



Appeal Decisions

Site visit made on 1 April 2025

by **M Ollerenshaw BSc(Hons) MTPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1st May 2025

Appeal A Ref: APP/Z4718/C/24/3345243

Appeal B Ref: APP/Z4718/C/24/3345244

Building between 6 and 8 Giles Street, Netherthong, Holmfirth, HD9 3EF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Stephen Molloy (Appeal A) and Mrs Nicola Molloy (Appeal B) against an enforcement notice issued by Kirklees Metropolitan Council.
 - The notice was issued on 24 April 2024.
 - The breach of planning control as alleged in the notice is: without the benefit of planning permission, the alteration to a roof.
 - The requirements of the notice are to:
 - a) Remove the fence and any supporting posts (for the avoidance of doubt, please see the fence circled in red in Appendix 1).
 - b) Return the roof to its condition prior to the development taking place.
 - c) Remove any resulting debris associated with steps a) and b).
 - The period for compliance with the requirements is 60 days.
 - The appeals are proceeding on the ground 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.
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Decisions: Appeals A and B

1. It is directed that the enforcement notice be corrected by deleting the words 'without the benefit of planning permission, the alteration to a roof' and replacing them with 'without the benefit of planning permission, the alteration to a roof comprising the erection of a fence'.
2. Subject to that correction the appeals are 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.

Preliminary Matters

3. Appeals A and B relate to the same site and the same enforcement notice. I shall therefore deal with them together.
4. The revised National Planning Policy Framework (the Framework) was published in December 2024. This does not raise any matters that require me to seek representations from the main parties in this case. I have, however, determined the appeal having regard to the revised Framework.

Matters relating to the notice

5. It is clear from the Council's reasons for issuing the notice, the steps required to remedy the breach, and the cases made by the main parties as set out in their statements, that the unauthorised operational development is the timber fence panel attached to the roof of the building. The building and the fence are identified

respectively on the plan and photograph attached to the notice. The alleged breach of planning control set out in section 3 of the notice refers to 'the alteration to a roof' only, and there is no reference to the fence. It is therefore vague and imprecise. Accordingly, I have corrected the breach of planning control by deleting the words in section 3 and replacing them with 'without the benefit of planning permission, the alteration to a roof comprising the erection of a fence'. I am content that this correction can be made without injustice being caused to either of the parties.

The ground (a) appeal

6. An appeal on ground (a) is that planning permission should be granted. The main issue in this case is the effect of the development on the character and appearance of the area, including the Netherthong/Deanhouse Conservation Area and the setting of a Grade II listed building, 8 Giles Street.
7. The appeal site is a single storey outbuilding situated between 6 and 8 Giles Street. The unauthorised timber fence panel has been positioned towards the top of the roof of the building and is about 1.4m high when measured from roof level and is finished in a grey-blue colour.
8. The site is within the Netherthong/Deanhouse Conservation Area (CA). The significance of the CA derives from the narrow winding streets lined by traditional houses and cottages and stone boundary walls, which together provide a strong sense of enclosure. Buildings vary in size and style but are typically constructed of stone and often feature mullioned windows. They predominantly front the pavement edge, although some are set back behind modest front gardens. The undulating landscape surrounding the CA is characterised by a patchwork of agricultural fields bounded by drystone walls.
9. The Grade II listed 8 Giles Street is situated immediately to the east of the site. Despite some alterations to the windows, the building has significance deriving from its architectural and historic interest as a three storey house, in hammer dressed stone with characteristic mullioned windows and a stone slate roof, dating from the early nineteenth century, and from its historic setting, as described above.
10. The building that is the subject of the notice is constructed in stone and features a mono-pitched roof which is clad in stone slates, with two timber doors to the front elevation. Given its traditional form and appearance, and siting adjacent to the road edge, the building is characteristic of the CA and positively contributes to it.
11. The unauthorised fence occupies an elevated position on the roof of the building. As it is set back from the building frontage, there are not extensive views of it, but it is clearly visible from certain points along Giles Street, particularly when viewed head on. While the fence is sited adjacent to raised ground levels to the rear, from Giles Street it is clearly seen as being attached to the roof of the building, and this siting and its overall height above street level is incongruous. The lightweight construction of the fence sits uncomfortably against the robust and traditional appearance of the building and those surrounding it. It is therefore a discordant feature in the CA, where stone boundary walls predominate. Notwithstanding that the grey-blue colour of the fence reflects the existing doors below and the fence on the opposite side of the street, this colour draws attention to it and further exacerbates the visual impact.

