
Appeal Decision

Site visit made on 24 August 2026

by **D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 13 October 2026

Appeal Ref: APP/P4605/F/25/3368043

18 Carpenter Road, Birmingham B15 2JW

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the Act).
 - The appeal is made by Dr Mohamed Anwar against a listed building enforcement notice (LBEN) issued by Birmingham City Council.
 - The LBEN was issued on 22 May 2025.
 - The contravention of listed building control alleged in the LBEN is:
Without listed building, the unauthorised removal of a section of a listed boundary wall in the approximate position shown marked blue on the plan attached to the LBEN.
 - The requirements of the LBEN are:
 - 1) To agree the bricks and mortar and their strength with the Authority's conservation officer;
 - 2) Reinstate the listed boundary wall to its original height using approximately thirteen courses of brickwork plus blue teardrop wall copings to match the existing; and
 - 3) Reinstate the listed boundary wall in Staffordshire Blue imperial brick constructed in Flemish Bond and lime mortar with flush joints to the original design including a stepped feature.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is made on the grounds set out in section 39(1)(b) and (d) of the Act.
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Preliminary Matters

1. The evidence before me refers to the personal circumstances of the appellant and his family. Nevertheless, given the grounds of appeal before me, the Equality Act 2010 and the public sector equality duty imposed by section 149(1) of that Act are not relevant to this appeal as my decision rests on the facts of the case, on relevant planning law and judicial authority.

The LBEN

2. On an appeal any defect, error, or misdescription in a LBEN may be corrected using the powers available in section 41(1)(a) of the Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
3. Requirement 1 involves the approval of bricks and mortar by a Council Officer. Therefore, on first receipt of the LBEN, it would not have been possible for the appellant to know what details might be approved by the Council, and consequently what they must do to comply with it. Furthermore, there is no mechanism through which the appellant could challenge any failure on the part of the Council to agree the details submitted, or should the appellant consider the subjective judgments made by the Council in these respects to be unreasonable or impossible to achieve.
4. Section 38(2) of the Act states that an LBEN shall specify the alleged contravention and require such steps as may be specified in the notice to be

taken. Although not specifically stated there, it is implicit within that section that the LBEN must tell the person on whom it is served fairly what they have done wrong and what they must do to remedy it.

5. Caselaw sanctions the correction of a notice to eliminate an element of vagueness or uncertainty, as long as the notice as a whole enables the recipient to know with “reasonable certainty” what they have done wrong and what they need to do to put it right. In this case, requirements 2 and 3 make it clear that the boundary wall is to be reinstated using materials to match the existing wall and to its original design and height. Requirement 1 could be deleted, and it would still be apparent what is needed to put the contravention right. As such, without requirement 1 the LBEN is not hopelessly uncertain, and I am satisfied that it is not a nullity. I intend to delete requirement 1 and renumber the remaining requirements. As the variations relate to a matter of fact, I consider that I can vary the LBEN without injustice to both main parties.

The ground (b) appeal

6. To succeed on this ground the onus is on the appellant to categorically show that what is alleged in the LBEN to constitute a contravention of section 9(1) or (2) of the Act has not occurred as a matter of fact. It is argued, by the appellant, that the Council requested them to remove a section of the boundary wall in a letter dated 29 June 2017 and that the blue line shown on the plan attached to the LBEN does not show the correct position of the removed portion of wall.
7. I acknowledge that a letter sent by Acivico (Building Consultancy) Ltd (Acivico letter) on behalf of Birmingham City Council, dated 29 June 2017, states that *“Following enquiries made by my surveyor I understand that you are either the owner of or the agent for the above property. Your attention is therefore called to the unsatisfactory condition of leaning boundary wall on elevation facing Wheeleys Road. Will you please arrange for this work to be attended to within the course of the next 28 days in order to removed the danger and avoid the need for any further action by the City Council.”* A heading within the Acivico letter cites Section 77(Dangerous Structures) of the Building Act 1984.
8. However, whilst the appellant considers that therefore the works were authorised by Birmingham City Council, requirements to comply with section 77 of the Building Act 1984 do not override sections 7 and 8 of the Act which relate to the control of works and authorisation of works to a listed building. Listed building consent is still required for the alteration of a listed building in any manner which would affect its character as a building of special architectural or historic interest. There is no evidence before me to indicate that listed building consent has been granted for the alleged works. In any case, this ground of appeal does not relate to whether a contravention of listed building control has occurred.
9. Moreover, there is no dispute that a section of the boundary wall fronting Wheeleys Road has been removed. I noted at my site visit that it is apparent that copings and several courses of bricks from a section of that wall have been removed and that the blue line, cited above, is appreciably more extensive than the affected section. Nevertheless, the appellant has clearly understood which section of wall is attacked by the LBEN and in any case I intend to substitute an amended plan with a reduced length of blue line on it using my powers in section

