



Appeal Decision

Site visit made on 31 January 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2024

Appeal Ref: APP/F0114/C/23/3326334

**Land West of Providence Bungalow, Frome Road, Radstock,
Somerset BA3 3LE**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Tim Gregory of Radstock Building Supplies Ltd against an enforcement notice issued by Bath and North East Somerset Council.
 - The notice was issued on 6 July 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised demolition of a wall in a conservation area.
 - The requirements of the notice are to:
Requirement 1 – Rebuild the demolished section of wall, like-for-like in terms of height and depth, using the same stones that were removed from the wall when demolished (or if the original stone is no longer available then in stone to match the adjacent sections of the remaining wall in terms of stone type, colour, size and coursing).
 - The period for compliance with the requirement is: One month.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld

Preliminary Matters

2. An access required site visit was arranged. That means that the appellant arranges for me to enter the site without the Council or any other party being present. I carried out an inspection initially by driving around to view from the surrounding roads, including from Mill Road. I then parked and inspected from Frome Road and I was approached by somebody who was representing the appellant. There was no need for me to enter the site so I asked them to leave. I was also approached by a member of the public and I explained why I was at the site. I kept my conversation with both of these people to a minimum, not discussing any of the merits of the case and continued with my site visit alone.
3. The notice refers to land outlined in red at the address in the header above. Although that outlined area is much larger than the area to which the alleged breach of planning control relates, the appellant has understood what the notice is addressing. The demolished part of the wall is a section of wall which is to the west of Providence Bungalow and which demarcates the back edge of the footway alongside the A362, Frome Road.

The Appeal on ground (c)

4. The appeal against the notice on ground (c) is that what is alleged does not constitute a breach of planning control. The onus is upon the appellant to prove their case on the balance of probabilities. The planning merits of what is alleged are not of relevance to this ground of appeal. It is not for me in this ground of appeal, for instance, to consider the significance of the wall in historic or any other terms.

Reasons

5. The section of stone wall that has been demolished is immediately at the back edge of the footway alongside the road and protrudes above it. I saw that in cross-section, the wall is to the rear of the footway with its base at a much lower level than the road, on the field which slopes down to Mill Road. The site is within the Radstock Conservation Area (CA).

Reasons – legal background

6. The appellant has referred to guidance on the Council website and also to some of the relevant legislation. The background to whether the development required planning permission is complex and it is necessary to understand the full legal context whereas, understandably, published guidance is likely to be simplified and more generalised.
7. By reason of s57 of the Act, planning permission is required for the carrying out of development of land. In turn, s55(1) of the Act states that development “means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land”. Furthermore, building operations are confirmed at s55(1A) to include “demolition of buildings”. Section 171A(1) of the Act includes within the definition of a breach of planning control, at sub-paragraph (a), the carrying out of development without the required planning permission.
8. The Town and Country Planning (Demolition – Description of Buildings) Direction 2021 at 3(1)(b) states that the demolition of the whole or any part of any gate, fence, wall or other means of enclosure should not be taken as “development”. However, article 3(2)(a) excludes from the definition, the whole or any part of any gate, fence, wall or other means of enclosure in a CA. Such development therefore requires planning permission and if carried out without it and would constitute a breach of planning control within the meaning of s171A(a) of the Act.
9. Article 3 of the GPDO¹ however grants planning permission as specified in Part 11, Class C for the demolition of the whole or any part of any gate, fence, wall or other means of enclosure subject to condition ‘C.1.’ Condition ‘C.1.’ states that development is not permitted for “relevant demolition” for the purposes of s196D of the Act. The effect of s196D of the Act as well as s74 and s75 of the Planning (Listed Buildings and Conservation Areas) Act 1990 means that the 2015 Conservation Areas Direction² applies. Although a little complex, this therefore boils down to the demolition of “any gate, wall, fence or means of enclosure” which is less than 1m high, which “abuts on a highway (including

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

² The Conservation Areas [Application of Section 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990] Direction 2015

public footpath or bridleway)” or which is “less than 2m in any other case”, not requiring planning permission as it would be permitted development. Conversely therefore, demolition of gates, walls, fences or other means of enclosure within CAs, exceeding those dimensions do require planning permission.

10. With respect to s196D, it is reasonable in my view to interpret the building being demolished within the definition of building in the Act at s336(1). This defines a “building” as including “any structure or erection, and any part of a building, as so defined.”

Reasons – application of the legal background

11. The wall demarcates the boundary of the field which forms the wider site. It is not uniform in height when viewed in elevation or in cross-section. There is no dispute however that when measured above the height of the hard-surface of the footpath, that the wall is generally less than 1m above that level. There is also no dispute either that on the field side, the wall measures generally more than 1m but less than 2m above that ground level.
12. There is no prescription in legislation of relevance here, for measuring where the land level is higher on one side than the other. I am not referred to any specific legal authorities either. I need to reach a view taking the natural and ordinary meaning of the words there used, viewed in their context and in the light of common sense.
13. Only part of the wall has been demolished, but that does not prevent its demolition falling within the regime for controlling such demolition, due to s336(1). Even though less than 1m of that height can be seen from directly in front when in Frome Road, the above legal background does not relate only to what can be seen from the abutting highway. As a matter of fact, the wall abuts the highway and from its base, its overall height is above 1m.

Conclusion on ground (c)

14. Planning permission was required for the demolition of the wall and was not permitted development, being relevant demolition for the purposes of s196D of the Act.
15. The appeal on ground (c) therefore fails.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Andy Harwood

INSPECTOR