



Appeal Decision

Site visit made on 19 February 2025

by **D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 1st May 2025

Appeal Ref: APP/D2320/C/24/3345673

274 Babylon Lane, Heath Charnock, Chorley PR6 9ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act). The appeal is made by Mr Anthony Brooks against an enforcement notice (EN) issued by Chorley Borough Council.
- The EN was issued on 8 May 2024.
- The breach of planning control as alleged in the EN is: Without planning permission, the erection of a raised driveway/terrace with glass balustrades within the green belt but outside of the residential curtilage.
- The requirement of the EN is: Remove the unauthorised raised driveway/terrace and glass balustrades outside the residential curtilage and return the land to its previous condition within 6 months.
- The period for compliance with the requirement is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (f) of the 1990 Act. 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 1990 Act.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

The Notice

1. On an appeal any defect, error, or misdescription in an EN may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. The description of the alleged breach of planning control should only refer to acts of development given that it forms the basis of the deemed planning application made under section 177(5) of the 1990 Act. Therefore, I intend to delete the wording '*within the green belt but outside of the residential curtilage*' within section 3 of the EN. This is a minor error which has not affected the appellant's understanding of the allegation of the EN. As such, I consider that the correction can be made without injustice to either main party.
2. The appellant has stated that the allegation and the requirement are vague as it is not clear what parts of the driveway/terrace are attacked by the EN. However, section 2 of the EN states clearly that the unauthorised development which is attacked by the EN is within the land shaded blue on the plan attached to it. My conclusion is that the EN (as corrected) tells the recipient fairly what he has done wrong and what he must do to remedy it. Compliance with this test does not rule out the ability to challenge the EN through the grounds available in an appeal and make corrections where they have shown to be justified.

3. For the reasons given above, I conclude that the EN is valid and that no injustice would be caused by correcting the error in accordance with my powers under section 176(1)(a) of the 1990 Act.

Procedural Matters and Background

4. There has been a revised National Planning Policy Framework (the Framework) published in December 2024. Both main parties were given the chance to comment on whether revisions to the Framework have relevance to their case. I have taken into account any responses and the revised Framework in the determination of the appeal.
5. The appeal site comprises a relatively large parcel of land that is owned and occupied by the appellant. In the north-eastern corner of the site is a recently constructed dwelling and in the south-eastern corner there is a detached double garage. The area between the garage and the dwelling is hardsurfaced and cars were parked on it on the day of my site visit. The area to the west of the dwelling is largely mown grass with hedges on its north, west and south boundaries. To the north of the appeal site is a terrace of dwellings and what appears to be gardens or amenity areas associated with that terrace. To the south of the appeal site is a mown area of grass which is bounded by hedges and appears to be associated with dwellings to the south. To the west of the appeal site is a large field and on the opposite side of Babylon Road there is also a large field. There is no dispute that the site lies within the Green Belt at Heath Charnock.
6. In 2019 planning permission¹ (the 2019 permission) was granted for the *'demolition of existing dwelling and garage and erection of detached dwelling and construction of vehicular access'*. Also, in 2019 an application² for a certificate of lawfulness for a proposed detached outbuilding/store was approved. In January 2022 a planning application³ (the 2022 application) for the *'change of use of agricultural land to garden land and the erection of lawnmower store'* was refused.

The ground (b) appeal

7. To succeed on this ground, the onus is upon the appellant to show on the balance of probabilities that the allegation has not occurred as a matter of fact. The appellant's case is that the driveway/terrace does not amount to a **'raised'** driveway/terrace as it has been built at pre-existing and approved levels (my emphasis).
8. I acknowledge that the part of the driveway/terrace that is attacked by the EN adjoins an area of hardstanding that appears to correlate with that shown on the approved drawings associated with the 2019 permission. Moreover, no ground levels either existing or proposed are shown on those approved drawings and there are no planning conditions on that planning permission with regard to ground levels. The ground levels of the surface of the driveway/terrace attacked by the EN appear to be similar to that of the area of hardstanding it adjoins.
9. Nevertheless, due to the sloping topography it is clearly apparent that the mown grassed area to the west is at an appreciably lower ground level to that of the house and the driveway/terrace. The surface of that driveway/terrace is therefore

¹ Ref No: 19/00517/FUL

² Ref No: 19/00769/CLPUD

³ Ref No: 21/01310/FUL

raised above the ground level of the mown grassed area. Furthermore, a retaining wall with glass balustrading above forms the western edge of the driveway/terrace. Therefore, in my judgement the erection of a raised driveway/terrace has occurred as a matter of fact and the ground (b) appeal fails.

