



Appeal Decisions

Site visit made on 6 January 2026

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

an Inspector appointed by the Secretary of State

Decision date: 16 February 2026

Appeal A Ref: APP/W1905/C/24/3341791

Appeal B Ref: APP/W1905/C/24/3341792

13 College Road, Hoddesdon, Hertfordshire EN11 9DN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
 - Appeal A is made by Mr Giovanni Orlando and Appeal B is made by Mrs Serafina Orlando against an enforcement notice ("EN") issued by Broxbourne Borough Council.
 - The EN was issued on 1 March 2024.
 - The breach of planning control as alleged in the EN is: Without planning permission, the raising of ground levels and the erection of a wall.
 - The requirements of the EN are to:
 - (i) Reduce the height of the wall between A and B, B and C, C and D on the attached plan so that it does not exceed 2m from the natural ground level from at any point
 - (ii) Reduce the depth of ground level from the hatched area as shown on the attached plan so that it is compliant with drawing number 3314-21A2-03 as per planning permission reference 07/22/0115/HF i.e. a reduction of approximately 1.3m in height
 - (iii) Remove any resultant soils and debris from the land.
 - The periods for compliance with the requirements are:
 - Step (i) – Three (3) months from the date this Notice takes effect
 - Step (ii) – Three (3) months from the date this Notice takes effect
 - Step (iii) – Four (4) months from the date this Notice takes effect
 - The appeals are proceeding on the grounds set out in section 174(2)(a) and (c) of the 1990 Act. Since appeals have been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.
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Decision – Appeals A and B

1. It is directed that the EN is corrected and varied by:

- *the deletion of the words "...within paragraph (a) of section 171A (1) (a)..." and their substitution with the words "...within paragraph (a) of section 171A (1)" in section 1 of the EN; and*
- *the deletion of the words "(i) Reduce the height of the wall between A and B, B and C, C and D on the attached plan so that it does not exceed 2m from the natural ground level from at any point" and their substitution with the words "(i) Reduce the height of the wall between A and B, B and C, C and D on the attached plan so that it does not exceed 2m from the natural ground level at any point" in section 5 of the EN;*
- *the deletion of the words "(ii) Reduce the depth of ground level from the hatched area as shown on the attached plan so that it is compliant with drawing number 3314-21A2-03 as per planning permission reference 07/22/0115/HF i.e. a reduction of approximately 1.3m in height" and their*

substitution with the words “(ii) Restore the depth of the ground level within the hatched area to its original depth” in section 5 of the EN.

Subject to the correction and variations, the appeals are dismissed, the EN is upheld, and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act.

Matters Concerning the Notice

2. There is a typographical error within section 1 of the EN whereby an additional “(a)” has been included in the relevant section of the 1990 Act. I have therefore excluded the additional “(a)” for precision. I have also corrected step (i) in section 5 of the EN as it included a typographical error. As the correction and variation are for precision, I am satisfied they would not prejudice the main appeal parties.
3. Step (ii) in section 5 of the EN requires the depth of the ground level within the hatched area on the EN plan to be reduced to comply with a drawing approved for a different planning permission at the appeal site. I requested a copy of the drawing from the Council, which was duly submitted.
4. The drawing includes an annotated spot height within the rear garden. However, there is no indication from where this spot height was measured. Furthermore, the evidence before me suggests that the ground level was not of a uniform height within the hatched area. Consequently, the requirement to reduce the whole of the hatched area “*by approximately 1.3m in height*” would go beyond remedying the breach of planning control.
5. I have therefore varied step (ii) to require the restoration of the ground level within the hatched area to its original depth. The appellants are best placed to know the previous depth of the garden and therefore, I am satisfied that this variation would not prejudice the main appeal parties as it would remedy the breach of planning control and would be less excessive for the appellants.

