



Appeal Decisions

Site visit made on 20 May 2025

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2025

Appeal A Ref: APP/V4630/W/24/3356101

Top Lock Cottage, 206 Old Birchills, Walsall WS2 8QD

- 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 David Hall against the decision of Walsall Metropolitan Borough Council.
 - The application Ref is 24/1134.
 - The development proposed is erection of wooden ship lat [sic] fencing to the south of the garden where walls have collapsed.
-

Appeal B Ref: APP/V4630/Y/24/3356100

Top Lock Cottage, 206 Old Birchills, Walsall WS2 8QD

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
 - The appeal is made by David Hall against the decision of Walsall Metropolitan Borough Council.
 - The application Ref is 24/1135.
 - The works proposed are erection of wooden ship lat [sic] fencing to the south of the garden where walls have collapsed.
-

Decision

1. Appeal A is allowed and planning permission is granted for the erection of wooden ship lat [sic] fencing to the south of the garden where walls have collapsed, at Top Lock Cottage, 206 Old Birchills, Walsall WS2 8QD in accordance with the terms of the application Ref 24/1134, and the plans submitted with it, subject to the conditions in Schedule 1 attached.
2. Appeal B is allowed and listed building consent is granted for the erection of wooden ship lat [sic] fencing to the south of the garden where walls have collapsed, at Top Lock Cottage, 206 Old Birchills, Walsall WS2 8QD in accordance with the terms of the application Ref 24/1135, and the plans submitted with it (Location plan dated 04-Sept-2024; site plan TQRQM24183204913039 dated 01 Jul 2024 and Closed Board Fence Drawing No.1 Rev No.1) and subject to the conditions in Schedule 2 attached.

Preliminary Matters

3. Since the appeal was made, a revised National Planning Policy Framework (the Framework) has been published¹. The document has not raised any new matters which are determinative to this appeal, hence I am satisfied that neither party would be prejudiced by my consideration of the revised Framework in reaching my decision.

¹ December 2024

4. The proposal relates to a listed building within a conservation area. Sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (The Act) require me to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possess; and to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.
5. As the two appeals concern the same scheme under different, complementary legislation I have dealt with both appeals together in my reasoning to avoid unnecessary duplication.

Main Issues

6. The main issues for Appeals A and B are i) whether the proposal would preserve the Grade II listed building known as Walsall Junction Canal Old Birchills Toll House² (hereafter the Toll House) or its settings and the settings of other nearby listed buildings, and ii) whether the proposal would preserve or enhance the character or appearance of the Walsall Locks Conservation Area (the WLCA).

Reasons

Special interest and significance of the heritage assets

7. The Toll House dates from about the 1840s and is sited on the canal towpath. It is a single storey brick building with fishscale tiles and a canted projection with hipped roof. It has windows with pointed heads and in the angle with the canted projection there is a porch with a chamfered brick doorway. The main roof is half hipped at each end.
8. From the submitted evidence and my observations, the building's special interest and significance are largely derived from the building's architectural and historic interests that reflect its function as a building associated with the canal network on the Walsall Junction Canal providing important trade links and conveyance of goods through the West Midlands and rest of the canal network.
9. The Toll House sits on the towpath close to the canal and the Grade II lock known as "Walsall Junction Canal Old Birchills Eighth Lock from South (Top Lock) Walsall Locks"³ (hereafter the Top Lock). The Top Lock was built in 1841 to join the Walsall Canal to the Birchills Branch of the Wyreley Canal and hence is contemporary with the Toll House. It is brick with some sandstone kerbstones to the lock chamber, with single gates and cast iron sluice gear. It forms part of a flight of eight locks. Its special interest and significance are largely archaeological, historic and architectural reflecting the engineering, social and economic growth of the canal network and as part of the wider Industrial Revolution that swept across the Black Country bringing social and economic change.
10. Adjacent to the Toll House, a little further away from Top Lock but still fronting the canal is the Grade II listed Former Boatmans Rest building⁴. This building is much younger dating from about the 1900s. It is a two storey, red brick, hipped slate roof building with a bay window and lancet style windows at the upper floor. It was one

² National Heritage List for England: list entry number 1077176

³ National Heritage List for England: list entry number 1186765

⁴ National Heritage List for England: list entry number 1271546

of three in the West Midland canals operated by the Incorporated Seaman and Boatmans Friend Society. The other two have since been demolished, so the building is the last remaining one of its kind on the Walsall Canal.

