



Appeals Decision

Site visit made on 5 June 2024

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2024

Appeal Refs: APP/A4710/C/23/3316525 & 3316526

Land at Greenwood Lee, Widdop Road, Heptonstall, Hebden Bridge HX7 7AZ

- 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 appeals are made by Jane Edwards and Christopher Edwards against an enforcement (EN) notice issued by Calderdale Metropolitan Borough Council (the LPA).
 - The enforcement notice was issued on 16 January 2023.
 - The breach of planning control as alleged in the notice is: the erection of a timber fence with concrete posts on the Land (in the approximate location indicated by a dashed line on the attached plan marked ENF1 and as seen in the digital photographs attached to the notice at Appendix 1).
 - The requirements of the notice are as follows:
 - (i) Permanently remove from the land the timber fence and concrete posts (which is in the approximate location indicated by a dashed line on the attached plan marked ENF/1 and as seen in the digital photographs appended to this notice).
 - (ii) Permanently remove from the land all materials arising from compliance with requirement (i) above.
 - The period for compliance with the requirements is 3 (three) months.
 - The appeals are proceeding on grounds (a) and (g), as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The Appeals are allowed to a limited degree on ground (g) only. Otherwise, the appeal is dismissed and the enforcement notice is upheld. See formal decision below.

Procedural Matters

2. I have been informed that the LPA did not enter details of the correctly served notice on a register, as required by S188 of the Act. However, such a procedural omission cannot be part of my remit. There is no dispute that the notice before me was correctly served, is valid and was appealed. I have therefore dealt with it accordingly under the two grounds pleaded.

3. Reference is made to a second timber fence which has been erected at the property. During my visit I noted that between the appeal fence and part of the appellants' property a timber fence with a timber gate had been erected. However, I am only empowered to deal with the fence and concrete posts which are the subject of this enforcement notice.

The Appeal site and the surrounding area

4. The appeal land, upon which the alleged unauthorised development (timber fence and concrete posts) have been carried out, forms part of the curtilage of the

appellants' property at 'Greenwood Lee House', a Grade II* listed dwellinghouse. The fence and posts have been erected along part of its boundary to the west.

5. Directly adjacent, to the north of the boundary, lies 'Greenwood Lee Barn', an aisled barn which is also a Grade II* listed building and which is in separate ownership. The appeal fence and posts wrap around the south-east corner of the barn which is in the process of being redeveloped to provide residential accommodation. Both of the listed buildings are on the north-eastern side of Widdop Road, to the north-west of Heptonstall village. Hebdon Dale is to the east and to the south-west there is open countryside across which runs part of the Pennine Way.

Background information

6. The listed aisled barn had been derelict for approximately 30 years until restoration works commenced in the summer of 2021. On behalf of the appellants, it is indicated that the *'unsupported red brick inner walls of the barn (approximately 6m to 7m in height) were exposed and seemingly at risk of collapse'* onto the appellants' land. It is stated that no protective measures were put in place and in August/September 2021 site safety issues were raised by the appellants with a Senior Planning Officer.

7. It is indicated that, as the works to the barn proceeded, heavy machinery was used to carry out earth moving and excavation works. The owner of the barn erected a 1m high orange plastic netting fence along the boundary. It is stated that this was totally inadequate as a means of providing a safe barrier between the works being carried out and the appellants' land.

8. In November 2021, due to the lack of appropriate protective measures undertaken by the owner/developer of the Barn (as legally required under the Health & Safety at Work etc Act 1974), and in the absence of any guidance from the LPA, the appellants decided to *'take their own protective measures'*. After taking advice from a fencing contractor the appeal fencing and posts were erected on 19 December 2021. The works are wholly within the appellants' boundary.

9. It is further indicated that the owner of the barn has no legal right of ingress or egress to the appellants' land. However, it also stated that the appellants attempted to offer an agreed solution and that the LPA had been informed of this and of the intention to erect a temporary protective fence. It is stated that the only response from the LPA at that time was that a fence should not be erected.

10. However, in 2022 an officer from the LPA's Enforcement Team visited the site and offered to facilitate mediation between the appellants and the owner of the Barn. According to the appellants this did not come to fruition because the Senior Planning Officer *'vetoed'* any further action. On behalf of the appellants the Government's Procedural Guide on Enforcement Notice Appeals is referred to and which states; *'It is important that the LPA and the people it considers as having breached planning control engage in constructive discussions and where appropriate to consider alternative dispute resolution such as mediation'*.

11. The representations before me indicate that the site is currently the subject of an ongoing investigation by the Health & Safety Executive (HSE). It is also noted that, prior to the first visit by HSE in November 2022, the Calderdale Building Control Department (CBCD) was unaware of the ongoing works, or that safety concerns had been raised with the planning department of the LPA. The internal red brick wall of

the barn was finally propped up in January 2023 and the owner of the Barn has indicated that there is 'Heras' fencing awaiting on site and ready to put in place subject to agreement, with the appellants, regarding access.

The Appeal on ground (a)

12. In reaching my conclusion on this ground of appeal I have had special regard to the requirements of Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act (PLBCAA).

