



Appeal Decisions

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 A Ref: APP/X1165/C/24/3343570

Appeal B Ref: APP/X1165/C/24/3343571

78 Spencer Road, Paignton TQ3 3SY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeals are made by Mr Adrian Northam (Appeal A) and Mrs Victoria Northam (Appeal B) against an enforcement notice issued by Torbay Council.
 - The notice was issued on 28 March 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission the carrying out of building and engineering operations in the front garden fronting on to Spencer Road, to erect retaining walls raising the land and the laying of a hardstanding and perimeter wall for the formation of off-road parking, as indicated in the approximate location hatched blue on the attached plan titled "Map 2".
 - The requirements of the notice are to:
 - (i) Remove the unauthorised walls, infill material and hardstanding and perimeter wall and reinstate the front garden fronting on to Spencer Road back to its original condition before the unauthorised works took place in accordance with the details indicated on the attached drawing number '500-(20)-00'.
 - (ii) Remove all resulting debris generated as a result of any remedial works set out in point (i) of this section in its entirety from the land.
 - The period for compliance with the requirements is: 6 months.
 - The appeals are both proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended). Appeal A has also been brought on ground (a) and so an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

1. 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.

The Appeals on ground (d)

2. This ground of appeal is that at the time the notice was issued, it was too late to take enforcement action. The notice was issued on 28 March 2024. The time limits for taking enforcement action are set out in s171B of the Act. That is subject to transitional provisions¹ which retains the previous 4 year time limit for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024.
3. There is no dispute in this case that the 4 year time limit is applicable. To succeed on this ground, the appellants would need to demonstrate on the

¹ The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024

balance of probabilities, that the development had been substantially completed 4 years prior to that date, therefore by 28 March 2020.

4. The photograph that has been submitted to support the appellants' case has a date stamp of 27 March 2020. The Council disputes the accuracy of that date although I have no evidence that it is inaccurate, but the appellants have not supplemented this with any form of legally sworn and witnessed declaration. Technology can be inaccurate, and it is common practice in appeals to corroborate evidence particularly where a date is potentially critical to the outcome. The weight that could be given to such evidence would be greater if there were legal implications for giving false or inaccurate statements. However, that may not be decisive unless there is evidence to contradict the appellants' version of events.
5. The aerial image reproduced in the Council's statement dated 24 March 2020 is not clear enough to be of much assistance to directly contradict or confirm the appellants' photograph. It is also not clear whether the timing of the construction being so close to the national Covid-19 lockdown is anything more than circumstantial and it is possible that the appellants could have already purchased the materials before that point. I have not been provided with any receipts or statements to help to demonstrate the appellant's version of events, however.
6. I am referred by the Council to the retrospective planning application submitted for the development in July 2020 which was very close in time to the events. The Council refer to the application form which states that the works were completed on 30 May 2020, after the material 4 year period. What 1 person may or may not consider is meant by the term "completed" can be subject to opinion and it will depend upon the context for making such a statement as well as that person's knowledge. However, the appellants refer "to this date having been inserted by their "planning consultant". I am not told who that person was, what qualifies them as a planning consultant or what professional credentials they have. However, I would expect a planning consultant to make reasonable enquiries of the circumstances before specifying a date which can have potentially significant consequences. I would normally expect a planning consultant to also understand what "completed" could mean in the context of an application made retrospectively for a development. The contradiction between this and what the appellants are seeking to demonstrate is not clarified in a sworn statement or statutory declaration which the appellant could have sought from the planning consultant to explain what they had understood. It is a contradiction to which I give substantial weight.
7. The appellants' photograph shows unrendered walls around each side of the platform other than where it adjoins the footway alongside the road. It also has a black bitumen surface. There is also disagreement about whether that surface is the final wearing course or, as the Council suggest, a base layer with a final course yet to be applied.
8. The lack of render on the walls would not prevent the structure from being used for parking a vehicle. However, the current surface of the structure that I saw, is level with the concrete edging strip which is raised a little above the surface of the adjacent footway. The bitumen surface shown on the photograph appears to be distinctly lower than the concrete edging at that

time. The photograph is not absolutely clear but it is the best image from around that time that has been presented. Furthermore, there are traffic cones shown along the front of the development which would prevent access. That does add weight to the Council's suggestion that the surface was not at that time suitable to support vehicles. The development appears to be a work in progress and not ready to accommodate vehicles which is clearly its intended purpose.

9. The appellant has referred me to the Sage case which, although the reference is not precisely the same, I have taken to be Sage v SSETR & Maidstone BC [2003] UKHL 22; [2003] JPL 1299. In that respect, looking holistically at what existed at the time of the photograph, it appears that the development was not in a condition that enabled its use for the parking of vehicles by the time of the photograph which was 27 March 2020. Although the walls had been largely constructed the lack of substantial completion of the surface would therefore mean that the structure as a whole was not substantially complete. There is no further evidence to indicate on the balance of probabilities that it was completed by the material date.
10. The appeals on ground (d) fail.

Appeal A on ground (a)

11. 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

12. There are 3 main issues. The first is the effect of the development on the character and appearance of Spencer Road. The second is its effect upon the living conditions for occupants of adjoining dwelling at No 80 Spencer Road. Lastly, the third main issue is the effect of the use of the development for parking of vehicle on highway safety.

Character and appearance

13. The appeal site is within a primarily residential area where many of the houses are semi-detached and of a similar design. A distinctive characteristic of the road results from the change in ground-levels given that the estate appears to have been built on a hillside. Consequently, the dwelling at the appeal site and others on the same side of the road are much lower than those on the opposite side, with ground-floors much lower than the road.
14. There are examples of parking platforms at the fronts of the dwellings on this lower side of Spencer Road. However, many of the original front gardens sloping down steeply from the footway to the ground floor levels of the dwellings are still apparent. Some of these gardens include picket fences others are open to the road but many include views through of soft-landscaping such as lawns and also large bushes. Where there are gaps between the houses there are also pathways and some driveways which also add to the spaciousness of the layout. These features help to soften the appearance of the street-scene and are significant characteristics.
15. The development is a large platform surrounded by rendered walls which is level with the road and footway. This sits in a high position relative to the

house and obscures the view from the road of much of the front, ground floor part of the house. It contrasts with the adjoining gardens which are more typical of the qualities the area I have described above as the garden here would have been previously. The substantial engineered structure is stark, brash and dominates the appearance of the appeal site. Other similar structures nearby are isolated and are not positive examples to follow in terms of the qualities of the area.

16. In relation to the first main issue, the development has a harmful effect on the character and appearance of Spencer Road. This does not comply with Torbay Local Plan, 2012 to 2030, adopted December 2015 (LP) Policies DE1 and DE5 which require, amongst other things, that development is well designed, respecting and enhancing Torbay's special qualities and would not dominate or have other adverse effects on the character of the street-scene. The structure is not in-keeping with the surroundings and does not respect the scale, design and height of the area and therefore does not comply with Paignton Neighbourhood Plan, adopted June 2019 (PNP) Policy PNP 1(c).

Living conditions

17. The development is very close to the conjoined property at No 80. The bulky structure is close to the windows in the front of No 80 and also the area at the front of that dwelling, directly on the boundary with it. The outlook in one direction when looking from the nearest ground floor window within the front of No 80 would be dominated by the high structure. Previously the outlook from those windows would have been of the street as well as the sloped garden. This development has therefore had an oppressive effect, harming the outlook from the neighbouring property.
18. In relation to this main issue, this development has a harmful effect upon the living conditions for occupants of the adjoining dwelling at No 80 Spencer Road. As such this does not comply with LP Policy DE3 which seeks amongst other things to ensure that developments do not unduly impact upon the amenity of neighbouring and surrounding uses.

Highway safety

19. The parking area does not conform to the dimensions that the Council requires for parking spaces which is 3.2m x 6m where the space is accessed directly from the highway, as specified in their LP. The space is too narrow to allow a vehicle to park parallel to the road whilst allowing both passenger side doors as well as the driver's side doors to open if the vehicle is entirely within the space. This is likely to lead to obstruction of the footway. This could conflict with pedestrians walking along the footway as well as others such as those in wheelchairs and could divert them into the road.
20. Vehicle sizes can vary considerably as can the way in which individuals drive and park their vehicles. These matters need to be considered generally. The appellant has said that there have been "no near misses or accidents caused" by the development but I have little detailed information about that. The individuals living at the property may be very conscientious and careful but if the appeal is allowed, the development may well remain in the long term when future occupants of the site may be less considerate. The platform may also remove the need for the occupants of No 78 from parking on the road which in turn may free-up on-street parking spaces. However, there is no formal

crossing here in the form of a dropped curb along the edge of the footway and no parking restrictions to prevent parking on-street. The presence and use of the platform may not entirely reduce on-street parking.

21. In relation to this main issue, the use of the development for parking of vehicle has a harmful effect on highway safety. This does not comply with LP policies TA2 and TA3 which only support the provision of vehicular and pedestrian access where it is to a safe standard as well as requiring parking that meets the standards set out in LP Appendix F.

Other matters

22. I recognise that there is some support locally for the off-street parking that has been provided. However, this does 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.

Conclusion

23. 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.

Andy Harwood

INSPECTOR