

# Report

on an investigation into  
complaint no 04/B/14163 against  
North Wiltshire District Council

19 June 2006

# **Investigation into complaint no 04/B/14163 against North Wiltshire District Council**

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## **Key to names used**

- Mr Archer - the complainant
- Officer A - Principal Planning Officer (Enforcement)

## **Report Summary**

### **Subject**

Conservation Area Consent and planning permission were granted in 1996 for the demolition of a shed and the construction of vehicular access. Information received after the application was registered made it clear that the demolition of the shed included the demolition of a boundary wall in the Conservation Area.

When the wall was demolished in December 2003 Mr Archer (not his real name) complained to the Council because he believed the permission had lapsed as works had not been started to demolish the wall within five years of the grant of permission and conditions attached to the permission had not been discharged.

In January 2004 the Council asked the developer to submit a retrospective application as the Council originally judged that no work had been carried out to implement the permission within five years. The developer originally agreed but subsequently argued that works to implement the permission had been started.

The Planning Officer noted that he “did not exactly agree” with the developer’s argument but decided to keep the file in abeyance while various applications for development and appeals against refusal of permission were considered.

During this time the wall remained partially demolished and there was rubble on the site. The boundary walls to the medieval burgage plots were one of the main aspects of the Conservation Area and the open and untidy site was detrimental to the appearance of the Conservation Area.

In August 2005 the Council took the view that the permission granted in 1996 was extant when the wall was demolished and therefore enforcement action was not expedient.

### **Finding**

Maladministration causing injustice.

### **Recommended remedy**

The Council should review its procedures and pay Mr Archer £500 compensation.

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## Introduction

1. Mr Archer complains that there were failings in the way the Council dealt with an application in a Conservation Area expressed to be for the demolition of a shed, next door but one to his home, and the preservation of vehicular access. He also complains that the Council was in a position to take enforcement action when the boundary wall on the site was demolished, because the planning permission and consent had lapsed as the only works carried out in the period were carried out in breach of inoperative planning permission.
2. He says that the Council's actions mean that the boundary wall enclosing the plot has been lost and an essential aspect of the Conservation Area has been compromised.
3. I invited the complainant and the Council to comment on the draft of this report, before writing the conclusions. I have taken account of their comments in preparing the final text and reaching my conclusions.
4. For legal reasons, the names used in this report are not the real names of the people concerned.<sup>1</sup>
5. One of the Commission's officers has examined the Council's files, interviewed officers of the Council and visited the complainant.

## Legal and Administrative Background

6. The law in relation to Conservation Areas is found in the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA). Procedure is governed by the Planning (Listed Buildings and Buildings in Conservation Areas) Regulations 1990.
7. Planning Policy Guidance Notes set out Government Policy and provide guidance to local planning authorities. The guidance is contained in Planning Policy Guidance: Planning and the Historic Environment (PPG 15).
8. Local Planning Authorities have a duty to designate as conservation areas any "areas of special architectural or historic interest the character or appearance of which it is desirable to enhance or preserve."<sup>2</sup>
9. The special architectural or historic interest that justifies designation should be clearly defined and recorded. The definition of an area's special interest should derive from an assessment of the elements that contribute to it.<sup>3</sup>

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<sup>1</sup> Local Government Act 1974 Section 30(3).

<sup>2</sup> Planning (Listed Buildings and Conservation Areas) Act 1990 Section 69.

<sup>3</sup> PPG 15 paragraph 4.4.

10. Special attention should be paid to the desirability of preserving or enhancing the character or appearance of a conservation area and this should be a material consideration in the handling of development proposals.<sup>4</sup>
11. Consent for demolition in a conservation area should not be given unless there are acceptable and detailed plans for any redevelopment.<sup>5</sup>
12. It will often be appropriate to impose on the grant of consent for demolition a condition to provide that demolition shall not take place until a contract for the carrying out of works of development has been made and planning permission granted. In the past, ugly gaps have sometimes appeared as a result of demolition far in advance of redevelopment.<sup>6</sup>
13. Applications for development should be publicised by notice indicating the nature of the works which are to be the subject of the application and made by site display in at least one place on or near the land to which the application relates for not less than 21 days.<sup>7</sup>
14. A Council has powers to issue an enforcement notice where there has been a breach of planning control and it considers enforcement action expedient.<sup>8</sup>
15. Works that have been undertaken in breach of an operative planning condition cannot be taken as works of “material development”.
16. The Council does not have a Conservation Area Statement for the Village Conservation Area. In his comments on the draft, Mr Archer said he had been pressing the Council regularly for a conservation statement, since first writing on 22 June 2004.
17. At the time the application was considered, the Council operated an informal consultation process of discussions with a Conservation Officer in cases where a planning officer considered there might be conservation issues.

