



Appeal Decisions

Site visit made on 12 February 2025

by **Andy Harwood CMS MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 March 2025

Appeal A Ref: APP/F0114/C/24/3348314

9 Van Diemens Lane, Lansdown, Bath BA1 5TW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Richard Hayes against an enforcement notice issued by Bath and North East Somerset Council.
- The notice was issued on 10 July 2024.
- The breach of planning control as alleged in the notice is: Without Planning Permission the erection of a retaining wall, importation of material and engineering operations to raise and level the rear garden.
- The requirements of the notice are:
Requirement 1: Demolish the Gabion Basket wall that runs along the eastern and northern boundary of the site and remove the resulting materials from the land.
Requirement 2: Remove from the land any imported material and from the area hatched and shaded in BLUE on the Plan attached to this notice in ANNEX A (Plan is not to scale and for clarification purposes only).
Requirement 3: Restore the land to its area hatched and shaded in BLUE on the Plan attached to this notice in ANNEX A (Plan is not to scale and for clarification purposes only) to its previous condition and levels prior to the unauthorised development specified in Section 3 of this Notice.
- The periods for compliance with the requirements are:
Requirements 1 & 2: 4 Months.
Requirement 3: 6 Months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Appeal B Ref: APP/F0114/W/24/3347451

9 Van Diemens Lane, Lansdown, Bath BA1 5TW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by R Hayes against the decision of Bath and North East Somerset Council.
- The application Ref is 23/03610/FUL dated 26 September 2023 was refused by notice dated 12 April 2024.
- The development proposed is described as “revised gabion walls to the east boundary and revised levels to the lawns in this position.”

Appeal A Decision

1. It is directed that the enforcement notice is corrected by deletion of the allegation at section 3 and its replacement with:

“Without planning permission the erection of a gabion basket wall along the eastern and northern boundary of the site, importation of material and engineering operations to raise and level the rear garden.”

Subject to the correction the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Decision

2. The appeal is dismissed.

Preliminary Matters

3. Appeal A relates to the whole or any part of the matters alleged on the enforcement notice whereas Appeal B relates to the refusal of an application for planning permission. Appeal A therefore concerns what had occurred by the time the notice was issued.
4. The National Planning Policy Framework (the Framework) was revised and published on 12 December 2024. That was 4 days prior to the statements of case of the main parties being due. Some minor corrections and amendments were made on 7 February 2025 which did not change the policies in the 12 December document. However, shortly afterwards the Planning Practice Guidance (PPG) was updated with respect to Green Belt policy. I sought the views of the parties with respect to these national policy and guidance changes.

Appeal B

5. The planning application form related to Appeal B incorrectly referred to the agent as the applicant. The Council in their consideration of the application corrected this, referring on their officer report and decision notice to R Hayes as the applicant. The appellant has also confirmed these matters. I have therefore used R Hayes as the name of the appellant in Appeal B.
6. Appeal B includes plans which show how it is intended to complete the development. The appellant has submitted further plans with their appeal statement. Their reasoning for this is that the plans “more accurately reflect the position of the retaining wall in relation to the site’s boundary.” Whilst schemes should not be evolved through the appeal process, having more accurate plans to represent what has at least in part been constructed has some benefit to the process. These revised plans do also include proposed changes to the gabion basket wall and levels of the garden. Furthermore, these plans have been submitted with the appeal and the interested parties and the Council have had an opportunity to consider them. I will therefore consider the appeal on the basis of the more accurate revised plans.

Appeal A

The enforcement notice

7. There are elements of the notice that are ambiguous. I have a duty to consider the form of the notice which is important for clarity but also due to the implications of further legal action in the event of non-compliance. I have broad powers under the provisions of s176(1) of the Act to correct or vary the notice where I am satisfied that it would not cause injustice to the appellant or to the Council. I have canvassed the views of the Council and the appellant about the matters that I am concerned about.
8. The allegation includes reference to a “retaining wall” as well as “engineering operations”. Requirement 1 then goes on to seek the demolition of the “gabion basket wall” which has not been explicitly mentioned in those same terms within the allegation. It seems clear that the Council has considered that the “gabion basket

wall” is part of the “engineering operations” which are shaded blue on the annexed map. That annexed plan however, confusingly has an annotation pointing to a “retaining wall” which is not the gabion basket wall but rather a substantial block-work retaining wall towards the western side of the site, outside of the blue shaded area. The gabion basket walling is referred to on the same plan but is not labelled as a “retaining wall”.

