

Appeal Decision

Site visit made on 28 November 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 14 December 2016

Appeal Ref: APP/T2350/C/16/3152735

Wiswell Shay Farm, Wiswell Lane, Whalley, Clitheroe BB7 9AF

- 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 Stuart Bell against an enforcement notice issued by Ribble Valley Borough Council (the LPA).
 - The enforcement notice was issued on 23 May 2016.
 - The breach of planning control as alleged in the notice is:
The unauthorised erection of walls exceeding:
 - 1 metre in height facing the highway between the locations marked A & B on the attached plan; and
 - 2 metres in height at the locations marked X on the attached plan.
 - The requirements of the notice are to:
Reduce the height of the wall to:
 - Less than 1 metre in height facing onto the road between the locations marked A&B on the attached plan; and
 - Less than 2 metres in height at the locations marked X on the attached plan.
 - The period for compliance with the requirements is 12 weeks.
 - The appeal is proceeding on grounds (a), (c), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal succeeds to a limited degree on ground (g) only. Otherwise the appeal is dismissed and the notice is upheld (see formal decision below).

Background information and relevant policy

2. The appeal site forms part of the boundary to the residential dwelling at Wiswell Shay Farm, Wiswell Lane, Whalley. The wall in question has been erected between the front of the house (Cottage No 1) and the highway. The red line area incorporates No 1 which is at the western end of the row. I noted that this had been extended to the west and that a telegraph pole had been re-positioned to a location adjacent to the new high curved wall (at X). The site is located outside of the settlement boundaries and lies within the open countryside.

3. The most relevant development plan policies are Policy DMG1 (General Considerations) and DME2 (Landscape and Townscape Protection) of the Ribble Valley Core Strategy (RVCS). The National Planning Policy Framework (NPPF) is relevant and in particular the relevant core principles and section 7 which requires good design. The CS policies are up to date and accord with those of the NPPF.

The appeal on ground (c)

4. To be successful on ground (c) it must be shown that planning permission is not required for the development carried out, either because permission is already in place, or that it constitutes permitted development and does not require express consent. There is no permission in place and thus, to be authorised, the

development must satisfy the requirements of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

5. In particular it must satisfy Schedule 2, Part 2, Class A of the GPDO. This sets out that any gate, fence, wall or means of enclosure erected adjacent to a highway is not permitted development (PD) if it exceeds 1 metre in height. Case Law has established that a reasoned approach to what denotes being 'adjacent' to a highway is being within 2 metres of the said highway. The sections of wall, from A to B and at XX, both exceed the 1m which would be permitted under the GPDO.

6. In this case, it is argued on behalf of the appellant that, when measured from the inside, the 1m limit is not exceeded and that the walls are retaining walls. From my site visit, I noted that that was the case and I also accept that there had been previous walls along this part of the highway. However, the Council's evidence, including the submitted photographs, clearly indicates that the previous wall along this part of the highway sloped towards the west and was also partially covered with planting. At the junction of the access with the highway, it appears that the boundary treatment was simply a hedge and one of the photographs shows a lawned area sloping upwards toward the cottage.

7. As indicated above, Case Law has established what denotes being '*adjacent to a highway*' and that a reasonable figure is within 2 metres (comprising both footway and carriageway where appropriate). Any height measurement is taken from the natural ground level adjacent to boundary which fronts the highway and irrespective of any different height on the other side of the wall. In this case, any measurement would be taken from various points along the length of the wall.

8. It is illogical and incorrect to suggest that the opposite should be the case. In this instance new walls, as a matter of fact and degree, have been built adjacent to the highway. Both sections (AB and XX) of wall enforced against are within 2m of the highway and both exceed the permitted development heights. Although the GPDO states at Article 1(3) that, when measuring height in the case of no uniform level, the higher level is to be taken, this definition does not apply to walls or fences. In this case, therefore, and irrespective of the groundwork carried out on the inside of the walls, planning permission is required for the works as carried out.

9. Furthermore, the works carried out, (albeit that the wall is similar in places to that which existed), constitutes the replacement of the pre-existing wall and its extension to the junction at the site access point. In my view, it is not a situation which falls into the category whereby the GPDO allows a fence or wall to be '*maintained, improved or altered*'. The works carried constitute new development. Irrespective of the height of the wall on the appellant's side of the wall, the new wall as built, therefore, requires planning permission. There is no permission in place ne in place and the appeal fails on ground (c).

The appeal on ground (a)

10. The main issue is the effect that the new wall has had on the character and appearance of this part of Whalley.

11. Having seen the wall from both near and distant viewpoints (including from the A671), I share the Council's concerns about its stark and visually harmful impact on the character and appearance of this part of Wiswell Lane. Due to its scale, height and form and because it is devoid of any vegetation it is seen as being most unnatural and urban development rather than being perceived as rural in its character and appearance. Because of this I agree with the Council's description of it currently looking most incongruous and visually harmful.

