



Appeal Decision

Site visit made on 11 July 2023

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 13 November 2023

Appeal Ref: APP/P2935/C/23/3318195

Woodlands Rise, Corbridge Road, Hexham, NE46 2PG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Barratt Homes North East against an enforcement notice issued by Northumberland County Council.
- The notice was issued on 2 February 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the construction of a retaining wall faced with anthracite grey split stone facing, in the approximate position and shown in red on the plan attached to the notice.
- The requirements of the notice are to: Remove from the retaining wall the anthracite grey split stone facing and replace this with natural stone which shall be laid with its natural quarry bed horizontal, and with mortar to match the natural colour of the stone, and with flush joints.
- The period for compliance with the requirement is: 12 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) 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.

Decision

1. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Ground (c)

2. The appeal on ground (c) is that there has not been a breach of planning control. This is a legal ground where the onus of proof lies on the appellant to present their case to the standard of the balance of probabilities.
3. The appeal site forms part of a development of 122 houses for which outline planning permission ref: 13/01208/OUT was granted, with all matters reserved except for access. Subsequently, planning application ref: 15/02221/REM was made, seeking approval for details of scale, appearance, landscaping and layout. This application was permitted with condition 2 attached which required the following:

'Notwithstanding any descriptions of the materials in the application, no construction of the external walls of any of the new dwellings above damp proof course level shall be commenced, or construction of the boundary walls and feature entrance, until precise details to include samples of the materials to be used in the construction of the external walls and roofs have been submitted to, and approved in writing by, the LPA. All roofing and external fencing materials used in the construction of the development shall confirm to the materials thereby approved'.

4. With regard to the detailed wording, the Council state that condition 2 sought details and samples of the materials to be used in the construction of the boundary walls and feature entrance, external walls and roofs. The condition is not particularly well drafted, but from my reading of it on its face, it is apparent that the boundary walls and feature entrance are included in the list of elements whose construction may not commence until the requested details have been approved.
5. The precise details and samples are sought for 'the external walls and roofs'. It is more likely than not that the 'external walls' in line 5 refers back to the 'external walls of any of the new dwellings' in line 2. There is nothing to indicate that any boundary walls to plots or the outer perimeter of the whole development are included in either instance. The word 'fencing' in the penultimate line appears to have been an error.
6. The appellant submitted details for approval under application ref: 16/00638/DISCON. They argue that approval for the anthracite grey wall facing was not sought through this application as its approval was not required within the wording of condition 2. From the evidence before me, I find that this interpretation is correct. Furthermore, it is unclear why the Council would have discharged this condition if they had not received all the details that they sought.
7. Nevertheless, in order to succeed on ground (c), the appellant needs to demonstrate, on balance of probability, that the wall at its built height and dimensions, has planning permission.
8. Condition 5 of the outline planning permission, ref: 13/01208/OUT, says:

'The development hereby approved shall be completed in strict accordance with a fully dimensioned layout plan incorporating road drainage, street lighting and landscaping together with a longitudinal section of the new road and details of construction of the carriageway, footpaths and accesses which shall first have been submitted to and approved in writing by the Local Planning Authority.'
9. To discharge that condition, the appellant submitted the plan named 'Proposed Levels, Rev 101, revision E (RWO drawing)'. The drawing clearly shows a wall in a broken red line, marked 'Rwall' for 'retaining wall', in the location of the structure that is the subject of the appeal. At the western end, the wall is shown to reach a proposed height of around 0.6m. Approximately halfway along, the proposed height rises to about 1.5m, dropping to about 1.2m at the eastern end. It is clear from this evidence that these are the permitted heights as they are part of the 'fully dimensioned layout plan' sought by condition 5.
10. Therefore, even if the facing of the boundary wall remained at the discretion of the appellant, there is no evidence that the wall as built has planning permission, or that planning permission was not needed for it.
11. The appeal on ground (c) therefore fails.

Ground (a)

12. Ground (a) is that planning permission should be granted for what is alleged in the notice.

Main Issue

13. The main issue is the effect of the development on the setting of the grade II listed building, and the character and appearance of the surrounding area.

Reasons

14. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out that, in considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
15. The National Planning Policy Framework (NPPF) sets out that heritage assets should be conserved in a manner appropriate to their significance. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to its conservation.
16. The NPPF says that significance derives not only from a heritage asset's physical presence, but also from its setting, and makes clear that significance can be harmed by development within the setting. It defines setting as the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

Significance

17. The grade II listed Red Lion Cottage is a former public house dating from the late 18th century. The main body of the building stands at two storeys high with a five bay frontage. On one side of the two storey section is a single storey annex with two windows. On the other side is a small lean-to with a further gabled single storey structure. The building is of rubble with quoins in a mellow buff sandstone. The slate roofs have a steep pitch, stone verges and prominent brick gable end chimneys.
18. The main façade has a symmetrical composition with the entrance door placed centrally in a sandstone surround. On either side are two ground floor and two first floor sash and case windows set regularly within the elevation. All the windows have heavy sandstone lintels. The single storey extensions have irregular openings and rougher stonework, but generally reflect the appearance of the main building.
19. Although the building lacks ornamentation in terms of its architectural treatment, the symmetry of the main façade gives it formality and presence in its roadside location. It has a strong coherency arising from the consistent use of the historic materials throughout. Despite some changes, the overall historic form and character of this handsome and imposing listed building remain legible, and the factors I have identified contribute to its significance.
20. The listed building sits on the outskirts of the settlement of Hexham. It is now surrounded by modern development to the south of the A695, which includes new housing and the Hexham Mole Stores premises. However, despite these encroachments, the building's surroundings are enhanced by the grassy areas,

the trees and the mature planting around it. Overall, the area retains a leafy openness that marks the transition to the open countryside not far away.

