



Appeal Decisions

Site visit made on 10 May 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2022

Appeal A Ref: APP/W0910/C/21/3287567

Appeal B Ref: APP/W0910/C/21/3287568

Land at Ruskinville, Abbey Road, Dalton in Furness LA13 0PE

- 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 John Cooper (Appeal A) and Ms Rebecca Cooper (Appeal B) against an enforcement notice issued by Barrow-In-Furness Borough Council.
- The enforcement notice was issued on 13 October 2021.
- The breach of planning control as alleged in the notice is, without planning permission the carrying out of development on the Land namely the erection of a garage (part built) comprising of a steel frame, concrete block walls, foundations, concrete floor slab, and pre cast concrete retaining wall with steel piers adjacent to south elevation with short return to west elevation, and the formation and laying out of an area to provide car parking and manoeuvring comprising excavation and levelling of sloping ground, the erection of retaining walls and the laying of an area of hard crushed stone as the subbase, and the layout and formation of an access track in crushed stone connecting the above to the public highway and being development subject of planning application (LPA ref B18/2021/0371) dated 15/04/2021 and which was refused planning permission by decision notice 6 October 2021 and in the approximate position marked with crosses on the attached plan.
- The requirements of the notice are:
 1. In respect of the garage and retaining wall adjacent to south elevation with short return to west elevation, to dismantle the steel frame, demolish all walls and retaining walls including steel piers and remove the concrete floor slabs and crushed stone sub base;
 2. In respect of the parking/manoeuvring areas and access track to remove all crushed stone and retaining walls; and,
 3. Reinstate the Land to achieve its former level and natural gradient, and to its former condition as open agricultural land forming part of the adjacent field and remove any arising debris or other waste materials from the site.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(c), (a), (f) and (g) 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.
- Appeal B is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Appeal C Ref: APP/W0910/W/21/3293727

Land at Ruskinville, Abbey Road, Dalton in Furness LA13 0PE

- 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 Mr John Cooper against the decision of Barrow-In-Furness Borough Council.
- The application Ref B18/2021/0371, dated 15 April 2021, was refused by notice dated 6 October 2021.
- The development proposed is the construction of a new garage and driveway.

Summary of Decision: The appeal is dismissed.

Background

1. The appellants sought planning permission for the construction of a new garage and driveway on the Land in April 2021. The development had already commenced. Planning permission was thereafter refused by the Council on 6 October 2021. An appeal against that refusal is the subject of Appeal C. The appellants ceased work on the development before its completion. An enforcement notice against the development was thereafter issued by the Council on 13 October 2021. Appeals against the enforcement notice are the subject of Appeals A and B.

Appeals A and B on ground (c)

2. Appeals on ground (c) are made on the basis that the matters stated in the notice to constitute a breach of planning control do not constitute a breach of planning control.
3. The appellants' submissions on the ground (c) appeal relate only to the access track, the hardstanding area and the retaining walls. It is said that those elements of the breach are granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Article 3(1) of the GPDO grants planning permission for those classes of development defined as permitted development in Schedule 2.
4. Class B of Part 6 sets out that permitted development comprises the carrying out on agricultural land comprised in an agricultural unit, of not less than 0.4 but less than 5 hectares in area, of development consisting of, amongst other things, the provision of a private way and the provision of a hard surface, where the development is reasonably necessary for the purposes of agriculture within the unit.
5. The appellants state that they have around 2 hectares of agricultural land at the appeal site and thus the access track and car parking area are permitted development under Class B. The Council's submissions do not appear to clearly articulate any response to that proposition. The principle held by the High Court in *Gabbitts*¹ was that if there is no evidence to contradict the appellant's version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
6. Nevertheless, I am not satisfied that the appellants' evidence is sufficiently precise and unambiguous. Very little evidence detailing the extent or location of the agricultural unit has been provided. Indeed, there is nothing before me which shows that the Land is within the agricultural unit. Moreover, the appellants have provided very little evidence to demonstrate that the access track and car parking area are reasonably necessary for the purposes of

¹ *Gabbitts v SSE & Newham LBC* [1985] JPL 630

agriculture within the unit. Furthermore, permitted development under Class B is subject to the limitations set out in paragraphs B.1 – B.4 and the conditions set out in paragraph B.5. There is no evidence before which shows that the access and parking area would not fall within any of the limitations nor that they would meet the conditions set out in B.5. As a result, I find on the balance of probabilities, that there is insufficient evidence to conclude that the access track and car parking area would fall to be considered as permitted development under Class B of Part 6 of Schedule 2 of the GPDO.

