
Appeal Decision

Site visit made on 28 November 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 19 January 2018

Appeal Ref: APP/F0114/W/17/3179690

25 Wells Square, Westfield, Radstock, Somerset BA3 3UF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss Hayley Johns against the decision of Bath & North East Somerset Council.
 - The application Ref 17/00555/FUL, dated 29 January 2017, was refused by notice dated 28 April 2017.
 - The development is vehicle access onto the A367 Wells Road, Radstock.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is for the creation of a joint vehicle access and associated parking area within the rear gardens of 25 and 26 Wells Square onto a classified road. The description of development in the planning application and appeal forms includes words and explanation which are not acts of development. Therefore, I have omitted the additional wording from the description used in the banner heading above.
3. According to the planning application form the development works were completed on 9 May 2014, which is in accord with what I saw on my site visit. Although, in her statement of the case, the appellant refers to some further works to allow turning in the parking area, it seemed to me that the main works had been completed. The dropped kerb would require a separate consent. As planning permission was not sought prior to the substantial completion of the works, the application is retrospective and essentially intended to regularise the position. I have considered the appeal on that basis.
4. Although I am aware that an enforcement notice has been served and that appeals have been lodged in relation to it, my sole concern is the planning appeal before me.
5. The Council advises that since the application was determined the Bath and North East Somerset Placemaking Plan (PP)¹ has been adopted. Therefore, the policies of the Bath and North East Somerset Local Plan 2007, referred to in the Council's decision notice, have been replaced by relevant policies in the PP. They are also referred to in the decision notice, but were emerging at that time. I am required to determine the appeal on the basis of the current

¹ District-wide Strategy and Policies July 2017

development plan, which both parties have had the opportunity to comment upon during the course of the appeal.

Main Issues

6. The main issues are the effect of the development on:

- the character and appearance of the Radstock Conservation Area (CA); and,
- highway safety along Wells Road.

Reasons

Character and appearance of the CA

7. The appeal site comprises the rear garden areas of 25 and 26 Wells Square which back on to Wells Road. The properties form part of one of three terraces of stone built former miners' houses on the northern side of Wells Road. They are situated within the CA and represent a significant link with the town's coalmining past and industrial heritage. Indeed, the Conservation Area Assessment (CAA)² advises that although none of the terraces which survive are listed '*their contribution to the town is unparalleled in their exceptional quality and character.*' I am mindful of the protection afforded by statute³ and the great weight attributed by the National Planning Policy Framework (the Framework)⁴, a material consideration in all planning decisions, to the conservation of designated heritage assets, such as conservation areas.
8. Until relatively recently, according to the Council, one of the defining characteristics of this 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. Whilst the rear gardens at Nos 25 and 26 may be slightly shorter than some others in the group of houses, they are still a reasonable size and the variation does not invalidate the Council's characterisation. Although technically the appeal site and wall are at the rear of the properties, the most prominent public views of the terraces are from Wells Road. The development has resulted in the removal of two sections of the low stone boundary wall, relating to Nos 25 and 26, and the creation of a parking area in the gardens giving access on to the A367 (Wells Road).
9. Although similar vehicle accesses have been constructed at some other properties amongst the terraces, I understand that they were also unauthorised. However, in the case of No 27, next door to the appeal site, the statutory enforcement period has expired. In any event, the low stone wall still runs uninterrupted for significant stretches and, with the rear gardens, continues to provide a unifying feature along the terraces, which positively contributes to the character and appearance of the CA. The piecemeal diminution of the wall and the creation of parking areas in the rear gardens damages this part of the CA and fails to preserve or enhance the CA as a whole.
10. The Council has also drawn my attention to two recent appeal decisions within the same group of former miners' dwellings, at 8 and 9 Wells Square.⁵ Those

² Conservation Area Assessment: Radstock (March 1999)

³ s72(1) Planning (Listed Buildings and Conservation Areas) Act 1990

⁴ Paragraph 132

⁵ APP/F0114/C/17/3172495 and APP/F0115/D/17/3176966

appeals also related to the creation of vehicle parking and accesses on rear gardens involving the removal of sections of the low stone wall. In both appeals, the Inspectors found that the development harmed the character and appearance of the CA.

11. According to the appellant the 1999 CAA is no longer accurate, as extensions facing Wells Road have been added to a number of properties along the terraces, with the benefit of planning permission. In the appellant's view the extensions have substantially changed the appearance of the houses and destroyed the uniformity which once existed. Furthermore, the appellant holds that the Council itself had accepted that the original built form of the terrace had been lost, citing the Council Officer's Report relating to an extension at No 12.
12. The appellant reasons that the Inspectors who dealt with the above appeals would have been unaware of those changes when assessing matters of character and appearance. However, even if one accepts the appellant's characterisation of the effect of the extensions, the relevant Inspectors carried out site visits and would have made their own assessments on the basis of what they saw along the terraces, in addition to considering any written submissions. Both Inspectors specifically refer to other relevant developments along the road which they noted or saw on their site visits. Therefore, their findings are still material. I will deal with highway safety issues later in my decision.
13. Furthermore, I do not agree that the CAA is no longer accurate. Whilst I do not have full details of the reasons that led to the extensions being approved, the extracts from the relevant Council Officer Reports indicate that the Council concluded that those extensions did not harm the character or appearance of the dwellings or the CA. Therefore, the Council do not accept that the CAA was or is inaccurate or out of date or that the CA was being significantly harmed.
14. The appellant places much emphasis on the Council Officer's report relating to the extension at No 12. However, the Officer considered that the single storey extension integrated satisfactorily with the existing dwelling and that the extension was sufficiently distant from the road so as not to cause a significant impact on the CA. The reference to the original built form of the terrace being lost appears to relate to the immediate context of other extensions in close proximity at Nos 14 and 15.
15. Even if one disagreed with the Council's assessment of the effect of the approved extensions and considered them harmful, it would not legitimise permitting a different type of development which caused further harm to the character and appearance of the CA. Nor would it mean that the CAA is no longer relevant. In my judgement, although there have been some single storey extensions, the three terraces retain consistent and unifying features including their stone construction, prominent gables, similar pitched roofs and chimneys and are enhanced by their rear gardens and stone walling. They continue to make a valuable contribution to the CA.
16. Therefore, I do not accept the premises posited by the appellant or agree that the Inspectors, who dealt with the appeals referred to, were in some way misinformed or not in possession of relevant facts. Rather, I concur with their consistent findings that the use of the rear gardens for parking areas and the

associated removal of sections of the low stone wall causes visual harm to the CA.

17. Consequently, I conclude that the development harms the character and appearance of the CA. It follows that it conflicts with policy CP6 of the Bath and North East Somerset Core Strategy (CS)⁶ and policies D2, HE1 and SV1 and of the PP which, amongst other things, seek to ensure that development does not harm local character and distinctiveness and conserves or enhances the character and appearance of heritage assets, such as conservation areas.

Highway safety

18. As already established, the development provides access onto the A367 Wells Road, which is subject to a 30mph speed limit and is described as relatively busy by the Council. There is concern about inadequate manoeuvring space in the parking area which may lead to vehicles reversing out over the pavement and onto a busy road. There is also a question about whether sufficient visibility can be achieved. A further issue is that a proliferation of such accesses along this stretch of road would increase risks to highway safety.
19. As the parking area extends over two gardens, the appellant says that there would be sufficient manoeuvring space to turn and exit in forward gear. However, that would not be easily done and, even if it were achievable, it would not be possible when one of the parking spaces was occupied. Moreover, there would be no certainty that current or future occupiers adopted that approach or any enforceable condition which could be imposed to ensure that they did.
20. The absence of a general requirement in the Highway Code and the Manual for Streets (MfS) for vehicles to enter and leave a driveway in forward gear is referred to by the appellant. However, that absence is a reflection of the fact that such a course of action may not be possible or necessary in all circumstances. However, both documents clearly indicate that the preference is for vehicles to exit in forward gear.
21. Reference is made by the appellant to research, cited within the MfS, which found that there were very few accidents involving vehicles turning into or out of driveways, even on heavily-trafficked roads. On that basis, the MfS advises that the limit for providing direct access onto roads with a 30mph speed limit could be raised to at least 10,000 vehicles per day. It is suggested that local authorities should review their standards with reference to their own traffic flow data and personal accident records. Similar points are made in the Manual for Streets 2.
22. The appellant has supplied traffic flow data from the Department for Transport relating to Wells Roads and says that it indicates a traffic flow close to the 10,000 vehicles per day figure referred to in the MfS advice. However, the Council have pointed out that the data refers to an estimated traffic flow of 14,000 vehicles per day, which is 4,000 above the 10,000 limit suggested. Therefore, it argues that the decision to restrict access on this section of road is in line with the MfS guidance. The appellant does not accept that view referring to a lack of accidents involving driveways along Wells Road, whereas

⁶ Adopted July 2014

the Council refer to a collision between two vehicles near the appeal site, albeit that involved a vehicle turning right rather than a driveway.