21. In terms of boundary treatments, the fields to the north of the A695 are contained by timber fencing. Although it looks modern, the timber has weathered down to a mellow appearance that keeps in with its natural surroundings. Vertical timber fencing is also a feature of the new housing development, and this will undoubtedly weather down in time to a similar appearance.
22. I also noted a stretch of stone wall that runs along the boundary of the plot of Red Lion Cottage back towards the new housing immediately behind it. This wall blends in well with the natural colours and tones of the listed building, complementing the character of the building and keeping in with its surroundings.
23. These features therefore provide a setting that contributes positively to the understanding and experience of Red Lion Cottage and its significance as a listed building.

Effect of the development

24. The retaining wall is clearly intervisible with the main façade of the listed building, sitting just on the other side of Coach House Drive. I am therefore satisfied that it forms part of the setting of the heritage asset.
25. With reference to general design principles, Policy QOP 1 of the Northumberland Local Plan (NLP) requires development to make a positive contribution to local character and distinctiveness. It should have particular regard to, amongst other things, distinctive local architectural styles, detailing and materials.
26. The appellant explains that the appointed contractor had used the material on a retaining wall elsewhere in Hexham, and so they assumed that the use of the material was acceptable in principle. It was also chosen as a material that would weather well, and is a product and system that is used as standard by the appellant throughout the north-east.
27. With reference to the specific site, the appellant states that the anthracite grey colour was chosen to complement the roof tiles of the new houses within the development. Whilst that is the case, there is no evidence that matching the colour of boundary treatments to roofs is characteristic of the surrounding area. From my assessment, I saw that the colour of the stone boundary walling and the timber fencing in the area provide a clear contrast to the grey slate roof of Red Lion Cottage, and the roofs of the newer houses.
28. Although the surface of the wall has been detailed to resemble hewn stone, the grey colour has a dull, synthetic tone that looks strikingly out of place in comparison to the mellow natural tones of the listed building, and of the trees and greenery that make the area attractive. As a result, the structure does not reflect the local architectural detailing and materials. Instead, it harmfully dominates the character and appearance of the surrounding area, and detracts from the setting of the adjacent heritage asset. This effect is exacerbated by the fact that the wall steps up to a substantial height at the end nearest to Red Lion Cottage.

29. I therefore find that the setting of the listed building is unacceptably harmed by the development. Accordingly, the development conflicts with the overarching statutory duties as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight, and with the environmental objective of protecting and enhancing the historic environment set out in the NPPF.
30. In addition, the appeal scheme conflicts with NLP Policy ENV 7, which seeks to ensure the conservation and enhancement of the significance, quality and integrity of Northumberland's heritage assets and their settings, and with NLP Policy QOP 1, which protects local character and distinctiveness.
31. Although serious, the harm to the heritage asset in this case is less than substantial, within the meaning of the term in paragraph 195 of the NPPF. Paragraph 196 requires that, where there is less than substantial harm, the harm should be weighed against the public benefits of the development.
32. The wall clearly forms an important function in terms of forming the boundary structure to the housing development. However, this benefit is not dependant on the appearance of the facing material used for the wall, which limits the weight I can attach to this factor.
33. I therefore find that insufficient public benefits have been identified that would justify or outweigh the harm I have identified to the heritage asset. The scheme therefore conflicts with the NPPF, which directs, at paragraph 193, that great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Other matters

34. The Council also refer to the effect of the development on the setting of the Hexham Conservation Area (CA). Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas in the exercise of planning functions.
35. On my site visit, I saw that the eastern-most edge of the CA is located at around 0.8 miles from the appeal site. Moreover, when looking towards the main settlement of Hexham from the road adjacent to the appeal site, the built form of the CA is all but imperceptible. It is not until one is considerably closer to the edge of the CA that any of its significant elements become apparent. For that reason, I am satisfied that the development preserves the setting and significance of the CA, and that the statutory duty is met in this regard.

Conclusion on ground (a)

36. For the reasons set out, the development unacceptably harms the setting of the listed building, and the character and appearance of the surrounding area. It is therefore contrary to the development plan as a whole. The appeal on ground (a) therefore fails, and the deemed planning application is refused.

Hidden ground (f)

37. Ground (f) is that the steps required to comply with the requirements of the notice are excessive. Although the appellant has not ticked ground (f) on the appeal form, the main parties have provided some discussion of the

implications of carrying out the requirements of the notice. I shall treat these statements as a hidden ground (f).

38. Although the notice attacks the whole structure of the wall, it requires only that the grey anthracite facing material be removed and replaced with natural stone facing. In their statement of case, the Council suggest a lesser step, which is to leave the anthracite grey layer in place and face it in stone.
39. In response, the appellant states categorically that this lesser step is not possible. This is because the grey material is not purely an aesthetic finish but is integral to the function of the 'lock and load' gravity retaining wall. They argue that the system is not designed to enable a further facing material to be tied into the outer face of the wall, as this would impose a structural load on the wall which could cause it to fail.
40. In view of the appellant's evidence on this matter, it is not open to me to amend the requirements to incorporate the Council's suggestion. I note that the appellant equally states that the refacing of the wall is not possible either. However, the breach must be remedied as no planning permission exists for the wall as built. In the absence of any other apparent solution, the requirements of the enforcement notice stand. It is open to the appellant to make a planning application for any alternative remedy that they may be able to identify.
41. The appeal on ground (f) fails.

Overall conclusion

42. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR