
Appeal Decision

Site visit made on 21 November 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 08 January 2018

Appeal Ref: APP/D0121/C/17/3181567

3 Jacklands Cottages, Clevedon Road, Tickenham BS21 6SG

- 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 Aaron Joseph Macfarlane against an enforcement notice issued by North Somerset Council.
- The enforcement notice, numbered 2015/0284, was issued on 24 July 2017.
- The breach of planning control as alleged in the notice is within the last 4 years and without the grant of planning permission the creation of a vehicular access on to a classified road and associated engineering operations to create an off street vehicular parking area.
- The requirements of the notice are:
 1. Cease the use of the parking area for the purpose of off street vehicular parking.
 2. Restore the land to the condition it was in prior to the unauthorised development having been undertaken.
- The period for compliance with the requirements is:
 1. Within 7 days from the date this notice takes effect cease the use of the parking area for the purposes of off street vehicular parking.
 2. Within 6 months from the date this notice takes effect restore the land to the condition it was in prior to the unauthorised development having been undertaken.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) 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 appeal is dismissed and the enforcement notice upheld with corrections.

Application for costs

1. An application for costs was made by Mr Aaron Joseph Macfarlane against North Somerset Council. This application will be the subject of a separate Decision.

The Enforcement Notice

2. The appellant has drawn my attention to various case law¹ and maintains that the notice is invalid because the requirements of the notice go beyond remedying the breach of planning control.
3. The notice alleges operational development namely “the creation of a vehicular access on to a classified road and associated engineering operations to create an off street vehicular parking area.” The appellant contends that the notice is

¹ Miller-Mead v Minister of Housing and Local Government and Another [1963] 2 Q.B. 196 & Mansi V Elstree RDC (1964) 62 LGR 172.

invalid because the first step in paragraph 5 of the notice 'What you are required to do' requires "cease the use of the parking area for the purpose of off-street vehicular parking." The notice can only require the remedy of what has been alleged. In this case what has been alleged is operational development and not a material change of use of the land.

4. It is open for me to correct the notice in accordance with my powers under section 176(1)(a) of the 1990 Act. I consider that the notice can be corrected by deleting the first step in paragraph 5 of the notice and deleting paragraph 6.1. 'Time for Compliance' relating to the use of the parking area in its entirety. I do not consider that there would be injustice to any party in doing so since the requirement of restoring the land to its former condition will bring about what the Council is seeking to achieve which is to prevent the land being used for the parking of vehicles. I shall therefore, correct the notice accordingly.
5. Subject to the correction, I consider that the appellant's residual arguments can be dealt with under the wider grounds of appeal. Thus, I do not consider that the notice is invalid as suggested by the appellant.

The appeal on ground (a)

Main Issue

6. The appeal site is located within the Bristol and Bath Green Belt. The planning history of the site includes a planning refusal² for the retention of the access and associated engineering works subject of this appeal. In its determination of the planning application the Council considered that the development was not inappropriate development within the Green Belt. Therefore, I do not need to consider the Green Belt further. Accordingly, the main issue is the effect of the development on highway safety.

Reasons

7. The appeal site is at the end of a terrace comprising three properties located on Clevedon Road, a Classified B highway. The adjoining terrace properties lie to the west of the appeal site and two detached dwellings lie to the east. This stretch of Clevedon Road is unlit and is subject to the national speed limit (60mph). The road rises from east to west.
8. Whilst the parking provided meets the requirements of the Council's parking standards, due to its close proximity to a sharp corner on the inside of a bend, the Highway Authority consider that there is insufficient visibility on either side of the access and insufficient space for vehicles to turn around and exit the site safely. Prior to the development being carried out parking at the appeal site occurred on-street.
9. Policy DM24 of the North Somerset Council Development Management Policies Sites and Policies Plan Part 1 (2016) (DMP) states that development will be permitted provided it would not prejudice highway safety. In addition, I have had regard to the various paragraphs of the National Planning Policy Framework (the Framework) referred to by the appellant.
10. The Highway Authority submits that on a road subject to the national speed limit a visibility of 215m must be available from a distance of 2.4m. The

² Planning refusal Ref: 16/P/1551/F dated 24 August 2016 for "creation of new hardstanding and vehicular access".

appeal site falls considerably short of this at approximately 15m to the west and approximately 20m to the east. The appellant has submitted an 'Appeal Statement in Respect of Highways and Transportation'³ (AS). The AS acknowledges that the visibility splays provided do not meet the requirements as advised in the Design Manual for Roads and Bridges. At my visit I was aware of the high vehicle speeds, the high volume and variety of vehicles using the road, and noted the lack of street lighting. I therefore share the Highway Authority's concern that the substandard visibility severely compromises highway safety.

