
Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 06/06/17

gan Alwyn B Nixon BSc MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 25.08.2017

Appeal Decision

Site visit made on 06/06/17

by Alwyn B Nixon BSc MRTPI

an Inspector appointed by the Welsh Ministers

Date: 25.08.2017

Appeal Ref: APP/E6840/C/17/3172828

Site address: 23 Clearview, Shirenewton, Chepstow, NP16 6AX

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr David Thomas against an enforcement notice issued by Monmouthshire County Council.
 - The enforcement notice (Ref: E16/255) was issued on 23 February 2017.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a boundary retaining wall.
 - The requirements of the notice are: 1. Demolish the wall in its entirety, remove the resultant material completely from the land and return the land to its previous condition; Or: 2. Rebuild the wall in accordance with the approved drawing no. 1 Rev A dated January 2016 submitted in accordance with condition 2 as required by Planning Consent DC/2015/01386.
 - The period for compliance with the requirements is 2 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/E6840/A/17/3172829

Site address: 23 Clearview, Shirenewton, Chepstow, NP16 6AX

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr David Thomas against the decision of Monmouthshire County Council.
 - The application Ref DC/2017/00082, dated 4 January 2017, was refused by notice dated 22 February 2017.
 - The application sought planning permission for the removal of an existing failed boundary retaining wall, a proposed new boundary retaining wall and associated engineering and landscaping works without complying with a condition attached to planning permission Ref DC/2015/01386, dated 12 February 2016.
 - The condition in dispute is No 2 which states that: The development shall be carried out in accordance with the list of approved plans set out in the table below.
 - The reason given for the condition is: To ensure that the development is carried out in accordance with the approved drawings, for the avoidance of doubt.
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Decisions

Appeal APP/E6840/C/17/3172828:

1. The appeal succeeds on ground (f) in part and on ground (g) only. The requirements of the enforcement notice are varied as follows:

Delete schedule 4 in its entirety and:

(i) Substitute the following new requirement: Permanently remove the railings from on top of the retaining wall and reduce its height so as to conform to the maximum height indicated by drawing no. 1 Rev A dated January 2016 authorised by planning permission reference DC/2015/1386. Permanently remove from the land all rubble and waste produced by reducing the height of the wall.

(ii) Amend the time for compliance to 6 calendar months.

Subject to these variations the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal APP/E6840/A/17/3172829:

2. The appeal is dismissed.

Reasons

APP/E6840/C/17/3172828 Ground (a) and APP/E6840/A/17/3172829

3. The appeal on ground (a) against the enforcement notice and the appeal concerning the condition imposed on permission DC/2015/01386 both raise issues of planning merits. The appeals concern development comprising a new front boundary treatment to the garden area of a detached dwelling within the village of Shirenewton. The plot frontage onto Clearview abuts a footway which is separated from the vehicular carriageway by a grassed area. The northern end of the plot abuts a lane without footways leading into the village centre (referred to as Mountain Road by the Council). The northern end of the plot frontage coincides with the edge of the Shirenewton Conservation Area, which covers the historic village core.
4. The plans initially submitted with application DC/2015/01386 sought to replace a low brick retaining wall along the site frontage adjoining the footway with a much higher stone-faced retaining structure approximately 2.6m high, topped by 1.1m high metal railings. Discussions with the Council during the course of the application resulted in amended plans being submitted. The amendments showed the height of the retaining wall reduced to approximately 1.8m, the facing changed to brick and the railings set back from the top of the wall and separated by a 40 degree planted earth batter. Decision notice DC/2015/01386 granted permission for the development subject to a condition that the development be carried out in accordance with the amended plan (identified in the schedule referenced in the disputed condition as Existing and Proposed Layouts Rev: A).
5. Notwithstanding the submitted and agreed amendments to the scheme and the stipulation imposed by the condition, the appellant has now carried out development in similar form to that originally proposed, save that the section of retaining wall reducing towards its southerly end has been constructed in facing brick. Both the ground (a) appeal against the enforcement notice and the appeal against the refusal to remove the condition effectively seek permission for the development as actually

carried out. As built, the wall measures 2.7m at its highest point; the railings add an additional 1.1m.

6. The issue at the heart of these appeals is the effect of the development as implemented on the character and appearance of the locality, having regard amongst other things to the site's location on the edge of the Shirenewton Conservation Area. The local policy context for consideration of these matters is provided by the Monmouthshire Local Development Plan (LDP). LDP policy DES1 states that all development should be of a high quality sustainable design and respect the local character and distinctiveness of Monmouthshire's built, historic and natural environment. In particular, sub-section (c) requires that development respect the existing form, scale, siting, massing, materials and layout of its setting and any neighbouring quality buildings. Policy HE1 places particular requirements on development within conservation areas. Policy EP1 seeks to protect against development giving rise to unacceptable environmental effects.
7. The site forms part of a cul-de-sac of more recent properties within the village and also sits at the edge of the conservation area on a route leading into the village core. The cul-de-sac of Clearview is characterised by detached properties within plots with fairly generous front gardens bounded by low brick walls/hedging and ornamental planting, providing an open and spacious feel. The character of Mountain Road, the nearby village core and the conservation area generally is of a more closely-knit built environment, where the use of stone predominates and boundary walls abut highways and form links between buildings in the street scene. The site lies at a transition point between these areas of differing character and appearance.
8. I recognise that the low retaining wall that previously existed in this location required replacement, and I understand the appellant's desire to provide a safe and secure means of enclosing the site. However, the previous structure was much more modest, and photographic evidence shows that the slope behind it was not excessively steep. The retaining wall as built, topped with railings, constitutes an unduly high and visually dominant feature at the entrance to Clearview which is at odds with the cul-de-sac's open and spacious character and detracts from the street scene.
9. In terms of its effect on the conservation area and the route into the historic village core, I recognise that stone boundary walls are a significant contributory feature to the area's character and appearance and that this is noted in the Shirenewton Conservation Area Appraisal. However, in my judgement the height of the retaining structure, the resulting stark, blunt end of the structure on the frontage of Mountain Road and the incongruous presence of the ornamental railings on top of the wall significantly undermines any affinity with traditional boundary features in the village and within the conservation area in this regard.
10. Overall, I find that the development fails to respect the existing form, scale and layout of its setting and harms the character and appearance of its surroundings. As such, the development does not accord with LDP policy DES1. As regards LDP policy HE1, I note that this policy applies only to development within conservation areas. The submitted evidence indicates that the development itself is located very largely outside the conservation area boundary. However, to the extent that part of the development does lie within the conservation area, I conclude that the development harms, and thereby fails to preserve or enhance its character or appearance. The development thus also conflicts with LDP policy HE1. In relation to this I am conscious of the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area when considering such proposals.

