



Appeal Decisions

Site visit made on 30 September 2019

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2019

Appeal A Ref: APP/X1355/C/18/3214440

Appeal B Ref: APP/X1355/C/18/3214441

Land at Rosemead, Barnard Castle, County Durham DL12 8QN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Andrew John Buck (Appeal A) and Mrs Janice Buck (Appeal B) against an enforcement notice issued by Durham County Council.
- The enforcement notice was issued on 1 October 2018.
- The breach of planning control as alleged in the notice is: without planning permission, the operational development consisting of the widening of the access road and erection of entrance walls and piers.
- The requirements of the notice are: dismantle in their entirety the coursed, dressed stone walls, including any gate posts, piers and associated gates, which flank the widened entrance to the site, removing all stone and materials from the site.
- The period for compliance with the requirements is 12 weeks.
- Appeal A is proceeding on the grounds set out in section 174(2)(c), (a) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
- Appeal B is proceeding on the grounds set out in section 174(2)(c), (a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld.

Application for Costs

1. An application for costs was made by Mr Andrew John Buck and Mrs Janice Buck against Durham County Council. This application is the subject of a separate Decision.

Appeals A and B on ground (c)

2. In the appeals on ground (c), the onus is on the appellants to demonstrate, on the balance of probabilities, that the matters stated in the notice which give rise to the alleged breach of planning control did not constitute a breach of planning control.
3. The parties do not dispute that the walls constitute development having regard to section 55 of the 1990 Act. As the walls amount to building operations, I see no reason to disagree. In addition, section 55 of the 1990 Act indicates that development comprises, as well as building operations, engineering

operations. Section 336(1) of the 1990 Act is clear that engineering operations include the formation or laying out of a means of access to a highway. That would include the widening of the access road here. I am satisfied, therefore, that the development subject of the notice amounts to development for which planning permission is required, as set out under section 57(1) of the 1990 Act.

4. Planning permission was granted in April 2017 for the widening of the existing entrance at the appeal site¹. The approved development included the erection of dry-stone walling and gates. Condition 2 of the permission required the development to be carried out in accordance with the approved plans. The approved plan shows the wall would comprise two pillars adjacent to the highway measuring 1.535m in height, with straight sections of consistent height either side of the widened access. The wall would then curve into a bell shape with two gate pillars measuring 1.835m in height.
5. However, the development that is subject of the notice comprise two pillars at the front of the wall each with pointed coping stones. It is said they measure 1.79m in height from ground floor level. Thereafter, the wall comprises straight sections either side of the widened access which abut a second pillar. The straight sections are staggered, increasing in height to, it is said, 1.55m before abutting the second pillar. Thereafter, there are curved sections of the wall on either side which again step up in height before abutting a final pair of pillars on which gate fittings/gate are attached.
6. The curved section of the walls and that part of the widened access are bottleneck in shape, rather than the bell mouth shape of the approval. Moreover, the initial pillars are around 0.25m higher than approved and the straight sections of the walls step up in height, in contrast to the consistent height shown on the approved plans.
7. As such, even were the development to have accorded with condition 3 of the 2017 permission in respect of materials, as suggested by the appellants, the development as enforced against is not the development depicted in the approved plans under condition 2. As a result, I find that the widened access and the walls that are subject of the notice are not the development for which planning permission was granted in April 2017.
8. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for those classes of development defined as 'permitted development' within Schedule 2. Class A of Part 2 of the GPDO states that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted development. Development is not permitted, however, if such development would fail to meet the limitations set out in paragraph A.1.
9. Paragraph A.1(a) states that development is not permitted by Class A if the height of any gate, fence, wall or means or enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after carrying out the development exceed 1m above ground level. Paragraph A.1(b) states that development will not be permitted by Class A if the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2m above ground level.

