



Appeal Decision

Site visit made on 6 March 2026

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 MARCH 2026

Appeal Ref: APP/X4725/C/25/3371512

Land at 7 Matty Marsden Lane, Horbury, Wakefield, WF4 6EY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Steve Anderson against an enforcement notice issued by Wakefield Metropolitan District Council.
 - The notice was issued on 10 July 2025.
 - The breach of planning control as alleged in the notice is without planning permission (i) the construction of a retaining wall; (ii) the carrying out of engineering operations resulting in a material change in levels of the rear garden, and (iii) the formation of an access road on the Land.
 - The requirements of the notice are to (i) demolish the retaining wall shown blue on the attached plan; (ii) return the Land to its pre-existing levels that existed prior to the construction of the retaining wall; (iii) remove the vehicular access road shown green on the attached plan; (iv) restore the Land to its previous condition by removing all material and debris arising with compliance with the above steps from the Land.
 - The period for compliance with the requirements is within 26 weeks of the date on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (f) 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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Decision

1. It is directed that the enforcement notice is corrected and varied by the deletion of the words *"the carrying out of engineering operations resulting in a material change in levels of the rear garden and"* in paragraph 3(ii), and their substitution with the words *"the carrying out of engineering operations resulting in a material change in levels and"*; and the substitution of the plan annexed to this decision for the plan attached to the enforcement notice. Subject to the correction and variation, the appeal is 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 Matter

2. A draft National Planning Policy Framework 'Plan-making and national decision-making policies' was issued by the Government for consultation on 16 December 2025 (Consultation Draft Framework). I afford the Consultation Draft Framework limited weight as a material planning consideration. This is relative to the published National Planning Policy Framework 2024 (the Framework) to which I afford full weight as a material planning consideration. It is in this context that it has not been necessary to invite comments from the main parties about the Consultation Draft Framework. Any such comments would not have made a difference to the outcome of the ground (a) appeal.

Appeal on ground (b)

3. The appeal made on ground (b) is that the matters comprising the alleged breach of planning control have not occurred. The onus is on the appellant to make a case on the legal grounds of appeal.
4. The claim made by the appellant on ground (b) is that the alleged breach of planning control in respect of the construction of a retaining wall has not occurred to the extent as shown in a blue colour on the plan attached to the notice. It is alleged that the wall covers less land on the eastern boundary of the land. It was clear from my site visit that the plan does not precisely identify the exact position of the constructed retaining wall. However, the appellant's evidence (including photographs and reasoning) clearly demonstrates that he is fully aware of what retaining wall the notice is attacking on the land.
5. I am satisfied that the plan could be corrected, without injustice being caused to any of the main parties. This is despite the fact that section 173 of the Act does not actually require an issued notice to include a plan showing the precise location of alleged unauthorised development. As part of this appeal, and, in this context, I nonetheless requested a corrected plan from the Council which I considered as part of my site visit. It was shared with the appellant who has agreed that it does accurately reflect the breach of planning control. I am satisfied that the corrected plan provides sufficient precision in terms of illustrating the position of the retaining wall and the access road and identifying the land to which the notice relates.
6. Notwithstanding the corrected plan, the appellant's claim that the construction of the alleged retaining wall on the land has not occurred is not sufficiently substantiated. The evidence from both the Council and the appellant is that a retaining wall has been constructed on the land (i.e., that shown edged red on the attached plan) and hence it has occurred. The appellant does not dispute the alleged land level changes, and the formation of the access road have occurred on the land.
7. For the above reasons, I conclude that the ground (b) appeal fails. In reaching this conclusion, and, for the avoidance of doubt, I do not find that the original notice was ambiguous to the extent that it did not enable a person on whom a copy of it is served to know what those matters were. In this regard, it did accord with section 173 of the Act despite the correction made to the plan.

Appeal on ground (c)

8. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make a case on the legal grounds of appeal.
9. The claim made by the appellant is that the constructed wall falls within the curtilage of the dwellinghouse and is permitted development under Class F of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). It is also claimed that the constructed wall is permitted development under Class E of Part 1 of Schedule 2 of the GPDO. In considering these matters, the point of dispute between the main parties is essentially whether the land to which the alleged breaches of planning control relate falls within land within the curtilage of the dwellinghouse known as 7 Matty Marsden Lane.

