



Appeal Decision

Site visit made on 21 January 2020

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 4 February 2020

Appeal Ref: APP/Y3940/C/19/3233343

7a Kennet Gardens, Bradford-on-Avon, BA15 1LT

- 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 1990 Act").
- The appeal is made by Melanie Towns ("the Appellant") against an Enforcement Notice issued by Wiltshire Council ("the Council").
- The Enforcement Notice was issued on 21 June 2019.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission, operational development comprising a building (grey metal building) shown in the photograph attached to the Enforcement Notice.
- The requirements of the Enforcement Notice are to remove the building from the Land.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (b) & (c) of the 1990 Act.

Summary of Decision: The appeal is dismissed, and the Enforcement Notice upheld.

Procedural & Background Matters

1. In this Appeal Decision I will refer to the grey metal building, the subject of the Enforcement Notice, as "the Building".
2. The Building:
 - a) Has been placed on land which had previously been used as an area of landscaping.
 - b) Is sited adjacent to a footway that leads to other dwellings in Kennet Gardens and also to Public Open Space known as Poulton Playing Fields.
 - c) Was built/assembled off-site but specifically to fit the gap between the garden wall of No. 7a and the aforementioned footway.
 - d) Was, in about December 2018, transported to the land on a trailer and then slid off the trailer onto pre-prepared pavements.
 - e) Is used by the Appellant as an artist's studio.
3. Prior to the delivery of the Building, works were carried out to the garden wall at No. 7a so that access could be achieved to the Building from the garden at No. 7a through the door in its side elevation. Further, a hole in the garden wall has been made so that daylight can reach the window in the Building's side elevation.

Application for costs

4. An application for costs was made by the Appellant against the Council. This application is the subject of a separate Costs Decision.

Reasons – Ground (b) - that the breach of control alleged has not occurred as a matter of fact & Ground (c) - that there has not been a breach of planning control

5. The Appellant's argument is that the breach of planning control as alleged in the Enforcement Notice has not occurred as a matter of fact because the Building does not amount to a building for the purpose of the 1990 Act.
6. A building is defined by Section 336 of the 1990 Act as including any structure or erection and any part of a building.
7. I am aware that the Building:
 - a) Is not of a large size.
 - b) Was not constructed on-site
8. However, it is clear that the Building is intended to be a permanent addition to the land and premises at No. 7a. A base was made for the Building; holes have been made in the garden wall to allow access and light to the Building; an electricity and water supply have been provided to the Building and there is no evidence that the Building has moved from its base since its date of arrival.
9. I am aware that there is no physical attachment of the Building to the land on which it stands. Further, the electricity and water supplied to the Building could be disconnected and the Building could be winched onto a trailer and moved off the site and used elsewhere.
10. In my assessment the Building is not a caravan. I am aware that it has a chassis, but it has never had axles or wheels that would allow it to be transported or moved in the same way that a caravan could be moved. For the reasons explained above the Building was not designed to be relocated. It was specifically designed to meet the dimensions of the land available for it to be sited on. It was built to be a structure within which the Appellant could carry out her hobby as an artist.
11. I am also aware that at one point a Council Officer agreed with the Appellant regarding the status of the stationing of a chattel at No. 7a. However, Council Officers reviewed their position and came to a contrary view that planning permission was needed for the Building. Had the Appellant wished to formalise this view an application could have been made for a Lawful Development Certificate under Section 191 of the 1990 Act.
12. Individually, none of the factors referred to above are conclusive as to whether the Building amounts to operational development. However, as a matter of fact and degree I find that the Building amounts to operational development. The appeal on Ground (b) therefore fails. The Appellant has not argued that the Building is permitted development. Further, no planning permission has been granted for the Building. Accordingly, the appeal on Ground (c) fails.

Reasons - Ground (a) and the deemed planning application – that planning permission should be granted for what is alleged in the Enforcement Notice

13. I will refer to the Bradford-on-Avon Conservation Area as “the Conservation Area”.
14. No. 7a is within the Conservation Area. There is a statutory duty when dealing with appeals relating to buildings in Conservation Areas that special attention is paid to the desirability of preserving or enhancing the character or appearance of that area (“the Conservation Area Test”). This is the approach that I have adopted in dealing with this appeal.
15. The Development Plan for the area includes Policies 57 & 58 of the Wiltshire Core Strategy 2015 (“the Core Strategy”).
16. The Core Strategy explains, amongst other things, that:
 - a) Heritage assets include Conservation Areas.
 - b) Development needs to be carefully planned to ensure that Conservation Areas are protected, conserved and where possible enhanced.
 - c) A high standard of design is required for all new development.
 - d) Development is expected to create a strong sense of place through drawing on the local context and being complimentary to the locality.
 - e) New development should make a positive contribution to the character of Wiltshire complying with the relevant requirements of Policy 57.
17. I have also been referred to Sections 12 & 16 of the National Planning Policy Framework 2019 which I have had regard to.

Does the Building conserve the character and appearance of this part of the Conservation Area?

18. The Building appears to be constructed mainly of painted corrugated metal with a curved roof. I am aware that Kennet Gardens comprises relatively modern dwelling-houses and is clearly not of the same historic interest as other parts of the Conservation Area. However, it is within the designated Conservation Area and members of the public use Kennet Gardens as one way of accessing the Public Open Space referred to above.
19. In my assessment, the Building fails to comply with the Conservation Area Test. The appearance of the Building, which is set outside the high garden wall of No. 7a, looks incongruous and as an alien feature in the streetscene of Kennet Gardens. It does not reflect the attractive appearance of the dwellings in Kennet Gardens which share a coherence due to their design and the materials used in their construction.
20. Further the Building does not reflect the character of the residential development in Kennet Gardens. There are no other dwellings in Kennet Gardens to which I have been referred where ancillary residential buildings have been erected outside their garden walls in the same way that the Building has.

21. I therefore conclude, for the reasons explained above, that the retention of the Building would not conserve the character or appearance of this part of the Conservation Area and would therefore be contrary to the relevant parts of the Development Plan.

Overall Conclusions

22. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the Enforcement Notice and refuse to grant planning permission on the deemed application

Formal Decision

23. 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.

Tim Belcher

Inspector