



Appeal Decisions

Site visit made on 27 May 2026

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th June 2026

Appeal A Ref: APP/P1045/C/25/3373415

Appeal B Ref: APP/P1045/C/25/3373416

Sunny Side The Dale, Bonsall, MATLOCK, DE4 2AY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - Appeal A is made by Mr Stephen Williams and Appeal B by Mrs Jenny Alesbrook against an enforcement notice issued by Derbyshire Dales District Council.
 - The notice was issued on 2 September 2025.
 - The breach of planning control as alleged in the notice is: The raising in height and construction of the retaining wall adjacent to a highway, and infill with soil, stone and hardcore without planning permission.
 - The requirements of the notice are to:
 - Demolish and remove from the affected land all parts of the retaining brick/ block wall shown marked blue on the attached plan which were constructed and completed after 01 March 2025. For identification purposes only these parts of the retaining wall are shown highlighted yellow on attached [sic].
 - Remove from the affected land all infill material (including soil, stone, hardcore, rubble etc) and reduce the height of the front garden of the affected land to the level it was prior to the unauthorised works (the level of the original and still standing old stone wall).
 - The period for compliance with the requirements is three months from the date the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(c), (e) of the Town and Country Planning Act 1990 (as amended).
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Decisions in Respect of Appeals A & B

1. It is directed that the enforcement notice is corrected by:
2. The deletion of the number “4.” Immediately following the heading “THE BREACH OF PLANNING CONTROL ALLEGED” and before the words “The raising in height....” and
3. The renumbering of the second paragraph 4.3, immediately before the words “The Council does not consider that planning permission should be given” as paragraph 4.4.
4. Subject to those corrections, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

5. Where, as in this case, two appellants are named on the appeal form in respect of enforcement appeals technically two separate appeals are made and an appeal reference number is given to each appellant. I have referred to the appeals as

Appeals A and B in the banner heading above. However, the grounds of appeal are identical and I have considered both appeals together in this decision letter.

The Appeals on Ground (e)

6. An appeal on ground (e) is made on the basis that copies of the enforcement notice were not properly served, as required by s172 of the Town and Country Planning Act 1990 (the Act). The notice was served on the correct owner/ occupier and there is nothing to suggest that there was a failure to serve a copy on anyone with an interest in the land.
7. The notice is dated 02 September 2025 and section 7.0 states that it will take effect on 14th October 2025 unless an appeal is made beforehand. That is no less than the 28 day period required by s172(3)(b) of the Act.
8. There is a typographical error in the explanatory section appended to the notice which explains the right of appeal. In that section it states that the notice will take effect on 18 February 2025 unless an appeal is made beforehand. That is clearly a mistake given that the date is months before the notice was served, presumably a result of cutting and pasting from some previous notice.
9. Similarly, the appellants refer to a cover letter which accompanied the service of the enforcement notice which states that an appeal must be made before the date set out in section 6. However, section 6 specifies the time period within which the works must be undertaken. The letter should have referred to section 7 which specifies the date on which the notice takes effect.
10. However, as with the explanatory section relating to the right of appeal, the details in the letter were an obvious typographical mistake. The appellants are clearly aware of that given the way the appeal under ground (e) has been written. The notice itself is clear and sets the correct dates. That is readily apparent to anyone reading the document as a whole. Moreover, the appellants have appealed such that no prejudice arises. Whilst the typographical errors are indicative of sloppy proof reading, they do not affect the validity of the notice which was properly served in respect of the requirements of s172. The appeals on ground (e) therefore fail.
11. The appellants have also made a number of other points relating to the notice under the heading of ground (e). However, those points do not relate to the service of the notice but to its overall clarity. Nonetheless, I shall cover the matters within this section for ease of reference.
12. The location of the wall is indicated by a blue line on the plan attached to the enforcement notice. The purpose of that blue line is to indicate the broad location of the breach as opposed to being a fully scaled drawing. It would be very difficult to depict the small gap between the pre-existing wall (which is not affected by the notice) and the newly constructed wall at the scale shown. Having viewed the structure on site the blue line is more than adequate to identify the location of the affected development and it seems to me that the appellants themselves are in no doubt as to where the wall is.
13. If there was any doubt in the blue line, that is allayed when one views the photographs attached to the notice which clearly depict the wall in yellow. The

combination of the plan and photographs is very clear, such that the appellants can have no doubt as to the location of the affected development.