## Investigation

18. Mr Archer lives at 1 Fish Street. Houses on Fish Street have long, narrow gardens with access at the rear on to Crab Way which is a narrow highway with no footpath and boundary walls directly on to the highway. Crab Way is part of the Village Conservation Area.

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4 PPG 15 paragraph 4.14.

5 PPG 15 paragraph 4.27.

6 PPG 15 paragraph 4.29.

7 Town and Country Planning (Listed Buildings and Conservation Area) Regulations 1990.

8 Town and Country Planning Act 1990, S.172 and 173 (as amended by the Planning and Compensation Act 1991).

## Planning History

19. On 26 January 1996 the Council received a planning application for permission to create a new access and erect a shed to the rear of 3 Fish Street. It also received an application for Conservation Area Consent for demolition of a shed on the same site.
20. The applicant subsequently submitted a letter enclosing “copies of drawings indicating wall and shed to be demolished”. There was also a photograph labelled “existing wall to be demolished wooden shed behind wall to be demolished”.
21. The applications were advertised by way of site notices posted on Fish Street and an advertisement in the local paper. The Council does not retain copies of the advertisement or site notices from 1996. In January 2004 Mr Archer went to the Public Library to check the back edition of the newspaper for the relevant advertisement.
22. On Thursday 15 February 1996 the applications were advertised as:

{3 Fish Street} demolition of shed and

{3 Fish Street} vehicular access, gates and erection of shed.’

Mr Archer said the site notices had the same wording. He considers that these notices were not sufficient to alert neighbours that the boundary wall, which formed an essential component of the conservation area, was to be demolished.

23. The planning officer’s site assessment sheet for the Conservation Area Consent notes that the construction of the vehicular access would result in commercial access in a narrow street with inappropriate turning detrimental to highway safety and the loss of a stone wall which forms an attractive feature in the Conservation Area and adds to the sense of enclosure along this part of the road. There was no evidence of a separate assessment of the application by a Conservation Officer.
24. On 30 April 1996 both applications were approved. The Conservation Area approval noted that the application was for the “demolition of shed”. The planning approval was for “construction of vehicular access and gates and erection of shed.” Condition 2 of the Conservation Area Consent for demolition stated that no demolition should occur before a contract for carrying out the replacement gates and pillars on the site as permitted by the relevant planning permission had been signed, in the interest of the appearance and character of the Conservation Area. Condition 3 required that all debris be removed from the site within one month of the completion of the works.

25. Condition 2 attached to the planning permission for the construction of the vehicular access and shed required the developer to submit to the Council a sample of the external materials to be used. The external appearance of the new shed and pillars to hang the gates should be approved in writing by the local authority before the commencement of any development.
26. On 25 July 1996 the Council wrote to the developer to say that Condition 2 of the planning permission had not been discharged and the works taking place on the site including the demolition of the shed were in breach of the planning permission.
27. There is a note on the Council's files of a site visit on 7 August 1996. The officer has noted that the shed had been demolished and the site cleared, the colour of the proposed bricks "seems OK-good colour-deep red to match shed to east". He also noted that there were assorted steel gates and ornate stone on the site and the material is "therefore OK-preserves area". A formal notice that Condition 2 was discharged was sent to the applicant on 15 August.
28. The wall which I describe was still standing, intact, at the time of the site visit on 7 August 1996.
29. On 27 May 2002 the Council received an application for the erection of two one bedroom dwellings in the garden of 3 Fish Street, adjacent to Crab Way. This was refused on 9 August 2002. One reason for refusal was that the development "...and the removal of an existing brick and stone boundary wall would not preserve or enhance the character and appearance of this part of the conservation area."
30. An application for the erection of two self-contained buildings in the garden of 3 Fish Street was submitted on 29 October 2002, but withdrawn on 1 April 2003.
31. On 6 June 2003 the Council refused another application for the erection of two dwellings. This refusal was subsequently upheld on appeal on 22 January 2004. However, the Inspector noted that "variations in the siting and appearance of developments along and in the vicinity of [Crab Way] exhibit little overall aesthetic cohesiveness and reflect a sense of not inconsiderable change from the historic origins of the locality."
32. An application for the erection of three dwellings was refused on 14 September 2003. This was also appealed. In his decision of 22 January 2004 dismissing the appeal, the Planning Inspector notes that there is a degree of enclosure along Crab Way and that the "grain" of the medieval layout and ownership pattern is still apparent. He adds that the existing front boundary [to 2 Fish Street] would be lost and the development would not match the degree of enclosure provided by existing properties. Thus the proposal would fail to preserve the character and appearance of this part of the Conservation Area. In his comments on the draft key facts, Mr Archer said the Inspector further noted that the stone wall to the rear of 3 Fish Street



