



Appeal Decision

Site visit made on 3 January 2025

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 JANUARY 2025

Appeal Ref: APP/U2750/C/24/3346349

The Hawthorns, Harrogate Road, Knaresborough, HG5 8DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Chris Butler against an enforcement notice issued by North Yorkshire Council.
 - The notice was issued on 14 May 2024.
 - The breach of planning control as alleged in the notice is the erection of concrete block retaining wall and Yorkshire stone boundary wall.
 - The requirements of the notice are to a) remove the concrete block retaining wall and Yorkshire stone boundary wall marked blue on the attached plan and b) make good the banking.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is varied by deleting the words "*make good the banking*" in section 5a), and the deletion of the words "*you are required to comply with this notice within 6 months from the date upon which this notice takes effect*" in section 6 and the substitution of the words "*you are required to comply with this notice within 12 months from the date upon which this notice takes effect*". Subject to the variations, the appeal is dismissed, and the enforcement notice is upheld.

Ground (c) appeal

2. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control.
3. The unauthorised wall has been constructed to facilitate land level changes to the front garden area as well as to function as a means of enclosure of the land. Apart from a small length of wall which is positioned perpendicular to the highway and alongside the sloping driveway, a significant length of wall has been erected along the frontage of the highway known as Harrogate Road. The evidence indicates that the wall, in conjunction with land level changes, has been built in stages since about 2012. Prior to this time, it is understood that there was mature vegetation and a post and wire fence fronting Harrogate Road.
4. On the evidence that is before me, and, as a matter of fact and degree, I find that the wall started to be built in about 2012 and was not substantially completed until about 2023. The evidence, including the planning application drawings accompanying the refused planning application considered as part of

an appeal made under section 78 of the Act in 2021¹, indicates, in my judgement, a staged intention to build the wall that is now on the land and is the subject of the notice. The appellant has not provided any compelling or suitably objective evidence that would lead me to depart from this view.

5. The onus is on the appellant to make his case. While he has provided photographs from 2015 which show part of the appeal wall in situ, the breezeblock element of the wall is not finished off in terms of the application of stone cladding. At this time, the breezeblocks are seen as being set back from the line of the existing stone wall, and, in my judgement, it is reasonable that I find that the evidence supports the view that at this time the appellant intended for it to be subsequently finished/completed with stone cladding to match the rest of the wall. After this time, the wall was extended to essentially mirror the drawings which were refused by the Council on 18 June 2021 as part of the determination of planning application 20/03796/FUL and which was the subject of the above appeal. This included extending the wall further to the east in about June 2022 and using concrete blocks which were then subsequently faced in stone.
6. The evidence indicates that the appeal wall was constructed as one single building operation over several years and was substantially completed, in conjunction with the associated level changes to the land, sometime in 2023.
7. The appellant claims that as part of the unauthorised wall measures no more than one metre in height above ground level when measured against the immediate adjacent level of the sloping drive, it means that the whole of the wall is permitted development. Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) states that development is not permitted by Class A if 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 one metre in height above ground level.
8. There is no dispute between the main parties that the part of the wall that is adjacent to the highway used by vehicular traffic (as distinct from the driveway) exceeds one metre in height when measured against the adjacent pavement. However, the appellant contends that as a small part of the wall which returns towards the dwellinghouse, and follows the sloping driveway, is no more than one metre in height when measured against the adjacent level of the sloping drive, it therefore means that the whole of the wall is permitted development.
9. Article 2(2) of the Order states '*unless the context otherwise requires, any reference in this Order to the height of a building or of plant or machinery is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it*'.

¹ Appeal reference APP/E2734/D/21/3280703 dated 11 October 2021

10. In terms of measuring the height of the wall, Article 2(2) of the Order is of no relevance. This is because Article 2(1) of the Order, which defines a building, states that it '*does not include plant or machinery and, in Schedule 2, except in Class F of Part 2 and Class C of Part 11, does not include any gate, fence, wall or other means of enclosure*'. Therefore, the requirement for a measurement to be made from the highest adjacent ground level, applies only to buildings, plant, and machinery, and not to a gate, fence, wall or other means of enclosure.
11. When the wall is measured from the adjacent highway, it exceeds one metre in height above ground level. Therefore, the whole of the wall, which is a single operation, requires planning permission. This is because it does not fall to be permitted development given the limitation imposed in Class A.1(a)(ii) of Part 2 of Schedule 2 of the Order.
12. For the above reasons, I therefore conclude that the ground (c) appeal fails.

Ground (d) appeal

13. The appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
14. The onus is on the appellant to make his case on legal grounds. As detailed above, the evidence is that the wall, which was built in stages over several years, was not substantially completed until sometime in 2023. Consequently, and, on the balance of probability, I find that a claim cannot be made under section 171(B) of the Act that the wall, built as a single and contiguous building operation, is immune from enforcement action owing to the passage of time.
15. I therefore conclude that the ground (d) appeal fails.

Ground (f) appeal

16. The appeal made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach. The purpose of the notice is to remedy the breach of planning control. In this regard, the requirements of the notice are not excessive.
17. The appellant states that requirement 5b) to '*make good the banking*' is vague and that the removal of the wall marked blue on the attached plan may mean that the raised garden/hardstanding would fall into the road. The Council is of the view that it would be possible to '*make good the banking*' utilising permitted development rights. I am not certain what specifically this would involve, but the appellant has requested a compliance period of twelve months rather than six months to consider options in terms of this matter. The Council supports a longer compliance period for this reason.
18. In the context of a longer compliance period, and as requirement 5b) is vague or imprecise, I find that it should be deleted. Subject to a longer compliance period, and, given the comments made by the Council about this matter, I find

that the evidence indicates that the breach of planning control would be suitably remedied without requirement 5b). A twelve-month compliance period would afford the appellant further time to separately discuss options with the Council in terms of making good the banking and prior to requirement 5a) having to be carried out. The deletion of requirement 5b) of the notice would not make the notice more onerous. I am satisfied that such a variation would not lead to injustice for any of the main parties.

19. I conclude that the ground (f) appeal succeeds to the extent that the requirements of the notice are varied.

Ground (g) appeal

20. The appeal on ground (g) is that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
21. As detailed above, it is necessary that the compliance period is increased from six to twelve months. This is supported by the Council. This strikes a reasonable balance between ensuring compliance with the requirements of the notice (as varied), ensuring the stability of the land to the front of the dwellinghouse including, if necessary, discussion with the Council, and remedying the breach of planning control in the public interest.
22. I therefore conclude that the ground (g) appeal succeeds.

Conclusion

23. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on grounds (f) and (g) succeed to that extent.

D Hartley

INSPECTOR