9. The requirements of the notice do not go on to address the (non-gabion basket) block-work retaining wall. I had been concerned that the notice as set out would approve that wall unconditionally under the provisions of s173 (11) of the Act, which may not have been intended. I have not been informed about the planning status of that wall but the Council has confirmed that they are only intending to attack the gabion basket retaining wall. Furthermore, they are content with my correcting of the notice to clarify these matters removing reference to the other non-gabion retaining wall. The appellant has confirmed that they do not consider that this would cause injustice.
10. I will therefore correct the notice under the provisions of section 176(1)(a) of the Act and change the allegation accordingly.

Appeal A ground (a) and Appeal B

Main issues

11. The Council has 3 adopted documents which form part of the development plan which have been combined into what is known as a ‘Composite Plan’. The Core Strategy (CS) was adopted in 2014, the Placemaking Plan (PP) was adopted in 2017 and the Local Plan Partial Update (LP) was adopted in 2023.
12. According to the Council, the bottom 11m of the appeal site is within the Green Belt. The adopted Local Plan proposals map shows the extent of the designation and there is a triangular section of the garden which extends into the neighbouring field. It is also agreed that the same boundary and proportion of the site is within the Cotswolds National Landscape (CNL) (formerly referred to as the Area of Outstanding Natural Beauty).
13. Given the above, the main issues are:
 - 1) Whether the development would be inappropriate development in the Green Belt including the effect upon openness, having regard to the National Planning Policy Framework (the Framework) and relevant development plan policies;
 - 2) The effect of the development on the character and appearance of the area, including upon the CNL and other purposes served by the Green Belt;
 - 3) The effect of the development on the living conditions at neighbouring properties with particular reference to privacy; and
 - 4) Whether other considerations clearly outweigh the harm to the Green Belt and any other harm so as to amount to very special circumstances.

Reasons

Green belt – inappropriateness including openness

14. CS Policy CP8 seeks to protect the openness of the Green Belt in accordance with national planning policy which is set out within the Framework.
15. The dwelling at the appeal site is on a steep hillside with the garden protruding into the undeveloped field, beyond the otherwise prevailing rear garden boundary-line of other neighbouring dwellings. This protrusion of the garden into the field is evident when looking from the rear garden of the property where the field slopes down dramatically from west to east along the rear of this and other dwellings in Van Diemens Lane. I also viewed from a distance in Charlcombe Lane which is at a much lower level across fields to the east as well as from the public footpath to the north.
16. Evidence is limited about what the site looked like before the gabion basket wall and engineering operations as a whole were undertaken. The photographs that have been submitted do however show a garden that sloped down gradually and had a planted border defining the boundary. Standing on top of the gabion wall, I could see the surface level of the field to the east and the increase in height levels now is substantial. That is confirmed by the submitted cross-section drawings which show an interpretation of the previous levels.
17. The development currently and with the proposed changes would only affect a small proportion of the wider Green Belt in terms of the area covered. However, this visually relates closely to the wider field into which it protrudes. The site as had previously existed provided an open setting of the settlement in a sensitive position. Even though the dwellings here are not part of the older historic core of Bath, they do form a built-up area which is clearly constrained by the field and is in contrast to the openness of the field. This helps to check the unrestricted sprawl of the large built-up area, as referred to as one of the purposes that the Green Belt serves, at paragraph 143 (a) of the Framework. For that reason and because it is not previously developed land, the site does not comply with the definition of being "grey belt" in the Framework.
18. The development as exists, has involved the construction of a substantial gabion basket wall around the north-eastern and eastern boundary of the site. This retains land behind it which has been built up to level-off part of the garden. These features stand proud of the adjoining field taking up a substantial amount of space above the previous more natural level of the land which is also visually noticeable when compared with the level of the field.
19. The development has involved operations that have considerably altered the topography of the site which contrasts with adjoining otherwise unaltered hillside. Although the proposed plans, if implemented, would change what has already been undertaken, the levels as seen from the north and east would involve a large amount of material, including the substantial gabion retaining wall and the retained land behind it, within the part of the site within the Green Belt. Even with the proposed changes to the current levels, a substantial mass of material would stand proud of the otherwise unaltered slope of the open hillside and in contrast with it. That overall mass of material will remain regardless of any landscaping that would be possible to plant to reduce the visual impact.
20. Whilst the area that would remain affected by the operations is relatively small compared with the rest of the garden, this has reduced the openness of the Green Belt in this location compared with what had previously existed. None of the