10. In respect of the above matters, the appellant makes the claim that the constructed wall and access road fall within the curtilage of the dwellinghouse. Curtilage is not a use of land. The courts have held what constitutes curtilage. Regard should be had to three tests of (i) physical layout of the building and the land or building said to be in the curtilage, (ii) ownership (past and present) and (iii) use or function (past and present) applied. The onus is on the appellant to provide sufficient detail and information about such matters. It is also necessary that I consider whether the land is so intimately associated with the appeal building on the land that it forms part and parcel of that appeal building as a matter of fact and degree.
11. It is noteworthy that the Council has commented that its reference to '*rear garden*' in section 3(ii) of the notice was an error. I deal with this later in the decision, but garden land would not, in any event, automatically equate to land within the curtilage of a dwellinghouse. The onus is on the appellant to provide precise and unambiguous evidence to demonstrate, as a matter of fact and degree, that the land to which the constructed wall and access road relate fall within the curtilage of the dwellinghouse known as 7 Matty Marsden Lane.
12. The appellant makes the claim that the land has always been used in connection with the use of the dwellinghouse from the time that he purchased and occupied it. While it would appear that there were some structures/buildings on part of the land to the rear of the dwellinghouse as shown in the Council's aerial photograph dated 2002, the evidence is not sufficiently precise in terms of demonstrating that these buildings/structures were used for a function or purpose that related to the use of the 7 Matty Marden Lane as a dwellinghouse, or that they were part and parcel of such a use.
13. The appellant contends that the aerial photograph dated June 2009 shows a trampoline and that there is allegedly evidence, as shown on an aerial photograph dated 2011, of an area of dead grass where a '*swimming pool had been over the summer*'. These are snapshots in time, and, in any event, the provision of a trampoline or temporary swimming pool on the land are not sufficient on their own to demonstrate that the whole of the land to which the breaches of planning control relates constitutes the curtilage of the dwellinghouse. In this case, I find that the referenced trampoline and swimming pool are de-minimis in the context of determining whether, when considered as a whole, the relevant land constitutes part of the curtilage of the dwellinghouse. Moreover, there is no evidence to demonstrate continuity of use of the land in terms of use of a trampoline, or to position an alleged swimming pool.
14. The appellant states that in respect of the rear of the property '*within the first few years of owning the property....used and enjoyed this area as residential garden, as well as the access track, which is incidental to the enjoyment of a dwellinghouse*'. This evidence is essentially assertion. It is not supported with the kind of weighty and compelling evidence that one may have expected to see. This may have for example perhaps included statutory declarations and witness statements relating to the use and function of the land, both past and present, by occupiers of the dwellinghouse and any visiting guests.
15. It is alleged that a fence was erected on the land as shown on the Council's aerial photograph dated September 2011, and that the constructed retaining wall is set further back than this. It is not clear from the aerial photograph if a fence was erected on this land. Even if it was, the evidence does not offer the necessary

precision or certainty needed in terms of explaining its function or purpose from a land use point of view.

16. In my judgement, and, as a matter of fact and degree, the aerial photographs provided by the Council between December 2002 and September 2011 do not, at least visually, demonstrate to me that the land to the rear of 7 Matty Marsden Lane had an intimate association with the dwellinghouse prior to the breach of planning control occurring. It may have historically included some buildings or structures on the land, but in the absence of any compelling contrary evidence it remains possible that such buildings may have been used in association with a separate agricultural or other use. Indeed, it is noteworthy that the written statement of the appellant states that *'prior to the construction of the wall we removed the 5 old farm outbuildings, one was a pig shed, one a hen coop plus others'* (my emphasis). This indicates to me, at the very least, a potential former agricultural use of such land. The appellant's evidence is not sufficiently clear about such a matter.
17. The onus is on the appellant to provide sufficiently precise and unambiguous evidence to justify the claim that the land to which the breach of planning control relates is part and parcel of the curtilage of the dwellinghouse. The appellant's photographs of a tractor 'mowing' grass are not dated and, in any event, the operation of mowing land does not in itself mean that one would automatically conclude that such land formed part and parcel of the dwellinghouse from the point of view of it being used for an intimate associated purpose. As a matter of fact and degree, the appellant's evidence is not sufficiently precise in this regard. The Council's evidence casts sufficient doubt about the appellant's claim in respect of this matter.
18. On the evidence that is before me, and, as a matter of fact and degree, I am persuaded by the Council's finding that the curtilage of the dwellinghouse is that which is confined to the north of the dwellinghouse and including the driveway leading to Matty Marsden Lane. While not a determinative factor in reaching this conclusion, I also note a comment made by another interested party as part of the appeal which is that *'the owner of 7 Matty Marsden has been engineering the Green Belt landscape for years, first drastically enlarging the previous 1 bed bungalow which was set originally directly into the field with no garden area'* (my emphasis).
19. Given my conclusion above that the land to which the access road and constructed retaining wall does not fall within the curtilage of the dwellinghouse, I find that such development does not fall to be permitted development under Classes E or F of Part 1 of Schedule 2 of the GPDO. Even if one were to take the view that the constructed retaining wall was not an enclosure for Class E permitted development rights purposes, and instead Class A (gates, fences, walls etc) of Part 2 of the Schedule 2 was applicable, it would still not be permitted development as the undisputed evidence is that when it is considered as a whole it exceeds two metres above ground level.
20. As part of the site visit, the appellant showed me a metal drainage cover within part of the land enclosed by the retaining wall. I assume that the appellant was trying to make a point that it supported a contention that the land levels had not been altered on the land. The provision of drainage and hence a metal drainage

