
Appeal Decision

Site visit made on 4 August 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2020

Appeal Ref: APP/P2365/C/19/3235072

Land to the south of Brooklands, 30 Parliament Street, Upholland, Skelmersdale, Lancashire WN8 0LN

- 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 Harvey Tongue against an enforcement notice issued by West Lancashire Borough Council.
 - The enforcement notice was issued on 18 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a retaining wall.
 - The requirements of the notice are:
 - (i) Form a compacted grassed and graded earth embankment (incorporating no additional retaining structures i.e. gabions) from the ground level on the lower garden level of "Brooklands" between points A and B as indicated upon Plan 1 and as shown on Plans 2 and 3.
 - (ii) Reduce the "above ground" retaining stone boundary wall in height (at the ground level along the entrance to Brooklands) to no more than 1.2 metres above existing ground levels, (5 metres in length from the existing stone pillar at the back edge of the pavement on Parliament Street) and remove any remaining length of wall as shown upon Plans 3 and 4.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

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

Preliminary Matter

2. The appellant's surname given in the banner heading above is taken from the appellant's appeal form, noting the discrepancy in the spelling between that and other submitted documentation.

The appeal on ground (a) and the deemed planning application

Background

3. The appellant purchased the house, Brooklands and refurbished the house including constructing the retaining wall, subject of the appeal. The house has since been sold however, the retaining wall and land to the south (lower garden) remain in the appellant's ownership.

4. In 2016 the appellant submitted a retrospective planning application for the retention of the retaining wall and construction of a boundary wall above ground floor level. That application was refused by the Council and subsequently dismissed on appeal¹. A further application was submitted for the retention of the retaining wall with amendments, planning application reference 2017/0822/FUL, which was also refused by the Council. It is against this background which I have considered the appeal.

Reasons

5. The main issues are the effect of the development on the setting of the Grade II listed building, Brooklands, and whether the development preserves or enhances the character or appearance of the Up Holland Conservation Area.
6. Brooklands is a 19th century building constructed from coursed squared sandstone under stone slate roofs in a Jacobean style. Three large gable bays face west, towards Parliament Street, with gabled bays facing south. It is a house of some status which would have stood in generous landscaped gardens, the extent of which would have reflected its status and this setting forms part of its significance.
7. Whilst the functional link between the lower garden and Brooklands may have been lost since they are now in separate ownership, the historic association remains, as would have the visual and physical association, prior to the erection of the retaining wall.
8. The Conservation Area is an historic village which occupies an elevated position and consists of largely residential buildings, mainly 19th and 20th century with terraced properties located along the frontage of the main streets contributing to very built up road frontages. Brooklands as an attractive historic property makes a positive contribution to the significance of the Conservation Area.
9. It is not disputed that historically there has been a driveway running from Parliament Street to the front of the house and down the eastern side, nor is it in dispute that the lower garden would have always been situated at a lower level than the house and upper garden. The main dispute relates to the extent of any boundary features which may have separated the land.
10. The appellant maintains that there has always been a wall running alongside the whole of the driveway, until it effectively collapsed and that the current wall is not as long and not positioned all the way around the driveway, as it has been in the past.
11. The Council stated that map regression (from the 1890's) indicates that the fall of the land to the south and east was designed into the landscape. Whilst it is acknowledged that the lower garden was always at a lower level from the main house it appears, based on the appellant's evidence, that it was accessed via a graded landscaped embankment consisting of planted terracing and a pathway. In this respect I note that the previous Inspector also concluded that historically there seemed to be a more gradual gradation between the main house and the garden.
12. The topographical survey submitted by the appellant indicates that there was a banking between the upper and lower garden levels overgrown with dense

¹ APP/P2365/D/16/3165277

trees and bushes. The photograph from the estate agent's particulars shows an overgrown embankment with what appear to be stones mixed in, the appellant contended these are the remains of the collapsed wall.

13. A photograph from 1900 appears to show a wall running along the eastern side of the driveway however, it is not clear from the evidence whether it extended the length of the existing driveway such that it separated the upper and lower gardens or that it included a significant retaining wall. Whilst the appellant estimated that the previous wall would have been around 1.5m in height above the level of the driveway, there is no evidence to support this view. Furthermore, I note that the previous Inspector found that a low-level wall marked the top of the bank other than for a short section of return wall at the Parliament Street entrance.
14. The setting of a heritage asset is not a fixed concept; it is concerned with the way the heritage asset is experienced. The retaining wall is a substantial structure the effect of which has been to sever the connection between the upper and lower garden, such that the lower garden now appears to have no physical or visual relationship with Brooklands. I consider that the retaining wall has weakened the appreciation of the asset by eroding its generous landscaped situation, thus causing harm to its setting and detracting from its contribution to the character and appearance of the Conservation Area.
15. Notwithstanding the appellant's comments about the extent of views from within Brooklands, the relationship between the upper and lower garden would have been appreciated by the occupants when using the gardens. Although wider public views of the retaining wall are limited to glimpses down the driveway of Brooklands and over the wall adjacent to Parliament Street, I am mindful that the statutory requirement relating to the special regard to be had to the desirability of preserving the setting of a listed building, is not dependent on public views of relevant changes.
16. Whether or not the development of five houses on land broadly east has affected the setting, this does not justify granting planning permission in the context of the special regard that must be paid to the desirability of preserving the setting of the listed building and, preserving or enhancing the character or appearance of the Conservation Area as a whole.
17. The appellant contended that the purpose of the enforcement notice is to prevent the lower garden being capable of development. However, there is no substantive evidence that this is the case, and, in any event, I have considered the development on its own merits on the basis of the submitted evidence and my site observations.
18. Given the scale of the development, I consider the harm to the designated heritage assets to be less than substantial. Nevertheless, I am mindful that in the National Planning Policy Framework (the Framework) paragraph 193 says great weight should be given to the conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification.
19. Paragraph 196 states that where a proposal would lead to less than substantial harm to the significance of such an asset, that harm should be weighed against the proposal's public benefits including, where appropriate, securing its optimum viable use. This requires a balancing exercise of harm against the public benefits of the development.

