



Appeal Decision

Site visit made on 14 January 2025

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 6 February 2025

Appeal Ref: APP/D4635/C/23/3333703

485 Cannock Road, Wolverhampton, WV10 0RE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Asfand Hussain against an enforcement notice issued by Wolverhampton City Council.
 - The notice was issued on 1 November 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the carrying out of operational development consisting of unauthorised excavation and grading of the land on the frontage to create a vehicular hardstanding, and construction of retaining walls with piers.
 - The requirements of the notice are to:
 1. Remove the hardstanding and retaining wall including the piers
 2. Return the site frontage to the height, gradient and profile that it was immediately prior to the unauthorised excavations that were undertaken to create the hardstanding. Restore the landscaping features and re-instate the boundary wall immediately adjacent the footway to its previous specification and appearance.
 - The period for compliance with the requirements: Two months.
 - The appeal is proceeding on the grounds 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:

In part 1 by substituting the wording with 'This notice is issued by the Council because it appears to them that there has been a breach of planning control within paragraph (a) of Section 171 A (1) of the above Act, at the land described below. It considers that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations.'

2. Subject to the correction, 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 Act (as amended).

Matters concerning the enforcement notice

3. The requirements as to the content of an enforcement notice are set out at section 173 of the Act and in Regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.
4. Section 173(1)(a) of the Act requires an enforcement notice to state the matters which appear to the Council to constitute the breach of planning control. Established case law in *Miller-Mead v Ministry of Housing and Local*

Government [1963] 1 A11 ER 4592 says that a notice must tell a recipient fairly what has been done wrong and what must be done to remedy the breach. A notice which is 'defective on its face' may be 'null' (without legal effect), but whether a defect in a notice renders it null in any given instance is a matter of judgment. However, it is not desirable for a notice to be declared a nullity on the basis of minor technical flaws. If the defect is not material and its proposed correction would not cause any injustice, then the powers available to an Inspector to remedy the notice should be used. By implication, if the defect is material it would render the notice a nullity.

5. Section 173(1)(b) of the Act requires an enforcement notice to state the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls. The enforcement notice states in part 1 that it is issued "under section 172 of the Town and Country Planning Act 1990". Section 172(1) of the Act provides that a Local Planning Authority may issue a notice when it appears that there has been a breach of planning control, and it is expedient to do so. Although it is apparent by the wording of the allegation that the breach falls within s171A(1)(a), this is not stated in the notice. Nevertheless, I consider this to be a minor technical flaw and one that can be corrected by virtue of s176(1) of the Act without injustice to the parties.

Relevant planning history

6. An application for planning permission (Ref:23/00150/FUL) described as 'Dropped kerb and creation of front drive, new retaining wall with columns and railings, and reduction of side wall to 1m (partly retrospective).' was refused by the Council on 14 April 2023.
7. In September 2008, an application for planning permission (Ref:08/00895/FUL) for a dropped kerb was refused by the Council. The reasons given were due to the resultant driveway being substantially open and hard surfaced with minimal boundary treatment which would be visually detrimental, and its impact on pedestrian and highway safety.

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

Main issues

8. The main issues are the effect of the development on i. the character and appearance of the streetscene and ii. the safety of highway users.

Reasons

Character and appearance

9. The appeal relates to the creation of a parking bay to the front of the property (No.485). No.485 is a semi-detached two-storey property, at the end of a row of houses of similar design. The dwellinghouse is considerably higher than the road to the front and prior to the unauthorised development, the garden would have sloped down to a low-level brick-built wall forming the common boundary with the public highway. The lower section of the garden has since been excavated and this has resulted in the loss of soft landscaping and the original front boundary wall. In its place is a taller retaining brick wall set back from the boundary with piers up to 3m high, and a levelled bay that provides off street parking for one car. The space extends to most of the width of the frontage and to the side are steps up to the front door.

