



Appeal Decision

Site visit made on 29 April 2025

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 May 2025

Appeal Ref: APP/P1045/C/24/3339669

5 Hackney Road, Hackney, Derbyshire DE4 2PW

- 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 L Stacey against an enforcement notice ("EN") issued by Derbyshire Dales District Council.
 - The notice was issued on 25 January 2024.
 - The breach of planning control as alleged in the notice is "Without planning permission the Unauthorised Engineering works to facilitate additional vehicular parking within the area outlined in red on the attached plan".
 - The requirements of the notice are to:
 - (a) Completely remove the retaining wall/structure and parking area from within the area outlined in red on the attached plan.
 - (b) Return the land outlined in red on the attached plan to its previous condition and gradient.
 - The period for compliance with the requirements is: 3 months from when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) 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 Act.
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Decision

1. It is directed that the EN is corrected by:
 - *the deletion of the words "Without planning permission the Unauthorised Engineering works to facilitate additional vehicular parking within..." and their substitution with the words "Without planning permission, engineering works including the construction of a retaining wall/structure and parking area within..." in section 3. THE BREACH OF PLANNING CONTROL ALLEGED.*
2. Subject to the correction, the appeal is allowed, the EN is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely engineering works including the construction of a retaining wall/structure and parking area within the area outlined in red on the attached plan at 5 Hackney Road, Hackney, Derbyshire DE4 2PW as shown on the plan attached to the EN and subject to the following condition:
 - 1) Unless within one month of the date of this decision, a scheme to prevent vehicles from parking on top of the gabions shall be submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within two months of the local planning authority's approval, the use of the site for the parking of vehicles shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within one month of the date of this decision, the use of the site for the parking of vehicles shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained for the lifetime of the development.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Matter Concerning the Notice

3. The alleged breach of planning control is described as “*Without planning permission the Unauthorised Engineering works to facilitate additional vehicular parking within...*”. However, within the requirements of the EN, it is described as a “*retaining wall/structure and parking area*”. It is therefore necessary for me to correct the alleged breach described within the EN, so it is consistent with the wording of the requirements. I am satisfied that the EN can be corrected in this respect without causing injustice.

Preliminary Matters

4. A revised National Planning Policy Framework (“the Framework”) has been published since the EN was issued. However, it does not raise any new issues that are determinative to the purposes of the appeal and therefore injustice to the parties does not arise.
5. Section 4 of the EN states that the reason for issuing the notice is that the Council “*is not satisfied that the development has been undertaken in a manner that will not adversely affect the stability of the land and result in damage to the adjacent dry stone boundary wall*” and refers to Policy PD9 of the Adopted Derbyshire Dales Local Plan, adopted 2017 (“LP”). However, the Council’s appeal statement also raises concern regarding the development’s effect on localised flooding.
6. The Council has clarified that the information submitted in the appeal statement was informative only and the correct reason for issuing the EN is detailed at Section 4 of the EN. I have therefore determined the appeal on this basis.
7. At the request of interested parties, I also visited 18A Old Hackney Lane as part of my site visit and assessed the development from the rear garden of this property. The interested parties also attended the site visit at the appeal site.

The Appeal on Ground (a) and the Deemed Planning Application

8. An appeal under ground (a) is that planning permission should be granted for the matter alleged.
9. The **main issue** is the effect of the development on land stability, including damaging an adjacent stone wall.

Reasons

10. The development comprises the levelling of part of the appellant's garden, the placing of gabions filled with crushed stone, the backfilling of the ground behind the gabions, and the laying of an asphalt surface on top of the backfilled area of ground. The asphalt surface is used for the parking of vehicles and is accessed via an existing driveway/access from Old Hackney Lane.
11. The development shares a boundary with 18A Old Hackney Lane. The rear garden of No 18A slopes steeply upwards from the dwelling to the appeal site where a stone retaining wall demarcates the boundary. The gabions are in proximity of the stone wall and extend approximately one metre above it.
12. Erskine Hurt Consultants Limited (Consulting Engineers) ("EHC") state that they inspected the development post construction and concluded that *"the height and width of the gabion baskets are more than adequate for supporting the new parking area...on the basis that it will only be used for cars and light vans less than 2.5 tonne. An assessment of the stone wall is a more subjective task. The exact construction is not known, nor are the underlying ground conditions, but based on the reasonable assumptions that it has [sic] built to normal dry stone wall proportions and founded on a normal clay subsoil, we consider it can adequately support the additional load"*.
13. The interested parties dispute EHC's assessment of the stone wall's construction and the ground conditions on which it is constructed. However, this has not been substantiated with evidence. I appreciate that EHC was not involved in the development prior to or during its construction, and their assessment is partly based on assumptions and does not include any calculations. However, I have nothing before me to doubt EHC's professional views, nor have I been presented with an alternative structural engineer's report to counter their conclusions.
14. The planning application form¹ for the retention of the development states that the works were completed on 6 April 2023. Therefore, prior to my site visit, the development has been in place for over two years and has been used to park vehicles that the interested parties suggest weigh more than EHC's suggested weight limitation.
15. At the time of my site visit, the stone wall was in good condition with no obvious signs of cracking to the mortar or stones, nor any signs of bulging or leaning. I viewed the gabions from both the appeal site and No 18A and did not notice any obvious defects. Similarly, the asphalt surface was intact with no noticeable cracks or sinking, and I have not been directed to evidence to suggest that the surface has recently been re-laid.
16. On my site visit, I noticed there were gaps between the uppermost horizontal panels of a fence that has been erected on top of the gabions. However, I have nothing before me to suggest that the gaps are linked to land stability. Consequently, there are no identifiable signs that the development is causing issues with land stability or is damaging the stone wall.
17. The interested parties dispute EHC's statement that *"the front of the gabion wall has been set approximately 0.5m back from the face of the stone wall"* as they