cover may have been provided as part of the land level changes. The evidence from the appellant is not sufficiently precise in this regard.

21. As a matter of fact and degree, and, based on the evidence that is before me, I find that the level changes amount to a significant engineering operation. This is an act of development by virtue of section 55 of the Act. The onus is on the appellant to make his case on the legal grounds, including ground (c) of section 174(2) of the Act. The appellant's evidence is that the constructed retaining wall and the land level changes are '*within the curtilage of the dwellinghouse and garden*'. There is no claim made that the land level changes were to facilitate anything other than a residential/garden use. The level changes are significant and could not on any reasonable basis be considered to be de-minimis. The land level changes comprise an engineering operation (i.e., an act of development) in association with the constructed retaining wall and for which there are no permitted development rights.
22. For the reasons outlined above, I conclude that the matters alleged constitute a breach of planning control. Therefore, the ground (c) appeal fails.

Appeal on ground (d)

23. The appeal made on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In an appeal against an enforcement notice on ground (d), the burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.
24. The appellant makes the claim that the wall which is the subject of this appeal commenced in 2012. This claim is based on photographs '38-43' but the extent to which I can rely on them is materially diminished as they are not dated. The appellant claims that the retaining wall was substantially completed in 2017. He also states that the land was '*backfilled and used again as a garden from September 2013*'. Reference is made to his photographs '71 & 72' showing the land being mown by a tractor. However, these photographs are not dated and, in the absence of precise and corroborated evidence from the appellant, it remains possible that the use of the tractor to mow grass may have been for either an agricultural purpose, or simply to 'tidy up' or 'maintain' the land. This does not in itself sufficiently support a claimed garden use of the said land.
25. In respect of section 171(B) of the Act, the date for immunity from enforcement action relates to when '*the operations were substantially completed*'. Despite the claims made by the appellant, the Council's evidence about land level changes in annexe 2 (April 2023 photograph) shows extensive areas of what I consider to be newly laid and dark coloured topsoil. This casts sufficient doubt about the appellant's assertion that the land level changes which are the subject of this appeal were in place in 2013. While it is asserted in the appellant's written statement that backfilling took place when the retaining wall was in the process of initially being constructed in 2012, the Council's April 2023 photograph casts sufficient doubt about such a claim. The written statement of the appellant is simply in letter form: it is not sworn evidence such as a statutory declaration. Hence, the weight that I can afford such a letter is limited.
26. Moreover, the Council's photograph dated 7 March 2025 shows newly erected brick parapet walls. These are significant in scale and extent. The appellant says

that *‘in 2018 the third skin of concrete blocks fell down as there were no expansion joints and it was replaced by a brick third skin in 2025’*. These are very significant additions to the wall which, in my judgement, and based on the evidence, was still in the process of being constructed until its completion in 2025.