Preliminary Matters

6. The appellants submitted a statement to support their grounds of appeal. However, the evidence indicates that the Council did not have sight of it and I could not open the document. I therefore requested a copy of the appellants’ statement. Even after requesting it be submitted several times, no statement was forthcoming. I have therefore determined the appeal in the absence of the statement.
7. I undertook unaccompanied site visits to the gardens of 11 College Road and 23 Westhill Road to view the alleged breach of planning control. Other than to detail the procedure, no discussion took place with the occupiers.

Appeals on Ground (c)

8. An appeal under ground (c) is that the matters alleged in the EN do not constitute a breach of planning control. The onus of proof is on the appellants, and the relevant test is the balance of probability.
9. The appellants assert that “*the existing and proposed ground levels are within permitted development rights afforded to the property which were not accurately represented on the retrospective application made to the Council*”. The appellants

have not stated which part of the GPDO is applicable to the alleged breach of planning control. They also do not convey how the measurements were incorrectly represented, nor do they provide a planning application reference number.

10. The Council assert that the changes to the ground levels would be excluded by limitation A.1(k)(i) of Class A, Part 1, Schedule 2 of the GPDO as they consist of or include the construction or provision of a raised platform with a height greater than 0.3m. They also consider that the wall would not meet limitation A.1(b) of Class A, Part 2, Schedule 2 as it exceeds 2m in height when measured from ground level.
11. The appeal site is located on the corner of College Road and Westhill Road. The dwelling fronts College Road and its rear garden adjoins the side boundary of 23 Westhill Road. Adjacent to the appeal site is 11 College Road. Due to the topography of the surrounding land No 23 and No 11 have a lower ground level than the appeal site.
12. The evidence before me indicates that the rearmost part of the appeal site's garden beyond the existing swimming pool previously sloped down towards No 23. A close boarded fence was located on the shared boundary adjacent to No 23's front garden. Drawing number 3848-23A2-01 includes a cross-section of the appeal site's rear garden that shows a retaining wall set back from the close boarded fence in this location. Therefore, the ground level between the close boarded fence and the retaining wall was much lower in height than the adjacent garden. Adjacent to the side elevation of No 23 and part of their rear garden, there was a retaining wall positioned along the shared boundary with a 1.2m high close boarded fence on top.
13. A new retaining wall was constructed. However, unlike the previous retaining wall, it was not stepped-in adjacent to No 23's front garden. A blockwork wall was then constructed on top of the retaining wall. A retaining wall with blockwork wall on top has also been constructed along the boundary shared with Westhill Road and inside the close boarded fence and hedgerow of the boundary shared with No 11. The height of the wall varies along these two boundaries due to the sloping topography and varying height of the blockwork. The garden behind the new retaining wall was backfilled. Consequently, the evidence before me suggests that the rear garden was raised in height by between 30cm and 1.7m.
14. Without the retaining walls, the ground levels in the rear garden could not have been raised and the blockwork wall could not have been constructed to enclose the newly raised garden. As a matter of fact and degree I find that the alleged breach of planning control comprises a single and cohesive act of development.
15. Section 55(1) of the 1990 Act defines development as 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 buildings or other land. Engineering operations for the purposes of s55(1) involve works with some element of pre-planning which would normally, but not necessarily, be supervised by a person with engineering knowledge. Therefore, the appellants 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.
16. In my view, the totality of the works to construct the retaining wall, infill the area behind it and enclose it with a blockwork wall would have involved a degree of pre-planning to co-ordinate the operations, machinery and materials. Therefore, as a

matter of fact and degree, I consider that cumulatively the alleged breach of planning control constitutes an engineering operation and as a whole does not fall within permitted development rights.

17. For these reasons, I am not required to consider each element of the development separately against the GPDO. Even if I were to do this, the evidence before me and from what I saw during my site visit clearly indicates that the wall exceeds 2m in height when measured from the natural ground level. Therefore, it does not comply with limitation A.1(b) of Class A, Part 2, Schedule 2 of the GPDO.
18. A raised platform for the purposes of limitation A.1(k)(i) of Class A, Part 1, Schedule 2 of the GPDO is defined as a *“platform with a height greater than 0.3m”*. Even if the development could be considered a raised platform, the totality of the ground levelling exceeds 0.3m in some places and was undertaken as one operation. Consequently, it would not be permitted development under Class A, Part 1, Schedule 2 of the GPDO.