had been recently demolished, but that photographs show this would have had the same function.

## **Background to the Complaint**

33. On 23 December 2003 Mr Archer noticed that the wall on the boundary of 3 Fish Street with Crab Way was being demolished. He telephoned the Council to report the demolition and faxed a letter confirming his complaint.
34. Mr Archer said he was not aware that there was Conservation Area Consent for the demolition of the wall. He was aware that planning permission had been granted on 30 April 1996 for the construction of vehicular access, gates and a shed but, as far as he was aware, no work had been carried out by way of construction of vehicular access and the erection of a shed within five years of its approval. He was concerned that there was no valid consent for the demolition of the boundary wall.
35. Officer A (Principal Planning Officer) made a file note on 24 December 2003 in which he recorded that the wall was in excess of one metre high and adjacent to a highway so Conservation Area Consent would have been required. He added that, from local knowledge, he did not consider that this area of Crab Way had substantial character to which the wall contributed and he thought it unlikely that any enforcement action to replace the wall would be successful; a postscript added that, "in the circumstances, this is not desperate."
36. On 5 January 2004 a site meeting was held so that the Planning Inspector could consider the appeal against refusal of planning permission (see paragraph 29). The wall had been demolished but rubble remained on site. The officer asked the agent for the developer to submit an application for Conservation Area Consent for the demolition of the wall to enable the Council to consider whether retrospective consent should be granted. In its comments on the complaint, the Council explained that records had been archived in a store some distance from the Council's offices. It was not apparent until the history files were inspected, therefore, that any demolition work had taken place before December 2003.
37. The Planning Officer, therefore, believed the 1996 Conservation Area Consent had expired and thus the demolition was in breach of planning control.
38. On 27 February Officer A wrote to Mr Archer's agent to explain that the agent for the developer had been advised of the need to make an application for planning permission and Conservation Area Consent but that the agent had claimed that the 1996 consent and planning permission had been implemented because part of the permitted works had been carried out (see paragraph 26). But he had agreed to submit an application should the appeal fail.
39. Officer A explained to the Commission's Officer that the Inspector's remarks, the history of the site and the reassurance that a retrospective application for

Conservation Area Consent would be submitted led him to reaffirm his initial judgement that it would not be expedient to institute enforcement proceedings.

40. On 3 March 2004 the agent for the developer sent an email to Officer A. He asked Officer A to reconsider the status of the consent for demolition and planning permission granted in 1996 (see paragraph 19) and went on to say that the shed had been demolished and the land used in accordance with the permission. He added that Condition 2 of the Conservation Area Consent (see paragraph 24) was “a bit of a loophole” as he could argue that the contract was signed but the work never carried out. He said that he thought the condition should have specified that the contract should be signed and the work carried out.
41. Officer A spoke to the agent for the developer on the telephone on 3 March and noted on the file that he “didn’t exactly agree with” this view but thought he was justified in holding the file in abeyance. In its comments on the draft key facts the Council said that the “written note was made following Officer A’s consideration that the Council might not be wise to serve an Enforcement Notice because there was no evidence that Condition 2 of the demolition consent was not complied with. He considered this was an added complication in pursuing enforcement action that could expose the Council, at any appeal, to a claim they had acted unreasonably .....
42. Officer A also took into consideration that the wording of Condition 2 on the 1996 consent was still in common usage by Planning Inspectors. It was not the practice for planning authorities to require a copy of a signed contract to be sent to them before commencement.
43. In his comments on the draft key facts, Mr Archer noted that there was no reference to the contract. The agent’s reason for not accepting the need for a new application was “in view of the partial demolition carried out”.
44. On 26 March 2004 Officer A wrote to the agent for Mr Archer to explain that he had reviewed the file and concluded that it would not be expedient to serve an enforcement notice. He was of the view that the demolition of the shed could be argued to constitute a commencement of the 1996 demolition consent. In addition it seemed likely, in the light of the Inspector’s remarks in determining a recent appeal that some development on the site might be acceptable, that the developer would submit another application for residential development. In his comments Mr Archer noted Officer A had not referred to the ‘loop-hole’ or the contract.
45. Officer A concluded that the file would be held open until matters concerning the site were more resolved as the agent for the developer had maintained that Conservation Area Consent was not required and the site would, in due course, be developed.
46. On 4 May a planning officer wrote to Officer A to say that the situation at Crab Way was detrimental to the character of the Conservation Area and even if the end of the

