
Appeal Decision

Site visit made on 18 August 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2020

Appeal Ref: APP/D0121/X/20/3249213

Railway Wharf, Station Road, Wrington BS40 5LL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Prestige Property Development Ltd against North Somerset Council.
 - The application (Ref. 19/P/2605/LDP) is dated 18 October 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is a replacement of an existing hardstanding and the removal of raised flower bed.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operations which are considered to be lawful.

Application for costs

2. An application for costs was made by Prestige Property Development Ltd against North Somerset Council. This application is the subject of a separate Decision.

Procedural matter

3. The Council has confirmed that if it had been able to determine the application, it would have certified the proposed development as being lawful.

Main Issue

4. The main issue is whether, if the authority had refused the application, the refusal would have been well-founded.

Reasons

5. The proposal involves the replacement of the existing tarmacadam surface of a car parking area with block pavements, and the removal of a low walled raised area, formerly a planted bed.
6. I consider that the replacement of a hard surface constitutes an engineering operation and falls within the definition of development under s.55 of the Act. No specific planning permission has been granted for the development.

7. The Council accepts that the car parking spaces serve shops and offices, and thus the provisions of Classes E and G of Part 7 of the Town and Country Planning (General Permitted Development) (England) Order 2015 are available in this instance, which specifically permit the replacement of hard surfaces for shops and offices respectively. The deemed permissions under these classes are subject to limitations, and do not apply where the cumulative ground area would exceed 50 sq m or if the development falls within the curtilage of a listed building. Neither of these exclusions applies here. Class G also contains a further limitation, providing that the permission does not apply if the building is in use as an office as permitted by Class JA. That is not the case here.
8. The deemed permissions are also subject to conditions relating to porosity, and the proposal confirms that the hardsurfacing is to be constructed in permeable block paving, incorporating soakaways, thus complying with this condition.
9. I therefore consider that the proposed hardsurfacing would be lawful, if carried out in accordance with the submitted plans and details.
10. The raised bed is located on the corner of Station Road and Westward Close, and is formed by a curved stone wall retaining a gravelled bed. Class C of Part 11 of the Order permits any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure. It is subject to a limitation which precludes "relevant demolition" for the purposes of s.196D of the Act. That Act in turn defines relevant demolition as meaning the demolition of a building that –
 - (a) is situated in a conservation area in England; and
 - (b) is not a building to which section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not apply by virtue of section 75 of that Act (listed buildings, certain ecclesiastical buildings, scheduled monuments and buildings described in a direction of the Secretary of State under that section).
11. Regulation 4 of the Conservation Areas (Application of Section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990) Direction 2015 says that s.74 of the Act shall not apply to descriptions of buildings which include walls and means of enclosure which are less than one metre high which abuts on a highway (including a public footpath) or less than two metres high in any other case.
12. The wall in this case is under 1m in height, and therefore its demolition is not precluded by s.74, and thus benefits from the provisions of Class C of Part 11 of the Order. The removal of the soil and gravel retained by the wall, being of such a small scale, would not constitute a building, engineering or other operation, and would not therefore comprise development under s.55 of the Act.
13. I therefore conclude on the main issue that had the Council refused the application, its decision would not have been well-founded. The appeal therefore succeeds and I shall grant a certificate of lawful development.

JP Roberts

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 18 October 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reasons:

1. The replacement of the existing hardstanding is permitted development under Classes E and G of Part 7 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
2. The demolition of the wall of the raised flower bed is permitted development under Class C of part 11 of the Town and Country Planning (General Permitted Development) (England) Order 2015. The removal of the soil and gravel within the bed does not constitute development under Section 55 of the Town and Country Planning Act 1990.

Signed

JP Roberts

Inspector

Date 15 September 2020

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First Schedule

The replacement of an existing hardstanding and the removal of raised flower bed, as shown on plans Ref: 1050-S-300 Rev B.

Second Schedule

Land at Railway Wharf, Station Road, Wroughton BS40 5LL



Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 September 2020

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Land at: Railway Wharf, Station Road, Wroughton BS40 5LL

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Not to scale

