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## Appeal Decisions

Site visit made on 7 January 2025

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 January 2025

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**Appeal A Ref: APP/X1118/C/24/3343099**

**Appeal B Ref: APP/X1118/C/24/3343100**

**Appeal C Ref: APP/X1118/C/24/3343101**

**Appeal D Ref: APP/X1118/C/24/3343102**

**Ashleigh House, Victoria Road, Barnstaple EX32 9HR**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Leslie Weston (Appeal A), Mrs Claire Weston (Appeal B), Mr Kirun Weston (Appeal C), and Mr Leyton Weston (Appeal D) against an enforcement notice issued by North Devon District Council.
- The notice was issued on 13 March 2024.
- The breach of planning control as alleged in the notice is: Without planning permission and within the last 4 years, unauthorised development consisting of a fence atop the front boundary wall and a timber shed structure in front garden.
- The requirements of the notice are:
  1. Remove the fence atop of the front boundary stone wall;
  2. Remove the timber shed structure outlined in green on the attached plan from the Land;
  3. Remove all materials and debris resulting from Steps 1-2 from the Land and dispose of them in a responsible manner.
- The period for compliance with the requirements is: Within 3 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in sections 174(2)(a) 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.

**Summary Decision: The appeals are dismissed and the enforcement notice is upheld with a correction in the terms set out below in the formal decisions.**

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### The enforcement notice

1. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the enforcement notice (“the Notice”) in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended (“the 1990 Act”) include to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
2. The requirements of the Notice at section 6 include, at paragraph 3, the disposal of materials and debris in a responsible manner. The Notice cannot control what happens to items once they are removed from the site and, therefore, the instructions about disposing of them should be deleted from the requirement. As this does not alter the operation or purpose of the Notice, no injustice would arise from such a correction.

### **Preliminary matter**

3. The boundary fence referred to in the Notice is part of a front enclosure that includes a gate of similar overall height. Barnstaple Town Council have queried why the Notice does not also require the height of that gate to be reduced. However, as the gate is separate to the fence and the Council has not included it in the Notice, that is not a matter before me. Irrespective of my decision, if it subsequently appears to the Council that the gate is a breach of planning control, they may consider the expediency of further enforcement action in the future.

### **Ground (a)**

4. Ground (a) is that planning permission ought be granted for the matters alleged in the Notice. The main issue is whether the development preserves or enhances the character or appearance of the Barnstaple-Newport Conservation Area ("CA"). There are a number of listed buildings in proximity to the site, but the Council has not alleged any harm to their settings and, while some can be seen alongside the development, given their separation from the site, I see no reason why any has occurred.
5. The overall CA is a mixed-use neighbourhood containing commercial, social and residential land uses. There are a variety of building styles, and the residential buildings vary in scale and appearance. However, the general pattern of historic streets and the relationship of the buildings to the public realm – be that roads or open space – still remains. This contributes to the character and appearance, historic interest and, thereby, significance of the CA as a heritage asset.
6. Victoria Road contains a number of large residential buildings. While Victoria Terrace is smaller in scale, other terraces are taller and set back from the street, giving a sense of historic grandeur, and spaciousness. More modern detached houses, including at the appeal site, have respected the general arrangement of dwellings along the road.
7. A notable feature is stone walling that runs the length of Victoria Road, on both sides. While punctuated in places, presumably to facilitate vehicular access, it has a strong presence and unifies the street scene. In some locations, timber fencing has been installed behind the wall, which detracts from the unity of enclosure.
8. However, a fence cited by the appellant at Clayfield care home is outside the CA and appears to be on a side boundary, so is not comparable. Another at Rock Park terrace appears to surround a rear yard and is also associated with a more utilitarian block-built wall. The more comparable ad-hoc fencing, such as that that at the buildings on the corner with Gloster Road, and at Albert Villas, is not a defining feature in the overall character and appearance of the site's immediate context.
9. In any case, the fence subject to the Notice differs from those elsewhere in that it is both fixed directly to the stone wall, and the fence panels sit within metal framing that give it a bold appearance. Its design and positioning changes the nature of the existing enclosure in an obvious and intrusive way. This undermines the positive contribution that the wall makes to the character and appearance of the area and causes less than substantial harm to the significance of the CA. There is no

particular evidence to suggest that a change to the colour of the panels would make an appreciable difference to that harmful effect.

