



Appeals Decision

Site visit made on 6 June 2024

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary

Decision date: 24 June 2024

Appeal Refs: APP/P1045/C/23/3323106 & 3323107

Land South of Yeats Lane, Cromford, Derbyshire

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Martin Towle and Mrs Sanchia Paquita Hunt Towle against an enforcement notice (EN) issued by Derbyshire Dales District Council (the LPA).
 - The enforcement notice, numbered ENF/23/00037, was issued on 19 April 2023.
 - The breach of planning control as alleged in the notice is: engineering works comprising retaining structures, associated changes to land levels and hardstanding.
 - The requirements of the notice are as follows:
Completely remove the unauthorised retaining structures, hardstanding and reinstate the land to its previous form and condition.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on grounds (a), (f) and (g), as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The Appeal is allowed in part on ground (g) only. Otherwise, the appeal is dismissed and the enforcement notice is upheld. See Formal Decision below.

The appeal site and the surrounding area

2. The 0.1ha appeal site is located in the southern part of Cromford and lies within the settlement boundary. It is also within the Cromford Conservation Area (CCA) and the Derwent Valley Mills World Heritage Site (DVMWHS). The land is to the rear (west) of residential properties (Nos 116-138) which front onto Cromford Hill. This historic part of Cromford comprises traditional houses fronting the main road (B5036) with outbuildings to the rear.

3. The land lies outside of any residential curtilage and there is an existing stone 'gabion' retaining wall along its southern boundary. The alleged unauthorised works have been carried out and are distinctly noticeable. The works are visible from the eastern entrance to the site, as well as from the adjacent public footpath to the west. To the north there is the partly treed open countryside, which extends further to the north and west. To the north-east there are more properties along Cromford Hill, with historic burgage-type plots projecting into the land to the north-west.

Background information

4. A pre-application enquiry had been submitted to the LPA on 10 June 2019. This indicated that a new gravel driveway area would be formed above an existing row of 'gabions', supported by a new row of stone-filled 'gabions' approximately 1m high. The extent of the driveway area was set out and it was indicated that there was a future plan to build a timber-framed storage shed/garage. A request was made as to whether planning permission would be needed for the works.

5. The LPA responded on 20 June 2019 and advised that, because the land lay outside of the curtilage of the dwelling house, the works as proposed could not benefit from permitted development rights. It was confirmed that, although the *'engineering work to provide a further retaining wall would be deemed 'de minimis' (of little significance), the works you propose to provide the access and the garage will require planning permission'*.

6. Works commenced on the retaining wall element outlined in the pre-application details on the basis that they would be 'de minimis'. On 7 March 2023, following an enquiry by others, a Council Enforcement Officer was informed by a contractor that the wall was being constructed to a height of 1m in accordance with the pre-application agreed details. However, further visits established that the wall being built exceeded 1m in height and the LPA considered that it was becoming a *'significant engineering operation for land retention'*. It was confirmed that it would require planning permission, as it had gone beyond a stage whereby it could be considered to be 'de-minimis'.

7. Considering the extent of the works carried out and the location, within both the CCA and the DVMWHS, the LPA considered it necessary that the works be stopped. A temporary 'Stop Notice' was issued on 17 March 2023. The LPA confirmed that if any works were carried out which did not accord with pre-application details, in terms of the height and alignment of the wall, then it was unlikely that planning permission would be granted. It was also stressed that there was a risk of enforcement action being taken against any works which had not been authorised during the course of the pre-application process.

8. There followed e-mail exchanges between the LPA and the appellant. A suggestion was put forward by the appellant whereby the line of 'gabions' generally remained and were still considered to be 'de-minimis'. It was also stated that, if necessary, it could be *'widened/depth extended'* to achieve *'a lower height of 1m to 1.5m'*. It was suggested that the upper row of 'gabions' be removed and the lower run topped by either wooden sleepers or a lower 0.5m run of 'gabions' if required? It was indicated that this could be backfilled with earth to create plant beds for vegetables, herbs & flowers. No formal application was made.

9. The LPA did not respond in detail to the latest suggested amendments and was clearly concerned with the development *'continuing in a manner which had not been approved'*. As referred to above, a temporary 'Stop Notice' had been served and this expired on 15 April 2023. On 12 April 2023, Officers determined it expedient to serve an enforcement notice given the extent of the unauthorised works within the CCA and the DVMWHS. I now turn to the appeal against the enforcement notice on the grounds pleaded.