23. The Council highways department also advise that, in accordance with the MfS, a 30mph road would generally require a visibility splay of 43m in each direction, taken from a point 2.4 metres back from the edge of the carriageway. Although the appellant has submitted photographs of the road in both directions, they appear to have been taken from points on the pavement rather than the required position. It is generally standard practice for a professionally drawn visibility splay diagram to be supplied to demonstrate, on a scale plan, that the necessary distances can be achieved from each parking space. No such plan or diagram has been submitted. The road is fairly straight, and it may well be that the requisite visibility could be achieved, but it would still not resolve the lack of sufficient manoeuvring space to enable easy entry and exit in forward gear.
24. The appellant refers to existing driveways along other parts of Wells Road where drivers would equally be unable to enter and exit in forward gear. However, it is not clear from the evidence submitted if those driveways were authorised and each case would have been judged on its individual merits. Therefore, they do not necessarily set a precedent for allowing another such driveway, if it is considered to endanger highway safety. Indeed, the Council is concerned that the proliferation of such driveways in close proximity along this part of Wells Road, with cars potentially reversing out onto the pavement and road, would increase the risk to highway safety.
25. There is a clear dispute between the parties on the above issues and the interpretation of MfS advice and relevant data. However, the MfS does refer to a range of factors relevant to a consideration of vehicle accesses which include: the speed and volume of traffic; the possibility of vehicles turning and exiting forwards, where this is possible; the presence of gathered accesses and the distance between the property boundary and the carriageway to provide adequate visibility. It is reasonable, in relation to these highways safety issues, taking account of accident levels and additional journeys generated, to give significant weight to the professional judgement and advice of the Council's Senior Highways Development Control Engineer who has objected to the application and other similar applications along the same stretch of road, after having assessed those factors.
26. Highway safety was also central to the two recent appeal decisions previously referred to. Both Inspectors concluded that the similar developments resulted in a harmful impact on highway safety. As explained above, the Inspectors would have exercised their own professional judgment in relation to such matters, based on not only on written submissions but also on what they saw on their site visits. Planning Inspectors are appropriately trained across a range of planning matters and have awareness of advice in the MfS. Therefore, I also give significant weight to the conclusions of the Inspectors in those appeals who considered that the developments did present a risk to highway safety.
27. Whilst I have carefully considered the case put by the appellant, the above factors lead me to conclude that the development is likely to put highway safety at risk. Therefore, it would be contrary to policy ST7 of the PP which

aims to ensure that development does not prejudice highway safety and that accesses are suitable, safe and convenient.

Other Matters

28. Most of the other properties on Wells Square benefit from long gardens to the north, where many residents have created vehicle parking areas. Whilst I am sympathetic to the fact that the appellant, at No 25, and the adjoining owner, at No 26, do not have that option, it does not justify creating a joint access which harms the CA and poses a risk to highway safety. That aspect includes concern about risks to the appellant and her neighbour whilst using the driveway. The appellant suggests that the minimum parking standards detailed in policy ST7 of the PP, which specify 2 parking spaces for three bedroom dwellings apply to existing properties including her own. However, the policy refers, in paragraph 647, to new residential development. It is reasonable to interpret that as relating to parking provision for new dwellings.
29. The appellant advises that there are personal risks involved in parking away from her house and having to walk at least 180 metres along a narrow pavement next to Wells Road. Whilst the pavement is narrow, I did not find use of it or the road unsafe during my site visit although I agree that reasonable caution is necessary given its proximity to a relatively busy road. In any event, I have found that there would be a potentially greater risk to the appellant's personal safety in using the vehicular access.
30. It is suggested by the appellant that the Council is applying a blanket ban on driveways where there is an inability to turn, which indirectly discriminates against the less affluent who may occupy smaller dwellings. However, the Council advises that it considers each application on its own merits, taking account of the site conditions, whether or not the access will be safe and if there is a need for a vehicle to be able to turn on site. No persuasive evidence to the contrary has been presented. In any case, my role is to consider the merits of the appeal before me and its implications for the CA and highway safety.
31. Westfield Parish Council (WPC) initially objected to the application on the grounds of highway safety and harm to the CA, but later withdrew their objection. The appellant considers that WPC support the application although the County Council's view is that WPC has not expressed clear positive support or provided planning reasons which overcome the previous harms cited. The appellant also says that they have the support of their local councillor. An email from the local MP expresses concern that the Council's action '*could be perceived as draconian.*' A third party has also expressed support for the application and made a detailed submission, elaborating on the appellant's case. Whilst I have fully considered all representations made, they do not lead me to alter my decision for the reasons already given.
32. The appellant says that walls under 1 metre high can be removed in conservation areas without planning permission, where the Council has not made an Article 4 direction. However, the application and appeal forms refer to a vehicle access on to the A367 and those are the works that appear on the ground, notwithstanding the lack of a dropped kerb. Therefore, although I appreciate the point being made, the removal of the wall was integral to and part of the creation of a vehicle access onto a classified road, which is not permitted development. That aspect is also dealt with in paragraph 3 of the

enforcement appeal decision relating to 8 Wells Square, referred to above. For those reasons, I give little weight to the 'fallback' position.

Planning Balance and Conclusion

33. As I have found harm to the CA, it must be given great weight, in accordance with paragraph 133 of the Framework. However, the harm caused by the removal of a low stone wall in front of two properties, even with the associated parking, would be 'less than substantial'. In such circumstances, paragraph 134 of the Framework advises that the harm should be weighed against the public benefits of the proposal.
34. However, in this case whilst there would be various personal benefits to the appellant and her neighbour, the only wider public benefit would be the provision of off-street parking for the dwellings. Wells Road does not lend itself to roadside parking, as it would be likely to obstruct the road or pavement, but there may be some benefit in reducing parking demand in surrounding streets. Nevertheless, as those public benefits are limited they would not outweigh the harm that I have identified to the CA.
35. Whilst I understand that the lack of nearby parking facilities for the appellant and her neighbour compares unfavourably with many other properties in the terraces and in the area, the planning system is more directly focussed on the wider public interest, unless exceptional personal need has been evidenced. I do not find that such an exceptional need has been demonstrated for the reasons already given. Therefore, it does not outweigh the harms identified, including in relation to highway safety.
36. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Tudor

INSPECTOR