27. As a matter of fact and degree, the evidence does not sufficiently persuade me, on the balance of probability, that it was not the appellant’s intention to construct the retaining wall without the parapet walls. Moreover, the evidence is that the retaining wall was altered significantly in 2025 with a third brick skin. I find that this operation was part and parcel of completing the resultant retaining wall. I find that such work likely occurred so that it was safe to retain the earth backfilling in association with land level changes. The former concrete blocks were removed and replaced with the brick third skin. The evidence is that this operation was in conjunction with completing the resultant wall with its parapet top. It was at this time when I find that the wall was substantially completed.
28. I have considered the appellant’s invoices for materials and his spreadsheet showing when materials were allegedly purchased. I have no reason to doubt that materials were purchased and that they were used to start constructing the retaining wall in 2012. That said, the evidence does not include copies of each claimed invoice for the said materials. Moreover, any evidence of materials being purchased or delivered to the appeal property does not mean that the retaining wall was substantially completed in 2017, or that all materials were necessarily used at this time. I have considered the letter from M&A Searles who *‘undertook some aspects of the works noted in the enforcement notice’*. While the letter does support the contention that work on the appeal retaining wall commenced in 2012, it is of no help from the point of view of the disputed matter relating to substantial completion of that retaining wall.
29. The onus is on the appellant to demonstrate, with precise and unambiguous evidence, that the wall was substantially completed in 2017. I consider, on the balance of probability, that the evidence is that the retaining wall was not substantially completed until 2025. Moreover, the evidence is not sufficiently precise about when the land level changes took place. On the balance of probability, the Council’s April 2023 photograph indicates that level changes took place at this time. As regards the access road, there is an absence of evidence from the appellant to demonstrate, on the balance of probability, that the access road (with a tarmacadam engineered surface) is immune from enforcement action with reference to timescales imposed in section 171(B) of the Act.
30. Overall, I conclude that at the date when the notice was issued enforcement action could have been taken in respect of the breach of planning control. No part of the breach of planning control is immune from enforcement action with reference to section 171(B) of the Act. Therefore, the ground (d) appeal fails.

Appeal on ground (a) and the deemed planning application

Main Issue

31. The appeal made on ground (a) of section 174(2) of the Act is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice. The land falls within land designated as Green Belt. In this context, the main issues are:

- Whether the breach of planning control constitutes inappropriate development in the Green Belt including its effect on Green Belt openness and purposes,
- the effect of the development on the character and appearance of the area including whether it constitutes poor design, and,
- if the breach of planning control is inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify development.

Whether inappropriate development in the Green Belt

32. The breach of planning control relates to the formation of an access with a tarmac surface, the erection of a retaining wall, and land level changes behind the erected retaining wall. While the development is relatively contained from public views, it is nonetheless noticeable from surrounding residential properties. Owing to the height and extent of the retaining wall, in conjunction with the significantly increased height of the land relative to its otherwise sloping and undeveloped nature, I find that it does not meet exception 154(h) of the Framework which states that engineering operations in the Green Belt are inappropriate unless *'they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it'*.
33. The retaining wall and land level changes are significant in scale and volume terms and have caused significant harm to the Green Belt in spatial terms. There is a dispute between the main parties about the height of the retaining wall. I was nonetheless able to observe its position and height as part of my site visit. In visual terms, the retaining wall and land level changes are seen within the landscape as being disproportionate and dominant additions relative to the dwellinghouse and depart significantly from the otherwise more open and sloping nature of the land that existed before such development occurred.
34. Overall, I find that the above development has caused substantial harm to the openness of the Green Belt. Moreover, and, given the scale and extent of this development, including the likely domestic paraphernalia associated with use of the levelled land for use as a garden, I find that this development fails to accord with one of the purposes of the Green Belt which is to *'assist in safeguarding the countryside from encroachment'*. I therefore find that the retaining wall and the land level changes combined comprise inappropriate development in the Green Belt.
35. As regards the access road, while this has not caused harm to the openness of the Green Belt, despite potential intermittent use by vehicles/machinery, it nonetheless has a very urbanised appearance in what is a more rural character setting. The use of a tarmac surface is particularly intrusive in this environment. While the appellant says that this has resulted in some benefits from a surface water drainage point of view (I was shown that the access road included a camber on my site visit), there may be other more sensitive options available to deal with any surface water drainage issues. I find that while the openness of the Green Belt has been preserved, the access road has nonetheless unacceptably urbanised the land and hence does not accord with the Green Belt purpose of assisting in

safeguarding the countryside from encroachment. Consequently, the access road comprises inappropriate development in the Green Belt.

36. I have considered whether the proposal may accord with the exception outlined in paragraph 155 of the Framework. It does not, in so far that the evidence does not demonstrate that the provision of the retaining wall with the land level changes, and the access road, meets the requirement of being a '*demonstrable unmet need for the type of development proposed*'.
37. Overall, I conclude that the breach of planning control amounts to inappropriate development in the Green Belt. It does not meet any of the exceptions outlined in paragraphs 154 or 155 of the Framework. To this extent, the unauthorised development also fails to accord with the Green Belt requirement of policy SP3 of the adopted 2024 Wakefield District Local Plan 2036 (LP).
38. For the avoidance of doubt, and despite the appellant's contrary position, I do not find that the breach of planning control constitutes an extension or alteration of a building and hence paragraph 154(c) of the Framework is not applicable. Similarly, the intended use of the levelled land as a domestic garden does not amount to a facility for outdoor sport, outdoor recreation, cemeteries or burial grounds or allotments. Therefore, paragraph 154(b) of the Framework is not applicable. Even if I had decided that paragraph 154(c) was applicable in this case, the land level changes do not preserve the openness of the Green Belt and, given the intended associated use and its likely domestic paraphernalia, would conflict with the Green Belt purpose of assisting in safeguarding the countryside from encroachment.