The appeal on ground (a)

Introduction

10. The retaining wall as constructed is currently 23.9m in length, 2m in height at its highest point 1m in height at its lowest point. There is a short section which is 1.5m in height. On behalf of the appellant, it is indicated that an improvement is offered under this Ground (a) appeal, as well as an alternative proposal under Ground (f).

11. The improvement offered under Ground (a) *'proposes the retaining wall to be kept where it is currently, with the 2m and 1.5m high sections being reduced to 3m in length each, with the remaining length of the wall being 1m high for 17.9m'*. The alternative solution offered under Ground (f) is to move the retaining wall further south to the original position that was submitted as part of the pre-application enquiry and reduce the height to 1m.

12. In dealing with this offered improvement and alternative solution, I have had regard to the findings in the case of *Bhandal & Ors v Secretary of State for Housing, Communities & Local Government & Anor* [2020] EWHC 2724 (Admin) (2020). I acknowledge that the case confirms that a decision-maker cannot simply 'dismiss a Ground (a) appeal on the mere fact that any new work is required and that they do have the power to grant planning permission for alternative developments'. However, it was also held that whether an alternative scheme forms 'part of the matters' under section 177(1)(a) is a matter of planning judgement.

13. In reaching my conclusion on this ground of appeal and because the site lies within the CCA I have paid special attention to the requirements of Section 72 of The Planning (Listed Building and Conservation Areas) Act (PLBCAA).

14. I have also taken into account all of the relevant policies set out in the National Planning Policy Framework (NPPF) and particularly section 16 (Conserving and enhancing the historic environment). The site also lies within the DVMWHS and the NPPF indicates that heritage assets such as these, which are of the highest significance, are internationally recognised to be of Outstanding Universal Value (OUV). It is stated that these assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance.

Relevant Policy

15. The development plan is the adopted Derbyshire Dales Local Plan 2017 (DDLPL). The most relevant policies are S1 (Sustainable Development Principles); S3 (Development within Defined Settlement Boundaries); PD1 (Design and Place Making); PD2 (Protecting the Historic Environment) and PD5 (Landscape Character).

The Main Issue

16. The main issue is the effect that the unauthorised works have had on the character and appearance of this part of the CCA Area and the OUV of the DVMWHS.

The gist of the case for the appellant

17. It is stressed that the site is located within the development boundary; on land that is historically used for ancillary domestic purposes and that the Council has accepted that a retaining wall is acceptable in principle.

18. It is contended that the retaining wall, as built, 'does not materially harm the OUV of the DVMWHS or the significance of the CCA'. It is confirmed that the retaining wall is constructed using steel wire gabion baskets which are filled with limestone. It is stressed that these are the same type of baskets that have been used for a retaining wall as previously built on the site and that limestone retaining walls are a feature of the immediate and surrounding area.

19. Therefore, it is argued that the use of the materials for this retaining wall are suitable for the character of the area. It is accepted that, although the retaining wall is bright in colour, this will soften over time as evidenced by the existing retaining wall on the site. Although the retaining wall is visible to the public, it is not considered to be an 'unruly sight', and the works are seen in the context of small parcels of ancillary domesticated land to the rear of existing houses. The area is characterised by outbuildings, yards and stone retaining walls and it is considered that, once the colour has softened the wall and its surroundings, it will not be out of character.

20. The 'gabion' baskets, as existing, are considered not to have a detrimental effect on the character of the landscape or the DVMWHS and CCA. The appellant accepts that retaining wall has not been constructed to completion and that this may change. The alternative proposal that is put forward will, by virtue of its reduced height, have a lesser visual impact. It is contended that the proposal has been sensitively designed, and

that it complies and is fully in accordance with Policies PD1, PD2 & PD3 of the Local Plan, as shown in plan No.1712-103.

21. Again, it is stressed that a retaining wall is acceptable in principle in accordance with Policies S1 and S3 of the Local Plan due to it allowing for *'the efficient and effective use of land and being compatible with the character of the site and adjacent development'*.