demolished wall were tidied up the detrimental effect would remain because of the void beyond the wall.

47. On 28 May Officer A wrote to the agent for the developer to say that he was still not certain that a fresh application for the demolition of the wall was not required because he was not necessarily convinced that Condition 2 of the 1996 consent had been met (see paragraph 25). There was no evidence that a contract for redevelopment had been signed. He noted that the site "looks open and a mess" and asked whether the agent could supply a timetable for a fresh redevelopment application.
48. On 13 October 2004 Mr Archer wrote to Officer A in the light of the refusal of the application to develop land to the rear of 2, 3 and 4 Fish Street. Officer A replied and set out the planning history of the site and explained that the planning permissions granted in 1996 had been implemented by the works to demolish the shed and the laying of a hardstanding. In the circumstances it was not expedient to serve an enforcement notice requiring the replacement of the wall. Officer A had, by that time, accepted the claims by the agent for the developer that Condition 2 had been complied with and there was no evidence to the contrary on which the Council could base a case for enforcement.
49. On 13 October Mr Archer wrote to the Council. He questioned whether there was a valid permission to demolish the wall as the application and the site notices had made no mention of the demolition of the wall. The site notice had been displayed in Fish Street although the wall was in Crab Way so members of the public might well have been deprived of the opportunity to comment on the proposed development. Further it was clear that the wall was not an integral part of the shed, evidenced by photographs and the fact that the shed was demolished in 1996 but the wall remained until 23 December 2003.
50. On 22 October 2004 Officer A replied to Mr Archer. He detailed the planning history of the site and said that permission was granted for a vehicular access, gates and the erection of a shed (see paragraph 19). On the same day permission was granted to demolish the shed, attached to the wall fronting on to Crab Way. He said it was clear from the files that demolition consent was granted for the removal of the whole wall and that the consent had been partly implemented. He said he was not willing to serve an Enforcement Notice as he believed an appeal would succeed.
51. On 15 December Mr Archer wrote to the Council and said that, even if the Council maintained that the demolition of the shed was a material start to the development so that the demolition of the wall at any time after the five year period was lawful there was no evidence that Condition 2 of the Conservation Area Consent (see paragraph 25) had been discharged. In his view this meant that the planning permission would not remain active. (see paragraph 14)

52. The Council responded to Mr Archer's letter on 21 December but it did not address the issue of whether the consent remained extant in the light of his assertion that the failure to fulfil Condition 2 meant that the demolition of the shed could not have constituted the commencement of development.
53. On 16 August 2005 Officer A wrote to the Case Officer dealing with the planning appeal to say that the agent for the owner had stated that the contract for the replacement wall had been signed but was not fulfilled. "We have no way of disproving the agent's claim. Therefore the consent to demolish the wall would appear to have been still 'live' permitting the wall to be demolished in December 2003." In his comments on the draft key facts, Mr Archer pointed out that there are only three instances showing contact between Officer A and the developer's agent; the email and telephone call of 3 March (see paragraph 40 and 41) and the entry for 22 October 2004 on the site progress sheet. He noted the agent had only said he would argue "the contract had been signed, but not fulfilled."
54. In its comments on the complaint the Council said that it was clear from the agent's letter (see paragraph 20) that it was intended to demolish the wall. Mention of the demolition was included in the agent's letter, the block plan and the photographs.
55. The Council explained that the Conservation Area Consent was "twinned" with an application for a new vehicular access including the erection of gates. To implement the planning permission it was necessary for the whole of the wall to be removed.
56. In his response to the Council's comments, Mr Archer pointed out while it might have been clear to the Council what the applicant's intentions were, the public was not given the opportunity to comment on the loss of the wall as it was not clear, from the site notice in 1996 advertising the Conservation Area Consent application, that it was proposed to demolish the wall. In his comments on the draft key facts Mr Archer pointed out that neither the applications nor consents refer to the demolition of the wall.
57. In addition, if the intention was to "twin" the two applications and ensure that the vehicular access was built to preserve the essentially enclosed nature of the Conservation Area, this had failed because of the poor drafting of Condition 2 which allowed the developer to demolish the wall and leave an untidy site; the very development that planning legislation (see paragraph 12) sought to avoid.
58. In March 2005 the stones and debris were removed from the site and the area levelled. When my officer visited the site in September no wall or gates had been erected and the site remained open.