Character and appearance

39. In respect of the extent, height and position of the retaining wall, coupled with the large expanse of levelled land behind it which the evidence indicates was carried out to facilitate an intended garden use, I find that such development appears as an overly dominant and disproportionate form of development in this countryside setting to the detriment of the character and appearance of the area.
40. I recognise that the dwellinghouse to the side of the appeal property (i.e., on the side of the levelled land where there are steps) does include a retaining wall to its front. This is set back from the retaining wall which is the subject of this appeal and is not as dominant or prominent in the landscape. When viewed from neighbouring properties, as well as from glimpsed views across predominantly open fields from part of Storrs Hill Road, the development appears dominant and out of scale in its landscape setting. There may be other development in the surrounding area (including outbuildings), but prior to this development occurring the land offered some welcome and distinctive open, green and undeveloped relief to the wider landscape setting. Moreover, the access road is experienced as being a harsh and urbanised form of development to the side/rear of the host property. It has materially diminished the otherwise more rural character afforded to this area.
41. The appellant has suggested that the retaining wall could be reduced in height, or that the access road could be finished in a different material such as hardcore or mesh. Such options would amount to fundamentally different forms of development relative to the breach of planning control. The ground (a) appeal must relate to the breach of planning control. Moreover, and, in any event, the appellant has not provided details of an alternative scheme as part of the ground (a) appeal.

42. For the above reasons, I conclude that breach of planning control constitutes poor design and has caused harm to the character and appearance of the area. Therefore, it does not accord with the design, visual, character and appearance requirements of policies SP23, LP55 and LP56 of the LP, and chapter 12 of the Framework.

Other Considerations

43. The appellant has referred to some buildings or structures on the land historically. These can be seen in aerial photographs. As part of the final comments, the appellant has commented that *'there has been similar scars on the landscape in the past, albeit not the same design'*.
44. It is not clear from the evidence if the above buildings or structures were used in association with the dwellinghouse known as 7 Matty Marsden Lane. In any event, the evidence is that they were removed from such land several years ago. It is necessary that I therefore consider the effect of the breach of planning control on the openness of the Green Belt now, taking into account the lawful position and the environmental conditions that exist now. As per my conclusion on the character and appearance main issue, it would not be appropriate to allow a 'scar' on the landscape.

Planning Balance and Conclusion

45. I conclude that the appeal development amounts to inappropriate development in the Green Belt. I find that the harm caused by reason of inappropriateness, and the other identified harm, is not clearly outweighed by any of the appellant's other considerations so as to amount to the very special circumstances necessary to justify either development. Overall, and, for the above reasons, I therefore conclude that the ground (a) appeal fails.

Appeal on ground (f)

46. The appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.
47. The purpose of the notice is to remedy the breach of planning control. This includes demolishing the retaining wall, removing the vehicular access road and returning the land to its pre-existing levels prior to the construction of the retaining wall. To the extent that the requirements of the notice seek to remedy the breach of planning control, I do not find that they are excessive.
48. The appellant's claim on ground (f) is that the retaining wall could be reduced in height to make it acceptable in planning terms and that the access road, which is finished in tarmac, could be replaced with a hardcore or mesh finish. These suggestions would relate to fundamentally different breaches of planning control. It is necessary that a ground (a) appeal is focussed on the matters alleged in the notice and it is necessary that the deemed planning application is considered on that basis.
49. I also emphasise that the appellant has not submitted an alternative scheme in terms of my consideration of the ground (a) appeal. Hence, even if a case were made that lowering the retaining wall in height did amount to a consideration of

matters alleged in the notice from the point of view of the consideration of a ground (a) appeal, I do not have any plans or details by which I could reach a properly informed judgement, or to provide necessary control as part of the consideration of the deemed planning application.

50. For the reasons outlined above, I conclude that the ground (f) appeal fails.

Conclusion

51. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

D Hartley

INSPECTOR

Plan referred to in the Decision

