



Appeal Decision

Site visit made on 10 July 2026

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 July 2026

Appeal Ref: APP/F0114/C/25/3363347

Lorne Road Car Park, Westmoreland, Bath, BA2 3BZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Cyril Catering Ltd against an enforcement notice issued by Bath and North East Somerset Council.
 - The notice was issued on 6 March 2025.
 - The breach of planning control as alleged in the notice is without planning permission, the provision of a hard surface to extend existing car park.
 - The requirements of the notice are to 1) remove the areas of hard surface highlighted in blue on the attached plan and 2) restore the area of the land highlighted in blue on the attached plan to its condition before the breach took place by replanting with the same species as previously approved under application reference 12955.
 - The period for compliance with requirement 1) is within 3 months of the date of the notice taking effect and requirement 2) is within 9 months of the date of the notice taking effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 (as amended). 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. 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.

Preliminary Matter

2. A draft National Planning Policy Framework 'Plan-making and national decision-making policies' was issued by the Government for consultation on 16 December 2025 (Consultation Draft Framework). I afford the Consultation Draft Framework limited weight as a material planning consideration. This is relative to the published National Planning Policy Framework 2024 (the Framework) to which I afford full weight as a material planning consideration.

Ground (a) appeal and the deemed planning application

Main Issues

3. The appeal made on ground (a) of section 174(2) of the Act is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. The main issues in respect of this appeal are the effect of the development on i) the character and appearance of the area including the Bath World Heritage Site, ii) biodiversity, iii) highway safety, and iv) surface water flooding.

Character and appearance including the effect on the Bath World Heritage Site

4. The appeal site falls within the City of Bath which has two UNESCO inscriptions, the first was inscribed in 1987 and again in 2021 in recognition of its value as one of the Great Spa Towns of Europe. The site falls within the Bath designated World Heritage Site (WHS) which is designated owing to its exceptional cultural, historical and architectural value. The Outstanding Universal Value of Bath derives principally from the hot springs, the Roman archaeology, the Georgian buildings and architecture, and its natural landscape setting.
5. The evidence is that prior to the breach of planning control occurring, the blue highlighted land on the plan attached to the notice was substantially landscaped. While some trees appear to have been lost between August 2018 and July 2019 from such land, it still included significant landscaping which provided a green and soft edge to this prominent corner plot located alongside a main highway and leading into the heart of the city.
6. Indeed, the evidence is the land was deliberately landscaped in association with the planning permission approved in 1984 for a car park on the land (planning permission ref 12955). I find that the former landscaping on the site contributed positively to the character and appearance of the site, as well as to the landscape setting significance of this part of the WHS when appreciated from views along the main arterial route leading into the main part of the city.
7. While the immediate area is built up and characterised by a mixture of commercial and residential properties, some of which are traditional and of architectural significance, there are nonetheless areas of pleasing landscaping within the otherwise urban landscape which break up the massing of the buildings and provide distinctive character to the locality. It is of note that landscaping is in place to other frontages within the corner plots which are near to the appeal site. This includes the Sainsbury's car park and 'The Depot'. This gives the busy highway intersection some design synergy and some welcome relief from the otherwise built form.
8. In the context of the above, the evidence is that the approved landscaping was removed to facilitate the formation of the unauthorised hard surface and to extend the existing approved car park. As part of my site visit, I was able to experience that the site is now seen by passers-by as having a visually harsh and unsightly appearance. There is now an absence of necessary landscaping to soften the appearance of the hard surface and associated parked vehicles and, when seen against the pattern of development in the vicinity of the site, including the corner plots, the development fails to assimilate well into its environmental context.
9. In relative terms, the site now has the appearance of vehicles being tightly packed onto the resultant land. Without a characterful belt of frontage landscaping, which would filter views of both the hard surfacing, associated parked vehicles, and the side walls of the end terraced property on Brougham Heys, the development has an incongruous appearance when viewed within the street-scene.
10. I acknowledge that since the notice was issued, the appellant has erected a 900mm high fence around the site. The evidence is that this replaced a low wooden knee rail. I find that this environmental change has created a somewhat dominant, hard and harsh edge to the site when seen by passers-by. It indicates to me an even greater need to secure meaningful landscaping on the site. Such

landscaping could still soften the effects of the hard surface and associated parking of vehicles even with the recently erected fence in place. Indeed, new planting would be capable of growing tall and above the height of the recently erected fence. However, such planting would likely necessitate the removal of much of the unauthorised hard surface, and which has been formed with the express purpose of being used for the parking of vehicles as part of an extended car park.

