
Appeal Decision

Site visit made on 15 November 2016

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS DipTP MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 January 2017

Appeal Ref: APP/F0114/X/16/3151221

Land between Miller Walk and Simons Close, Bathampton, Somerset

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Property of Bath Ltd / Valerie Vivian against the decision of Bath & North East Somerset Council.
 - The application Ref 16/01232/CLPU, dated 9 March 2016, was refused by notice dated 5 May 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is provision of permeable block paving surface to existing private way.
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Decision

1. The appeal is dismissed.

Reasons

2. Schedule 2, Part 9, Class E of the Town and Country Planning (General Permitted Development) Order 2015 notes that the carrying out on land within the boundaries of an unadopted street or private way of works required for the maintenance or improvement of the street or way is permitted development. For the purposes of Class E, 'unadopted street' means a street not being a highway maintainable at the public expense within the meaning of the Highway Act 1980.
3. When the housing nearby was developed, a right of way was granted between houses to the fields behind. A right of way is not necessarily a street or private way, it is a legal permission to use the land. In the Transfer of the relevant land ('the Accessway') it is simply described as a strip of land 7m wide between the retained land and the estate road. Whether a physical street or private way has been formed is a matter of fact and degree, which will relate to the character of the right of way in question. The Transfer gives a right of way, amongst other things, in favour of the retained land at all times and for all purposes with or without vehicles and animals over and along the access way.
4. An appeal under section 195 is not concerned with the planning merits of the case or any future use that may or may not occur on the land. However, while the impact of what has been constructed on the character of its surroundings is not relevant, in determining whether a street or private drive has been formed

the character of what forms the right of way is relevant to determining what it is.

5. Prior to the recent works by the appellant, the right of way had the character and appearance of an area of mown grass. There is a layer of 'grasscrete' type concrete reinforcement below the surface, reinforcing the grass, enabling vehicular traffic to pass without causing substantial harm to the surface. The 'grasscrete' was not visible and had what appears to be a shallow layer of turf/grass over it. While the appellant suggests the grass over the blocks was not put there by her and not intended, I consider on the balance of probability that if grasscrete type blocks are provided the likely intention is to have grass with it.
6. To my mind, the land had no physical visual characteristics associated with a street or private way and simply appears to be an open area of land with grass which has been reinforced to allow the right of way permitted by the Transfer. The construction of the blocks shown in the evidence is not an unusual method of reinforcing grass to allow access, and to my mind is fit for all purposes of access and in all weather and the evidence does not demonstrate otherwise. The relevant character is not as a vehicular way or street, but an area of grassland with the ability to carry vehicles as necessary.
7. The applicant has removed the layer of grass/earth covering the 'grasscrete' and provided some gravel (without having to do further foundation work). However, this has completely changed the character of the right of way from grassland with concealed 'reinforcement' below; the provision of a further paviour stone surface, whether level with the grass or not, would have the same effect. This introduction is not maintenance or improvement of the 'reinforced' grassland, but the construction of something new and different.
8. I have taken into consideration the evidence presented, including in relation to the dropped kerb, passing places, bin collection and turning spaces. However, that does not change my conclusion on the nature of the right of way that is provided.
9. I conclude that the original arrangement, because of its construction, character and appearance as an area of grassland with reinforcement beneath, is not a 'street or private way' but simply grassland reinforced to allow traffic to pass over it. Therefore, the provisions of Part E do not apply and what has been undertaken is not maintenance or improvement of a street or private way.
10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the provision of a permeable block paving surface to existing private way was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Graham Dudley

Inspector