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## Appeal Decisions

Hearing held and site visit made on 8 January 2014

**by Jennifer Armstrong JP BA FRTPI**

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

**Decision date: 22 January 2014**

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**Appeal A ref: APP/F0114/A/13/2204329**  
**Gibbs Mews, Walcot Street, Bath, BA1 5BG**

- 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 Thameside Property Company Ltd. against the decision of Bath & North East Somerset Council.
  - The application ref. 12/04076/FUL, dated 12 September 2012, was refused by notice dated 11 April 2013.
  - The development proposed is amendments to permission ref 08/00591/FUL (as amended by 11/03532/NMA) specifically in relation to the size of the external wall facing block and the use of panelled timber sash windows.
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**Appeal B ref: APP/F0114/A/13/2206113**  
**Gibbs Mews, Walcot Street, Bath, BA1 5BG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Thameside Property Company Ltd. against Bath & North East Somerset Council.
  - The application ref. 13/02227/VAR is dated 23 May 2013.
  - The application sought planning permission for the erection of four houses without complying with a condition attached to planning permission ref. 08/00591/FUL (re-submission of 05/04017/FUL), dated 10 February 2009.
  - The condition in dispute is no. 3 which states that: Natural local stone shall be used in the construction of the external walls of the building to correspond in respect of type, size, colour, pointing, coursing and jointing to the sample panels erected on the site and approved by the Local Planning Authority.
  - The reason given for the condition is: In the interests of the appearance of the development and the surrounding area.
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### Decisions

1. The appeals are dismissed.

### Preliminary Matters

2. Appeal A: At the hearing the appellants confirmed that, although the application to which this appeal relates is for amendments to a previous planning permission, the intention is to secure planning permission for the development as built i.e. in reconstituted stone in blocks smaller than those on

the sample panel. Alterations to the windows were subsequently dealt with in July 2013 as a Non-material Amendment.

3. Appeal B: The Council have stated in their representations that, had they been able to make a decision, the application would have been refused for the reason that 'The proposed deletion of Condition 3 of 08/00591/FUL is considered unacceptable as it would result in a development that is out of character with the surrounding area and have an incongruous appearance which fails to preserve or enhance the character and appearance of this part of the Bath Conservation Area. The development would also have a harmful impact on the setting of the surrounding listed buildings. This is contrary to policies D2, BH2 and BH6 of the Bath and North East Somerset Local Plan including minerals and waste policies adopted 2007 and the guidance contained within the National Planning Policy Framework'.

### **Main Issue**

4. In the light of the above, I find that the main issue in both appeals is whether the Council's requirement for the use of natural local stone is necessary and reasonable, having regard to the site and its surroundings, relevant planning policies and the tests set out in Circular 11/95.

### **Background to the Appeals**

5. In April 2007 planning permission was granted for four dwellings on the appeal site. The application documents referred to the proposed walling as Bath Stone Ashlar and a condition was imposed which stated that "natural local stone shall be used in the construction of the external walls of the buildings and no development shall commence until samples of the stone, its coursing, bedding and jointing have been submitted to and approved in writing by the Local Planning Authority". The reason given for its imposition was "in the interests of the appearance of the development and the surrounding area".
6. The appellant acquired the site in late 2007 and was immediately in contact with the Council regarding the proposed use of reconstituted stone and render instead of natural local stone. Replying in January 2008, the Council stated that such changes would represent significant alterations to the appearance and character of the development and would substantially change its impact on the surrounding area and the amenities of neighbouring occupants. A new planning application would therefore be required.
7. A new application was not submitted but in May 2008 the appellant sought to address the condition referred to in paragraph 5 above. A 3-part panel of materials was erected on the site, provided by Wheeler and Co Ltd, a firm whose business was not natural local stone but concrete products/reconstituted stone. The appellant's letter to the Council at that time made reference to, among other things, "the coursed sawn side and rear elevations". In its reply the Council commented that "the sample of plain Bath stone ashlar" was acceptable for the sides and rear and also for "the plain ashlar on the front elevation...".
8. In February 2009 a revised application was approved with the condition set out in the heading above under Appeal B. Again, the application documents and approved plans for this revised application refer to the use of Bath Stone or coursed sawn stone or rusticated ashlar. The Design and Access Statement of

an application refused in July 2011 stated that “the elevation treatment remains in Bath Stone ashlar and coursed stone as previously approved both on the approved drawings and sample panel on site”. Another application concerning amendments to the 2009 permission referred to ‘coursed sawn stone’.

9. After development had commenced and in response to a complaint, an officer of the Council visited the site. In April 2012 he wrote to the appellants stating that the use of reconstituted stone was unauthorised and that work should cease. He wrote again in August 2012 pointing out that the blocks being used were faced concrete blocks of a different size to the sample panel and again he advised against continuing to use reconstituted stone. However, work continued and the development is largely complete. I understand the different sized blocks resulted from a change of supplier.

### **Reasons**

10. This is a sizeable piece of land in a highly built up part of the Conservation Area in one of the country’s outstanding historic urban environments. It does not front Walcot Street but because of its size and location it is a significant element of the Conservation Area. Many of the nearby buildings are listed Grade I and II. All of those in the immediate vicinity of the site are constructed of local Bath stone. They include Chatham Row, a Grade II mid-nineteenth century terrace on the south side of the site and a collection of Grade II buildings to the west, stretching back from Walcot Street. On the north side is the former Walcot School, now flats, dating from the late nineteenth century although not listed. The site is part of the setting of these building, all of which have numerous windows looking directly onto it.
11. Of the policies quoted by the Council from the Bath and North East Somerset Local Plan (2007), BH.2 and BH.6 are particularly relevant. BH.6 permits development in Conservation Areas only where it preserves or enhances the character and appearance of the area in terms of, among other things, the suitability of external materials and detailing. BH.5 seeks to ensure that development affecting the setting of a listed building does not harm the contribution the building makes to the local scene. These policies accord with those in the National Planning Policy Framework (2012) which require local planning authorities to look for opportunities for new development within Conservation Areas and within the setting of listed buildings to enhance or better reveal the significance of those heritage assets.
12. Reconstituted stone is not natural stone. While it may seek to replicate and reflect natural stone, its different appearance and behaviour becomes increasingly obvious with time, when the natural processes of weathering reveal the inferiority of the artificial product. This can be seen in a number of twentieth century buildings in the city and, as the Council stated at the hearing, such examples illustrate why natural stone is routinely required for new development in the Conservation Area. And while I have considered the applications before me on their own merits, any acceptance for the use of artificial stone could be cited as a precedent for development elsewhere.
13. Within this context, I find that, in order to meet the objectives of the local and national planning policies outlined above and thereby preserve the character and appearance of the Conservation Area and the setting of the adjoining listed buildings, the use of natural local stone is necessary and reasonable. Indeed,

all the evidence before me, as set out above, is that this has always been the intention for the site, the only reference to artificial stone being in correspondence from the appellants in late 2007/early 2008, the Council replying that such a change would require a new planning application. While there appears to have been some misunderstanding over the nature of the panel, the Council's letter of 16 May 2008 refers to plain Bath stone ashlar, as had been previously indicated and conditioned.

14. As to the question of the discrepancy between the block sizes in the sample panel and the building, my understanding is that the former correspond with the traditional size of natural stone ashlar whereas the latter do not. Although this may be a less significant consideration, it serves to further emphasise the difference between the expected and the actual appearance of the development.

### **Other Matters**

15. Other objections have been raised on the grounds that the workmanship is of a poor quality in terms of pointing, unevenness of wall surfaces, exposed breeze blocks inside the parking bays, rendering rather than stone on the chimneys and use of bricks at lower levels on the main elevations. These are matters to be taken up by the Council and are not part of the appeals before me.
16. Following the hearing, a signed Unilateral Undertaking was submitted relating to financial contributions towards improved school and youth facilities, and to the transfer of land to the Council in relation to a potential riverside walkway. However, having found Appeal A to be unacceptable on other grounds, it has not been necessary to consider the Undertaking in further detail.

### **Conclusion**

17. For the reasons given above and having regard to all other matters raised, I conclude that the appeals should be dismissed.

*J. Armstrong*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

John Bosworth	Solicitor
Andrew Shepley	Agent
Royston Thomas	Appellant
Timothy Owen	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Rachel Tadman	Senior Planning Officer
John Davey	Historic Buildings Consultant

### INTERESTED PERSONS:

Caroline Kay	Chief Executive, Bath Preservation Trust
Mark MacDonnell	Local resident - chartered surveyor and architect
Simon Gilligan	Local resident
Joan Gilligan	Local resident
William Cross	Local resident
Rick Knapp	Local resident

## **DOCUMENTS**

- 1 Draft Unilateral Undertaking submitted by appellant
- 2 Descriptions of nearby listed buildings – extracts from published lists

## **PLANS**

- A Plan submitted by Council showing nearby listed buildings

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