The ground (c) appeal

10. An appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. In an appeal on this ground the onus is on the appellant to show on the balance of probability that the matters alleged, to have occurred, in the EN do not constitute a breach of planning control. The appellant considers that the glass balustrading would have been 'permitted development' under Article 3 and Schedule 2, Part 2, Class A (Class A) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns the erection of a gate, fence, wall or other means of enclosure.
11. The appellant also considers that the driveway/terrace would have been 'permitted development' under Article 3 and Schedule 2, Part 1, Class F (Class F) of the GPDO which relates to hard surfaces incidental to the enjoyment of a dwellinghouse. He additionally argues that, if I consider that the works do not comply with those classes of the GPDO, the difference between what has been built and what was approved by the 2019 permission is not sufficiently significant as to constitute a material breach of planning control.
12. Class A permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure subject to certain limitations. It is clear that the relevant limitation in this case would be A.1.(b). Under A.1.(b) development is not permitted if the height of any other gate, fence, wall or means of enclosure erected or constructed would exceed 2 metres(m) above ground level. There are 2 separate sections of glass balustrade that are attacked by the EN. The one is to the rear of the dwellinghouse and has been erected on the mown grass at the lower ground level. It encloses a relatively small area between the raised patio and steps down, that are adjacent to the dwellinghouse and the mown grass. Even though there are no measurements before me in respect of the height of that balustrade it is clearly apparent that it does not exceed 2m above ground level. As such, this section of balustrade would have met the limitations and conditions of Class A of the GPDO.
13. The second section of balustrade is above the retaining wall that forms the edge of the raised driveway/terrace and a short section of it turns at 90 degrees towards Babylon Lane. The frame of the balustrade appears to have been fixed to the retaining wall and one upright at the end closest to the garage extends down the side of that wall to the ground level of the mown grass. Again, no measurements are before me with regard to the height of this section of the balustrade. Nevertheless, the evidence before me indicates that the height of the retaining wall is around 0.9m and it is more likely than not that the overall height of the retaining wall and the balustrade does not exceed 2m in height above ground level.
14. Moreover, I acknowledge that the driveway/terrace has a hard surface and that its use is incidental to the enjoyment of the dwellinghouse. However, even if I agreed with the appellant that the hard surface is within the curtilage of the dwellinghouse, when considered holistically, it is reasonable to consider that the construction of the raised driveway/terrace and the section of balustrade that is attached to it has

been constructed as a single operation. The appellant has stated within his ground (a) appeal that *'the works are considered to constitute an engineering operation'*.

15. The meaning of development for the purposes of the 1990 Act is defined at section 55(1) of that Act as meaning: '...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land'. The courts have held that engineering operations for the purposes of section 55(1) involve works with some element of preplanning, which would normally but not necessarily be supervised by a person with engineering knowledge. Therefore, the appellant or person(s) who carried out the works do not have to be an engineer or possess engineering knowledge for the works to constitute an engineering operation. In my view, the totality of the works to construct the retaining wall, infill the area behind it, hard surface that area and enclose it with the balustrade would have involved a degree of pre-planning to co-ordinate the operations and the required machinery and materials. Therefore, as a matter of fact and degree, I consider that cumulatively those works constitute an engineering operation and as a whole do not fall within permitted development rights.
16. As stated previously, the approved plans associated with the 2019 permission make no reference to ground levels. I acknowledge that the ground levels of the drive area adjoining the pavement to Babylon Lane ensure level access across that pavement. Nevertheless, given the sloping topography down towards the western boundary of the appeal site it is clearly apparent that the ground level of the drive would have been above that of the mown grass along the boundary where they would meet. No boundary treatment for that boundary is shown on the approved plans. The works that constitute the engineering operation are not within the application site of the 2019 permission and condition 1 of that permission states that *'the development shall only be carried out in accordance with the approved plans...'*. That engineering operation extended the driveway/terrace to the west and introduced a retaining wall and balustrade as the boundary with the mown grassed area. Given, that extension to the west the height of the retaining wall is more likely than not taller than would have been required with that approved by the 2019 permission. In any case the addition of the balustrade appreciably altered the height of the boundary treatment with the mown grassed area. Therefore, in my judgement those works are materially different from the approved plans and express planning permission is required for the engineering operation.
17. In this respect the ground (c) appeal fails. Yet the section of balustrade on the mown grassed area is a separate operation which I have found would have met the limitations and conditions of Class A of the GPDO. As such, that part of the development is granted planning permission by Article 3 of the GPDO and in that respect the ground (c) appeal succeeds. To ensure that the requirement of the EN is precise with regard to which glass balustrade would have to be removed I intend to delete the plan attached to the EN and replace it with Plan A annexed to this decision. The area of blue shading covering the separate section of glass balustrade is removed on that plan. I also intend to delete the letter 's' on the end of the word balustrades within the description in section 3 and the requirement in section 5 of the EN.