7. The appellants also point to Class A of Part 2 of Schedule 2 of the GPDO which sets out that that the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure is permitted development. The appellants state that the retaining walls fall within the parameters of Class A of Part 2 and are thus granted planning permission by Article 3(1).
8. The Courts have held that in order to benefit from the permitted development right, the wall must have some function of enclosure. In this instance, I am satisfied that the retaining wall to the south and west of the garage does have such function, containing as they do the garage and the land upon which it sits. In addition, there is no reason for me to conclude that the walls exceed the 2m height restriction in the limitations set out under paragraph A.1.
9. Nevertheless, it is clear that the retaining walls were constructed as part of wider engineering operations to facilitate the construction of the garage and provision of the parking area and access. The courts held in *Garland*² that when operations are undertaken contemporaneously, the development as a whole must be considered, not the individual components. One cannot look at the retaining walls in isolation out with their intended function to facilitate the construction of the garage. Thus, the walls cannot benefit from the planning permission granted by Article 3(1) of the GPDO.
10. The appeals on ground (c) therefore fails.

Appeal A on ground (a) and Appeal C

Preliminary Matters

11. The two appeals effectively relate to the same development, albeit Appeal C relates to the proposal for the completed development, whilst Appeal A deals with the partial construction subject of the enforcement notice. Nevertheless, in respect of Appeal A the main frame of the building has been erected. The exterior walls have not been completed but nevertheless the assessment of the two developments in respect of the main issues is broadly similar. Thus, I have dealt with both appeals in the round.

Main Issues

12. The main issues are:

- the effect of the developments on the character and appearance of the area, including the effect on protected trees; and,
- the effect of the developments on highway safety.

² *Garland v City of Westminster* (1968) 20 P & CR 93

Character and Appearance

13. The appeal site is located in an area of largely open countryside between the settlements of Dalton-in-Furness and Barrow-in-Furness. The locality is characterised by rolling fields, large mature trees and a sense of openness derived from limited built form. The appeal site and the immediate area surrounding it comprise of Ruskinville, the large dwelling adjacent the appeal site, along with the attached dwelling shown as Ruskin Cottage on the plans and the adjacent detached property Beckans Gill House. The three properties along with their gardens and the mature trees which border them, give the sense of an isolated, neatly contained element of built form within the otherwise open landscape.
14. Adjacent to the driveway and the hardstanding areas are around 14 sycamore trees of considerable height. I was able to see from my site visit that they are attractive specimens and make a considerable, positive contribution to the visual character of the area. Moreover, the size and arrangement of the trees is such that they play a key role in containing the extent of built form of Ruskinville and the adjacent properties.
15. The garage measures around 12.2m by 18.3m in footprint with an eaves height of around 4.8m. As a consequence, it has resulted in the introduction of an element of built form in the landscape which is of considerable size and scale.
16. I note that the garage is designed to accommodate the appellant's need for up to four vehicles, a workshop, a storage area for 200 hay and straw bales, 7 tonnes of animal feed and a sit down tractor. I also note that the building is designed to have the appearance of an agricultural building rather than a domestic outbuilding.
17. However, whilst such a design in isolation may be commonly found within rural areas, in this context the building appears as a dominant addition due its size and siting. It gives the sense of further extending the envelope of built form here, extending as it does beyond the bulk of the tree line to the front of Ruskinville. As a consequence of its positioning, I was able to see from my site visit that the building is clearly visible in views from Abbey Road, despite the significant distance it is set away from the road itself.
18. Moreover, the long, sweeping driveway and large parking area has introduced a significant element of hardstanding to the Land which appears in stark contrast to the gentler, open fields to the north of the property and beyond. The appellant suggests that they are open to an alternative finish to the hardstanding area but little details of an appropriate alternative have been put before me.
19. The drive and parking areas are located within the root protection zones of several trees which are subject to Tree Preservation Orders. A Tree Condition and Management Report dated 10 February 2022 assessed those trees amongst a total of 25 trees in and around the appeal site. The report indicates that the trees are relatively healthy and can expect to have capacity to live for many years.
20. The appellant states the tree report sets out that the trees have not been harmed by the developments and there is no reason to believe that the health of the trees will be impact by the developments.

21. However, beyond noting generally that sycamores are a robust species that can often survive with interference to their rooting environment, the report does very little to assess the impact upon the trees of the driveway and hardstanding areas and no such conclusion is set out therein. As a result, it seems to me in the absence of evidence to the contrary, the proximity of the driveway and hardstanding is likely to undermine the health of the protected trees which make a significant positive contribution to the character and appearance of the area.
22. The developments as a whole have in essence resulted in a significant addition of urbanised built form to the detriment of the rural character of the landscape upon which the appeal site sits. Consequently, I consider the developments does not respect the form and character of the surrounding area.
23. I conclude, therefore, that the developments will have a harmful effect on the character and appearance of the area. As a consequence, they will conflict with Policy H6 of the Barrow Borough Local Plan 2016-2031 (2019) (the LP) which states that proposals for ancillary buildings in the countryside will be permitted only where the building respects the surrounding landscape with regard to scale, design and use of materials. The developments also conflict with Policies DS5 and N4 of the LP which state development must integrate with the natural environment and that trees which positively contribute to the visual amenity of an area will be protected. Finally, there will be conflict with LP Policy DS2 insofar as it states development should contribute to the enhancement of the character and appearance of related landscapes, settlements, opens space and trees.

