
Appeal Decision

Site visit made on 22 August 2016

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 2 September 2016

Appeal Ref: APP/F0114/C/16/3150383

Land to the rear of Dixon Gardens, Upper Lansdown Mews, Lansdown, Bath BA1 5HH

- 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 Mrs K Barton against an enforcement notice issued by Bath & North East Somerset Council.
- The notice was issued on 4 May 2016.
- The breach of planning control as alleged in the notice is described as unauthorised demolition of a curtilage listed wall in the Conservation Area.
- The requirements of the notice are: Reinstatement of the wall to the north side of Upper Lansdown Mews at the rear of Dixon Gardens to match the remaining section of the wall; complete with matching capping (the pointing, jointing and coursing shall all match the remaining extent of original wall).
- The period for compliance with the requirements is Three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The allegation is corrected and the requirement is varied, subject to which the appeal is dismissed, the notice is upheld and planning permission is refused for the deemed application.

Preliminary matters and background

1. The appeal before me is a planning appeal and the Notice has been issued under S171A(1)a of the *Town and Country Planning Act 1990 (as amended)* (the Act). However the wall is described in the allegation as a 'curtilage listed wall'. Nevertheless although the allegation refers to works to a listed building the parties have addressed in the evidence whether the alleged demolition requires planning permission and this does not therefore render the Notice invalid.
 2. Consequently, I shall amend the allegation of the breach of control and delete the term 'curtilage listed'. I am satisfied that this will not prejudice the parties because it does not alter the purpose and the appellant would continue to know what she is alleged to have done.
 3. The demolition of the wall appears to have taken place on about the 2 September 2015. From the evidence before me these works of demolition included the removal of a pedestrian gate and associated lintel and stonework.
 4. The site is located within the Bath Conservation Area (the BCA) and the Bath World Heritage Site.
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The appeal on Ground (c)

5. To succeed on this ground the appellant will need to show that the building operations subject of the allegation do not constitute a breach of planning control. It is thus appropriate to consider the statutory provisions and related orders.
6. Section 55(1)(a) of the Act says that development includes the demolition of buildings. Section 57(1) says that planning permission is required for any development of land other than in respect of specified exemptions, none of which are claimed here.
7. However, paragraph 3(1)(b) of *The Town and Country Planning (Demolition-Description of Buildings) Direction 2014* (the Direction) says that demolition of the whole or any part of any gate, fence, wall or other means of enclosure is not development. But paragraph 3(2) says in turn that this does not apply to means of enclosures within conservation areas. Thus the operations amount to demolition and because they have taken place within BCA they are development.
8. Similarly Part 11, Class C of *The Town and Country Planning (General Permitted Development) (England) Order 2015* (the GPDO) says that a building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of enclosure is development unless the operation is "relevant demolition" (Class C1). Relevant demolition is defined by Section 196D of the Act as demolition of a building (other than various ecclesiastical and other exemptions) that is situated in a conservation area. The term 'building' includes for the purposes of Part 11, Class C any gate, fence wall or other means of enclosure.
9. However the appellant says that the building operations do not amount to demolition and should be regarded as an 'alteration'. In these circumstances it is argued that the building operations should be considered against the permitted development rights under Part 2, Class A of the GPDO. To support this argument the appellant says that her intentions have been to alter the wall and gates and in evidence of this she submitted a planning application¹. The proposed development was described on the application form as "To demolish a small section of wall to obtain access".
10. The planning application was submitted after the demolition had taken place and this indicates that the appellant accepted that planning permission was necessary. However she subsequently said that the application was withdrawn because it 'was not required'. This was due to two factors, firstly the advice received from her conservation advisor that the section of wall was not curtilage listed and secondly a view that the proposal represented alterations to the wall so the GPDO gave consent. The question of whether or not the wall is listed is not before me though I note that the appellant's heritage assessment did conclude that the building operations did not require listed building consent. But from what I have seen there was no assessment in the heritage report of whether the works were 'demolition' or an 'alteration'. In these circumstances it seems more probable that the application was withdrawn because of the adverse comments made by the Council's conservation officer.

¹ Planning application reference 15/04695/FUL.

11. Whether the works are demolition or an alteration is a matter of judgment in this case. However the common meaning of the word 'alteration' is a change or modification or action to make (a structure or thing) different. It seems to me that these both imply the adaptation of the existing structure rather than its removal. In contrast the word demolition means the act of pulling down, to lay in ruins or destroy a structure.
12. The appellant used the word 'demolition' in her application. Her conservation advisor, JME Conservation Ltd, similarly uses the term, demolition, on several occasions in the 'Assessment of Significance', including in the descriptive text below the three photographs of the subject wall, Fig 3, Fig 5 and Fig 6.
13. Taking these altogether, and coupled with the absence of any work other than the removal of the pedestrian gate, lintel, and stonework, it appears to me that the building operations fall fairly and squarely into the description 'to lay in ruins'. Hence I conclude that as a matter of fact and degree they constitute an act of demolition. Thus because the building operations amount to demolition, they are development.
14. Section 55(1) of the Act says that development includes demolition and Section 57(1) says that planning permission is required for any development of land. No permission has been granted for the demolition, whether on application or by a development order. By reason of Section 171A (1) of the Act the carrying out of development without the required planning permission constitutes a breach of planning control. Consequently the appeal on ground (c) fails.