11. I have taken into account an appeal decision provided in Appendix C⁴ of the AS concerning the formation of a new access and hardstanding. Whilst I have not been provided with the full details of this case, I note that the previous Inspector considered that despite the substandard visibility the access provided "some net improvement or at worst neutral impact on highway safety". However, I do not know the specific road conditions on which this decision was made and thus do not know if the circumstances of this particular case are directly comparable with the appeal site. Thus, I have dealt with the appeal before me on its own merits having regard to the particular context in which the access and hardstanding will be used.
12. I accept that Rose Cottage (adjacent detached property to the east of the appeal site) has an off-street parking area which does not meet the required highway safety standards. However, I am informed that this parking area relates to a 1962/1963 planning permission and has been in place since at least 1999. Thus, given the age of the permission it would have been assessed against different planning policies. Moreover, this site is not directly comparable to the appeal site in terms of the size of the off-street parking area provided and its location along Clevedon Road in relation to its proximity to the bend to the west. In any event, each case must be determined upon its own merits having regard to the Development Plan, the Framework and other material considerations.
13. I have had regard to the appellant's comments regarding the dangers to family members and cyclists as a result of on-street parking at this location and accept that being able to park off-street is of benefit to the appellant and his family. However, given the traffic speed and the manoeuvres required in order for vehicles to either reverse into or reverse out of the parking area and having regard to the existing traffic conditions and the lack of accidents⁵ between 2012 and 2017, I am not satisfied that the development is less harmful to cyclists and other highways users and the free flow of traffic as claimed by the appellant. Consequently, I consider that the betterment afforded to the appellant is not outweighed by the severe compromises to highway safety which would be permanent were I to allow the appeal.
14. I consider that in this particular case the development is harmful to highway safety. Thus, there is conflict with the aims of DMP Policy DM24 and the aims of the Framework to ensure that safe and suitable access is provided for development.

³ Appeal Statement in Respect of Highways and Transportation October 2017 by Cotswold Transport Planning.

⁴ APP/R3325/D/16/3144793.

⁵ Figure 3.2 Page 5 of the Appeal Statement in Respect of Highways and Transportation October 2017 by Cotswold Transport Planning.

15. The appellant has drawn my attention to Policy CS11 of the Council's Core Strategy (2016). This is a strategic policy concerning parking provision. The lack of harm to the character and appearance of the area and living conditions of residents in my view does not mean that less weight should be afforded to highway safety as suggested by the appellant.

Other Matters

16. I have had regard to the appellant's comments regarding reliance on a car to get to and from work, the expense of carrying out the development and the further cost involved in having to implement any remedial work. However, the appellant's personal circumstances do not outweigh the identified harm.
17. I note that the appellant considered submitting a s106 planning obligation to mitigate some of the highway concerns but decided not to on the basis that there is little to be gained by restricting the method of parking. However, in view of my findings above my decision does not turn on this matter.

Conclusion

18. For the above reasons, and having regard to all other matters raised, I conclude that the ground (a), the deemed planning application should fail.

The appeal on ground (f)

19. Section 173 of the 1990 Act sets out what the contents and effect of an enforcement notice should be. Sub-section 4(a) explains what purposes the steps specified in an enforcement notice should achieve. In this case the residual requirement seeks the land to be restored to the condition it was in prior to the alleged development taking place. The purpose of the notice therefore, is to remedy the breach of planning control that has occurred.
20. In his submissions under ground (f) the appellant makes a number of comments concerning the planning merits of the case. I have addressed these above and found that the development is harmful to highway safety.
21. In order to remedy the breach of planning control, it is not excessive to require the land to be restored prior to the development taking place. I conclude that no lesser step would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

The appeal on ground (g)

22. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. The appellant seeks 12 months in order to carry out the works because restoration of the ground levels will be costly and time consuming and will involve encroachment onto the highway. The Council considers that 6 months is sufficient time to restore the land to its former condition.
23. I have been provided with no substantive evidence regarding the timescale of obtaining a traffic regulation order should one be necessary. In my view given the identified harm to highway safety I consider that a compliance period of 12 months is too long. From all I have seen and read I see no reason why the necessary works could not be carried out in 6 months. If this reasonably proves to not be the case, the appellant can ask the Council to extend the

period specified in accordance with s173(9) in the notice using their powers under s173A(1) of the 1990 Act as amended. The appeal on ground (g) fails.

Formal Decision

24. It is directed that the enforcement notice be corrected by:

- (i) Deleting step 1. of paragraph 5. 'What you are required to do'.
- (ii) As a result of (i) above, deleting the text "2." from paragraph 5. 'What you are required to do.'
- (iii) Deleting paragraph 6.1. 'Time for compliance'.
- (iv) As a result of (iii) above, deleting the text "2." from paragraph 6. 'Time for compliance'.

25. Subject to the above corrections the appeal is dismissed and 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.

Elizabeth Jones

INSPECTOR