Relevant Policy

13. The development plan comprises the Calderdale Local Plan (CLP) and was adopted on 22 March 2023. This was after the EN had been served. At the time of service policies within the Replacement Calderdale Unitary Development Plan 2009 (RCUDP) were relevant. The policies referred to in the EN were BE1 (General Design Criteria) and BE15 (Setting of a Listed Building) of the RCUDP. These policies are effectively replaced by Policy BT1 (High Quality Inclusive Design) and Policy BE15 by HE1 (Historic Environment) of the CLP. These up-to-date policies generally accord with those of the National Planning Policy Framework (NPPF).

14. Policy BE15 of the CLP requires that new developments are of high quality design and that they respect the character and appearance of existing buildings. Policy HE1 requires that development proposals are sympathetic to heritage assets in that their significance and settings are understood, respected, conserved or enhanced and safeguarded against their exploitation or endangerment.

15. The NPPF requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. It goes on to state that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

The Main Issue

16. The main issue in these appeals is the effect that the timber concrete fence and posts have had on the settings of the two Grade II* listed buildings, 'Greenwood Lee Barn' and 'Greenwood Lee House'.

My Assessment

17. The two buildings were listed in 1966 (barn listing reference 1265719) and 1961 (house listing reference 1226793). Their significance lies in their respective late C16 and early C17 origins and their typical architectural and historic detailing of the time. The former has been described as one of the most significant aisled barns in upper Calderdale and the house is described as a typical C17 'Clothier's Residence'. Although the barn is now in very poor condition, the list description clearly sets out its special architectural and historic features. Similarly, the house is distinctly identifiable from its list description.

18. Having seen the unauthorised fence and posts, I share the Council's concerns about their effect on the two listed buildings. In terms of both materials and form,

the fence and concrete posts detract markedly from the settings of the listed buildings. The materials are crude and out of character when seen against these two important historic buildings. Despite the fact that the view of the fence and posts from Widdop Road is limited, the works carried out are obtrusive and visually harmful to the settings of both buildings and detract from their features of special architectural and historic interest.

19. Although this harm is less than substantial there are no significant public benefits which would outweigh the harm caused. Although it could be argued that the public (as visitors) as well as the appellants, might have been protected from any danger caused by the works to the Barn, this minor benefit is far outweighed by the harm identified to the settings of the two listed buildings.

20. In conclusion and having had special regard to Section 66(1) of the PLBCAA, I do not consider that planning permission should be granted for the retention of these unauthorised works and the appeals must fail, therefore, on ground (a).

The appeal on ground (g)

21. On behalf of the appellants it is indicated that should the appeal fail on ground (a), given the safety issues, the time frame of three months as a compliance date is not reasonable under any circumstances. It is stated that there is no guarantee that appropriate protective measures will be installed by the owner/developer of the Barn and maintained as such for the time the works are on-going. It is argued that if the appeal fence is removed prior to completion of the works, the appellants' property will remain at risk.

22. I acknowledge and sympathise with the difficulties that the appellants have had in securing the safety and security of this part of their land at 'Greenwood Lee House'. Clearly there have been health and safety issues that have been complicated by the dispute between the appellants and the owners of the Barn, as well as negotiations with the Council and the HSE. It would also appear that the Council had internal disagreements relating to the provision of the protective fence.

23. Although the owner of the barn has indicated that there is 'Heras' fencing ready to be put in place, there is no firm evidence before me to suggest when that might happen, or when the renovation works to the barn might be completed. Therefore, it is not clear how long the unauthorised fence might have to be kept in place. However, it has already harmed the settings of the listed buildings for some time and cannot remain for an indeterminate period.

24. But, taking into account all of the submissions and the fact that the HSE is still involved, I do not consider that a 3 month compliance period is reasonable. It seems that a state of 'stalemate' has occurred between all parties and this seems to have been exacerbated by the appellants' dispute with the owner of the barn.

25. In the overall circumstances, therefore, I consider that an 18 month period is a necessary and sensible compliance period. This should give sufficient time either for the 'stalemate' to be resolved and for all parties to agree a way forward, or for the works to the barn to be completed. If an alternative solution is not put in place, or the works to the barn are not completed by that time, it may well be the case that the Council and the HSE will have to take further action to secure the health and safety of the appellants on this part of their land.

26. I shall, therefore, vary the notice to increase the compliance period from 3 (three) months to 18 (eighteen) months. Thus, the appeal succeeds to a limited degree on ground (g) only.

Other Matters

27. In reaching my conclusions I have considered all of the appeal submissions made by the appellants, by the Council and by the owners of the Barn. These include the full planning history; the dispute between the appellants and the Barn owner; the detailed appeal submissions; the final comments and all of the photographic evidence. However, none of these carries sufficient weight to alter my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision.

Formal Decision

28. The Appeal is allowed to a limited degree on ground (g). I direct that the enforcement notice be varied in Part 6 (TIME FOR COMPLIANCE) by deleting the figure and words '*3 (three) months*', after '*For 5(i) and 5(ii) above*', and by inserting therefor, the figure and words '*18 (eighteen) months*'.

29. Otherwise the Appeal is dismissed, and the enforcement notice is upheld as varied. Planning Permission is refused on the application deemed to have been made under Section 177(5) of the Act.

Anthony J Wharton

Inspector