12. I acknowledge that boundary fences are common in residential areas, but they are typically sited to the rear or sides of buildings and at ground level. There are a small number of fences to the front of properties in the surrounding area, though as these are situated at ground level and not on the roofs of buildings, they are not comparable to the development.
13. The outbuilding is adjacent to the listed building at No 8 and it consequently forms part of its setting. The unauthorised fence is a discordant element in the street scene and is seen alongside the listed building in views from Giles Street. Given its siting and appearance it detracts from the setting of the listed building and the way in which it is experienced from Giles Street.
14. I have considered whether planning conditions could mitigate the impact of the development. I am not satisfied that changing the colour of the fence or any other conditions would make the development acceptable.
15. For these reasons I conclude that the development is harmful to the character and appearance of the area, and it fails to preserve or enhance the character or appearance of the CA and the setting of the Grade II listed building. Therefore, it conflicts with Policies LP24 and LP35 of the Kirklees Local Plan (2019) (Local Plan) which, among other things, require proposals to promote good design ensuring the form, scale, layout and detailing of development respects and enhances the character of the townscape and the historic environment.

Planning Balance

16. Given the localised effect of the development, the harm to the significance of the CA and the listed building is less than substantial. Even so, great weight is given to the conservation of designated heritage assets, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance, in accordance with paragraph 212 of the Framework.
17. Local Plan Policy LP35 states that, in cases likely to result in substantial harm or loss, development will only be permitted where it can be demonstrated that the proposals would bring substantial public benefits that clearly outweigh the harm. The policy does not address a scenario where there is less than substantial harm. However, the Framework sets out that less than substantial harm should be weighed against the public benefits of the proposal.
18. The appellants state that the change of use of the outbuilding to a holiday let at No 6 has not been implemented in accordance with the approved plans and conditions imposed upon the planning permission¹. In particular, the fence shown on the approved plans has not been erected, and the outdoor seating area associated with the holiday let extends to the side, and is not confined to the rear, of the building. As a consequence of this, the appellants contend that there has been overlooking and noise and disturbance to their house and garden at 13 Giles Street which is opposite the appeal site. However, this planning permission, and the Council's decision not to take enforcement action in the matter, are not before me for consideration.
19. The unauthorised fence is the appellants' response to the fence not being erected at the holiday let. The fence approved as part of the holiday let permission would

¹ Council ref. 2019/62/91806/W

have been at right angles to the unauthorised fence, and its purpose was to prevent overlooking of No 8 rather than No 13. While it would have prevented occupiers of the holiday let from sitting out within the area to the side of the building, it would not have entirely prevented overlooking of the appellants' property.

20. Mutual overlooking at close range between houses and gardens is a feature of this area where they are often located close to one another. The outdoor seating area has been used historically as a garden as part of No 8, with a raised garden and greenhouse in this location, though it appears not to have been used for sitting out immediately prior to the holiday let development. The appellants' property is already overlooked to some extent from nearby properties and from the street. Given these factors, I am not persuaded that the outdoor seating area has resulted in significant loss of privacy to the appellants' property, particularly given that the holiday let is not used all year round. That said, the unauthorised fence does prevent overlooking to the appellants' house and garden, and to other neighbouring occupiers to a lesser extent. It may also mitigate noise and disturbance, though the extent to which this is an issue, and the effectiveness of the fence in mitigating it, have not been substantiated.
21. Furthermore, it has not been demonstrated that there are no other possible and less visually harmful solutions to mitigating the adverse impact identified by the appellants, which limits the weight that I attach to this matter, and I note that they have sought to address it by other means, including the 'sail' attached to the front of their property.
22. Although I sympathise with the appellants' situation and I have taken into account the 'human factor', the relatively minor benefits of the development do not outweigh the harm identified, bearing in mind that great weight is given to the conservation of designated heritage assets.

Other Matters

23. The appellants refer to email correspondence with the Council in which they were advised that the erection of a 1.8m fence not adjacent to the highway would not require planning permission. As there is no ground (c) appeal and no dispute that the unauthorised fence requires planning permission, I have not considered this matter further. The appellants say that they had a legitimate expectation that in following the Council's advice they would not be the subject of enforcement action at a later date. However, that advice is not binding on the Council and the disclaimer at the end of the Council's email is clear that any advice is informal and always subject to the formal written decision of the Council.
24. The appellants have questioned whether the Council's decision to issue an enforcement notice was proportionate and in the public interest in their case. However, whether or not it was expedient to serve the enforcement notice is a matter for the Council.
25. There is some support from third parties for the retention of the fence, as well as an objection. While I have had regard to the other matters raised, which include the dispute between the appellants and the neighbour and issues over land ownership, these do not alter my decision.

Conclusion

26. The development conflicts with the development plan, and there are no material considerations indicating a decision otherwise than in accordance with it. I therefore conclude that the appeals on ground (a) 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).

M Ollerenshaw

INSPECTOR