11. As defined in the Framework Glossary and pertinent to the appeal, the significance of a heritage asset can also be derived from its setting. The Framework goes on to define the setting of a heritage asset as the surroundings in which the asset is experienced, which may not remain fixed and may change as the asset and its surroundings evolve.
12. The Toll House, Boatmans Rest, Top Lock, the canal and the canal basin beyond the lock have some group value as a collection of buildings clustered around the towpath, canal basin and canal locks. They are all clearly visible and appreciated from the towpath, which I saw was used by a number of pedestrians, and from the other side of the lock and the wider canal basin. They also form an attractive group alongside the water when seen together from Old Birchills road and the bridge (Top Lock Bridge) over the canal, which affords views down onto the canal and towpath. These views are integral to understanding the function of the buildings and their relationship to each other and the canal and to part of Walsall's industrial heritage. Thus this wider setting contributes in a very tangible and positive way to the heritage interests of the appeal building and the other nearby heritage assets.
13. The Toll House also has a small brick walled garden/yard. One wall fronts the towpath and the other is adjacent to the derelict yard and vacant former public house on the corner of Green Street. From within the enclosed brick garden/yard the special interest of the Toll House is more intimately experienced and appreciated. This immediate setting therefore positively contributes to its heritage significance.
14. The appeal site and the other aforementioned listed buildings, as well as the canal itself, the canal basin and all 8 locks along it are located within the WLCA. From the evidence before me, the character and appearance of the WLCA, and hence its special interest and significance, are largely derived from its association and role in the canal network as part of the social and economic evolution of Walsall, the Black Country and the wider West Midlands and its network of canals as trade links and as part of the Industrial Revolution that transformed the area. Hence the appeal site positively contributes to the understanding and significance of the WLCA.
15. Notwithstanding that, since the Council submitted its appeal statement and photographs showing the gap in the wall when viewed from the road bridge and the towpath, the boundary wall belonging to the vacant former public house has been crudely secured with a hotchpotch of materials. The designed gaps in the wall have been infilled with metal mesh, corrugated metal and panels of chipboard and painted wood that extend beyond the height of the wall. This conceals much of the collapsed wall in the Toll House garden/yard from view from either the towpath, Top Lock and from the road bridge over the canal. However, the poor quality and unsympathetic use of materials along this boundary are far more visually prominent and detracting than the partially collapsed wall the subject of this appeal. The poor appearance, coupled with the visible signs of neglect and vandalism of the building, which is clearly evident, serve to significantly detract from the character and appearance of the WLCA and the setting of the Toll House, Top Lock and the wider canal basin.

Appeal proposal and effects

16. Part of the 2.5 metre tall brick side wall of the garden/yard of the Toll House, along the boundary with the yard of the adjacent derelict public house, has collapsed following what appears to be the demolition of some adjacent buildings. As a result, a large gap is now left in the boundary wall. I saw this left the boundary to the Toll House unsecured and there were direct views into the derelict yard of the adjacent vacant public house. Temporary Heras fencing has been erected across the gap and the remaining wall is in a poor state of repair. The appellant's evidence includes photographs showing the wall intact before it collapsed.
17. The proposal would involve installing a new ship lap horizontal timber fence across the gap, approximately 4.6 metres wide. Metal fence post anchors would be used and some sections of collapsed wall would be retained but repaired. The fence is intended as a temporary measure, although the application forms do not indicate this or suggest a time period. However, the appellant states their long term intention is to repair and reconstruct the wall.
18. The sections of timber fencing across an historic brick wall enclosure would introduce an unsympathetic building material at odds with the surrounding brick walls. Whilst the alignment of the means of enclosure would be retained, the use of timber fencing would be incongruous and visually discordant. The proposed timber fence would reduce the integrity and authenticity of the brick garden/yard and its means of enclosure. This would lessen the positive contribution the building's setting makes to its special interest and significance. Thus the proposed timber fence would fail to preserve the listed building and its immediate setting. In doing so, it would harm the significance of this designated heritage asset.
19. As the Toll House is an integral part of the WLCA it follows that the harmful effects I have identified to the heritage interests of the listed Toll House would diminish the contribution it makes to the WLCA and would thus cause some residual harm to the significance of the WLCA. As the proposed timber fence would not be within the line of sight of the Boatmans Rest building or Top Lock, their settings would not be harmed.