11. In this case, there does not appear to be land available at ground level for new planting. I have not received an alternative scheme from the appellant in this regard and in so far that it relates to the breach of planning control. The appellant has indicated that provision would be made for above ground planting boxes on top of the recently erected fence and within the corners of the site. This type of development is not a characteristic of the area, and I am concerned that such a proposal would also look materially out of place. Moreover, and, in any event, the appellant has not submitted a detailed scheme in this respect. In addition, such a proposal would not in itself relate to the breach of planning control. In addition, I emphasise that the inclusion of such planters may result in the provision of a resultant fence which is of a height which needs planning permission.
12. For the above reasons, I conclude that the development has caused significant harm to the character and appearance of the area. I find that less than substantial harm has been caused to significance of the WHS. Such harm is on the very low end of the spectrum of less than substantial harm from the point of view of the harm caused by the development to the otherwise softer landscape setting that is afforded to the pattern of development, including historic buildings, within the WHS as a whole. The proposal has not and would not enhance or better reveal the significance of the WHS and nor does it make a positive contribution to its character and appearance. In this regard, there is direct conflict with policy HE1 of the Council's Core Strategy and Placemaking Plan incorporating the Local Plan Partial Update 2023.
13. I recognise that additional car parking provision in the area is a public benefit that I need to weigh in the overall balance. However, in this case the less than substantial harm to the WHS is not outweighed by public benefits arising from the development. The development therefore fails to accord with the design, conservation, character and appearance requirements of policies CP6, D2 and HE1 of the Council's Core Strategy and Placemaking Plan incorporating the Local Plan Partial Update 2023 (Local Plan Partial Update), policy B4 of the Council's Core Strategy and Placemaking Plan 2017, and chapters 12 and 16 of the Framework.

Effect on biodiversity

14. As the deemed planning application is made based on development which has already occurred, i.e., unauthorised retrospective development, it is exempt from the requirement to deliver statutory 10% biodiversity net gain (BNG). However, this does not obviate the need for all development proposals to accord with policy NE3a of the Local Plan Partial Update which states that *'for minor developments, development will only be permitted where no net loss and appropriate net gain of biodiversity is secured using the latest DEFRA Small Sites metric or agreed equivalent'*. The Council does not dispute the appellant's submitted BNG metric

which indicates that the appeal development would need to deliver 0.02 habitat units off site.

15. The deemed planning application relates to development which has already been carried out. The loss of vegetation on the land has facilitated the formation of the unauthorised hard surface and the associated parking of vehicles. The BNG metric assessment appears to include errors and, in this regard, is not reliable. Even if it were to be relied upon, I do not have sufficient information before me in terms what or where compensatory landscaping or other biodiversity habitat would be provided.
16. In my judgement, and without precise details at this stage, there is no reasonable evidence to indicate that it would be possible to provide suitable BNG on-site given the availability of land in association with the breach of planning control or other associated car park land. In respect of off-site provision, I find that a planning obligation would be needed which required either a financial payment to be used for BNG on land elsewhere (e.g., buying BNG credits), or in respect of the provision of BNG enhancement on land elsewhere and which does not relate to the deemed planning application site. A completed planning obligation is not before me.
17. In addition to the above, I have also concluded that the provision of planters on the site would cause harm to the character and appearance of the area. Moreover, and, in any event, I do not know if the provision of planters would provide suitable BNG.
18. Given the above, and on the evidence that is before me, I am unable to conclude that the development is capable of according with the biodiversity requirements of policy NE3a of the Local Plan Partial Update. I have little certainty before me that BNG can be secured in respect of the breach of planning control, and nor do I have a suitable controlling mechanism before me in respect of the provision of any BNG off-site.

Effect of highway safety

19. The hard surface area has been formed to provide three additional car parking spaces. Prior to the hard surface area being formed, the evidence is that there were five car parking spaces within the approved car parking area. The car parking area is in private ownership and there is no evidence to suggest that the way that the car parking area as a whole is laid out is having an adverse effect on the operation of the highway, or leading to any highway safety issues on Lorne Road which I noticed on my site visit was effectively a cul-de-sac and where vehicular and pedestrian movements were low.
20. In this case, it would be possible to impose a planning condition which controlled the layout/marketing out of the car park to enable its efficient operation from a manoeuvring/turning point of view, and to ensure that vehicles did not have to reverse into or out of Lorne Road. The latter would not be conducive to safe vehicular and pedestrian movements within such a highway.
21. Subject to the imposition of a condition, I conclude that the development would not conflict with the highway safety requirements of policy ST7 of the Local Plan Partial Update, and paragraph 116 of the Framework.