11. I note the Council's position that the proposal also conflicts with LDP policy EP1. However, I find no evidence that the development causes harm to the privacy, amenity or health of neighbouring occupiers, or that it poses any significant risk in terms of pollution, contamination, land instability or an identified risk to public health or safety. In arriving at this conclusion I note the assertion that the retaining wall encroaches upon the highway carriageway at its northerly extremity. Whilst it is possible that a marginal encroachment may have occurred, I have no definitive evidence before me on this matter. Whilst the Council, when rejecting the proposal to depart from the disputed condition, noted that the Highway Authority considered both the earlier approved scheme for a 1.8m high retaining wall abutting the footway and the current proposal to be unacceptable, this did not form part of the Council's reason for refusal and is not relied on in its statement of case on the appeals. I find insufficient evidence to lead me to conclude that the development conflicts with LDP policy EP1.
12. Notwithstanding the above, my decision on these appeals does not remove the need for development to be compliant with such requirements of other legislation as may also apply. Aspects of compliance with the provisions of the Highways Act 1980 are ultimately matters for the Highway Authority to pursue, if appropriate.
13. I note also that a number of local residents have indicated that they see no objection to the new boundary structure as built. However, this opinion is not shared by the Community Council for the area, nor does it accord with the professional judgement of the Council's Conservation Officer.
14. I appreciate the need to take into account practical and safety considerations as well as matters of appearance. However, the revised scheme already approved under reference DC/2015/01386 does this. It is not the case that a retaining wall of the height now constructed is essential for practical and safety reasons; other, less intrusive, solutions exist.
15. Overall, I conclude that the development as carried out causes undue harm to the character and appearance of its surroundings and fails to preserve or enhance the character or appearance of the Shirenewton Conservation Area. As such it conflicts with LDP policies DES1 and HE1 and so does not accord with the development plan. Material considerations do not exist here which are sufficient to indicate a determination other than in accordance with the plan. The ground (a) appeal against the enforcement notice therefore does not succeed.
16. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective of supporting safe, cohesive and resilient communities.
17. In the light of the foregoing I also conclude that the condition imposed on decision DC/2015/01386 to the effect that development be carried out in accordance with the revised plan submitted at that time was properly imposed having regard to the tests for conditions, in particular the tests of necessity and reasonableness, in order to ensure that the development is of an appropriate design that adequately respects its setting. Removing the condition so as to enable the development as built to prevail would run counter to the objectives of securing good design embedded in development plan and national planning policy. Appeal APP/E6840/A/17/3172829 therefore also fails.

Appeal APP/E6840/C/17/3172828 – ground (f)

18. In respect of the arguments advanced on ground (f) I consider that the stone facing of the retaining wall, as opposed to brick, is acceptable in this location and does not cause harm to the character or appearance of its surroundings. However, for the reasons given above I consider that the height of the wall as built is excessive and that its resultant overbearing and incongruous presence in the street scene is compounded by the steel railings erected on top. A reduction in the height of the retaining wall to 2.5m, as suggested by the appellant, would be marginal and would not overcome this harm, particularly since the steel railings on top would remain.
19. Having taken all factors into account I consider that the requirement of the notice to completely demolish the wall is excessive; and that the alternative requirement to rebuild it in accordance with the previously-approved plans is also excessive insofar as those plans specified that the wall be faced in brick, not stone. I therefore allow the appeal on ground (f) and amend the requirements of the notice to require that the railings be removed from on top of the retaining wall and that the wall be reduced in height so as to conform to the maximum height indicated on the plans previously approved by permission reference DC/2015/01386.

Appeal APP/E6840/C/17/3172828 – ground (g)

20. The appellant points out that the services of a structural engineer and specialist contractors will be needed to ensure that the works are undertaken safely. I consider that this is a valid argument which, notwithstanding that I have decided to modify the requirements of the notice and make them less onerous, continues to apply. I agree with the appellant that, bearing this in mind, the compliance period should be increased to 6 months.
21. The ground (g) appeal therefore succeeds and I vary the notice accordingly.

Overall conclusion

22. For the reasons given, and having taken into account all matters raised, the appeal on ground (a) against the enforcement notice fails. I refuse planning permission for the development concerned and the enforcement notice therefore stands. Similarly, I dismiss the appeal against the Council's refusal to permit development without complying with condition 2 attached to previous permission DC/2015/01386. However, the appeal against the enforcement notice on ground (f) succeeds in part and the appeal on ground (g) also succeeds; I therefore vary the notice accordingly.

Alwyn B Nixon

Inspector