10. The immediate surroundings are mostly characterised by residential properties set back from the road in an elevated position. Many of the properties on the opposite side of the road have garden areas to the front with a continuous stone boundary wall to the pavement. Parking is provided to the rear of these properties. Houses on the same side to No.485 are similarly elevated and originally laid out with gardens to the front and a low brick boundary wall to the pavement. Many have off-road parking provision to the front. Some of the parking is in the form of a sloping driveway, alongside the garden, where there is no room for any manoeuvring within the site. Some property frontages are entirely hard surfaced, and there are examples of gardens which have been excavated either in full or in part to provide a level lowered surface on which to park vehicles clear of the main road.
11. Some of the parking areas that have been created are more successful than others in the manner in which they have retained the low boundary walls to the front and excavation works have been minimal. Therefore, the general character of the streetscene has not been unduly compromised. However, due to No.485 being significantly more elevated than many of the properties along the road, the creation of the levelled parking space has required substantial excavation. This has resulted in the loss of soft landscaping and the feature low level boundary wall and its replacement with a large expanse of retaining wall and hard standing. In these circumstances, the extent of the wall is visually incongruous in its setting, and this is exacerbated by the stark brickwork and the pillars which extend above the height of the wall.
12. Overall, I consider that the appeal development is unsympathetic and harmful to the character and appearance of the street scene. In this respect the development conflicts with Wolverhampton Unitary Development Plan 2001-2011 (the UDP) saved Policies D5, D6 and D9. These, among other things, seek to achieve high quality urban design which understands local distinctiveness and new development that complements the character of the site and the surrounding area, using appropriate form, scale, detailing and materials which are important to the appearance of a development and its visual effect.

Highway safety

13. The parking bay is limited in depth and therefore the car must be parked parallel with the road to ensure it is parked clear of the highway. While it may well be possible to enter and exit the space in a forward gear, due to the limited width of the space, the driver would have to manoeuvre the car over the pavement to park in the space.
14. Cannock Road is a classified A road, and I observed a constant high volume of traffic when I visited mid-morning on a weekday. I noted that adjacent to No.485 is a car hire business on a large plot and in between, and fenced off at the time of my visit, there is a roadway into the Fallings Park Industrial Estate which is located to the rear. Between this roadway and the appeal property is a high brick wall extending to the edge of the pavement. The wall, which could be reduced in height, currently obscures views of the appeal site from the roadway to the industrial estate. This is also likely to compromise visibility for the driver when exiting the space thereby creating a highway safety issue.
15. Immediately to the front of the appeal property is a traffic sign which indicates the nearby roundabout. There is also a bus stop, which appears to be a stop for two bus routes, in front of the boundary between No.485 and its neighbour.

Not only is there the matter of physical obstruction for the driver, but there is also clearly a potential highway safety issue for those who may wait for buses and for those who disembark at the stop. Moreover, bus journeys may be disrupted as occupants manoeuvre their car into and out of the space. While the Highway Authority note that these could be relocated, there is concern whether this would be possible due to the number of existing driveways and the road layout. Furthermore, there is no evidence presented to inform me whether any options have been advanced.

16. The appellant has provided several examples of driveways of properties in the locality which they consider compromise highway safety. The Council has countered the view that these examples present highway safety issues. In defending the examples at 37 Victoria Road, Nos.404, 501 and 503 Cannock Road, the Council consider these not to be on an open stretch of the highway with free flow of traffic and thus say that any impact on highway safety would be less. Examples at Nos.358, 445 and 449 Cannock Road are said to have been in place for at least nine years and are therefore immune from enforcement action.
17. While I note that the Council made no response concerning the neighbour's driveway and 491 Cannock Road, I viewed these along with others at my visit. It is apparent that driveways have been created at many properties along the Cannock Road and it is likely that some have been in situ for a considerable time. It is also noted that many of the driveways have dropped kerbs which indicates to me that they were likely considered acceptable in highway safety terms. Notwithstanding this, except for the three noted above, I am not fully aware of the planning status of the more recent developments. Nevertheless, their presence does not justify the described harm to highway safety generated by the appeal development.
18. I appreciate that providing on-site parking at the property, in an area where street parking is restricted, would be significantly advantageous to the occupants, however, this does not outweigh the harm identified in respect of both design and highway safety. There is conflict with saved Policies AM12 and AM15 of the UDP and Policy CSP4 of the Black Country Core Strategy. These, among other matters, promote measures to minimise the demand for parking, and state that provision should not be detrimental to pedestrian safety and the free flow of road traffic. Furthermore, all new development should be designed and implemented to contribute towards improving road safety.

Conclusion

19. For the reasons given above, the appeal development does not accord with the adopted development plan when considered as a whole, and there are no material considerations which indicate a decision otherwise than in accordance with it. Therefore, the appeal on this ground cannot succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

S A Hanson

INSPECTOR