



Appeal Decision

Site visit made on 5 September 2023

by Anthony J Wharton RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Levelling Up Housing and Communities

Decision date: 18 September 2023

Appeal Ref: APP/W0910/C/22/3307167

Number 4 (formerly Plot 1), Rock Lea Close, Barrow-in-Furness LA13 9FA

- 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 Mulberry Homes Limited against an enforcement notice issued by South Lakeland District Council.
- The enforcement notice was issued on 18 August 2022.
- The breach of planning control as alleged in the notice is as follows:
The development of Plot 1 in a manner not in accordance with condition 2 of planning permission 2017/0796 specifically approved plan RL/10 Rev J(5)(B) dated 7/12/17 by the exclusion of parking spaces along the rear boundary of the plot (the photos attached to the notice show the land without the provision being made).
- The requirements of the notice are as follows:
To provide and maintain two parking spaces (as edged blue on the attached plan) and access to the highway shown falling within the site edged by a red line on the plan attached to the notice and as shown on the approved plan RL/10 Rev J(5)(B) dated 17/12/22, by removing and repositing the boundary fencing, excavate the ground by removing any vegetation and top soil, preparing a compacted sub grade, installing suitable ground works (granular sub base material and laying course) topped with appropriate blocks and edging of a type to match the adjacent driveway, set with suitable fall for drainage.
- The period for compliance with the requirements is Three (3) Calendar months.
- The appeal is proceeding on grounds (a), (b), (c) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

On 1 April 2023 Barrow-in-Furness Borough Council, Eden District Council and South Lakeland District Council merged to form a new Unitary Authority called Westmorland and Furness Council. Appeals against the issuing of an Enforcement Notice continue to refer to the name of the Local Planning Authority that issued the notice, in this case South Lakeland District Council.

Decision

1. The appeal is dismissed. See formal decision below.

Matters of clarification

2. At my request the Planning Inspectorate case officer wrote to the parties requesting clarification in respect of the drawing referred to in the notice, RL/10 Rev J(5)(B) (relating to permission 2017/0796) and other iterations/revisions of the same drawing. I requested clarification as to whether the other revisions referred to,

J(5)(E); J(5)(A); J(5)(C) and J(5)(D) indicated a different approved parking layout to the rear of Plot 1.

3. The LPA responded and indicated that RL/10 Rev J(5)(B) was an amendment to the approved landscaping (relating to permission 2017/0796) and that the arrangement shows 3 parking spaces as also shown on revision J(5)9E. It also confirmed that no other subsequent plans with a different parking arrangement for Plot 1 have been approved. A later 2018 permission did not alter the layout.

4. The LPA has also confirmed that it chose to under-enforce (i.e., only requiring two spaces to be provided in the approved rear position) because the appellant company had transferred part of the parking space for Plot 1 into the garden of former Plot 2. It was considered that the neighbouring occupier would be an 'innocent party' and that to fully enforce could result in unreasonable disruption.

5. The appellant's response to the same questions was that the parking arrangements for No 4 (plot 1), on both of the drawings (Rev J (5)(B) and Rev J(5)(E)), '*appear to be the same*'. However, it is contended that it is still unclear as to exactly which planning permission is being enforced against. With regard to the second question, relating to the other revisions of the same drawing, it is stated that the appellant is not aware of any other approved layout plan which shows a different layout for the parking to the rear of Plot 1.

6. Having now seen all of the relevant drawings referred to and having seen all of the representations, I am not sure why the appellant is still unsure '*as to exactly which planning permission is being enforced against*'. It is clear that it was planning permission 2017/0796 as confirmed above. As indicated above the subsequent 2018/0087 permission did not change the situation since the parking layout had not changed. I am, therefore, satisfied that the appellant must be clear from the notice what is expected in relation to the requirements. It is evident to me that the approved parking layout for Plot 1 is that shown on the drawing referred to in the notice. It is on this basis that I have dealt with this appeal having regard to the fact that the LPA has under-enforced in only requiring two spaces to be provided to the rear of No 4.

7. The approved scheme indicated No 4 (former Plot 1) to be a type EAT house type, a 5 bedroomed detached property. Local Plan Policy I6 requires parking provision to be in accordance with the Cumbria Development Design Guide. The Design Guide requires 3 spaces per unit for 5+ bedroomed houses.

8. Three spaces were shown on the approved drawing and the enforcement notice is aimed at the non-compliance with the approved layout which clearly required the 3 spaces to be provided. During the site visit the parties agreed that the relevant planning permission was the 2017/0796 permission and not the initial 2016 permission and that drawing Rev J (5)(B) was the correct drawing as referred to in the notice. I have, therefore dealt with the appeal on the basis of what is alleged in the notice.

