



Appeal Decision

Site visit made on 15 October 2024

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2024

Appeal Ref: APP/A2335/C/24/3341577

14 Priorsgate, Heaton with Oxcliffe, MORECAMBE, LA3 3RN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Colleen Welsh against an enforcement notice issued by Lancaster City Council.
 - The notice was issued on 22 February 2024.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the siting of a static caravan and the creation of an access onto a classified road as shown within Appendix B (the Development)'.
 - The requirements of the notice are to: 1 Block up the access using similar bricks and coping stones to those used to build the walls either side of the access. Upon completion, the new section of wall which will block the access, should match the walls either side of the access, in design, colour and height. 2 Remove the static caravan and all associated infrastructure such as water and electrical supply from the Land. 3 Remove all resultant materials and debris from the Land.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended) (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by deletion of the allegation in section 3 of the Notice in its entirety, and replacement with 'Without planning permission, the material change of use of the Land for the siting of a static caravan for residential purposes, and the creation of an access onto a classified road as shown within Appendix B (the Development)'.
2. The requirement in paragraph I. of Section 5 of the Notice is deleted and replaced with 'Block up the access by restoring the boundary to its previous condition before the breach took place'.
3. Subject to those corrections the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Notice

4. Inspectors have a duty to try to get notices in order. If I consider the Notice is defective, I have broad powers under the provisions of s176(1)(a) of the Act to correct any defect, error or misdescription in the enforcement notice, or to vary the terms of the enforcement notice. I can only do so, however, where I am satisfied that this will not cause injustice to either the appellant or the Council. If the Notice cannot be corrected, I must quash the Notice.

5. The Notice alleges the formation of a new access and the siting of a caravan to the rear of 14 Priorsgate, a residential dwelling with a rear garden extending to Oxcliffe Road. However, the Notice fails to specify the use of the land that the caravan is sited for. It does not therefore provide the necessary precision to let a recipient know fairly what is alleged by the Council.
6. The Council's case in the appeal is that, by virtue of the provision of the access on to Oxcliffe Road and the extent of accommodation provided by the caravan, it amounts to a separate residential unit of accommodation. Although this is disputed by the appellant, she nevertheless confirms that the caravan has since been removed from the site and does not seek to pursue the ground (a) appeal in relation to the caravan.
7. At the time of my site visit, the caravan had indeed been removed from the site. Having regard to that, and the fact that if a caravan is used ancillary to the residential occupation of the dwellinghouse it would not constitute a material change of use of the Land, I find correction of the Notice to clarify the Council's allegation would not cause injustice in the case circumstances.
8. The first requirement in section 5 of the Notice requires the access to be blocked up. However, this is by way of reference to walls that have since been demolished. In order to give that part of the Notice continued effect, the requirement is corrected to require reinstatement of the boundary prior to the breach taking place. As that correction would result in an equivalent requirement on the appellant, no injustice would arise.

The appeal on ground (a) and the deemed planning application

Main Issue

9. Having regard to the appellant's limited appeal on ground (a) and the Council's stated reasons for issuing the Notice, I consider the main issue to be the effect of the access on highway safety.

Reasons

10. At the time of my site visit the rear boundary of 14 Priorsgate had been completely removed. It lay open between the front boundary of 328 Oxcliffe Road and the rear boundary of 16 Priorsgate. The side boundaries dividing the plots were marked by close board timber panel fences.
11. No16 has large, curved splay walls either side of vehicular entrance gates set some distance back from the pavement. One of the high rendered walls terminates close to the appeal site's side boundary with a capped brick pillar set close to the pavement. On the other side, No328 also has a tall wall-end pillar at the back of the pavement and adjacent to the common boundary.
12. The Council's highway advisor indicates a number of requirements that would be necessary to meet current highway safety guidelines and to provide a safe form of access. Of the requirements, the majority could be secured by planning condition. However, it is unclear whether the necessary splay sightline of 20 x 120m could be achieved.
13. In support of the proposal, the appellant has provided a plan showing an achievable visibility splay of 2.4 x 43m for a vehicular access central in the rear boundary. However, the demonstrated splay is a standard usually applied

to 30 mph roads. Oxcliffe Road is subject to a 40mph speed limit. The demonstrated splays do not meet the highway authority's requirement.

14. Although forward visibility along Oxcliffe Road is good on account of its relatively straight and level alignment, vehicles emerging from the site without sufficient visibility to approaching traffic would increase the risk to highway safety. While I have little doubt that splay walls to provide sufficient intervisibility between emerging vehicles and users of the footway could be provided, the restriction to views caused by the neighbouring pillars close to the site's high side boundaries limits visibility to the nearside edge of the carriageway. Any subsequent necessity for drivers to edge out into the main carriageway to secure adequate visibility would prejudice highway safety in the locality.
15. Moreover, a planning condition to secure the visibility splay requirement of the highway authority would not be reasonable as it could nullify any permission it was attached to in the event that it could not be delivered. Such a condition would not meet the legal tests and requirements in Paragraph 56 of the National Planning Policy Framework (the Framework).
16. I acknowledge the concerns of the Council regarding the proximity of the access to others nearby. However, there is little justification provided as to why that might further prejudice highway safety in the case circumstances.
17. I note the appellant's reference to access points approved by the Council elsewhere, including the neighbour at No16. However, the plans provided in that case show that a greater visibility splay could be achieved at that access.
18. Only partial detail of a development site for several houses further east of the site on Oxcliffe Road (adjacent to St John's Terrace) have been provided. Notwithstanding, that site appears distinct from the appeal site insofar as no individual driveway accesses directly emerge on to Oxcliffe Road.
19. For the above reasons, I find that, in the absence of demonstration otherwise, the creation of the access onto a classified road conflicts with Policies DM29 and DM60 of the Local Plan for Lancaster District Part 2 [2020]. Together those policies require development to incorporate suitable and safe access to the existing highway network in line with the latest standards and to satisfy the highway authority to ensure that highway safety and efficiency is maintained or improved. It would also conflict with the Framework which seeks safe access for all users and avoidance of unacceptable impacts on highway safety.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

R Hitchcock

INSPECTOR