



Appeal Decisions

Site visit made on 22 October 2024

by D Hartley BA (Hons), MTP, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 OCTOBER 2024

Appeal A Ref: APP/P2365/C/24/3337264

Appeal B Ref: APP/P2365/C/24/3337265

La Mancha Lodge, 104 Renacres Lane, Halsall, Lancashire, L39 8SF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Denis Olverson and Appeal B is made by Mrs Jeanette Olverson against an enforcement notice issued by West Lancashire Borough Council.
 - The notice was issued on 4 December 2023.
 - The breach of planning control as alleged in the notice is without planning permission, erection of concrete wall adjacent to the highway.
 - The requirements of the notice are 1. to demolish the wall identified as A-B and dashed red on the Plan annexed hereto ('the Wall') and 2. to remove from the Land materials resulting from the demolition of the Wall.
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended) and Appeal B is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a) for Appeal A, an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions

Appeal A Ref: APP/P2365/C/24/3337264

1. It is directed that the enforcement notice is corrected by deleting all the words in section 3 and substituting them with '*without planning permission, the erection of a wall identified as A-B and dashed red on the Plan annexed hereto ('the Wall')*'. Subject to the correction, the appeal is allowed, and the enforcement notice is quashed.

Appeal B Ref: APP/P2365/C/24/3337265

2. It is directed that the enforcement notice is corrected by deleting all the words in section 3 and substituting them with '*without planning permission, the erection of a wall identified as A-B and dashed red on the Plan annexed hereto ('the Wall')*'. Subject to the correction, the appeal is allowed, and the enforcement notice is quashed.

Preliminary Matter

3. The Government consulted on reforms to the National Planning Policy Framework 2023 (the Framework) on 30 July 2024 (Consultation Draft Framework). The consultation closed on 24 September 2024. I afford the

Consultation Draft Framework limited weight in decision making terms as a material planning consideration. Considering the deemed planning application main issues below, I do not find that there are any proposed reforms in the Consultation Draft Framework which have a material bearing on how this appeal should be considered. In this regard, it has not been necessary for me to seek comments from the main parties in respect of the Consultation Draft Framework.

Ground (b) appeals

4. An appeal made on ground (b) of section 174(2) of the Act is that the matters alleged in the notice have not occurred. The onus is on the appellants to make their case on any of the legal grounds of appeal.
5. The claim made by the appellants is that a 'concrete' wall has not been erected on the land. The appellants do not dispute that a wall has been erected on the land and in the position marked A-B on the plan annexed to the notice. However, they state that it is constructed from breeze blocks and brick and not from concrete.
6. The Council considers that the reference to concrete is an accurate description of its construction and refers to the Cambridge Dictionary definition of breeze block as a '*light brick made of concrete mixed with burnt coal, used in building*'. In this regard, I am satisfied that the reference to concrete is an acceptable description for part of the wall, although I do accept that some people may associate concrete as having a smoother finish. Moreover, the wall does include elements of brickwork in conjunction with the breeze blocks.
7. I find that the wall should have been described as the erection of a breeze block and brick wall, or simply the erection of a wall. However, it is clear from the evidence that the appellants are fully aware of what wall the notice is attacking. There is indeed added precision in this regard in terms of requirement 5(1) which requires the '*demolition of such a wall identified as A-B and dashed red on the plan annexed hereto ('the Wall')*'. I shall, for the avoidance of doubt, and to ensure precision, correct the breach of planning control so that it reads '*without planning permission, the erection of a wall identified as A-B and dashed red on the Plan annexed hereto ('the Wall')*'. No injustice would be caused to the main parties because of this correction.
8. To the extent that I have corrected the breach of planning control, I conclude that the ground (b) appeals succeed.

Ground (c) appeals

9. An appeal made on ground (c) of section 174(2) of the Act is that those matters (if they occurred) do not constitute a breach of planning control.
10. The appellants' claim under ground (c) is that the wall is not adjacent to a highway used by vehicular traffic and consequently it is permitted development under Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) as no part of it exceeds two metres in height above ground level. The matter in dispute between the main parties is whether the wall has been erected adjacent to a highway, as distinct from being adjacent to a private access or drive.