10. A shed has also been constructed to the front of the dwelling. It is visible above the fence. While there are some outbuildings at other properties, they are also uncommon and not a defining feature of the area's character or appearance. Moreover, a shed at Glen Lyn is a low, open fronted, timber structure that is very significantly lower than the raised entrance to the 3 storey building behind it, and one at Wynsum appears to be built into and against a taller stone side boundary wall. They are not comparable to the more bulky, closed structure subject of the Notice that is broadly level with the main floor of the house, and finished in materials visually at odds with others on the site.
11. A gas governor on the opposite side of the road, while somewhat incongruous with the historic townscape, is outside the CA and in any case is viewed against open space rather than buildings. It is not comparable. Nor is an advertisement display board at the corner of Newport Road, which is also outside the CA and viewed against a commercial site.
12. The shed subject of the Notice is set to the front of the dwelling. It is also closer to the road than the adjoining Victoria Terrace. It disrupts the open frontage of the site and contribution that it and the other similar spaces make to the general appearance and openness of the road. Therefore, it also causes less than substantial harm to the significance of the CA.
13. The National Planning Policy Framework ("the Framework") requires that any less than substantial harm to a designated heritage asset should be weighed against the public benefits of the development. There is no substantive demonstration of any public benefit arising from the shed.
14. I understand that the property has historically suffered from intruders seeking to access a footpath alongside the left-hand site boundary that provides a shortcut to Barnstaple town centre but is locked at night. The appellant has described how this behaviour has stopped since the erection of the front boundary fence.
15. However, it is not clear as to why the same cannot be achieved by other means, such as alterations to the side boundary along the footpath that might be less visually intrusive. I saw that there is already some fencing alongside the footpath, including barbed wire. It is not clear whether that is contemporary with the front boundary fencing or not, such that it might also be playing a role in preventing intruders, especially as it appeared to me to be fairly easy for a determined intruder to access the front of Ashleigh House across the neighbour's frontage on the right-hand side.
16. Accordingly, even if improving the security of the dwelling and reducing anti-social behaviour around it could be deemed a public benefit, on the basis of the evidence provided, I attribute only limited weight to the role that the fence on the site frontage plays in that. Compared to the great weight that the Framework and Policy ST15 of the North Devon and Torridge Local Plan 2011-2031 ("LP") indicates must be applied to the conservation of heritage assets, I find that the public benefits in this case do not outweigh the less than substantial harm that has been caused.

17. Therefore, the matters alleged in the Notice conflict with those aims of LP Policy DM07 that only allows harm to heritage assets where there is an acceptable balance between harm and benefit in line with national policy tests. There is also conflict with those aims of LP Policy DM04 that seeks, amongst other things, to ensure that development is sympathetic to its setting and contributes positively to the historic environment.
18. In conclusion, I have found that the development conflicts with the development plan. No material considerations have been shown to indicate that a decision should be taken otherwise than in accordance with it. Therefore, planning permission should not be granted for the matters alleged in the Notice and the appeal on ground (a) should fail.

### **Ground (f)**

19. Ground (f) is that the steps required by the Notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by the matters alleged, or as the case may be, to remedy any injury to amenity which has been caused. The purpose of the Notice is to remedy the breach of planning control. Therefore, it is not relevant in this case whether lesser steps might remedy any injury to amenity.
20. No alternative steps have been put forward. Moreover, as the steps concisely require the removal of the matters alleged, there is no obvious alternative that might remedy the breach of planning control. Therefore, the appeal on ground (f) should fail.

### **Formal decisions**

21. It is directed that the enforcement notice is corrected by:  

In Section 6 'What you are required to do', paragraph 3, delete the words "and dispose of them in a responsible manner".
22. Subject to the 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.

*M Bale*

INSPECTOR