41(1)(a) of the Act. As the correction relates to a matter of fact I consider that I can correct the LBEN without injustice to both main parties.

10. Taking into account all of the above the ground (b) appeal fails.

The ground (d) appeal

11. This ground of appeal addresses situations where urgent works were necessary in the interests of safety or health or for the preservation of the building. This ground of appeal comprises three tests. The first test is whether the works were urgently necessary in the interests of safety or health or preservation of the building; the second test is that it was not practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support and the third test is that the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation. For an appeal to succeed on ground (d) all three tests must be met and the onus is on an appellant to demonstrate that this is the case.
12. As stated above, the Acivico letter indicates that works to the listed boundary wall were urgently necessary in the interests of safety or health. Nevertheless, in that letter there is no indication of what specific works were required. The appellant has stated¹ that *“Council representatives visited the site soon afterwards and I initially proposed the use of ‘lateral restraint ties’ to make the wall safe, but this was rejected by them, who insisted that the top section of the wall must be removed. During their visits, Council representatives advised me directly how much of the wall needed to be taken down, recommending approximately 13 courses of bricks along a 30-metre stretch.”*
13. However, even though the appellant has submitted extensive evidence in relation to his dealings with numerous Council Officers and planning decisions there is very little evidence, other than the Acivico letter, specifically relating to the removal of the section of the wall that appears to have occurred in 2017. I have no reason to dispute the appellant’s recollection of the events that led to the removal of a section of the boundary wall. Yet there is little documentary evidence/correspondence before me to demonstrate that any form of temporary support or other repair methods were not practicable and that the works carried out were the minimum measures immediately necessary to achieve the aims of safety or health.
14. Furthermore, the Acivico letter did state that *“The building in question is listed or in a conservation area and therefore subject to the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990.”* I agree with the appellant that that letter could have made it clear that additional consent from the Council in the form of listed building consent would be/may be required before the works were carried out. As stated, above, the need to obtain listed building consent is not overridden by section 77 of the Building Act 1984. Whilst section 9(3) of the Act provides a defence against prosecution it is not an exemption for obtaining listed building consent.
15. Even if the temporary removal of the section of wall was the only practicable way to achieve health or safety a period of around 9 years has elapsed since it was removed, so that the works have assumed a permanent character. I understand

¹ Final Comments

the appellant's frustration and concern in respect of the time taken and the issues surrounding the determination of the planning and listed building applications for works to the wall. Nonetheless, those applications incorporated additional works, including the formation of a gated access. The appellant was advised to remove the gated access from the applications to enable consent to be granted for the repair/rebuilding of the section of wall. The appellant considers that the only way to obtain sufficient bricks/copings to complete the works would be to demolish another part of the wall which is one of the reasons for the gated access. Yet, in my experience, specialist suppliers of new imperial sized bricks and specific designs of copings are available even if reclaimed products cannot be sourced. Moreover, 9 years is in my judgement a relatively long period of time to formulate, gain consent and carry out the repairs/rebuilding of the boundary wall and there is no ground (e) appeal, that listed building consent ought to be granted for the works, before me.

16. In my judgement, as a matter of fact and degree it has not been demonstrated that it was not practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support and that the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation. The appeal therefore fails on ground (d).