Whether sufficient surface water drainage

22. The Council has confirmed as part of the appeal that it is no longer concerned about surface water drainage in respect of the breach of planning control. I have also considered the appellant's evidence including the fact that the site is on a slight slope towards an existing drain and that the land already had drainage in place in accordance with planning permission reference 12955.
23. I have no reason to disagree with the common ground position of the main parties in respect of surface water drainage. In this regard, I conclude that the development does not cause harm in terms of surface water run-off. It therefore suitably accords with the drainage requirements of policy CP5 of the Local Plan Partial Update, and chapter 14 of the Framework.

Other Consideration

24. The appellant states that the area became a 'magnet for litter' in respect of the landscaping which was on the site previously. He has submitted some photographs which show such litter in place.
25. There is no indication from the Council that the recently erected fence is not permitted development. I have therefore assumed that such a fence has been lawfully erected and will therefore stay. Such a fence may help to alleviate the potential for litter to be discarded on the site. However, the potential for litter to be discarded must be weighed against the harm caused to the character and appearance of the area arising from the removal of characterful and distinctive approved landscaping to facilitate the harmful hard surface and with its intention to be used for the parking of vehicles. Moreover, the erection of fence does not in itself mean that it is not possible to replace lost planting on the site.

Planning balance and conclusion

26. The evidence is that the on-site drainage facilities are acceptable and that the development does not cause harm from a surface water run-off point of view. Moreover, the layout/marketing out of the car park could be controlled by condition and the development would not cause unacceptable harm to highway safety. These are matters of neutral consequence in the overall planning balance.
27. Notwithstanding the above, the development has caused significant harm to the character and appearance of the area. This includes less than substantial harm to the WHS. Moreover, I am unable to conclude that the development accords with the biodiversity requirements of policy NE3a of Local Plan Partial Update.
28. Even if policy NE3a of the Local Plan Partial Update was satisfied, or the development did not result in any harm being caused to the significance of the WHS as claimed by the appellant, these findings would not alter or outweigh the harm caused to the character and appearance of the area from a general design perspective which is a matter of overriding concern. The harm caused to the character and appearance of the area is significant and, in this case, it is not considered that such harm could be suitably mitigated by planning condition and nor is such harm outweighed by any the other consideration identified above.
29. Overall, I conclude that development does not accord with the development plan for the area taken as a whole and there are no material considerations that

indicate the decision should be made other than in accordance with the development plan. Therefore, I conclude that the ground (a) appeal fails.

Ground (f) appeal

30. The appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control, or to remedy any injury to amenity which has been caused by any such a breach.
31. The purpose of the notice is to remedy the breach of planning control in so far that it requires the removal of the hard surface highlighted in blue on the plan attached to the notice. This is not therefore an excessive requirement.
32. The notice also requires the blue highlighted land to be restored to its condition before the breach took place *'by replanting with the same species as previously approved under application reference 12955'*. Based on the Google Street View images submitted as part of the appeal, it is evident that some landscaping (e.g., trees) have been removed relative to what was approved and planted as part of planning permission reference 12955. However, the notice does not require all approved landscaping to be restored on the land. It is worded in such a way that it only requires the land to be restored to its condition prior to the unauthorised development occurring, i.e., the provision of the same planting that existed at this time. It is noteworthy that a Google Street View image dated May 2023 shows what landscaping was on the land just a few months before the unauthorised development took place.
33. The appellant states that the breach of planning control took place in early 2024. The appellant does not dispute that there was landscaping in place prior to the hard surfacing being formed. While the evidence is that some approved landscaping has been removed (e.g., trees), the appellant does not provide precise and unambiguous evidence to sufficiently demonstrate that what was in place at this time was not in accordance with what had been planted in association with the implementation of planning permission reference 12955.
34. In the context of the above, I do not find that requirement 2 of the notice exceeds what is necessary to remedy the breach of planning control. It does not require all landscaping approved as part of planning permission reference 12955 to be replaced. It simply requires replanting in accordance with planning permission reference 12955 and to the extent that it restores the land to its condition prior to the breach of planning control taking place. This requirement accords with section 173(4)(a) of the Act.
35. On the evidence that is before me, I find that it is reasonable and necessary to require the planting of the same species of plant as approved as part of planning permission reference 12955. This is not an excessive requirement, and it ensures necessary precision.
36. In reaching the above finding, I have also considered the site context prior to the breach of planning control taking place as part of my consideration of the ground (a) appeal and the deemed planning application. I have concluded that the removal of the landscaping to facilitate the provision of the unauthorised hard surfacing area, and the associated parking of additional vehicles, has caused material harm to the character and appearance of the area. The imposition of

conditions would not overcome this harm for the reasons outlined. Moreover, I have not been provided with a suitable and detailed alternative proposal relating to the breach of planning control.

37. For the above reasons, I conclude that the ground (f) appeal fails.

Conclusion

38. For the reasons given above, I conclude that the appeal should not 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 (as amended).

D Hartley

INSPECTOR