12. It is not just a question of the land lacking any soft landscaping: I also consider that the formation of the front area of grass and kerbing are also harmful to the character and appearance of this rural lane. Overall the works carried out are far from being of a high quality of design. Although the wall is of natural stone the way it is laid is slightly different to that of the cottage and its new extension. It is now clearly a retaining wall but it is retaining significantly more ground than the previous boundary treatment. I do not accept the contention on behalf of the appellant that '*there has been a wall here of the same height and using the same stone material for as long as anyone can remember*' or that the wall has simply been re-sited. Its height, overall massing and re-positioning all add to the unnatural and urban appearance of the unauthorised structure. I note the intention to place a coping stone on top of the wall but that will result in it being even higher and will not overcome the visual harm that I have identified above.

13. In my view the works as carried out are contrary to policies DMG1 and DME2 of the RVCS. The works are not of a high standard of building design; they are not sympathetic to the existing location in terms of size and nature and they detract markedly from the visual appearance of their surroundings and the existing landscape character of the area. During my visit I noted other high stone boundary treatments on the road into the village, but most of these were historic boundaries which incorporated some soft-landscaping resulting in a more rural, rather than urban appearance. I agree with the Council that the works as carried out have significantly harmed an important landscape feature of the area.

14. I also find the works to be contrary to some of the core principles and policies of the NPPF. In particular I do not consider that the works have secured a high quality of design and a good standard of amenity for all; they have not established a strong sense of place; they have not responded to local character and they are far from being visually attractive. These works are of very poor design and the NPPF at paragraph 64 indicates that permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions. Instead of improving the area, these particular works detract from its qualities and character.

15. The Council (for the reasons set out in the notice) would clearly not have granted planning permission for these works. I agree with the Council's reasons and thus there can be no justification in granting permission at this appeal stage. The appeal also fails, therefore on ground (a) and planning permission will not be granted for the unauthorised development as carried out.

The appeal on ground (f)

16. The appellant repeats arguments which relate back to the ground (c) appeal. However I consider that, as a matter of fact and degree, the wall is '*adjacent to the highway*' for the purposes of the GPDO. In such circumstances measurements are not taken from the opposite (or inner) side of the wall to the highway. The suggestion, therefore, that there is a height limit of 2m because the wall is not adjacent to the highway is not accepted. In any case it is requested that, because there would be little difference in what has been built and a 2m limit, then the wall should be considered acceptable. But, this is not the same as showing what lesser steps would, or could, overcome the harm caused by the works as carried out.

17. The Council issued the notice to remedy the breach and to remedy any harm to amenity. The appellant has not shown that any lesser steps would achieve this aim and the appeal also fails on ground (f).

The appeal on ground (g)

18. A period of 6 months is requested due to the fact that the appellant has a full-time job and is carrying out all of the works himself. This is a reasonable request and I consider that a period of just 12 weeks is unreasonable. I consider that a 6 month period would enable the appellant to liaise with the Council and to work out the necessary new levels to the site, as well as producing a landscaping scheme which would work in conjunction with the requirements. The appeal succeeds to this limited degree and the notice will be varied accordingly.

Other Matters

19. I have considered whether a landscaping condition could overcome the harm caused and I accept the need to retain some ground between the buildings and the highway. This was achieved before with the cottage in the same location and, from what I have seen, it would still be possible, even if the wall is reduced in height.

20. I do not consider that the simple imposition of a landscaping condition would overcome the current harm caused. Because of the complexities of levels and the overall relationship of any boundary treatment, it is my view that a comprehensive design to incorporate landscaping is required. I have referred in principle to this in the ground (g) appeal above.

21. In reaching my conclusions I have taken into account all of the other matters raised by, and on behalf of, the appellant. These include the details set out in the initial appeal statement (June 2016) and the final submissions in response to the Council's statement.

22. With regard to the latter this includes the fact that the Council's photographs are not recent; that they do not reflect the situation before the wall was built; that the '*before and after*' photographs prove this point; that it is proposed to plant the boundary; that the wall would be capped; that there are other high stone walls nearby; that the tree indicates that levels have not changed appreciably; that there is a grassed area between the wall and the highway; that the 1m height limit relates to highway safety; that the highway authority raises no sight-line issues; that sight-lines are improved and that the suggested condition is acceptable with regard to the site adjoining and including the wall.

23. However, none of these matters carries sufficient weight to alter my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision.

Formal Decision

24. The appeal succeeds to a limited degree on ground (g) only and I direct that the figure and word '*12 weeks*' be deleted from part 6 of the notice (TIME FOR COMPLIANCE) and that the figure and word '*6 months*' be substituted therefor.

25. Otherwise the appeal is dismissed and the enforcement notice is upheld as varied. Planning permission is refused for the application deemed to have been made under section 177(5) of the Act.

Anthony J Wharton

Inspector