Background information

The appeal site and its surroundings

9. The appeal site is located at No 4 Rock Lea Close (formerly Plot 1), a new housing development of 10 dwellings to the north of Barrow-in-Furness town centre. The Close is immediately off Abbey Road and lies between Abbotsfield Gardens and Dane Avenue. Planning permission was initially granted in October

2017 (Ref: 2016/0789) for 10 dwellings on the site, which had formerly housed a Cumberland County Council Care Home. The houses are large units aimed at the 'Executive Sector' and each had been required to provide off-street parking suitable for the size of dwellings.

10. The appeal property at No 4 was formerly referred to as Plot 1 of the 10-dwelling development. On the approved plan Plot 1 had been shown to have had a row of three spaces positioned lengthways along the rear garden boundary. These have not been provided and instead the rear garden has been extended. However, a dropped kerb has been provided. The as-constructed parking provision/hardstanding is located at the front of the property and is accessed via a shared driveway with Plot No 2. It includes a triangular shaped area between the two detached houses.

The Enforcement Notice

11. The notice, the subject of this appeal, alleges that the development of Plot 1 has not been carried out in accordance with condition 2 of Planning Permission 2017/0796. It is stated that that this part of the development does not accord with the approved plan, Ref, RL/10 Rev J(5)(B), dated 7/12/17. The LPA states that this is the relevant drawing and that the notice refers to the correct planning permission, condition, and drawing.

12. Planning Permission 2017/0796 was a minor material amendment to the original planning permission 2016/0789. The 2017 permission resulted in the dwellings being angled slightly and this has created the triangular shaped parking area. This area is open to the front and had been shown on the approved plan as providing a pedestrian access and landscaping.

13. A previous enforcement notice, dated 30 November 2021, and aimed at the same alleged breach, was quashed on appeal by a decision dated 4 July 2022 (APP/W0910/C/21/3289663). The previous Inspector found that the notice, although not a nullity, was defective, since it failed to inform the recipient exactly which plan needed to be complied with, in order to remedy the alleged breach of planning control.

14. In that appeal the LPA had referred to Planning Permission 2016/0789 (the 2016 application) and approved plan RL/10 Rev J (5), subsequently amended to RL/10 Rev J(5)(E). In its appeal submission it was stated that this reference was incorrect and that the correct reference was as now set out in the current notice (the 2017 application) and drawing RL/10 Rev J(5)(B) dated 7/12/17.

15. However, also in that appeal, the appellant stated that even those references were not correct and referred to another permission 2018/0087 (the 2018 application) which required, by condition, compliance with plan reference RL/10 Rev J(5)(E) rather than RL/10 Rev J(5)(B). This later revision E did not alter the required parking layout for plot 1. The parking layout is the same on both drawings.

16. The appellant still considers that the current enforcement notice does not refer to the correct application or approved drawing. I disagree. In any case, for the reasons referred to above, I am satisfied that the recipient of the notice should now be exactly clear that the parking layout on both revised drawings is the same; that the allegation set out is clear; that the approved parking layout for Plot 1 has not been complied with and that the requirements of the notice are clear. I now turn to the grounds of appeal.

The appeal on ground (b)

17. To be successful on this ground of appeal it must be shown that what is alleged in the notice has not occurred as a matter of fact. I have noted the appellant's first proposition but, from my inspection of the site and the drawings referred to above, I do not see how it can be disputed that the layout is not in accordance with the approved drawing referred to in the notice. It follows that what is alleged in the notice has occurred as a matter of fact and therefore that the appeal on ground (b) must fail.

The appeal on ground (c)

18. To be successful on this ground it must be shown that either there is a planning permission in place for what has been carried out not in accordance with the approved plan, or that what has been carried out is permitted development. Again, it is clear that the works have not been carried out in accordance with the approved plan. Irrespective of whether or not the hardstanding constitutes permitted development, there is no planning permission in place for the exact works as carried out. In any case the LPA has enforced against the non-provision of parking spaces as approved for Plot 1 and has not enforced against the hardstanding parking area to the front of Plot 1. It follows that the appeal must also fail on ground (c).

The appeal on ground (a)

Reasons

19. Local Plan Policy I6 requires parking provision to be in accordance with the Cumbria Development Design Guide and, as confirmed by the LPA, this requires 3 spaces per unit for 5+ bedroomed houses. The policy requires off-street parking to be appropriate to the streetscene.