14. There is another minor typographical error in the notice in that a duplicate paragraph 4 has been added just before the setting out of the details of the alleged breach. Again, whilst better proof reading should have detected the error it does not affect the legibility of the notice as a whole. For clarity I shall correct the notice to delete the number “4” and no prejudice arises because the notice was already clear on its face.
15. Accordingly, the notice was properly served and is clear on its face. The appeals on ground (e) must fail and I am satisfied as to the validity of the notice.

The Appeals on Ground (c)

16. The appeals on this ground are made on the basis that the matters alleged in the notice do not constitute a breach of planning control. The retaining wall is clearly development within the meaning of s.55 of the Act. In effect it is a building operation but also an engineering operation, given that the structure is engineered to retain the ground behind it; ground which has been raised significantly above the original level.
17. Consequently, the key question is whether the works benefit from planning permission, either granted directly by the Council or at appeal, or through the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). The appellants have referred to plans approved for an extension to the property under reference 21/00741/FUL¹.
18. Having viewed those plans, the details show the front garden sloping downwards along a similar line to the original boundary wall. The approved details do not show a retaining wall of the height and position of that affected by the enforcement notice. Thus, reference to that plan does not assist the appellants’ case and the approved scheme did not grant permission for the structure, as erected.
19. Furthermore, the wall is not simply a means of enclosure, it is a retaining structure designed to accommodate the raised land level behind it. The operations, viewed holistically, include the wall and the associated infill/ raising of the land. The appellant contends that there is a 500mm gap between the wall and surrounding land such that it should not be considered a retaining structure but could function as a free-standing wall.
20. However, that is not borne out by the photographic evidence presented which shows backfilled material directly behind the structure, including what appears to be a metal reinforcing rod. The fact that the wall may have been backfilled with soil as opposed to rubble or other material does not alter the function of the structure which is to retain the earth behind it and raise the level of the garden to a level closer to the extended building behind. The wall was clearly not designed to function as a free-standing structure, its primary function is a retaining structure amounting to an engineering operation in my view.
21. That is supported by the content of an email sent by Mr Williams to the Council on 10 February 2025 in which he said that; “the wall will hold back the soil and

¹ As included at appendix 2 of the appellants’ initial appeal statement

planting as the garden has always had a steep sloped bank” which is a clear indication of the intended function as a retaining structure.

22. The provisions of Class A, Part 2 of Schedule 2 of the GPDO relate to the construction of gates, fences, walls and enclosures but not to engineering operations of the kind constructed here. Therefore, I agree with the Council that the works fall outside the scope of Class A, Part 2, of Schedule 2 of the GPDO. No other Class within the GPDO would permit such works and the development does not benefit from planning permission granted through the Article 3(1).
23. Even if I were wrong in reaching that conclusion, I am not satisfied that the structure would benefit from permitted development rights on account of its height. Under Class A, Part 2 of Schedule 2 of the GPDO the construction of a gate, fence, wall or other means of enclosure is permitted development, subject to certain limitations. Under paragraph A.1(a)(ii), the height of any gate, fence, wall or other means of enclosure constructed adjacent to a highway used by vehicular traffic is not permitted if it would exceed 1 metre above ground level.
24. The back edge of the highway abuts the original boundary wall to the property, with the new retaining wall being constructed directly behind that original wall, with only a small gap between the two which has been backfilled. Given the limited distance from the back edge of the highway it seems to me that the wall is adjacent to it.
25. It is difficult to work out the precise level of original ground given the way in which the settlement is built into the hillside. The garden is set on a higher level than the road, as are neighbouring gardens, that being a feature of the area. It seems likely that a degree of cut and fill would have taken place when the various roads and gardens were constructed but the precise levels are difficult to ascertain given the historic nature of the settlement.
26. However, the original wall appears to have been used to retain or enclose land behind the highway, with the Council estimating that the land behind it was broadly at the top of that wall or just below, prior to the current wall being built. In other words, the height of that retained land may have been artificial, if it was raised above the original land level of the highway. In which case, the level of the land at the point the wall meets the highway should be taken as the adjacent ground level in my view. The original wall is already above a metre from ground level at the back edge of the highway.
27. The new wall has increased that further by at least another metre such that the overall height of the enclosure as a whole is significantly above 1m when measured from land level at the edge of the highway. Whilst the appellant maintains that the structure is separate from the original wall the gap between the two is limited. The visual effect from the surrounding highway is that the two elements together form the boundary between the garden and surrounding land.
28. It would be artificial in my view to see them as entirely separate structures. In effect, the existing wall has been extended upwards, albeit that the new wall is set in slightly behind the existing structure. In that respect, the wall is significantly higher than a metre and adjacent to the highway.
29. Even if the wall was seen in isolation the onus on ground (c) rests with an appellant to demonstrate their case. If the original ground level was taken as the