Conclusion on Ground (c)

19. For these reasons, the appellants have failed to show, on the balance of probability, that the matters alleged in the EN do not constitute a breach of planning control. Therefore, the appeals on ground (c) fail.

Appeals on Ground (a) and the Deemed Planning Permission

20. An appeal under ground (a) is that planning permission should be granted for the matter alleged. The **main issues** are the effect of the development on the character and appearance of the surrounding area and the living conditions of the occupiers of neighbouring properties in respect of outlook and privacy.

Reasons

Character and Appearance

21. Westhill Road is a residential street consisting of detached, two-storey dwellings with a mixed appearance. The dwellings are positioned along both sides of the road and are set behind front gardens. Boundary treatments to the front gardens typically consist of dwarf walls and/or hedgerows/vegetation, while there is an absence of a front boundary treatment to some dwellings. This results in an open and verdant character and appearance.
22. The wall consists of a concrete retaining wall with a blockwork wall above. At the time of my site visit, the section of wall adjacent to Westhill Road had close boarded fence panels affixed to its exterior face, and parts of the wall along the boundary shared with No 23 had close boarded fence panels and plastic foliage affixed to it.
23. I acknowledge that the fence panels have partially improved the appearance of the wall. Furthermore, the section of wall along Westhill Road has a similar appearance to the fence that had previously existed along this boundary. However, the plastic foliage is contrived and draws attention to the overall scale of the wall. Furthermore, some sections of the wall still have exposed concrete and blockwork, which detracts from the surrounding area.

24. The wall is a substantial and imposing structure measuring over 3m in height in places. The wall is particularly prominent when travelling from the direction of the A1170 and when in proximity to it. It appears as a significant, hard engineered structure that is uncharacteristic of, and detracts from, the open and verdant character and appearance of the surrounding area.
25. For these reasons, the wall conflicts with Policy DSC1 of the Broxbourne Local Plan, adopted 2020 ("LP") which, amongst other things, seeks to ensure that developments enhance local character and distinctiveness, taking into account existing patterns of development, height and materials.

Living Conditions – Occupiers of Neighbouring Properties

26. The height of the blockwork wall largely restricts people's views over No 23's rear garden. Furthermore, No 23 has a substantial single storey rear extension and therefore, if a view can be gained over the wall towards the rear garden, it is limited and oblique. Therefore, the privacy afforded to the rear garden of No 23 would not be substantially harmed by the breach of planning control.
27. A first floor bedroom window within the rear elevation of No 23 is in proximity of the rear boundary of the appeal site. A section of the wall extends for a substantial length beyond this window, but its height prevents an overbearing effect. However, increasing the ground levels of the appeal site's rear garden affords an oblique view within proximity of this bedroom window. Consequently, the breach of planning control harms the privacy of the occupiers of the neighbouring property.
28. No 11 has an area of hardstanding at the end of their back garden that, at the time of my site visit, was used as a seating area. The wall significantly extends above the close boarded boundary fence and therefore has an overbearing effect on this part of No 11's garden. The wall's height prevents any overlooking of this part of No 11's rear garden. However, the raised ground levels have resulted in an uninterrupted elevated view towards No 11's rear windows and patio area. Consequently, the breach of planning control adversely affects the privacy of the occupiers of the neighbouring property.
29. For these reasons, the breach of planning control harms the living conditions of the occupiers of neighbouring properties with reference to outlook and privacy. It therefore conflicts with Policy EQ1 of the LP which, amongst other things, seeks to avoid detrimental impacts on the amenities enjoyed by the occupiers of neighbouring properties in terms of outlook and overlooking.

Conclusion on Ground (a) and the Deemed Planning Permission

30. For the reasons given above, I conclude that the appeals on ground (a) should be dismissed.

Overall Conclusion

31. I conclude that the appeals should not succeed. I shall uphold the EN with a correction and variations and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act.

A Berry

INSPECTOR