



Appeal Decision

Site visit made on 27 June 2017

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 July 2017

Appeal Ref: APP/F0114/C/17/3172495
8 Wells Square, Radstock, BA3 3UF.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Leslie Robson against an enforcement notice issued by Bath & North East Somerset Council.
 - The enforcement notice, numbered 16/00503/CONSRV, was issued on 22 February 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the formation of a means of access onto a classified highway.
 - The requirements of the notice are: (a) Cease the use of the land to the front of the property for the parking of vehicles; and (b) Reinstate the walled enclosure to the front of the property to match the remaining natural rubble white lias Stone section of the wall; complete with matching cock and hen capping (the pointing, jointing and coursing shall all match the remaining extent of the original wall).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(c) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

2. Wells Square is comprised of terraces of former miners houses. It is situated in the Radstock Conservation Area (CA) and sits to the north of the A367. According to the Council, until recently one of the defining characteristics of the group of houses was the long gardens separating them from the main road with a low rubble stone boundary wall punctured only by pedestrian access to the street. The appeal property is one of a number of the Wells Square houses that has removed a section of wall to create an accessible hardstanding at the back of the pavement alongside the A367. I saw on my site visit that at least one section of the wall, at the frontage of a nearby property, has now been re-instated.

Ground (c)

3. An appeal on ground (c) is that what has occurred is not a breach of planning control. The basis of the appeal on this ground is that the works of removing

the wall did not require planning permission, while the construction of the hardstanding was landscaping, and therefore permitted development. However, it is clear that the works were carried out as a single operation, and stand to be considered as such. From what I saw, and indeed from the appellant's own submissions, I could come to no other conclusion that what was constructed was a highway access, regardless of the absence of a dropped kerb at the highway edge, which requires a separate consent in any case. Section 336 of the 1990 Act states that "the formation or laying out of a means of access to highways" is an engineering operation, and therefore development for the purposes of the 1990 Act. Where the formation of the means of access is to a classified road, it is excluded from the permitted development rights provided by Schedule 2, Class 2, Part B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). I have noted the appellant's view that it is only the use of the access that requires permission, but as is clear from the above, it is actually the formation of the access that is directly controlled by planning legislation. As a matter of fact and degree I consider that the works carried out amount to the construction of a highway access to a classified road. This is development that requires planning permission, in the absence of which the appeal on this ground cannot succeed.

Ground (a)

4. This ground is that planning permission should be granted for the matters alleged to comprise a breach of planning control. The main issues in this case are the effect of the development on highway safety and whether it would preserve or enhance the character or appearance of the Radstock Conservation Area.
5. Regarding highway safety, the Council's concerns relate to inadequate manoeuvring space and visibility. The A367 passing the property is a busy road subject to a 30mph speed limit. The hardsurfaced area is capable of accommodating 2 cars, but there does not appear to be sufficient vehicle manoeuvring space to enable cars to both enter and leave the spaces in a forward direction. As a result the use of the access would involve either reversing onto or off the highway. On a busy classified road this is likely to be detrimental to highway safety and the free flow of traffic. In terms of visibility, the national guidance on highway planning matters indicates that accesses onto 30mph limited roads should be expected to have 43m visibility in both directions when measured from 2.4m back from the highway edge. I have not been provided with evidence that this level of visibility can be achieved from each of the potential spaces.
6. In view of the unsatisfactory nature of the access in terms of the potential for harm to highway safety I consider that the development conflicts with saved Policy T.24 of the Bath and North East Somerset Local Plan 2007 (LP), which expects development to provide a high standard of highway safety.
7. Regarding the character or appearance of the CA, the CA appraisal comments on the exceptional quality of the unlisted miners terracing built in the local stone tradition, and it seems to me that the stone walling fronting onto the A327 is an integral part of this character and quality. Sections of the walls are missing, mainly for similar parking areas, but the significant sections of wall remaining continue to make a significant positive contribution to the character of this part of the CA. I agree with the Council's comment that the stone

walling is a unifying feature of the Wells Square terraces, and its erosion harms the character and appearance of the CA. Accordingly I consider that the development does not preserve or enhance the character or appearance of the CA. It is thus contrary to saved LP Policy BH.6 and Policies SV1 and CP6 of the Core Strategy.

8. I have concluded that the development is contrary to the relevant development plan policies. There are not material considerations to outweigh this conflict. Accordingly, having considered all other matters raised I conclude that the appeal on this ground should be dismissed and planning permission refused.

Ground (f)

9. This ground of appeal is that the steps required to be taken are excessive. The steps in a notice are intended to achieve the purpose of either remedying the breach of control that has occurred or remedying any injury to amenity (sections 173(3) and (4) of the Act). In this case the requirements of the notice are clearly aimed at remedying the breach by the restoration of the land to its former condition. Since planning permission was not required for the demolition of the boundary wall in isolation, the appellant submits that it would be sufficient to block access to the hardstanding from the street by means other than the reconstruction of the wall, such as a chain or concrete planters. However, the demolition of the wall was part and parcel of the unauthorised development comprising the breach of planning control, and the alternative steps suggested would not fulfil the purpose of the notice, which is to restore the land to its condition before the unauthorised development took place. There are no lesser steps that would achieve that purpose, and hence the appeal on this ground must also fail.

Paul Dignan

INSPECTOR