exceptions within paragraph 154 of the Framework are applicable and in relation to the first main issue, the development is and would continue to be inappropriate development within the Green Belt having regard to the Framework. As such, this would not comply with CS Policy CP8. As the Framework confirms, the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open with the essential characteristics of the Green Belts being their openness and permanence. Given these impacts, the proposal would have a small but noticeable effect on the sprawl of the settlement, therefore not complying with that purpose served by the Green Belt as set out at paragraph 143(a) of the Framework.

Character and appearance and other purposes served by the Green Belt

21. The undeveloped field on the hillside which adjoins the site, stretches out behind the row of dwellings within Van Diemen's Lane providing a very open and rural scene and setting to the built-up area, in this part of Bath. These dwellings as well as those to the west within Landsdown Road and those to the north-west within Granville Drive, form a distinct edge of the settlement where it joins the open countryside which is within the CNL. The appeal site is conspicuous by extending further into the field, beyond the rear boundaries of the adjoining properties by reason of the triangular area which, as described above, is within the CNL (as well as the Green Belt). Prior to the development the garden seems to have had a gradual slope which appears from the available evidence, to have more closely adhered to natural levels. The boundary appears to have previously included a row of landscaping in the form of large shrubs or trees.
22. There is no dispute that the whole of the appeal site prior to the engineering operations taking place was used in connection with the dwelling. It could have been used for a plethora of domestic activities including use of various paraphernalia that can go along with that including things like climbing frames, moveable trampolines as well as washing lines and such like which are commonplace within domestic gardens. Such items would be more noticeable now due to their raised position, than they would have been prior to any of the work having been carried out. These items could have been noticeable from surrounding gardens as well as the footpath to the north. However, things on top of the garden at its previous height would have been at a much lower level than currently or as proposed.
23. The gabion basket wall, even with the proposed changes, will continue to be a noticeably substantial feature in a sensitive position and this is very obviously beyond the general line of the rear gardens along Van Diemen's Lane, encroaching into the surrounding field. Gabion basket features have been used elsewhere such as along the rear boundaries of the houses to the west although they are higher up the hillside and form a more continuous line with the rear boundaries that adjoin them. These types of walls can look brash particularly when newly constructed. The stonework is also fairly randomly put within the baskets rather than the more ordered appearance of traditional walling. From what I saw of the local area these are not a long-standing or traditional method of construction that could be considered as an authentically distinctive feature within Bath or the CNL.
24. The material may tone down with the effect of time, weather and the gaps may also fill with plants and soil. Furthermore, it has been clarified through the revised plans that there is a margin between the gabion wall and the property boundary where

planting could be introduced to assist in reducing the visual impacts. However, the change in levels will remain noticeable and this will appear as an artificial feature within the landscape even with those mitigating steps being implemented. For screening of the feature to be effective, it could require very robust planting which could in itself look out of keeping with more traditional methods of defining field and garden boundaries.

25. There would be a modest but nevertheless noticeable visual impact from the development even if the stonework tones-down in hue and the landscaping helps to screen the development. In relation to this main issue, the development will have a harmful effect upon the character and appearance of the area. This would therefore not comply with LP Policy NE2, CS Policy GB1 or PP Policies D2 and NE2A. These along with the Framework require that great weight is given to conserving and enhancing the landscape and scenic beauty of National Landscapes. GB1 also requires that development within the Green Belt does not prejudice but should enhance its visual amenities. The countryside would not be safeguarded from encroachment contravening that purpose of the Green Belt.

Living conditions

26. With the re-grading of the garden that has already happened as well as with the changes proposed, the area will be higher relative to the next property down-hill to the immediate east, No 10 Van Diemen's Lane. Parts of the garden were previously higher than that property including its garden due to the natural level of the land. Given as well that the site extends into the field beyond the adjoining garden, it would seem that it was previously possible to look towards the rear windows of that neighbouring dwelling.
27. There will be positions within the garden of the appeal site that allow for higher vantage points when looking back towards No 10. However, those views would be primarily from the northern part of the development which is a substantial distance from the conservatory and rear windows within that adjoining dwelling. The garden at No 10 at the time of my site visit included robust landscaping which would assist in protecting the privacy of those residents who will have been subject to views from the same vantage points previously, albeit at a lower level.
28. In relation to this main issue, the development will not have a harmful effect on the living conditions at neighbouring properties with particular reference to privacy. As such in these terms the development would comply with PP Policy D6.

