in the approximate location coloured green on the attached plan titled "Map 2".
 - The requirements of the notice are to:
 - (i) Reinstate the former wall and railings along the north-eastern boundary of the land, in the approximate location identified by a blue line on the attached plan titled "Map 2". The reinstated wall must be re-instated in accordance with the attached photographs labelled "Photograph 1" and "Photograph 2" and in accordance with the requirements in sub-paragraphs (a) and (b) below.
 - (a) The bricks used to re-instate the new boundary wall and associated piers shall match the bricks used in the construction of the original boundary wall and pillar and as depicted in the attached photographs labelled "Photograph 1" and "Photograph 2".
 - (b) The metal railings sited between the 2 pillars shall be designed to match the original metal railings and shall be re-instated in accordance with the details provided as shown in the attached photographs labelled "Photograph 1" and "Photograph 2". The railings shall be painted in either a matt or gloss paint top-coat.
 - (ii) Reduce the height of the outbuilding (including fixtures and fittings) sited in the approximate location coloured green on the attached plan titled "Map 2" to no more than 2.5m in height when measured from the ground level immediately adjacent to it.
Alternatively, demolish the outbuilding sited in the approximate location coloured green on the attached plan titled "Map 2" in its entirety and remove all resulting debris from the land.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (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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Decision

1. 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.

Preliminary Matters

2. A single notice is being used to address 2 separate developments and I will deal with each in turn. The appellant has mentioned in their submissions that they will be reducing the height of the outbuilding. When I undertook my site visit, I noted that structure had been altered such that the roof is now much lower than shown in the photographs submitted within some of the representations. I must deal with the appeal on the basis of what existed at the time that the notice was issued which is therefore the outbuilding as previously existed and not what is on site now.

The Appeal on ground (c)

3. The appeal against the notice on ground (c) is that what is alleged does not constitute a breach of planning control and the onus is upon the appellant to prove their case on the balance of probabilities. The planning merits of what is alleged are not of relevance.

Reasons - access [paragraph 3 (i) of the notice]

4. The appeal site is an end of terrace building which is set back from the footway that runs alongside Manor Road. The short area at the front of the building had previously been enclosed by the wall with railings that has been mostly demolished. The area has been used as an area to keep skips whilst renovation works have been carried out.
5. By reason of s57 of the Act, planning permission is required for the carrying out of development of land. In turn, s55(1) of the Act states that development "means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land". Furthermore, building operations are confirmed at s55(1A) to include "demolition of buildings". Section 171A(1) of the Act includes within the definition of a breach of planning control, at subparagraph (a), the carrying out of development without the required planning permission. However, notwithstanding the above, the Town and Country Planning (Demolition – Description of Buildings) Direction 2021 at 3(1)(b) states that the demolition of the whole or any part of any gate, fence, wall or other means of enclosure should not be taken as "development".
6. The notice alleges that the works have been undertaken "to create a means of access". The creation of a means of access will only require planning permission if it involves an act of operational development within the meaning of s55(1). In themselves, the removal of the wall and gateway including the piers would not require planning permission given it is excluded from the definition of development but the 2021 direction. The possible intention and broader implications of this legislative background are not for me to consider when making this judgement. However, it is necessary to look at the works as a whole and determine whether or not as a matter of fact and degree, the demolition could, along with any other works, be characterised as one

operation involving the formation of a means of access to a highway that could be considered to be development within these provisions.

7. Section 336 of the Act includes within the definition of "engineering works" as including "the formation or laying out of means of access to highways". However, there will need to have been something that has taken place which involves the "formation" or "laying out" of the access as a matter of fact and degree for the operation to involve development.
8. The appellant has referred to wanting to drop the kerb between the footway and the road but as a matter of fact, that has not been undertaken. A planning application had also been submitted previously that would have involved the "formation of off-road parking spaces".
9. As well as the removal of the low brick wall, the railings and one of the brick piers that supported the wall, I can see from 'photograph 1' as attached to the notice, that previously there had been some form of slabbed surface on much of the front garden. That slabbed surface has been replaced with a gravel surface. This appears to have involved some substantial works that have involved the formation and laying out of the surface. The area has been used to store skips and large rubble sacks which normally I would expect will involve vehicles accessing the site whether or not they then remained parked there. That is consistent with the appellants confirmation that the wall has been removed to allow a space for skips and waste "accessible for heavy machinery/skip lorries." The works that have taken place would appear on the balance of probabilities to have been one operation involving the removal of the wall as well as "the formation or laying out of means of access to highways" and therefore by definition involved engineering operations requiring planning permission.
10. Schedule 2, Part 2, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), permits (grants planning permission) for the formation, laying out and construction of a means of access to a highway, but only where it is not a trunk or classified road. The fact that the site is not within a Conservation Area does not affect this determination one way or the other. There is no dispute that Manor Road is a classified road and so what is alleged is not permitted development. The demolition of the boundary wall and metal railings as part of the creation of an access therefore required planning permission.