The gist of the case for the Council

22. The Council stresses that it had not raised the 'principle' of the retaining wall as a cause for concern because, as detailed in the pre-application submission, it was deemed to be *'de minimis'* and similar to an existing wall between the site and the residential properties. However, it is confirmed that it now has serious concerns about the works which have been undertaken, which it considers do not benefit from being permitted development, nor from being *'de minimis'*.

23. The Council does not agree with the appellant that the retaining wall does not materially harm the OUV of the DVMWHS or the significance of the CCA. It is considered that the appellant has failed to analyse the significance of the site within the CCA and its impact on the OUV of the DVMWHS, and to appraise the development in this context.

24. The Council stresses that *'the interrelationship of the rural landscape with the introduction of the historic industrial installations, and their dependent housing settlements (including their associated outbuildings and structures), forms a relict landscape which is an important historic attribute of the DVMWHS, and which contributes significantly to its OUV'*. It is also stressed that this historic relationship forms *'a fundamental part of the distinctive character and appearance of the CCA'*.

25. Reference is made to the CCA appraisal, which focuses specifically on the character and appearance of this part of Cromford. It refers to the west side of 'The Hill' being *'constrained by a sheer limestone bluff, which defines the extent of the settlement, and beyond that the steep climb up to the hill'*. It goes on to state that *'the allotments behind the properties nos. 86-110 are literally squeezed into this space in tiers of retained stone-walled 'gardens' and that, 'on the west side of The Hill, the paths between and behind the properties still survive, lined with limestone drystone walls, and enclosing paddocks and allotments'*.

26. It is further stressed that the form of some C18 allotments remain and can be recognized from the 1841 Tithe Map; that most of the *'Arkwright phase outbuildings & animal shelters survive'* and that the 'town pinfold' (an animal holding pen) is still preserved as a walled enclosure behind No 114 'The Hill'.

27. It is contended that a retaining structure of this height and alignment, and the re-engineered landscape it has created, has resulted in encroachment and harm to this historic landscape. It is considered that it presents *'a very visible and physical change to both the character and appearance of the area that it erodes and diminishes this identified attribute of the DVMWHS and its OUV'*.

28. It is accepted that over time the structure will weather and the colour will be less strident. However, it is also stressed that although the 'gabion' baskets are filled with limestone, this type of construction is not considered to be reflective of traditional limestone retaining walls to be found in this part of the CCA and the DVMWHS and that the works have resulted in an unnecessary and harmful development.

29. With regard to the suggested amendments and the lowering of the wall, it is considered that this raises concerns about how the land may have to be re-engineered

and re-modelled in order to be retained by a lowered wall. It is considered that such works would be likely to constitute a significant re-engineering/re-modelling of the land which would erode and diminish the existing character, appearance and significance of the land.

My assessment

30. Having seen the retaining wall and the area of hardstanding, I share the Council's concerns about the effect that the works, as carried out, have had on the character and appearance of the CCA and the OUV of the DVMWHS.

31. In my view the works have resulted in a most obtrusive and visually harmful development. This is in an area which is not only a significant conservation area (the CCA), but one which the NPPF indicates is of the highest significance and which is internationally recognised to be of Outstanding Universal Value (the DVMWHS). I do not consider that these two irreplaceable heritage assets can be said to have been 'conserved' in a manner appropriate to their significance. The significance of both of these heritage assets are set out in the Council's appeal submissions and, in my view, full consideration of the impact of the works as carried out has not been considered.

32. Whilst acknowledging that a simple limestone retaining wall (1m in height), as seemingly agreed to be 'de minimis', might have been acceptable in visual terms, what has been constructed is an engineering operation which is completely out of scale to what was agreed at the pre-application stage. Both the scale of the operation and the alignment of the retaining structure do not comply with what was initially proposed. Combined with the hardstanding area the works have resulted in an unacceptable 'scar' on the side of the his historic land.

33. The use of the steel 'gabions', combined with their fluctuating height, has exacerbated the harsh and alien appearance of this inappropriately engineered retaining structure. In my view, and irrespective of the fact that weathering will improve its colour, I do not consider that planning permission ought to be granted for the retention of the works as carried out. The works are not perceived as a traditional limestone wall, but as an inappropriate and visually harmful engineered structure.