Other considerations, overall balance and very special circumstances

29. The appellant refers to their ability as an alternative to the gabion wall, to erect a fence or wall up to 2m high without requiring planning permission to enclose the garden. There is no dispute that this could be undertaken under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Furthermore, also under the provisions of the GPDO, the appellant refers to the ability to construct an outbuilding within the garden up to 2.5m high, in the north-eastern corner of the garden.
30. Whilst precise scheme for an alternative fence or wall have not been provided, such a development could be higher than the proposed development for the full length of the eastern and northern boundaries. There is no limitation within the GPDO regarding the colour or what materials are used in such a construction.

- Such a fence or wall could be more visually noticeable than the current structure and there would be no conditional requirement to plant additional landscaping.
31. From what is in front of me as well as a common-sense view that the appellant would want to enclose their garden, I consider that there is more than a theoretical possibility that a 2m fence would be constructed as an alternative to the gabion basket wall and so it is a likely fall-back scenario.
 32. The gabion basket wall is presently less than 2m high but is part of broader engineering operations which would continue to retain a substantial amount of built-up land which would provide a higher garden behind. Such engineering operations are not means of enclosure and therefore are not permitted development at any height. A fence without land being retained behind would have less impact upon the openness of the Green Belt due to the space or volume that it would take-up being less. Furthermore, any paraphernalia on top of that raised garden would be more prominent than if it were tucked on lower land behind a fence within the permitted development tolerances. With the original profile of the garden and a fence or wall with its base at ground level, such paraphernalia in the north-eastern corner of the garden would be on ground much lower than would be possible within the current proposal where land is retained. Overall, that alternative development would not bring about as much impact upon the openness of the Green Belt or in terms of visual impacts. Nevertheless, I do give this fallback development a moderate degree of weight.
 33. With respect to an outbuilding, again I have not been given details of what may be considered or what purpose the appellant would have for it. I have to imagine such a structure constructed on land levels similar to what previously existed before the engineering operations took place. I do not have precise details of those or agreement between the parties about what could potentially constitute permitted development or whether there is a particular need for such a structure. I do not know what floor area such a building would cover or how it would be constructed given that it would need to be accommodated on the sloping garden which in itself could involve further engineering operations that would go beyond what could be considered as permitted development under the terms of the GPDO. From the information provided therefore, whilst it is theoretically possible to construct an outbuilding with the Council having limited controls over its extent and no control over its external appearance, I have no evidence that it would be anything more than a theoretical possibility that this would happen as an alternative. This is fallback scenario of very limited weight.
 34. The levelling-off of the garden may have made it more functional for some activities. However, from the submitted information it looks like the previous slope did not prevent its use for sitting out and as a pleasant space for residents to enjoy the very pleasant rural setting. The uses that gardens are put-to are variable according to personal preference and this garden was not un-usable even though it may not have suited the appellant's aspirations. I give very limited weight to these benefits.
 35. I consider the development would be unacceptable with respects to the first 2 main issues. The proposal is inappropriate in the Green Belt and it would fail to meet 2 of the purposes of the Green Belt. The Framework states that substantial weight should be given to any harm to the Green Belt. Furthermore, the development

would not conserve or enhance the landscape and scenic beauty of the CNL, a factor which also attracts great weight.

36. The lack of harm in relation to the living conditions of neighbouring properties is a neutral matter. Although the appellant has referred to ecological and other habitat benefits from the development, these are not demonstrated and I also consider that this is a neutral matter neither weighing for or against the development.
37. On the other side of the scale, there is a moderate degree of weight that I can give the fallback of constructing a fence and very limited weight both to the theoretical possibility of erecting a large outbuilding as well as to the benefits of making a space that is more usable for some activities. These factors however taken individually or together, do not have sufficient weight to clearly outweigh the Green Belt and other harm that I have identified. As such, the very special circumstances necessary to justify the development have not therefore been demonstrated. The proposal does not comply with the development plan as a whole or the Framework.

Appeal A ground (a) Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Conclusion

39. For the reasons given above, I conclude that the appeal should be dismissed.

Andy Harwood

INSPECTOR