Other Matters

17. In reaching my conclusions I have taken into account all of the other matters raised by the appellant and by the Council. However, none of these alters any of my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision.
18. No third parties have submitted comments in relation to this appeal, and I have no jurisdiction over the information held by the Council relating to complaints and/or objections received by it.

Formal Decision

19. It is directed that the listed building enforcement notice be varied by:
- the deletion of the wording of requirement 1; and
 - the renumbering of the remaining requirements to 1 and 2;
- and corrected by:
- the substitution of the plan annexed to this decision for the plan attached to the listed building enforcement notice.
20. Subject to the correction and variations the appeal is dismissed, and the listed building enforcement notice is upheld.

D Boffin

INSPECTOR



Planning Inspectorate

Amended Plan

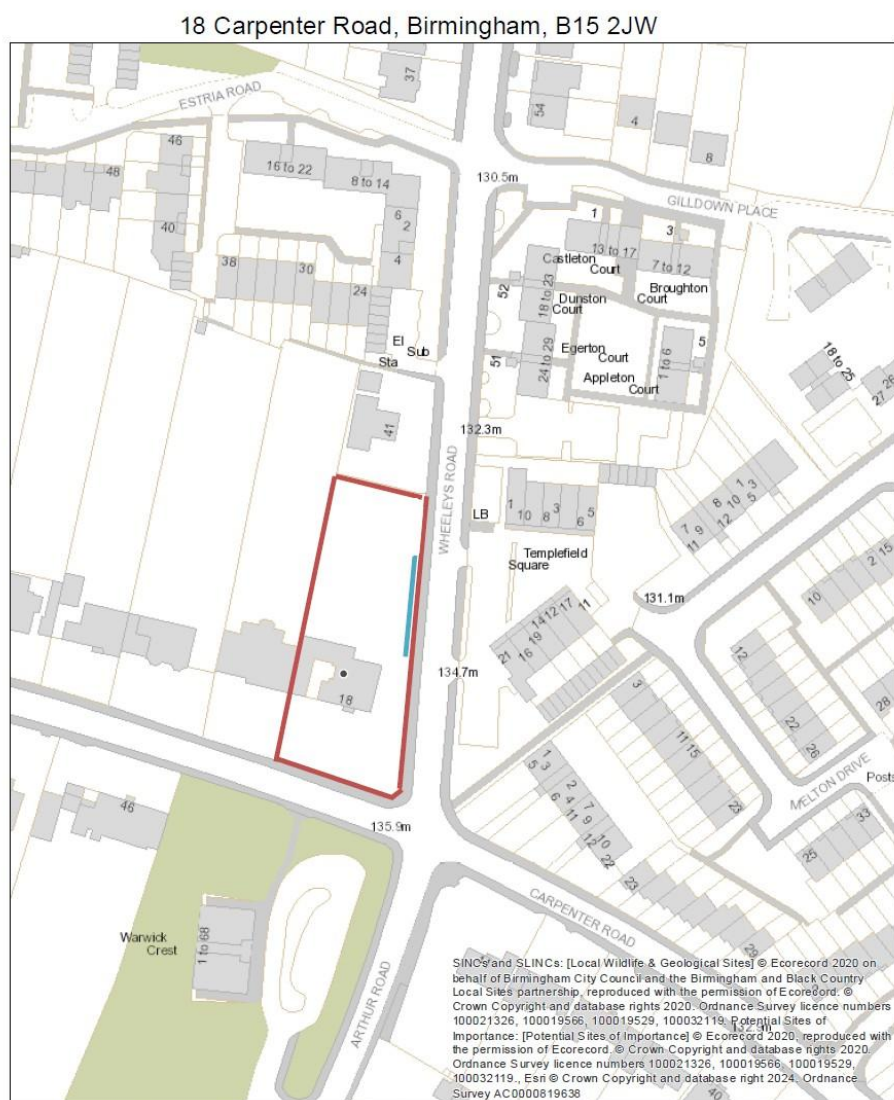
This is the plan referred to in the decision dated: 13 October 2026

by D Boffin

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Scale: Not to Scale



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