Highway Safety

24. The appeal site lies adjacent to Abbey Road. I was able to see from my site visit that Abbey Road is a single-carriageway road carrying traffic between Barrow-in-Furness and Dalton-in-Furness. I saw it carried a steady stream of traffic at reasonably high speeds. Whilst only a snapshot at a particular point in time, I have no reason to conclude that my observations were not representative of typical road conditions.
25. The developments include the provision of an access onto Abbey Road to serve a newly created driveway which measures around 100m in length. The driveway leads to a hardstanding area set out around the garage.
26. An appeal was dismissed in March 2021 on land at Abbey Road/Crompton Drive³ for a new access to a development of 11 houses. At application stage the Highway Authority raised no concerns on highway safety grounds. Nevertheless, at the appeal, the Highway Authority raised concerns that the development in that instance would introduce a second access resulting in additional turning movements and slow moving traffic, increasing potential conflicts and thus an increased accident rate. The Inspector, whilst noting the change in the Highway Authority's position, did not conclude on the matters since they were dismissing the appeal for other reasons.
27. In this case, the Highway Authority initially raised no objection subject to a condition requiring the existing access to be closed. However, it is intended for

³ APP/W0910/W/20/3262506

the existing access to remain in order to continue to serve the adjacent two properties.

28. The Council say that the previous change in advice on the Crompton Drive appeal means less weight should be attributed to the Highways Authority's lack of objection here. However, it is clear from the comments on the Crompton Drive appeal that the Highway Authority do not have the same concerns here. When informed that the original access would remain, the Highway Authority maintained no objection to the scheme.
29. Indeed, it seems to me that access here will not facilitate an increase in vehicular movements since there is no increase in the number of dwellings. Moreover, as the Highway Authority point out, the new access has improved visibility over the existing, which I was able to see from my site visit. Thus, the developments decrease the number of vehicular movements using the existing access which has poorer visibility. I note the evidence put to me of a fatal collision on this stretch of Abbey Road in 2020. However, whilst I fully understand a heightened sense to ensure highway safety in the area as a consequence, there is no evidence before me that this tragic occurrence resulted from vehicular movements into or out of accesses on Abbey Road. As a result, on the evidence before me, it seems to me that the developments are unlikely to increase the risk of vehicular collisions on Abbey Road to the detriment of highway safety.
30. The Council also raises concerns that the developments would heighten pressure for additional accesses. However, as set out above, there would be no material increase in the number of vehicular movements onto Abbey Road, with the new access providing improvements to visibility. In any event, each case should be considered on its individual merits.
31. I conclude, therefore, that the developments will not have a significant harmful effect on highway safety in the area. As a consequence, they will comply with Policy DS2 of the LP which states that development should not prejudice road safety.

Conclusion – Appeal A

32. Whilst I have found the development will be acceptable in highway safety terms, I have found that it will have a harmful effect on the character and appearance of the area. That is the prevailing consideration. As a result, for the reasons given above, I conclude that the appeal should be dismissed and the deemed application for planning permission should be refused.

Conclusion – Appeal C

33. Whilst I have found the development will be acceptable in highway safety terms, I have found that it will have a harmful effect on the character and appearance of the area. That is the prevailing consideration. As a result, for the reasons given above, I conclude that the appeal should be dismissed.

Appeals A and B on ground (f)

34. An appeal on ground (f) is made on the basis that the requirements of the notice are excessive. Section 173(4) of the 1990 Act states that the purposes of an enforcement notice are to: (a) remedy the breach of planning control; or, (b) remedy any injury to amenity.

35. The notice states that the purpose of the notice is to remedy the injury to amenity caused by the breach. Nevertheless, given the requirements are to remove the development which comprises the breach from the Land, it seems to me that the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place under section 173(4)(a).
36. In any event, the requirement to remove the development and reinstate the Land to its former level and natural gradient does not go beyond what is necessary to remedy the breach or indeed remedy injury to amenity, since I have found on the appeal on ground (a) that the development as a whole is harmful and conflicts with the development plan. The steps required to be taken in the notice are not therefore excessive.
37. The appellants' case on ground (f) is that it is excessive to remove the elements of the development which they consider to be permitted development. However, as set out in the appeals on ground (c), I have found that no part of the development is granted permission under Article 3(1) of the GPDO. As a result, it is not excessive to require the removal of those elements.
38. The appeals on ground (f) therefore fail.

Appeals A and B on ground (g)

39. An appeal on ground (g) is made on the basis that the time for compliance with the requirements of the notice is too short. The notice gives 6 months for compliance.
40. The appellants state that the notice should give 12 months for compliance, as a summer period is ideally needed to carry out the works. However, there is no evidence before me that the required remedial works could not be feasibly carried out during the winter months. Moreover, I consider a 12 month period would be unduly long and would not deal with the planning harm which arises from the development which the necessary expediency.
41. The appeals on ground (g) therefore fail.

Decisions

Appeal A

42. 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.

Appeal B

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

Appeal C

44. The appeal is dismissed.

J Whitfield

INSPECTOR