Reasons – Outbuilding [paragraph 3 (ii) of the notice]

11. The appellant has not disputed that the outbuilding as alleged on the notice, prior to the reduction in height, needed planning permission. They do suggest that because it has been reduced in height, it no longer requires planning permission however, I have to consider the situation as at the date the notice was issued. The appeal on this ground will not succeed because the building as alleged did require planning permission.

Conclusion on ground (c)

12. The appeal on ground (c) fails with respect to both of the allegations.

The Appeal on ground (a)

13. Under this ground of appeal, I have to consider whether planning permission

ought to be granted for the matters stated on the notice as the breach of planning control.

Main issues - access [paragraph 3 (i) of the notice]

14. The main issue is the effect of the vehicular use of the area at the front of the appeal site on highway safety within Manor Road.
15. Although the Council has not raised obvious concerns about the visual effect of the loss of railings and wall, the appellants have raised the issue of whether the railings should be reinstated. They have done that under the appeal on ground (f) but I can only consider planning merits under ground (a). As ground (a) has been pleaded, a second main issue is therefore the effect of the demolition of the boundary wall and metal railings on the character and appearance of the street-scene within Manor Road.

Reasons – access highway safety

16. The appeal site is located in a built-up area close to the sea front. Marine Drive runs parallel with the sea front and for vehicles travelling from south to north and turning into Manor Road, where the site is located, there is no junction that needs to be stopped at. Instead, the 2 roads meet at a sharp bend in the road. The appeal site is located immediately next to the Manor Road frontage of the large multi-storey building known as Tembani Court.
17. The lack of a dropped kerb would not prevent a vehicle driving into the site particularly as the kerb here is low although not officially 'dropped'. The area that has become accessible now that the wall has been removed measures, according to the Council, approximately 3.34m by 2.25m. Those dimensions are disputed by the appellant who says that the space is 6.9m by 3.98m. However, notwithstanding this difference, I could see that the limited size of the area would not allow for a vehicle to turn within the site in order to leave in a forward direction. The appellant has not provided evidence to convince me otherwise. This would be even worse when the area is used to store rubbish bins as it was at the time of my site visit. Parked end-on in the space, many types of vehicles would overhang the footway. This could obstruct pedestrians and other users of the footway such as those in wheelchairs or parents with push-chairs, who may have to divert into the road.
18. The parking area is obscured by the remaining wall, railings and planted hedge within the front garden of Tembani Court. I found that as I drove around the bend from the direction of the sea-front that these features obscured my view of the appeal site. Drivers of vehicles parked within the site would also have a limited view of cars approaching from the sea-front direction. Without being able to turn within the site, the lack of reasonable visibility of oncoming cars within Manor Road as well as pedestrians and other users of the footway would not provide vehicular and pedestrian access to a safe standard.
19. Although the appellant refers to parking their car parallel to the road, it would be very difficult to strain to look backwards to effectively see cars or users of the footway who approach the site. There are examples elsewhere along the same road where there is insufficient room for vehicles to turn and where reversing in or out of parking spaces onto the road is necessary. However, that provides no weight in favour of further unsafe development.

20. In relation to this main issue, the vehicular use of the area at the front of the appeal site has a harmful effect on highway safety within Manor Road. For the above reasons, this does not comply with Torbay Local Plan, 2012 to 2030, adopted December 2015 (LP) Policies TA1, TA2 and TA3, including the standards set out in LP Appendix F.

Reasons – access character and appearance

21. This part of Manor Road contains primarily residential properties of similar original appearance with short front-gardens which are behind front walls. There are also many properties where the front walls have been entirely removed. The combination of these factors means that the street-scene has a varied appearance which is incrementally being dominated by vehicles. However, where walls remain, the original character of the street-scene is more apparent. This quality in the character and appearance of the road does remain in parts.
22. The loss of a wall along the appeal site frontage contributes further to the erosion of the character of the street-scene and opens up the frontage and removing the short garden. Railings remain along some frontages in the road including on the more modern developments adjoining the appeal site. However, on other properties where there are high walls without railings, they are still effective in provide enclosure of the front gardens which in turn help to soften the street-scene. Construction of the low wall without railings would look incomplete and would thereby be at odds with the street-scene. I don't have an alternative acceptable scheme before me to consider.
23. In relation to this main issue, the demolition of the boundary wall and metal railings has had a harmful impact upon the character and appearance of the street-scene within Manor Road. This does not comply with LP Policy DE1 which seeks developments to be well designed respecting or enhancing Torbay's special qualities.