20. I have noted the argument that this is now only a 4 bedroomed house; that what would have been fifth bedroom is now a 'study' and, therefore, that only 2 parking spaces are required. I disagree. Planning permission was granted on the basis that the house was an 'executive' house (Type EAT) with 5 bedrooms and it is evident that a 'study' could easily revert to a bedroom. I consider, therefore that usable parking spaces, as required by the approval, should be provided.

The Main Issue

21. The main issue is the effect that the development as carried out and the omission of the spaces to the rear of Plot 1, has had on the character and appearance of this new housing development.

Reasons

22. As indicated by the LPA the approved parking layout would have occupied a discreet location at the rear of plot 1 and would have been accessed in a similar way to the adjacent plots (Plot 3 onwards). Instead, the hardstanding to the front, which now includes the second triangular parking space, has resulted in the loss of a landscaped area. The overall result, in my view, is an obtrusive location at the front of the property for parked cars. In addition, it has deprived the house of usable practical parking provision to the rear.

23. I noted two cars parked to the frontage during my site visit, one parallel to front and one in the triangular space. I agree with the LPA that even with an imaginative use of the second space provided to this dwelling/plot, it is not reasonably practicable to provide space for more than two cars. If more than two cars did manage to be

shoe-horned into the area provided it would result in exacerbating the detrimental appearance of the frontage when viewed from the site entrance.

24. Having seen the development as carried out I share the LPA's concerns about the omission of the spaces to the rear and consider that the frontage could result in this part of the site being visually dominated by cars at this critical entrance to the development. I agree with the LPA this would '*tarnishes the character of the site*' and is contrary to advice in the Design Guide. Clearly the frontage space was not designed with parking in mind, since it was supposed to be a pedestrian access with soft landscaping, as shown on the approved plan.

25. As well as being contrary to local plan policy I6 and the design guide, I also find that the development as carried out to be contrary to policies within the National Planning Policy Framework (NPPF). In Section 12 (Achieving well-designed places) the NPPF advises that, '*the creation of highquality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.* It continues: '*development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design*'.

26. In conclusion I do not consider that planning permission should be granted for the retention of the development as carried out. That is, in a manner not in accordance with condition 2 of planning permission 2017/0796 specifically approved plan RL/10 Rev J(5)(B) dated 7/12/17 by the exclusion of parking spaces along the rear boundary of the plot. The appeal also fails, therefore, on ground (a).

The appeal on ground (f)

27. The arguments put forward on behalf of the appellant appear to suggest that even though only two spaces to the rear are required, the requirements are excessive and that what has been carried out are sufficient steps to overcome the harm identified by the LPA. It is argued that the changes to the front are beneficial and are not detrimental to the appearance of the development as carried out. For the reasons set out above I have disagreed with that stance.

28. Also, for the reasons set out above and in accordance with the case put forward by the LPA, I disagree with the appellant's ground (f) arguments. In effect lesser steps are not being put forward to overcome the unauthorised development. Instead, it is simply being argued that what has been carried out to the frontage is acceptable and that there is no need to provide the two spaces as set out in the enforcement notice plan and marked in blue.

29. To succeed on ground (f) it must be shown that lesser steps would overcome the harm caused by the unauthorised development. I do not accept that it has been demonstrated that this is the case, and the appeal also fails on ground (f)

Other Matters

30. I do not accept the contention made on behalf of the appellant that the notice is a nullity. The requirements of the notice are clear and are as follows:

'To provide and maintain two parking spaces (as edged blue on the attached plan) and access to the highway shown falling within the site edged by a red line on the plan attached to the notice and as shown on the approved plan RL/10 Rev J(5)(B) dated 17/12/22, by removing and repositing the boundary fencing, excavate the ground by

removing any vegetation and top soil , preparing a compacted sub grade, installing suitable ground works (granular sub base material and laying course) topped with appropriate blocks and edging of a type to match the adjacent driveway, set with suitable fall for drainage’.

31. The notice does not require the specific approval of a third party (the highway authority) to carry out the above requirements. Approval for the works had already been granted under the original approval(s) and, despite the fact that only two spaces are now required to be provided, compliance with the notice will effectively grant planning permission for what is a minor amendment.

32. In reaching my decision I have taken into account all of the submissions made on behalf of the appellant and by the Council. These include the full planning history; the policy context; the detailed statements of the parties; the final comments and all of the other photographic and documentary evidence submitted. However, none of these carries sufficient weight to alter my conclusions on the grounds of appeal or to change my decision that the appeal should be dismissed.

Formal Decision

33. The appeal is dismissed, and the enforcement notice is upheld. Planning permission on the application deemed to have been made under Section 177(5) of the Act is refused.

Anthony J Wharton

Inspector