## **Conclusions**

59. At the time of the 1996 application for consent and permission at 3 Fish Street (see paragraph 19) the Council had a system of informal consultation with the

Conservation Officer but it is not clear that it undertook a proper consideration of the impact of the proposed development on the Conservation Area. There is no evidence that the Conservation Officer visited the site or was aware of the architectural or historic interest that had prompted the designation of a Conservation Area in the first place. These failures were maladministration. I am pleased to note that the Council's system has now changed. It is important that the assessment of an application affecting a conservation area includes appropriate consideration by specialist officers.

60. Neither the application nor the Council's consultation on it is explicit about whether the boundary wall was to be demolished. I accept that the planning officer may have been fully aware of the intention implied in the application and the drawings submitted subsequently. But without an explicit statement that the application involved the loss of the wall which enclosed the historic burgage plot, members of the public could not appreciate the full implication of the application and may thus have been denied the opportunity to object. Mr Archer was not aware that the application was for the wall to be demolished. So while it is clear that the Council gave permission to demolish the shed, it is not clear that the boundary wall was an integral part of the shed. Permission to demolish the wall may well have been implied but it was not explicitly stated in the Conservation Area permission. The Council's failure to clarify whether or not the wall was to be demolished was maladministration.
61. When Mr Archer noted that the wall was being demolished in December 2003 (see paragraph 33) he felt this was a breach of the permission granted on 30 April 1996. He assumed the permission to construct the vehicular access had lapsed as no work had been started within five years of the granting of the application. He was not aware that the demolition of the shed constituted implementation of the consent granted at the same time. The fact that the consent did not explicitly state that the wall could be demolished led him to pursue the complaint with the Council and expend considerable time and trouble in doing so.
62. Mr Archer was not the only one left confused as a result of the Council's maladministration. I note that Officer A took a provisional view, when the complaint was initially made, that it would not be expedient to pursue enforcement to reinstate the wall, and that the complaint was not particularly urgent (see paragraph 35). He subsequently revised this view (see paragraph 36) and asked the agent for a retrospective application for Conservation Area Consent for the demolition of the wall.
63. Then when the agent asked Officer A to reconsider the status of the consent (see paragraph 38) Officer A took the view that it would not be expedient to pursue enforcement action because there was no evidence that Condition 2 had not been discharged. It appears that Officer A did not question the agent's assertion that he could argue that the contract was signed but that work was not carried out. However, he subsequently wrote again to the agent to say that he was not certain

whether a fresh application was required. This uncertainty meant that Mr Archer was led to believe that action might be taken to address what he considered to be a breach of planning control causing detriment to the Conservation Area.

64. The Council has said that it decided within 24 hours of the report of the demolition of the wall that it would not be expedient to take enforcement action. But that conflicts with the hesitation actually expressed by Officer A. And if a view is formed that enforcement is not expedient, for whatever reason, both the developer and the complainant should be informed of this at the earliest opportunity. The failure to record a decision and communicate it promptly to all relevant parties was maladministration. It could only have added to Mr Archer's justifiable confusion.

## **Finding**

65. For the reasons given in paragraphs 59, 60 and 64 I find that there has been maladministration by the Council causing the injustice described in paragraphs 61, 63 and 64.
66. The Council should pay Mr Archer £500; and it should review its procedures to ensure, as far as possible, that the maladministration I have identified does not recur.

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