The ground (a) appeal and deemed planning application

Main Issues

18. Taking into account the reasons for issuing the EN and that no specific development plan policies are cited in those reasons or the evidence before me the main issues are:
- Whether the development is inappropriate development in the Green Belt having regard to its effect on the openness and purposes of the Green Belt and the Framework.
 - if the development does amount to inappropriate development within the Green Belt, whether the harm by way of inappropriateness, and any other harm, is clearly outweighed by other material considerations such that very special circumstances exist to justify a grant of planning permission.

Reasons

19. Paragraph 154 of the Framework states that development in the Green Belt is inappropriate unless one of the stated exceptions applies. I have found that cumulatively the works constitute an engineering operation. Paragraph 154 h)ii exempts engineering operations, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
20. Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence. Paragraph 143 of the Framework states that the Green Belt serves five purposes. The relevant purpose for this appeal is c) to assist in safeguarding the countryside from encroachment.
21. Whether harm is caused to openness depends on a variety of factors such as the scale of the development, its locational context and its spatial and/or visual implications. Moreover, in the context of paragraph 154 h) it is the openness of the Green Belt that must be considered and not the openness of the site as such. In my view, under each of the exceptions cited at paragraph 154 h) it is contemplated that there will be some change to what is presently there. Any new engineering operation is likely to result in some degree of change in openness whether that is spatially and visually, or just spatially.
22. Paragraph 154 h) qualifying requirements cannot act to exclude all listed exceptions and thus there is an inherent acceptance within that paragraph that some effect on openness is permitted. Put another way, whether the openness of the Green Belt is preserved, or conversely harmed, cannot mean that a development can only be regarded as 'not inappropriate in the Green Belt' if the openness of the Green Belt would be left entirely unchanged. It can only sensibly mean that the effects on openness must not be harmful.
23. In this case, the retaining wall is more than likely taller than it would have been if the driveway/terrace had been built in accordance with the approved plans of the 2019 permission and the balustrading has been added on top of it. Yet the balustrade is formed of a relatively thin black frame and glass inserts. The extension of the driveway/terrace to the west has a very modest spatial impact on the openness of the Green Belt.

24. Furthermore, the development is seen, from the mown grassed area and Babylon Lane, in the context of the dwellinghouse, garage and the part of the driveway/terrace not attacked by the EN. The materials used for the development match those used in the dwellinghouse and its associated parts. Therefore, it is well related physically and visually to that dwellinghouse. Moreover, when the gates that are on the boundary with Babylon Lane are closed the development would be largely screened from the public realm. The visual impact on the openness of the Green Belt is not therefore harmful. In addition, as a relatively small extension to the approved driveway it is more likely than not that no additional parking or movements will result from that extension.
25. I therefore find that taking into account all of the above, the openness of the Green Belt is preserved in this case. The extension of the driveway/terrace to the west is into the mown grassed area but that extension is limited in size and as stated above it is well related physically and visually to the dwellinghouse. Therefore, the development does not conflict with the purpose of safeguarding the countryside from encroachment.

Other Matters

26. I acknowledge that the 2022 application was refused and that the Council considers that the alleged breach of planning control is for a similar development to that proposed. However, that development involved a material change of use and the erection of a building whereas the alleged breach of planning control is for operational development that I have found constitutes an engineering operation.

Conclusion

27. For the reasons given above I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the erection of a raised driveway/terrace with glass balustrade as described in the EN. The appeal on ground (f) does not therefore fall to be considered.

Formal Decision

28. It is directed that the enforcement notice is corrected by:
- deleting the wording '*within the green belt but outside of the residential curtilage*' within section 3 of the EN.
 - deleting the letter 's' on the end of the word balustrades within the description in section 3 and the requirement in section 5 of the EN.
29. Subject to the correction the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a raised driveway/terrace with glass balustrade on land shaded blue on Plan A annexed to this decision at 274 Babylon Lane, Heath Charnock, Chorley PR6 9ER.

D Boffin

INSPECTOR



Plan A

This is the plan referred to in this decision dated: 1st May 2025

by **D Boffin**

Land at: 274 Babylon Lane, Heath Charnock, Chorley PR6 9ER

Reference: Appeal Ref: APP/D2320/C/24/3345673

Scale: Not to Scale

