

Enforcement Appeal

**Site: JARVEYS COTTAGE, 16 STOKE ROAD, NORTH CURRY, TAUNTON, TA3
6LR**

**Alleged Breach of planning control: ALLEGED UNAUTHORISED DEMOLITION
OF BOUNDARY WALL IN CONSERVATION AREA AT JARVEYS COTTAGE, 16
STOKE ROAD, NORTH CURRY**

Reference Number: E/0226/24/15

Appeal decision: ALLOWED

Appeal Decisions

Site visit made on 30 September 2016

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 October 2016

Appeal A: APP/D3315/C/16/3148394

Jarveys Cottage, 16 Stoke Road, North Curry, Taunton, Somerset TA3 6LR

- 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 Mr David Skilton against an enforcement notice issued by Taunton Deane Borough Council.
 - The notice was issued on 1 April 2016.
 - The breach of planning control as alleged in the notice is "Without planning permission in a conservation area, the demolition of a boundary wall as shown for identification purposes only on the 3 photographs attached to this Notice marked 1-3 ("the Original Wall") and erection of a new boundary wall as shown on the 4 photographs attached to this Notice marked 4-7 ("the Unauthorised Replacement Wall"). The Unauthorised Replacement Wall is in the approximate position marked by a blue line on the plan attached to this Notice.
 - The requirements of the notice are: 1. Demolish the Unauthorised Replacement Wall. 2. Construct a replacement wall in the approximate position of the Original Wall and of a similar design and height to the Original Wall using reclaimed blue lias stone and lime mortar.
 - The period for compliance with the requirements is 3 months.
 - 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.
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Appeal B: APP/D3315/W/16/3146461

Jarveys Cottage, 16 Stoke Road, North Curry, Taunton, Somerset TA3 6LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr David Skilton against the decision of Taunton Deane Borough Council.
 - The application Ref: 24/15/0054, dated 12 January 2016, was refused by notice dated 26 February 2016.
 - The development proposed is described as "Retrospective application for the demolition of an approximately 1m high existing stone retaining wall and its replacement to the same height using the same materials and detailing as used in the original wall. Where possible original stone has been re-used. The original gate location has been repositioned to improve highway safety".
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Summary of Decisions

1. Both appeals are allowed in the terms set out below in the Formal Decisions.
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Application for Costs

2. Applications for costs made by Mr David Skilton against Taunton Deane Borough Council are the subject of a separate Decision.

Preliminary Matter

3. The descriptions for each development used on the enforcement notice and the application form contain details about what has happened. However, for the purposes of considering the act of development in each case (the deemed planning application under Appeal A and the refusal of planning permission for the application made under Appeal B) the works should be more appropriately and precisely described as "Demolition of an existing stone boundary wall and the erection of a new stone boundary wall". These changes would not cause any prejudice to either main party. I shall consider both appeals accordingly.

Main Issue – planning merits

4. The main issue is whether the development has preserved or enhanced the character or appearance of the North Curry Conservation Area.

Reasons

5. The new wall, it is claimed, has been constructed from the blue lias stones used in the previous wall. They are of differing sizes which have been laid in a random manner with a 'cock and hen' finish to the top of the wall similar to the previous structure. The replacement wall has a relative newness due to its recent construction. Possibly some new stones rather than originals were used as well. However, this freshness will dull over time and its look is similar to the style and materials prevalent in other roadside boundary walls in the Conservation Area. There is no substantive evidence that the former wall had lime mortar joints instead of the cement now used.
6. The height of the original wall may have been over 1m high for some of its length whereas the new wall has a uniform height of about 1m. It has also been rebuilt not quite on the line of the former wall. However, at the time of considering the planning application the Council's Heritage section advised that "the original wall would appear to have been a relatively recent construction...not on the line of an earlier boundary wall" and "its intrinsic historic value is therefore limited". While the view was also held that the former wall made a positive contribution to the character and appearance of the conservation area, its precise alignment was not crucial in this regard. Moreover, the Council now states that the new wall is a "replica in a very similar location". Against this background any height and location changes have been inconsequential. I also find that the new wall is not a stark feature that bears little resemblance to the original wall.
7. The main visual change has been the removal of garden vegetation and the loss of a strip of roadside grass verge next to Manor Lane. However, seeing more of the house has not harmed the street scene given that it has an attractive traditional appearance and seeing houses is part of the general street scene. I also saw at my site visit that there has been some replacement planting on the garden side of the wall anyway. Moreover, the Council's position is that the removal of the vegetation and the grass in this case did not require any consent from the local planning authority. It could thus have been done in the absence of demolishing the original wall and building the new one.

In my opinion the loss of what appeared to be a very narrow strip of rough grass along one side of Manor Lane has not harmed the character and appearance of the area given the retention of the slightly wider main grass verge along Stoke Road. The grass verge along Manor Lane was also not, in any event, required to be reinstated by the enforcement notice.