The appeal on Ground (a)

Main Issue

15. The main issue is the effects of the demolition of the wall on the character and appearance of the Bath Conservation Area (BCA).

Significance

16. The section of demolished wall and the former pedestrian gateway are part of the southern boundary to extensive walled gardens laid out to the north of Upper Lansdown Mews as part of William Beckford's landscaping undertaken in the 1820's. The appeal site as a whole marks a division between the nursery or kitchen gardens to the east and further areas of terracing to the west. The evidence also shows that the demolished section and pedestrian access also has historic associations and may well have been used by Beckford, who owned a house in Lansdown Crescent, located a short distance to the south, for over 20 years. His direct route to the landscape he designed, including the upper terraces, the embattled gateway, Beckford's Ride and the 'picturesque' landscape beyond, was through the pedestrian gate and along the walkway between the separate areas of garden. Thus the section of wall and the gate have significance in terms of defining the layout of the gardens and also have historic associations with Beckford, an 18th century dilettante and architect. The survival of the form of the gardens and terraces is an important element of the BCA.

The Conservation Area

17. This part of Bath marks the northern edge of the Georgian development of the city and also the transition between the formal layout of the housing and the

countryside beyond. The high walls are a particular characteristic of Upper Lansdown Mews and make a positive contribution to the character and appearance of the BCA.

18. The appellant says that the demolition has a neutral impact on the significance of the surviving south wall because it still reads as a section of historic wall within the street scene and the sense of enclosure is preserved. Moreover, given its limited length, its loss, she says, is insignificant.
19. However, from what I saw and have read, although part of the southern boundary has been lost, most particularly at the time of the construction of Dixons Gardens, the historic layout of the Beckford's gardens has survived and is readily discernible. In these circumstances, whether or not the length of the section of affected wall is substantial is not the primary matter. The section of wall has a particular historic significance because it marks the line of a division in the planned landscape and appears to be associated with an influential sponsor and architect of the development of Bath. Moreover, although some of the historic wall has been lost through past development that renders the remaining section even more important in terms of the continuing evidence of the planned landscape.
20. Of the policies relied upon by the parties I find that saved Policies BH.6, BH.7 and BH.8 of the *Bath and North-East Somerset Local Plan 2007* to be the most relevant to this appeal. These collectively seek to preserve or enhance the character and appearance of the Conservation Areas in several ways. These include, amongst other matters, retention of architectural features which contribute to the character of the area including boundary walls, to permit demolition in conservation areas only where it is justified, and ensure that boundaries enhance the character and appearance of any area. For the reasons I have given the demolition conflicts with these policies which are broadly in accordance with the National Planning Policy Framework (the Framework). This says heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Accordingly I conclude that in terms of both the Framework and the Development Plan policies the demolition fails to preserve or enhance the character and appearance of the BCA.
21. Notwithstanding this, whilst the building operations have led to harm in the context of the Framework, this harm is less than substantial when looking at the designated BCA and the World Heritage Site as a whole². In these circumstance the harm should be weighed against the public benefits of the proposal. However no such public benefits have been claimed and thus do not outweigh the harm to the character and appearance of the Conservation Area. Consequently the appeal on Ground (a) does not succeed.

The Requirements

22. The appellant says in terms that 'both parties accept that the notice is not precise'. It is clear, from the photographic evidence submitted by the appellant and also by the Beckford Tower Trust, that prior to the building operations the demolished section of wall previously included a pedestrian gate and associated lintel and stonework. Thus I agree that the requirements are not precise and the steps that are detailed would not result in the complete reinstatement of

² Paragraph 134 of the National Planning Policy Framework

the boundary treatment which was in place a few days before the demolition works.

23. The details of the capping and materials of the lost section of wall are disputed and the evidence is contradictory. However, on the balance of probabilities, I conclude that this section was not materially different to those sections which remain to either side, particularly the closest section of the wall to the east where the wall is continuous. My reason for this is that the Council saw the materials following demolition and have described them in detail and this description accords with what I saw adjacent to the demolished section at my site visit.
24. In these circumstances and in accordance with my powers under S176(1)(b) to vary the terms of the enforcement notice, I shall amend the requirements to include a reference to the pedestrian gate, lintel and stonework. I am satisfied that the variation will not disadvantage the appellant as it will clarify the requirements, so that she will know what she has to do to remedy the alleged breach of planning control.

The appeal on Ground (f)

25. The appellant says that it is not reasonable to prevent access and the provision of inward opening vertically boarded timber gates, in accordance with the plans submitted as part of the withdrawn planning application, would provide an alternative means of enclosure.
26. I agree that it is reasonable that there is a means of access into the site, because this was available before the demolition took place. However the variation, as above, of the requirements would ensure that an access is reinstated. But, historically this was a pedestrian gate and the substitution of vehicular gates would compromise the character of the BCA and the historic association with Beckford. Furthermore by requiring an improvement to what was there previously would not in any event amount to a lesser step. Consequently the appeal on ground (f) also fails.

Decision

27. It is directed that the notice is corrected and varied as follows:
- a) the deletion, of the words "curtilage listed" before the word "wall" in paragraph 3; and
 - b) the addition of the phrase ",pedestrian gate, associated lintel and stonework," after the phrase "Reinstate the wall", in paragraph 5.
28. Subject to this correction and variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused for the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Sukie Tamplin

INSPECTOR