Main issue – Outbuilding [paragraph 3 (ii) of the notice]

24. The effect of the outbuilding enforced against on the character and appearance of the area.

Reasons - outbuilding

25. The outbuilding is located at the rear of the property next to the driveway which is accessed from the cul-de-sac which also serves Tembani Court as well as other properties which front onto Manor Road. I can see from submitted photographs that the building was previously much higher than the rendered wall that remains. The building adjoins landscaped garden area at the rear of Tembani Court.
26. The position of the outbuilding is very prominent within the cul-de-sac. At the previous height it obscured and over-dominated this part of the street-scene including the adjoining the nearest part of Tembani Court. The building had a functional, open fronted appearance being used for storing surf-boards that were clearly visible into the street, with a surf-board also decorating the front, high fascia.
27. The rear of the site is accessed via a narrow service lane that runs between the backs of the properties in Colin Road and Manor Road. The street-scene

contains many outbuildings and parking areas. However, the structure being enforced against had a much greater impact upon the street-scene and was out of keeping with it. Furthermore, the lower structure which the notice allows to be retained, is much more in scale with other outbuildings nearby and does not obscure the high hedge which helps to soften the streetscape.

28. In relation to this main issue, the outbuilding enforced against had a harmful effect on the character and appearance of the area. This was not well-designed and did not respect or enhance the area. Furthermore, its scale was overbearing when seen from the cul-de-sac and adjoining gardens. As such, for these reasons, the development did not comply with LP Policies DE1, DE3 nor DE5. The outbuilding was not in keeping with the surroundings and did not respect the scale, design and height of the area and so did not comply with Paignton Neighbourhood Plan, adopted June 2019 (PNP) Policy PNP 1(c).

Other matters

29. Complying with the notice would result the loss of the parking space. There is some parking at the rear of the appeal property which is accessed from the no-through road between the rear gardens of the buildings in Manor Road and Tembani Court. There may be some obstruction of the parking space at the rear at times which can may well be inconvenient, and I suspect a cause of annoyance for the appellant when obstructions make them late for appointments. In that respect the development enforced against would overcome some of these issues and as such, I give this limited weight in favour of the proposal.
30. The appellant's threatened course of action to place skips alternatively on the road could be subject to controls under other legislation. I give that matter no weight. It is also not for me in this appeal to comment upon the status of other accesses and parking areas nearby or whether the Council should or could take enforcement against those.

Conclusion on ground (a)

31. Overall, these other matters and any potential advantages of the development do not outweigh my conclusions on the main issues. For these reasons, having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal on ground (a) should fail and consequently, the deemed planning application shall be refused.

The Appeal on ground (f)

32. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The purposes of notices are set out in s173(4) of the Act. In short, the purposes are to (a) "remedy the breach" and (b) to "remedy any injury to amenity". The notice in this case has 2 requirements.
33. The first requirement in relation to the reinstatement of the wall and railings is also in turn, in 2 parts. Firstly, it is necessary to reinstate the wall and then secondly the railings, which need to match the original railings. Rebuilding the structure in this way would remedy the breach by requiring the undoing of what has been done. In my view the requirement goes no further than that and it is the only way drawn to my attention, that the breach of planning control can be fully remedied. I have however considered, under ground (a),

whether it would be appropriate to just reinstate the wall without the railings. For the reasons I explain above, that would not be acceptable in terms of the relevant planning merits.

34. The second requirement is also split into 2 alternatives. The first is to reduce the height of the outbuilding to 2.5m which falls short of remedying the breach. That therefore seeks to require the remedying of any injury to amenity. That would be achieved as the building at its reduced height would be acceptable for reasons I have explained above with respect to the appeal on ground (a). The appellants have already reduced the height of the building.
35. The second alternative is to demolish the building entirely in other words to undo what has been done. That would remedy the breach of planning control.
36. Overall, the requirements have not exceeded the purposes of the notice and no other alternatives have been brought to my attention that would achieve those. The appeal on ground (f) therefore fails.

Conclusion

37. For the reasons given above, I conclude that the appeal 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.

Andy Harwood

INSPECTOR