Public benefits and heritage balance

20. Paragraph 205 of the Framework states that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. With reference to paragraphs 207 and 208, in finding harm to the significance of a designated heritage asset, the magnitude of that harm should be assessed.
21. In line with the Framework and taking account of the nature and extent of the proposals, I find the harm to the significance of the listed building and the WLCA would be 'less than substantial'. Nonetheless this harm carries considerable importance and weight. Framework paragraph 208 requires the harm to be weighed against the public benefits of the proposal including, where appropriate, securing the asset's optimum viable use. Public benefits, as described in the national Planning Policy Guidance, can be anything that delivers economic, social or environmental objectives. Benefits do not have to be visible or publicly accessible and can include works to a listed private dwelling, for example, which secures its future as a designated heritage asset.

22. I am led to understand the collapsed boundary wall was the result of third party actions that have left the appellant and his family with an unsecured boundary to their property. This adversely affects their security and personal safety. The property has been burgled twice, the appellants have installed CCTV and the building is on the Police's Register of vulnerable properties. The adjacent former public house has also been burgled several times. This leaves the listed Toll House vulnerable to further burglary and vandalism, which could lead to damage and result in greater harm to the heritage asset in due course. The situation is also adversely affecting the quality of life for the appellant and his family. Hence there is a need to establish a secure boundary to the property.
23. It may well be that the adjacent public house site will be repaired or redeveloped sometime in the future, and this may present an opportunity to sympathetically repair the brick boundary wall to the Toll House garden/yard. However, that is an uncertainty and timescales are unknown. But to leave the gap in the boundary wall, through what appears to have been the result of third party actions, would be unreasonable. Taking these factors into account, I find these are circumstances that warrant a bespoke approach.
24. Therefore, as an interim measure and while an appropriate and permanent solution for the boundary wall for the Toll House garden/yard can be found, I consider a temporary 1-year permission would be a reasonable approach in these particular circumstances. Whilst there would be harm to the immediate setting of the listed Toll House, I consider that on balance the erection of the proposed timber fence for a temporary period, and the resulting removal of the Heras fencing and the temporary fill of the gap, would bring public benefits in the form of temporary visual improvement to the wider area and help reduce further vandalism and damage to the listed building. This in turn would bring some wider associated benefits to the suite of canal-side buildings, 'Top Lock' and the WLCA. There would also be public benefits in helping to continue to secure the use of the building. In light of this, the temporary consent for a timber fence would outweigh the 'less than substantial' harm to the heritage asset. The timber fence would also help address the safety of the appellant and his family.
25. Accordingly, whilst there would be conflict with Policies ENV26, ENV27, ENV32 and GP2 of the Saved Unitary Development Plan, and Policies ENV2, ENV3 and CSP4 of the Black Country Core Strategy, which cumulatively seek to promote high quality design and place-making by ensuring proposals do not adversely affect historic buildings and areas that contribute to the borough's local distinctiveness including its historic canal network, water frontage, industrial heritage and its associated buildings, the material considerations I outline above outweigh the conflict with the development plan.
26. A section 20 appeal does not need to be determined in accordance with the development plan. However, in the decision notice the Council refer to the same development plan policies against which the planning application was determined, and which I have described above.

Conditions

27. The Council has suggested 3 conditions, without prejudice, should the appeal be allowed. I have considered them against the advice in the Framework and Planning Practice Guidance.

28. Due to the temporary nature of the proposal and the need to secure the appeal site, I shall reduce the standard time-period to commence the proposal from 3 years to 1 year. The 1-year temporary consent will then run from when the fence is first put up. As the fence is meant as a short-term interim measure and the fence is a fairly lightweight structure, the suggested engineering report is unnecessary at this stage.

Conclusion

29. Appeal A: For the reasons above the appeal is allowed.
30. Appeal B: For the reasons above the appeal is allowed.

K. Stephens
INSPECTOR

Schedule 1: Conditions for Appeal A - Ref: APP/V4630/W/24/3356101

- 1) The development hereby permitted shall begin no later than 1 year from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan dated 04-Sept-2024; Site plan TQRQM24183204913039 dated 01 Jul 2024 and Closed Board Fence Drawing No.1 Rev No.1
- 3) The fence hereby permitted shall be for a limited period of 1 year from date that the fence is first erected. After this time the timber fence shall be removed and the wall restored in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.

Schedule 2: Conditions for Appeal B – Ref: APP/V4630/Y/24/3356100

- 1) The works authorised by this consent shall begin no later than 1 year from the date of this consent.
- 2) The fence hereby permitted shall be for a limited period of 1 year from date of it is first erected. After this time the timber fence shall be removed and the wall restored in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.

End of conditions