¹ Planning Ref 23/00990/FUL

assert the distance is much narrower (between 6-20cm). They also assert that the difference between these two measurements could indicate that the gabions have moved since the consultant visited the site.

18. I agree that the distance between the rear of the stone wall and the gabions is less than 0.5m. However, EHC state the measurement was taken from the *“face of the stone wall”* and that the measurement was *“approximately 0.5m”* [my emphasis]. Together with variations in the thickness of the stone wall and the distance between the stone wall and the gabions, it is reasonable to conclude that EHC’s measurement is correct, and the gabions have not moved.
19. The interested parties have raised concern that a fence constructed on top of the gabions has reduced their structural integrity and conflicts with EHC’s advice that they assert states *“that any structure on top of the car park should be ‘...built off foundations that are deep enough so as to not impose any lateral load on either the gabion retaining wall or the original stone wall’”*.
20. However, the advice is specific to the construction of a car port on top of the development, not a fence, which would be much lighter. Furthermore, EHC’s advice actually states, *“Although the loads on the stanchions will be relatively light we recommend the two rear stanchions are built off foundations that are deep enough so as not to impose any lateral load on either the gabion retaining wall or the original stone wall”*. Consequently, it does not imply that any structure on top of the development would reduce the structural integrity of the gabions.
21. For these reasons, the development does not adversely affect land stability or damage an adjacent stone wall. It complies with Policy PD9 of the LP which, amongst other things, seeks to protect people from unsafe environments, and ensure sites are suitable for their proposed use taking account of ground conditions and land instability.

Other Matters

22. Interested parties have submitted representations to this appeal. I acknowledge that they differ from those summarised within the Officer Report for a previous planning application² for a similar development. However, I can only consider representations that have been submitted as part of this appeal.
23. The interested parties raise concern regarding the effect of the development on the living conditions of the occupiers of neighbouring properties, but they do not explain how. The Council does not raise concern in this regard and from the information before me, I have no reason to disagree with the Council.
24. The interested parties assert that the development has affected the well-being of an adjacent tree, however, this has not been substantiated with evidence. They also assert that the appellant’s arboricultural report is based on assumptions and subjective views. The arboriculturist was appointed after work had commenced and therefore some assumptions are inevitable. Furthermore, I have not been provided with an alternative arboricultural report to counter their conclusions.
25. I appreciate that if the tree fell, it could affect the safety of the occupiers/visitors of No 18A. However, I have nothing before me to show that this would be more likely to occur as a direct consequence of the development.

² Planning Ref 23/00990/FUL

Conditions

26. I have had regard to the conditions suggested by the Council and the tests for conditions set out within the Framework. The Council's second and third suggested conditions refer to a car port which was not present at the time of my site visit, nor is it included within the alleged breach of planning control. The Council has confirmed that these conditions are not applicable to the development, and from the information before me, I agree.
27. The Council's first suggested condition requires details of measures to prevent the parking of vehicles on top of the gabions to be submitted, agreed and maintained for the lifetime of the development. This is to comply with EHC's requirements. At the time of my site visit, timber had been placed around the perimeter of the gabions that would likely be effective. However, I am unaware whether it is acceptable to the Council. Even if it is acceptable, the Council do not have any details of its appearance.
28. Consequently, a condition requiring details of measures to prevent the parking of vehicles on top of the gabions is necessary. However, I will re-word the Council's suggested condition to ensure it includes sanctions to allow for the enforcement of any subsequent breach of the condition.
29. EHC recommended that vehicles parked on the development should be restricted by a weight limit. The Council has not suggested a weight limit condition. I do not consider that a condition restricting vehicle weight would be enforceable. Furthermore, the access road width, the brick entrance into the appellant's land, and the size of the parking/turning area would restrict the size, and as a consequence, the weight of the vehicle(s) that could park on the development.
30. In addition, as I have described above, the interested parties have stated that vehicles exceeding the weight limit have used the development without causing land stability or damage to the stone wall. Consequently, a weight limit condition would also be unreasonable.

Conclusion

31. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the EN as corrected. The EN will be corrected and quashed.
32. In these circumstances the appeal on ground (g) does not fall to be considered.

A Berry

INSPECTOR