level of the garden behind the original wall, no conclusive evidence has been presented to indicate what the level of that land was. The Council suggest it was at or just below the level of the top of original wall but conclusive evidence is limited. As such it is not clear that the new wall is less than a metre in height even from that baseline.

30. For any or all of those reasons the appellants have not demonstrated, on the balance of probability, that the structure benefitted from permitted development rights. In the absence of planning permission the development represents a clear breach of planning control and the appeals on ground (c) must fail.
31. The appellants have written at length relating to correspondence between themselves and the Council, including the suggestion that they had been advised that the work amounted to permitted development. Emails dated 10 February and 12 March 2025 were sent to Council enforcement officer Bryn Maw setting out how the appellants intended to proceed.
32. The emails were less than clear in my view in terms of precisely what was proposed. In the message dated 10 February 2025, Mr Williams said that they were reverting back to the original approval. For the reasons given above, the wall in question did not form part of that approval. As noted above it was also clearly stated that the purpose of the wall was to hold back the soil and planting which is a clear indication of the intended function as a retaining structure.
33. Whilst it was stated that the wall would be reduced in height from 1.5m to 1m there is nothing to indicate where that would be measured from or any plans or information to show what the previous land levels were. The subsequent email to Mr Maw, dated 12 March provided little extra detail beyond the comment that the appellants were adapting the wall to 1m high so as to conform to permitted development. There was no analysis of where that height was measured from or what the basis of the calculation was.
34. Mr Maw replied on 13 March to say that he considered that the work may be permitted development but qualified that to say he could not confirm as he wasn't a planning officer and that he would need to get confirmation from a senior planning officer. There is no written record of any confirmation being given. The appellants maintain that Mr Maw telephoned the following day to confirm his view that the wall was permitted development but the transcript of that call is not before me.
35. It would be unusual for an officer to be able to confirm whether a proposal was likely to be permitted development in the absence of existing and proposed plans such that the full details were before them, including an indication of existing and proposed levels. If Mr Maw did suggest that the proposal would be permitted development, it is not clear precisely what he was basing his opinion on in the absence of such plans or, crucially, where existing land level should be measured from. Nor is it clear if he caveated his response, as he did in his previous email.
36. Consequently, if Mr Maw did confirm over the telephone that the work would be permitted development, which is not clear, there is ambiguity over the basis on which he reached that conclusion.
37. Following that correspondence further visits were undertaken in April 2025 by Mr Treen, another enforcement officer from the Council who confirmed his view to the

appellants that the wall did not amount to permitted development on account of the fact that it was a retaining structure. For the reasons given above, supported by details given by Mr Williams in his email of 10 February 2025, that conclusion was correct in my view.

38. The appellants clearly did not agree with the advice and a string of emails and complaints to the Council followed. However, no formal confirmation was given in writing at any point from the Council to suggest that the works amounted to permitted development. The email from Mr Maw, dated 13 March, was a heavily caveated informal opinion and not binding on the Council in its decision to take enforcement action.
39. Had the appellants wished to confirm what they intended to build/ complete was lawful it would have been open to them to apply for a certificate of lawful development under s192 of the Act. However, they did not do so. Whilst I appreciate that the appellants feel aggrieved at the way the case was handled, I can only assess the ground (c) appeal on the facts of the case.
40. Regardless of what may have been said to whom, of which there is some doubt, it does not alter my conclusion that the development was not lawful and did not benefit from permitted development rights. Rather, it was a clear breach of planning control and the appeals on ground (c) must fail.

Conclusion

41. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice, as corrected.

Chris Preston

INSPECTOR