¹ LPA Ref: DM/17/00363/FPA

10. The appellants' case is largely predicated on the basis that the parts of the wall set back behind the pillars are lower than 2m in height and not adjacent to the highway. Therefore, it is said, they are granted planning permission by virtue of Article 3 of the GPDO. Likewise, it is said the entirety of the wall up to 1m in height benefits from planning permission under the GPDO. The appellants indicate that it is only the pillars and their coping stones which do not fall within the terms of Class A.
11. The two pillars at the front of the wall measure 1.79m in height from ground floor level. The Council indicates that the initial sections measure 1.55m in height with the second pillars measuring 1.96m from ground floor level. Thereafter, it is said that the gate pillars are around 2.1m in height.
12. I saw from my site visit that the front pillars abut the grassed highway verge. Whilst the term adjacent is not defined in the GPDO, the set back from the road is limited and the close proximity of the pillars to the highway is such that they are perceived as being adjacent to it. As they exceed 1m in height, they would fail to meet the limitation under A.1(a)(ii).
13. In addition, the remainder of the wall exceeds 2m in height at its highest part. It seems to me that the walls form a single means of enclosure and were erected in a single operation. There is little to no physical or visual detachment between the sections of the wall. Moreover, it seems to me that the widening of the access and the walls form a single act of development, as the walls have been constructed to enclose the widened access created by the laying of hardcore.
14. Case law has established that permitted development rights apply to the development taken as a whole. The development cannot be broken down into constituent parts for the purposes of the GPDO. Thus, given that parts of the walls exceed both the 1m and 2m limitations, I find the whole of the means of enclosure falls outside the limitations under A.1(a). As a consequence, the development subject of the notice does not constitute development granted planning permission by virtue of Article 3 of the GPDO.
15. In the absence of any evidence regarding any alternative grant of planning permission under section 58 of the 1990 Act for the development as enforced against, I conclude that the alleged breach of planning control did constitute a breach of planning control.
16. The appeals on ground (c) therefore fail.

Appeal B on ground (a)

Main Issue

17. The main issue is the effect of the development on the character and appearance of the area.

Reasons

18. The appeal site is located within an Area of High Landscape Value (AHLV), where Saved Policy ENV3 of the Teesdale Local Plan 2002 (the LP) states that development will only be permitted where it does not detract from the area's special character and it pays attention of the landscape qualities of the area.

19. The area is distinctly rural in character, comprising a series of open fields interspersed with rural built form. Whilst there are some variances in boundary treatments in the wider area, including some modern additions similar to the development here, fields are generally contained by traditional, dry stone walls. The appeal site plays a positive role in the wider character due to the retention of the well-preserved dry-stone wall which runs for a considerable length of its frontage with the road.
20. The development subject of the notice comprises the erection of a wall either side of a widened access to the appeal site. The walls are adjacent to the existing dry-stone wall which extends along the highway verge either side of the created access.
21. I saw from my site visit that, visually, there is a discordant contrast between the new wall and the old. I note the wall is constructed of more recent, locally sourced stone and naturally will not have been subject to the same extent of weather exposure than the existing wall. Clearly, that has resulted in a visually discernible variation in the colour of the two.
22. However, it will take a period of several years for the stonework to darken and there are no guarantees that it will darken sufficiently to blend with the existing wall. In any event, it is not just the colour of the stone that creates the discordant contrast. The stone used in the new walls is bonded together using mortar with a more regular course. Whilst I understand the appellant's practical reasons for doing so, this nevertheless provides a contrasting appearance to the random arrangement of the adjacent dry-stone wall. In addition, the long, flat coping stones appear at odds with the roughly spaced, vertically arranged capstones of the original wall. Moreover, the increased height of the walls above the existing wall only serves to emphasise the contrast.
23. As a result, I find the development has resulted in a discordant and obtrusive feature, which detracts from the character of the AHLV and fails to pay attention to its landscape qualities.
24. I conclude, therefore, that the development will have a harmful effect on the character and appearance of the area. Consequently, the development conflicts with Saved Policies GD1, ENV1 and ENV3 of the LP which state that development should be of a high standard of design, that development in the countryside should not unreasonably harm the landscape of the area and development in AHLVs should not detract from its special character. In addition, there is conflict with paragraphs 127 and 170 of the National Planning Policy Framework (the Framework) which state that development should be visually attractive, should be sympathetic to local character and should recognise the intrinsic character and beauty of the countryside. Although referred to in the Council's reasons for issuing the notice, paragraph 172 of the Framework is not relevant as it relates to National Parks, the Broads and Areas of Outstanding Natural Beauty.

