



Appeal Decision

Site visit made on 14 August 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2019

Appeal Ref: APP/G0908/C/18/3214245

45 High Brigham, Brigham, Cockermouth

- 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 Ms Sarah Katherine Nicholson against an enforcement notice issued by Allerdale Borough Council.
- The enforcement notice was issued on 5 October 2018.
- The breach of planning control as alleged in the notice is the alteration of an existing pedestrian access resulting in the formation of a means of vehicular access to the adjacent highway which is a classified road.
- The requirement of the notice is:
 - i. Reduce the altered unauthorised access to reinstate the original width and location.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

The appeal on ground (c)

1. The ground of appeal is that the matter alleged does not constitute a breach of planning control. The appellant wishes to rely on her view that the works that have been carried out in so far as it relates to the demolition of a boundary wall and the laying of a hard surface on the area of land between the front elevation of the property and the highway are permitted development. In doing so the appellant has relied on Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). However, I have noted that the appellant has not specified under which Class the permitted development right is derived.
2. Nonetheless, I do not dispute that the removal of the front wall and the hardstanding fall within permitted development rights in some circumstances. However, it is clear to me that in this case the works have been carried out in order to form a means of vehicular access onto the adjacent classified highway. Under Schedule 2, Part 2 (Minor operations) Class B, the formation of a means of access to a highway which is not a trunk road or a classified road is permitted development. However, since in this case the access is onto a classified highway this particular right does not apply and therefore planning permission is required. Since permission has not been granted for the formation of the access a breach has clearly occurred. The appeal on ground (c) fails.

The appeal on ground (a)

3. The ground of appeal is that planning permission should be granted. The main issues are:
 - i. the effect on the safe, efficient and convenient movement of users of the highway; and
 - ii. the effect on the character and appearance of the area.
4. The appeal property is a terraced two storey residential property situated on a classified road in Brigham. A vehicular access has been formed to the front of the property in order to serve an area of hardstanding that has been created. It is my understanding that the land in question was previously an area of grass with a pedestrian access onto High Brigham. At my site visit I noted that other properties in the locality have retained their original frontage treatments and use the road for parking. However, some properties have modified their frontages to provide parking areas and vehicular accesses. I understand that some vehicular accesses have been created on High Brigham without the benefit of planning permission and are immune from enforcement action through the passage of time.
5. The appellant contends that the Council has relied on highways advice dating back to 2008 when assessing the highways effects of the current development; however, there is insufficient evidence before me to conclude that this is the case. In any case I have determined this appeal on ground (a) on its own merits.
6. At my site visit I noted that the road outside the appeal property is relatively narrow and owing the other vehicles parking on High Brigham the width was restricted further. Several vehicles were parked on the road immediately adjacent to the appeal site which severely restrict visibility for the new access that has been formed. Owing to the restricted distance between the pavement edge and the frontage of the dwellinghouse itself there seems to me to be insufficient space for manoeuvring or turning a vehicle within the site. Consequently, in order to access the parking area vehicles would need to either reverse into the space from the highway or alternatively enter the site in forward gear and then reverse onto the road when egressing.
7. Visibility along the road to the west is restrictive due to the curvature of the road and the presence of a boundary wall. To the east, the street is particularly narrow with vehicles parked which severely limit visibility. Given the existing road conditions in the locality, the restrictive space within the appeal site and the very limited visibility I consider that potentially hazardous manoeuvres would be required in order to access and egress the site. In these circumstances I consider that such movements may be hazardous to road users, including pedestrians, cyclists and vehicle users.
8. The appellant contends that drivers would be aware of vehicles manoeuvring to and from residential driveways in the locality. That may be the case but does not mean that the additional vehicular access would not create problems. Instead, given the conditions I have set out above it is my view that the development would result in harm to highways conditions in the locality. In coming to this conclusion I have taken into account the appellant's evidence with regard to accident data, the presence of other access arrangements in the

area and the prevailing highway conditions. I have also taken account of the movements and activity generated by vehicles parked on the highway but am not persuaded that the prevailing conditions in the vicinity of the site are suitable for the development proposed. The appellant has also commented that the development has increased availability of car parking in the area. Although that may be the case that benefit is outweighed by the concerns I have regarding the highway safety associated with manoeuvres in and out of the access.

9. Therefore, on this issue I conclude that the development has a harmful effect on the safe, efficient and convenient movement of users of the highway. As such it conflicts with Policy S5 of the Allerdale Local Plan (Part 1) Strategic and Development Management Policies July 2014 (the LP) which, among other objectives, states that proposals will be acceptable provided the development includes acceptable arrangements for car parking and access.
10. I noted at my site visit that some properties retain their original frontages, whilst others have been altered. There is variety in the design and appearance of property frontages in the locality. Therefore, the removal of the wall to the frontage of the appeal property has not resulted in a significant loss of character to the host property or the area, generally. Therefore, on this issue I conclude that the development has not had a harmful effect on the character and appearance of the area and as such does not conflict with the provisions of Policy S5 of the LP.
11. Although I find there to be no harm with respect to character and appearance, I have found there to be a harmful effect on the safe, efficient and convenient movement of users of the highway. That is the prevailing issue in this case and therefore the appeal on ground (a) fails.

The appeal on ground (f)

12. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). The removal of the section of frontage wall and the creation of an area of hardstanding have facilitated the formation of a vehicular access onto the classified road. In order to remedy the breach in this case the requirements of the notice are required to ensure that the overall purpose of the notice – to prevent unsafe vehicular access – is achieved. Since the requirement of the notice is to remedy the breach of planning control, any measures short of those specified would not achieve its overall purpose.
13. Therefore, the appeal on ground (f) fails.

The appeal on ground (g)

14. The ground of appeal is that the time given to comply with the requirements is too short. The one month period is not long given the requirement to reduce the unauthorised access and reinstate the original width and location which will inevitably require the erection of some kind of front boundary. The appellant considers that a minimum period of three months is required to obtain estimates, instruct a contractor and for the works to be undertaken.

15. The period suggested by the appellant is excessive given the ongoing harm caused by the access and potential hazard to highways users. However, I consider the period should be increased to enable the appellant the time to implement the requirements of the notice. In this respect I consider two months would strike the appropriate balance and this would not place a disproportionate burden on the appellant. To this limited extent the appeal on ground (g) succeeds.

Formal decision

16. I direct that the enforcement notice is varied by:
- a) The deletion from paragraph 5 of the words "one (1) month" and the substitution therefor of the words "two (2) months" as the time for compliance with the requirements.
17. Subject to this variation the appeal is dismissed and the enforcement notice is upheld. Planning permission if refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A A Phillips

INSPECTOR