34. I do not consider that the improvement '*offered under Ground (a)*' will overcome the harm to the CCA and the DVMWHS. Whilst its alignment might be acceptable it would still involve heights in excess of the pre-application height. This would result in *the 2m and 1.5m high sections being reduced to 3m in length each, with the remaining length of the wall being 1m high for 17.9m*'. However, I consider that it would still be visually harmful for the reasons outlined above.

35. In conclusion on this ground of appeal I find that the works are contrary to policies S1; S3; PD1; PD2 and PD5 of the DDLP when considered as a whole and that there are no matters to indicate that a decision should be made other than in accordance with the development plan. It follows that I also find the works as carried out to be contrary to the policies within Section 16 of the NPPF. The appeal on ground (a) must, therefore fail and the deemed planning application is refused.

The appeal on ground (f)

36. An appeal on ground (f) is made on the basis that lesser steps would overcome the harm caused. In putting forward an alternative solution '*to move the retaining wall further south to the original position that was submitted as part of the pre-application enquiry and reduce the height to 1m*', it is inferred that these '*lesser steps*' would overcome the harm to amenity and remedy the breach of planning control.

37. The breach of planning control as alleged in the notice is: '*engineering works comprising retaining structures, associated changes to land levels and hardstanding*'.

Thus, it involves more than just the position of the retaining wall and a reduction in its height. The EN refers to the development as carried out (the whole of it, not just the wall) being harmful to the character and appearance of both the CCA and the DVMWHS. The reason it was issued was to remedy the injury to amenity caused by the breach of planning control.

38. Normally in a ground (f) appeal a lesser step is usually put forward in order to show that it could either remedy the breach and/or remedy the injury to amenity. If it is considered by the decision-maker that such a lesser step would serve such a purpose then the requirements of the EN could be varied and this would constitute a success on ground (f).

39. In this case the 'lesser step' is simply related to moving the retaining wall to a previously agreed line and reducing it in height. It would not resolve all of the concerns relating to the change to land levels, the hardstanding as laid and the reasons why the EN was issued in the first place.

40. Thus, it would not overcome the effect that the unauthorised works, as a whole, have had on the CCA and the DVMWHS. It is the combination of the retaining wall, as built, and the other works to facilitate this which have resulted in the identified harm caused. I do not consider, therefore, that the requirements can be reasonably or justifiably varied on ground (f).

41. I accept that the re-positioning and reduction in height of the wall to the position agreed under the pre-application application would be acceptable to the LPA. However, I do not consider that this could be achieved by varying the requirements. To vary the requirements as suggested would only deal with one element of what is being enforced against and to re-write the whole of the requirements to deal with the other points could not, in my view, be done in a precise and unambiguous way. The appeal also fails therefore on ground (f).

The appeal on ground (g)

42. I have referred above to the fact that the proposal to re-align the retaining wall, and reduce it to the agreed height, to complete it in accordance with the pre-application 'approval' would be acceptable to the LPA. Having seen the site I agree that this is the case. The compliance period in the EN is 6 months.

43. Considering that there are proposals for the whole of the appeal site and that the appellant is in contact with the LPA with regard to the works as proposed, I consider that a period of 6 months falls short of what should reasonably be allowed.

44. Having considered all of the submissions by the parties I consider that the compliance period should be extended to 12 months. This will give the appellant more time to agree a final scheme with the LPA for the whole of the site and which would include a retaining wall in accordance with the pre-application details.

45. The appeal succeeds, therefore, to this limited degree on ground (g) only.

Other Matters

46. In reaching my conclusions on the grounds of appeal I have taken into account all of the submissions made by the appellant and the Council. These include the full planning history including the pre-application details; the detailed statements and appendices; the CCA Appraisal; details relating to the DVMWHS; the photographic evidence and the final comments/rebuttals.

47. However, none of these carries sufficient weight to alter any of my conclusions on the grounds pleaded and nor is any other matter of such significance so as to change my decision.

Formal Decision

48. The Appeal is allowed to a limited degree on ground (g) only. I direct that the enforcement notice be varied in Part 5 (WHAT YOU ARE REQUIRED TO DO - Time for Compliance) by deleting the figure '6' before the word 'months' and by inserting therefor the figure '12'.

49. Otherwise the Appeal is dismissed, and the enforcement notice is upheld as varied. Planning Permission is refused for the application deemed to have been made under Section 177(5) of the Act.

Anthony J Wharton

Inspector