Other Matters

25. I have considered the appellant's 'fallback' position of being able to reduce the height of the walls in line with the provisions of the GPDO. Nevertheless, it follows that a reduction in height of the means of enclosure, by virtue of its reduced mass, would have less of an impact on the character and appearance

of the area than the development as enforced against. As such, the fallback position would not justify the harm that I have identified in this instance and thus I afford it limited weight.

26. The appellant suggests that a 1m wall could be constructed of “rusty corrugated iron sheets and painted in bright pink and blue stripes”. Thus, it is intimated that any reduction in harm by virtue of the reduction in height of the walls could be embellished by the discordant nature of the materials. Whilst such a scenario may indeed be more harmful than the wall before me here, the appellant follows their statement with a clear indication that the appellant would not do such a thing. Thus, such a scenario is not a legitimate fallback position to which I can afford more than very little weight.
27. Likewise, the effect of the wall approved as part of the 2017 permission on the character and appearance would not be greater than that resulting from the development as enforced against. The existence of the permission would not therefore justify the harm I have found.

Conclusion

28. For the reasons given above, I conclude that Appeal B on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals A and B on ground (f)

29. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
30. The notice does not specify which of the two purposes it seeks to achieve. Nevertheless, the requirements are to dismantle the walls in their entirety, including posts, piers and gates. Essentially, it requires the removal of the wall that has formed part of the breach of planning control alleged in the notice. It is evident that, since there is no requirement to remove the widening of the access road element of the breach, the Council has chosen to “under-enforce” under section 173(3) of the 1990 Act.
31. Section 173(11) of the 1990 Act states that where an enforcement notice could have required any works to be removed, but does not do so, an unconditional planning permission shall be treated as having been granted by virtue of section 73A of the Act in respect of the development consisting of those works. Nevertheless, it should be noted that the permission will only come into effect when all the requirements of the notice have been complied with.
32. Nevertheless, I am satisfied that the purpose of the notice is to partly remedy the breach of planning control, as the requirements would have the effect of partly returning the land to its former condition prior to the breach taking place. As a result, I find the requirements of the notice do not exceed what is necessary to remedy the breach of planning control.

33. Case law has established that it is incumbent on me to consider an obvious alternative that would overcome the planning difficulties at less cost and disruption than total removal.
34. The appellants' suggestions to paint, taint, dust or colour treat the wall to soften the appearance may or may not overcome injury to amenity. However, that is not the purpose of the notice. In any event, in the absence of any particular details of how that would be done and therefore whether it would mitigate the harm identified in respect of the appeal on ground (a), I am unable to consider it as an obvious alternative.
35. In addition, I am aware that the 2017 permission remains extant. The appellants could therefore demolish the walls subject of the notice and then rebuild walls in accordance with the 2017 permission. However, it is clear from looking at the approved plans, that the approved walls are not in the same location or layout as that which has been built. As such, the wall would need to be largely demolished in those circumstances in order to build the extant wall in any case. Thus, the 2017 permission does not present an obvious alternative.
36. Likewise, the wall could be reduced to 1m in height in order to benefit from planning permission under the GPDO. However, there are no plans or evidence before me which shows that the wall could be practically reduced in height in practical terms nor that such a scenario would serve the same purpose as the development before me or indeed that it is likely to occur. Thus, there are no lesser steps beyond those set out in the notice that would remedy the breach.
37. As a result, Appeals A and B on ground (f) do not succeed.

Formal Decisions

Appeal A

38. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

39. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

J Whitfield

INSPECTOR