
Appeal Decision

Site visit made on 13 September 2022

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2022

Appeal Refs: APP/Z4718/C/22/3290845 & 3290846 22 Town Head, Honley, Holmfirth HD9 6BW

- 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 Claire Laycock and Paul Laycock against an enforcement notice issued by Kirklees Metropolitan Council.
 - The enforcement notice, reference DEV/HG/GDM/D231287 was issued on 21 December 2021.
 - The breach of planning control as alleged in the notice is as follows: The demolition/removal of the boundary dry stone wall at the front of the site, (Conservation Area).
 - The requirements of the notice are as follows:
 - (a) Rebuild a dry stone wall to the front of the site to match the condition of the wall prior to it being demolished, rebuild to the same height, design, position and using materials to match materials that previously existed as shown highlighted in red on the attached photograph COMP/01.
 - (b) Resite the wall post back to its original siting as shown highlighted in blue on the attached photograph COMP/01.
 - (c) Remove from the land any rubble and materials arising from the carrying out of the above steps.
 - The period for compliance with the requirements is 45 days.
 - The appeals are proceeding on ground (c) only, as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decision

1. The appeals are dismissed. See formal decision below.

Matter of clarification

2. The appeals are proceeding on ground (c) only. This is made on the basis that a contravention of planning control has not occurred. Thus, the merits of the case are not before me. Any references to the development plan policies are not relevant to my consideration as to whether or not the demolition of the wall constituted a breach of planning control.

Background information

3. The stone-built, terraced appeal property at No 22 is located on the north side of Town Head and lies within the designated Honley Conservation Area (HCA). Town Head is a narrow lane leading off from Church Street where it forks off to the south-west at Berry Croft. The surrounding area is predominantly residential and generally comprises terraced stone houses with stone and slate roof tiling.

4. Like many of the properties in the locality No 22 has a small garden to the front and rear. The front garden is has been hard gravel surfaced and, at the time of my visit, a car was parked on the land. Having seen the general layout of the houses within the HCA it is clear that many have dry stone wall front boundaries and a few have hard standings or short driveways to their frontages.

5. During my visit I noted that the gap between the originally located stone pillar (to the east) and the re-located one (to the west) was around 4m, thereby allowing sufficient width for the vehicle access. It had originally been around 2m wide, sufficient for access by a small van to a house to the rear.

6. As indicated above, a section of the dry stone front wall (approximately 2m) was demolished to provide the off-street parking space in the front garden. The original (west) stone pillar was re-used. On the highway side the evidence indicates that the dry stone wall had been around 1.2m high, but on the garden side the height was varied and slightly lower. The Council has submitted photographic evidence to confirm this as have some interested persons.

7. Following the demolition of the section of walling the appellants had applied for a Lawful Development Certificate (LDC) on the basis that the demolition constituted permitted development. However, the LDC application was refused. An earlier planning application for the vehicular access appears to have been withdrawn

8. After the LDC was refused the evidence indicates that the appellants then re-built the wall but not to its original height and not with the previous stone coping to match the remaining section of wall. However, since then this lower section has been increased in height and the wall has been re-built to its correct height and with the original matching coping stones.

9. The overall result, as inspected during my visit, is that the wall abutting the highway is now around 2m shorter in length than the original in order to create the opening for the vehicular access. Photographs submitted by the Council and others show the situation as it originally existed and as it was rebuilt following the LDC refusal. The photographs include images of refuse bins in front of the wall and a tape measured image showing clearly that it exceeded 1m in height.

10. From this evidence it is clear to me that, prior to the demolition of the 2m or thereabouts section, the wall was clearly in excess of 1m in height and the opening between the stone pillars was around 2m, as opposed to the current 4m width.

The appeal on ground (c)

11. The appeals are made on the basis that a contravention of planning control has not occurred. The onus is upon the appellants to demonstrate that this is the case.

12. It is argued that that planning permission would not have been required, or is not required for the demolition carried out to the dry-stone boundary wall, as it constituted Permitted Development as per Schedule 2, Part 11, Class C of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (GPDO).

13. However, as indicated by the Council, the appellants have failed to note the necessary conditions set out in the GPDO. Condition C.1 states: '*Development is not permitted by Class C if the demolition is 'relevant demolition' for the purposes of section 196D of the Act (demolition of an unlisted etc building in a conservation area)*'.

14. In this case, because the wall was originally over 1m in height and abuts the highway (my underlining) the demolition carried out amounted to '*relevant demolition*' for the purposes of section 196D of the Act. Only if the whole of the wall had originally been below 1m in height would it have constituted permitted development. The photographic evidence, as referred to above, clearly indicates that prior to the works being carried out the wall was 1.2m in height and, therefore, section 74 of the Planning (Listed Buildings and Conservation) Areas Act 1990 applies. It follows that an application for demolition of the wall within the HCA would have been necessary.

15. I have noted the appellants' reference to where the height of any wall should be measured from, in relation to whether it constitutes PD. However, in this case there can be no argument that the height must be taken from where the wall abuts the highway. If a wall abutting a highway exceeds 1m in height then, for the reasons set out above, its demolition cannot constitute permitted development. This is the case even if the wall varies in height along its length or on the opposite side, as in this case.

16. No application was made to the Council for the demolition of the wall and as the works cannot constitute permitted development under the GPDO, a contravention of planning control has occurred. The appellants have failed to demonstrate that this is not the case and it follows that the appeals on ground (c) must fail.

Other Matter

17. Appeals on ground (g) were not made. However, if the 45 day compliance period proves to be difficult under current circumstances then the LPA is not precluded from extending the period by agreement.

Formal Decisions

18. The appeals are dismissed and the enforcement notice is upheld.

Anthony J Wharton

Inspector