8. Objectors have referred to the possibility that the works were undertaken in order to improve driver visibility at the Manor Lane and Stoke Road junction to support a housing proposal further up the lane. However, whether that was the case or not, it is not a matter that has any bearing on considering the merits or otherwise of the development before me. Nor does it matter that the agent for the housing scheme and these appeals is apparently the same. I recognise that carrying out works without first obtaining the relevant permission, and thus without any prior notification or consultation, does little to engender a local community's acceptance of a scheme. However, the planning system does allow for development to be considered retrospectively and this does not affect the judgement, based on planning merits, about whether to grant planning permission.
9. In view of the above, the development has preserved the character and appearance of the North Curry Conservation Area. Thus it has also not harmed the significance of the designated heritage asset. As such it accords with policy CP8 from the Taunton Deane Core Strategy which, amongst other things, seeks to conserve or enhance historic assets.

Other Matters

10. Some objectors have questioned the appeal procedure. However, it has not followed the Householder Appeal Service and all parties have had the opportunity to make full representations detailing their concerns. I also note highway safety concerns over the changes to the Manor Lane and Stokes Road junction. However, there is no evidence that the junction in its original state was dangerous and although the vehicular entrance to 16 Stokes Lane is now in a slightly different position, the works have not led to any material changes to the highway layout. I also do not have any objection by the Local Highway Authority. I have considered all other matters, including the agent's incorrect reference to other walls in the area and that the host property is currently up for sale. Nevertheless, nothing else outweighs my previous findings.
11. The Council has not suggested any conditions that should be imposed if either appeal was to succeed. I have noted that when the application under Appeal B was recommended for permission at the Council's Planning Committee a landscaping condition was proposed. However, given my above findings I do not consider this to be necessary to make the development acceptable in planning terms. As the development has been carried out it is also not appropriate to impose the standard time limit for commencement of the development or the normal plans condition.
12. As the ground (a) appeal under Appeal A is succeeding the associated ground (f) appeal does not fall to be considered.

Conclusions

13. It is concluded that both appeals should succeed.

Formal Decisions

Appeal A

14. In view of the Preliminary Matter section above, it is hereby directed that the enforcement notice be corrected by deleting the text under paragraph 3 and replacing that with "Demolition of an existing stone boundary wall and the erection of a new stone boundary wall". Subject to this correction, the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under S177(5) of the 1990 Act for the demolition of an existing stone boundary wall and the erection of a new stone boundary wall at Jarveys Cottage, 16 Stoke Road, North Curry, Taunton, Somerset TA3 6LR.

Appeal B

15. The appeal is allowed and planning permission is granted for the demolition of an existing stone boundary wall and the erection of a new stone boundary wall at Jarveys Cottage, 16 Stoke Road, North Curry, Taunton, Somerset TA3 6LR in accordance with the terms of the application Ref: 24/15/0054, dated 12 January 2016.

Gareth Symons

INSPECTOR

Costs Decisions

Site visit made on 30 September 2016

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 October 2016

Costs application in relation to Appeal Ref: APP/D3315/C/16/3148394 Jarveys Cottage, 16 Stoke Road, North Curry, Taunton TA3 6LR

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr David Skilton for a full award of costs against Taunton Deane Borough Council.
 - The appeal was against an enforcement notice alleging, in short, the demolition of an existing stone boundary wall and the erection of a new stone boundary wall.
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Costs application in relation to Appeal Ref: APP/D3315/W/16/3146461 Jarveys Cottage, 16 Stoke Road, North Curry, Taunton TA3 6LR

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr David Skilton for a full award of costs against Taunton Deane Borough Council.
 - The appeal was against the refusal planning permission for demolition of an existing stone boundary wall and the erection of a new stone boundary wall.
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Decisions

1. The applications for an award of costs are refused.

Reasons

2. Planning Practice Guidance advises that irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
 3. When a local planning authority has refused planning permission for development that has already been carried out, the next logical step is often to issue an enforcement notice that seeks to remedy the breach of planning control if it is considered expedient to do so. Waiting for the outcome of the S78 appeal before taking such action runs the risk that if the appeal is dismissed the Council then has to issue the enforcement notice with the potential that gives for another appeal. In the meantime, the unauthorised development remains in place which can undermine public confidence about the effectiveness of enforcing planning control. Against this background, in my experience it is not unusual or unreasonable for a Council to issue an enforcement notice soon after the refusal of planning permission so that the planning and the enforcement notice appeals (the S78 and the S174 appeals)
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can be linked as happened in this case. This saves work, time and expense on both sides. I therefore find that the Council was not premature in issuing the enforcement notice when it did and there was nothing unreasonable about the Council's actions in this respect.

4. Turning to the planning merits of the appeals, although the planning application was recommended for approval the Council's reason for refusal and the reasons for issuing the enforcement notice were clearly referenced to relevant development plan policy. Also, there were differences, albeit subtle, between the former wall and the new wall which I have had to consider such as the slightly different position and whether it is a stark feature. Furthermore, the issue of the impact of the development on the character and appearance of the designated Conservation Area, and the statutory test this engages, is a subjective judgement. While I acknowledge that the Council's case was not the strongest given the Conservation and Landscape officer views at the application stage, it does not mean to say that it was without any substance. It was, on balance, on the side of respectability. As such, I can also see that the Council considered it was expedient to take enforcement action.

Conclusion

5. In view of the above and having had regard to all other matters raised, it is concluded that the Council did not behave unreasonably in either appeal. Accordingly, an award of costs is not justified and so both applications should be refused.

Gareth Symons

INSPECTOR