20. I acknowledge that the retaining wall was erected to provide stability to the driveway in the interests of safety. However, it has not been demonstrated that the appeal scheme is the only means by which the desired stability could be provided, and, in any event, the enforcement notice does not require the removal of the below ground structure. Therefore, this is a matter of limited weight.
21. Consequently, the public benefits do not outweigh the great weight that I am required to attach to the heritage assets' conservation. I conclude that the retaining wall causes harm to the setting of the listed building and fails to preserve or enhance the character or appearance of the Conservation Area contrary to the design and heritage protection aims of Policies EN4 and GN3 of the West Lancashire Local Plan 2012-2027 Development Plan Document. It also fails to accord with national policy which seeks to conserve and enhance the historic environment.

Other Matters

22. I have had regard to the extract from the appellant's Counsel opinion however, whilst it reinforces the appellant's concerns regarding the Council's approach to the investigation and associated applications, it simply confirms that some form of retaining structure is required.
23. The misgivings expressed about the Council's approach to the investigation including the delays in issuing the enforcement notice have no bearing on the planning merits of the development.
24. For the above reasons and with regard to all other matters raised, I conclude that the appeal on ground (a) should not succeed.

The ground (f) appeal

25. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the notice requires remedial works to be undertaken to restore an embankment between the two areas of land and reduce the height of the wall. I therefore find that the purpose of the notice is to remedy the injury to amenity.
26. The appellant's arguments under this ground are that the requirements would result in some structural complications. Also, that it would prevent the owners of Brooklands from being able to erect gates to their property without having vehicles on the highway and allowing vehicles to turn and come out in a forward gear safely. Additionally, they suggested that the proposed scheme as applied for in 2017 is an acceptable alternative.
27. It was suggested that placing clay against the wall could lead to overall failure of the retaining wall and that any vibration or disturbance during any works on the entrance wall may cause further damage to the wall adjacent to the pavement on Parliament Street. However, such comments, were not based on the detailed design of the wall and no analysis was carried out to confirm the capacity of the wall with and without the additional height.

28. It was also stated that placing clay would block the passage of water from the weep holes in the wall which would increase pressure and *could* [my emphasis] lead to overall failure of the retaining wall. However, I note that drawing number 099/PL/110 submitted as part of the appellant's 2017 application, proposed the use of a clay, sand and broken bricks mix. This was also shown in a section drawing produced by a consulting civil and structural engineer, submitted by the appellant.
29. Given the lack of substantive detailed evidence and ambiguity regarding the suitability of materials, it has not been demonstrated that the requirements would result in structural complications and this is a matter of little weight in my assessment. Additionally, there is no substantive evidence that the reduction in height or length of the wall would result in erosion due to water run-off.
30. The Council considered that the best-case scenario would be the removal of all the above ground wall, such that there is no visual separation between the upper and lower gardens and based on my findings above, I share this view. Nevertheless, the Council acknowledged that in order that a set back gate to the driveway of Brooklands can be provided, it would be necessary to have something to fix the gate onto.
31. In determining what would be a reasonable length to be retained, the Council considered that should be the length of a car parking space, as recommended by Lancashire County Council as the local highway authority.
32. There is adequate room to the front of the house to enable a vehicle to turn and leave the site in a forward gear. Having regard to the above, in the absence of substantive evidence to demonstrate that the requirements would lead to a risk to highway safety, this is a matter of limited weight.
33. The appellant submitted a bat survey which concluded that the walls were deemed to offer negligible potential for roosting bats. Further, that as only a single dropping was found in an expansion joint within the northern wall, it was assumed that this was only an occasionally occupied roost, as no other evidence of bat occupancy was found.
34. Whilst it was recommended that the walls and the surrounding area are left as they are, this was to ensure continuity of biodiversity on the site, and its surrounding area. However, as there is no evidence of a protected species likely to be adversely affected by the requirements of the enforcement notice, this cannot outweigh the harm to the designated heritage assets.
35. The 2017 proposal included gabions to the lower sections of the embankment and a tall above ground wall. As acknowledged by the Council, the scheme went some way to addressing the harm and would represent some improvement in that a large part of the retaining wall would be concealed by landscaping. However, the bottom of the embankment would be cut back, and gabions installed creating a hard edge resulting in an engineered and incongruous intervention which, when combined with the height and length of the above ground wall would continue to have the effect of separating the areas of land. Consequently, it would not overcome the identified harm.

36. Overall, for the reasons given, I find that the requirements of the notice are not excessive in order to remedy the injury to amenity. The appeal on ground (f) therefore fails.

Conclusion

37. For the reasons given above, I conclude that the appeal 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.

Felicity Thompson

INSPECTOR