11. Class A of Part 2 of Schedule 2 of the GPDO states that a gate, wall, fence or other means of enclosure is not permitted development if '*(a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed— (i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons; (ii) in any other case, 1 metre above ground level; (b) the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres above ground level*'.
12. The appellants state that the access is privately owned and that the occupiers of the seven residential properties that use it have specific and express right in their property deeds to use it for access purposes. I have not been provided with copies of any property deeds, but this evidence is not disputed by the Council. I have no reason to doubt that the two signs which have been erected at the entrance to the access, and which state '*no public right of way, no unauthorised access, no parking*', are reflective of the fact that the access is not a public right of way and that only authorised access is permitted.
13. The appellants state that the public cannot use the private and unadopted access '*as of right*'. The appellants therefore claim that it is not a highway. They state that as the wall does not exceed 2 metres in height above ground level, it does not require planning permission and hence a breach of planning control has not occurred.
14. The appellants have referred to section 336(1) of the Town and Country Planning Act 1990 (as amended) (the Act) which defines 'highway' as having the same meaning as in the Highways Act 1980. The Act is not the GPDO, the latter of which does not include a definition of an existing highway under Part 2 of Schedule 2 of the GPDO. It is necessary that I consider whether the access is a highway based on the evidence that is before me, and, on a fact and degree basis. In the absence of a definition in Part 2 of Schedule 2 of the GPDO, it is noteworthy that common law has established that a highway is a defined route over which the public can pass and repass without hindrance or charge. The use must be '*as of right*', meaning without force, secrecy, or permission.
15. In this case, the access is used by vehicular traffic. It is not gated, and, to this extent the free movement of vehicles and people along it can take place without physical obstruction. The provision of a gated access would have made my decision in terms of whether the access is a highway, as distinct from what may be said to be a private drive or access, much easier. However, in this case I do not find that the absence of a gate is a decisive matter.
16. While the access is called Renacres Lane, it is very narrow and spurs off the much wider Renacres Lane to the south. The evidence is that it does not link to any footpath or bridleway network. Moreover, my site visit revealed that motorists could not continue beyond the complex of residential properties served off it. The evidence is that the access provides a private route to only the seven residential properties and to the agricultural land beyond which is privately owned and farmed.

17. The undisputed evidence is that there is no public access over the route as of right. Moreover, I can see no reason why the public at large would want to use the access, particularly as it is essentially a cul-de-sac where it reaches the cluster of private residential properties. On my site visit, I was able to see the delivery of what appeared to be parcels to a few of the properties off the access. However, that is not an uncommon occurrence in respect of the use of private drives. In essence, such deliveries have been authorised by the respective residents.
18. I do not know when the two signs were erected at the entrance to the access. They do appear to have a relatively new appearance to them. Even if the signs had been erected recently, I would have still concluded, as a matter of fact and degree, that the other collective evidence before me demonstrates that the access is a private drive and not a highway for the purposes of applying Class A of Part 2 of Schedule 2 of the GPDO.
19. In particular, the evidence is persuasive in so far that members of the public cannot, as of right, use the access without authorisation or permission. In this regard, there appears to be a legal hindrance to the free movement of all vehicles and people along it. Moreover, there is no reason why anyone other than authorised visitors to the residential properties or the farmstead would have need to use the access. The latter two considerations are, in this case, decisive.
20. In my judgement, and, as a matter of fact and degree, I do not find that the wall has been erected adjacent to a highway for the purposes of considering Class A of Part 2 of Schedule 2 of the GPDO. It is instead adjacent to a private drive or access. The evidence, which is not disputed by the Council, is that the wall does not exceed two metres in height above ground level. Therefore, I find that it is permitted development and hence there has been no breach of planning control. I therefore conclude that the ground (c) appeals succeed.

Conclusions

Appeal A Ref: APP/P2365/C/24/3337264

21. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. The appeal succeeds on ground (b) to that extent. On the balance of probabilities, the appeal on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. The enforcement notice will be corrected and quashed. In these circumstances, the appeals on grounds (a), (f) and (g) of section 174(2) of the Act, and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended), do not need to be considered.

Appeal B Ref: APP/P2365/C/24/3337265

22. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. The appeal succeeds on ground (b) to that extent. On the balance of probabilities, the appeal on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.

23. The enforcement notice will be corrected and quashed. In these circumstances, the appeals on grounds (f) and (g) of section 174(2) of the Act do not need to be considered.

D Hartley

INSPECTOR