



Appeal Decision

Site visit made on 16 June 2025

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 18 July 2025

Appeal Ref: APP/H0738/W/25/3361294

35 Pennal Grove, Ingleby Barwick, Stockton-on-Tees TS17 5HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Jon Paul Brown against the decision of Stockton-on-Tees Borough Council.
 - The application Ref is 23/2016/RET.
 - The development proposed is change of use of formal landscaping area to garden land associated with 35 Pennal Grove, including landscaping works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development has commenced and is substantially completed. It is therefore retrospective development, and I have considered the appeal on this basis.
3. In the heading above, I have removed reference to retrospective from the description as it is not an act of development.
4. The National Planning Policy Framework (the Framework) was updated in December 2024. Insofar as it is directly relevant to the appeal, there are no substantive changes. As a result, I have determined the appeal on the basis of the information provided and the parties have not been prejudiced by this. However, for correctness I have used the paragraph numbering and any related changes in the update where applicable.
5. A boundary retaining wall survey by WB Engineers¹ dated February 2025 (February 2025 Survey Report) was submitted in support of the appeal. This report considers the structural integrity and stability of the wall. As this report does not change the physical form of the development and the Council and Interested Parties have had the opportunity to comment on it, I consider that no party would be prejudice by its inclusion. I have therefore considered the report and the provided comments in my determination of the appeal.

¹ Reference W22284-WBE-XX-XX-CO-Z-0002/EB/ks

Main Issues

6. The main issues in the determination of the appeal are the effect of the development on:
- the stability of land with particular regard to the boundary retaining wall extension; and
 - the living conditions of the neighbouring occupants at 27 Stanegate Avenue (No 27) with particular regard to overlooking and privacy.

Reasons

7. The appeal site comprises the rear garden to 35 Pennal Grove (No 35). The host property and part of its rear garden are at a higher ground level than the neighbouring property at No 27. To allow for the height difference, a retaining wall exists along the adjoining boundary of these properties. Prior to the development, the higher rear garden was partly covered by a raised timber decked patio.
8. The development has extended the higher rear garden, removed the timber decked patio, landscaped the area and changed some of the boundary treatments. Amongst other works, the development included the extension of the retaining wall along the boundary of No 27 to support the higher garden extension.

Stability

9. The extended retaining wall is of cavity construction made up of two leaves of blockwork/brickwork separated by a small cavity and which sits on a foundation. The wall and foundation are visible from the garden of No 27. A boundary fence is fixed to the top of the wall.
10. The February 2025 Survey Report concluded amongst other matters that the extended retaining wall, while not aesthetically pleasing was structurally suitable. The assessment was based on the assumption that the fence fixings would fail before imposing any substantial horizontal forces on the wall and the wall was not showing any visual signs of distress. However, a number of defects were noted and identified as needing to be addressed including underpinning the foundation, repairs to damaged bricks and mortar and the wall cavity being cleaned out and concrete/grout infilled. Reference was made that the wall was typically in accordance with the BRE Good Building Guide 27 titled 'Building Brickwork or Blockwork Retaining Walls' (GBG 27) and compliant to this guidance. The Council's Building Control Manager did not dispute the contents of this report.
11. Notwithstanding the above, at the application stage a Structural Report² dated July 2024 (July 2024 Report) was submitted by an Interested Party. This considered the original and extended retaining walls and the boundary fence. Amongst other matters, in relation to the extended retaining wall, this report identified similar and some additional defects to those detailed in the February 2025 Survey Report. This report recommended that the extended wall should be structurally designed and rebuilt. The author of this report also commented on the February 2025 Survey Report findings³ and confirmed that this supported the findings of the July 2024 Report. However, the author disputed that the wall complied with GBG 27, outlining

² Structural Inspection Boundary Wall and Fence by K. Wijesinghe B.Eng, C.Eng, M.I.Struct.E, dated 27 July 2024

³ Reference - WB Engineer Letter dated 21st February 2025 by K. Wijesinghe B.Eng, C.Eng, M.I.Struct.E, dated 28 February 2025

a variety of reasons for this including the guidance was not suitable for walls that support solid fences; the foundation did not meet the guidance's requirements; there was no evidence that the guidance's recommended back of wall drainage had been provided and the wall construction was not covered by the guidance. It was maintained that the wall's structural integrity and stability was not satisfactory. Little evidence to counter these raised concerns have been provided.

12. I appreciate that the extended retaining wall has been in place for a number of years and the fence fixings would fail prior to placing any significant loading on the wall. However, taking together the identified defects, the differences in the wall's design to that recommended in the GBG 27, the significant differences set out in the two independent engineers' reports and the potential risks to the neighbouring property, I am not convinced that the extended retaining wall is structurally sufficient, and the land stability risk is acceptable.
13. I appreciate that an engineering solution could probably be found to make the extended retaining wall stable and note the Council and the appellant's indication that this matter could be secured through a planning condition. However, neither party has provided any proposed wording for this and considering the uncertainties and differences detailed in the two independent engineers' reports, I am not satisfied that a condition could be imposed that would meet the enforceable, precise and reasonable tests⁴ set out in the Framework.
14. Accordingly, the development adversely affects the stability of land and is contrary to Paragraphs 187, 196 and 197 of the Framework. These seek, amongst other matters, for new development to not contribute to land instability and be suitable for its proposed use taking account of any risks arising from land instability.

Living Conditions - Overlooking

15. While the extended rear higher part of the garden is located away from the houses at Nos 35 and 27, with its low boundary fencing, the development has significantly increased the original area from where overlooking of No 27's garden and patio can occur. Furthermore, even though there is separation to No 27's house, the area has also allowed better views into some of the rear rooms. Together, these are allowing unacceptable overlooking of No 27 and have adversely affected the occupants' privacy and harmed their enjoyment of the garden and house.
16. Due to the topography of the area and No 27 being constructed later than No 35, some overlooking may have been expected and accepted. However, the development has changed this, and with the extended higher garden being increased by a number of metres with little privacy screening being provided, it is not negligible. The 'before and after' photographs⁵ show the significant changes caused by the development. As such, the original overlooking does not justify the harm the development is causing.
17. It is advised that the extended garden is significantly lower than the removed original timber decked patio, the patio area has not been extended any further than it had been originally, and the height of the development's boundary fence is similar to the original fence. However, these do not justify or change the fact that the development has increased overlooking and caused harm.

⁴ Paragraph 57 of the Framework

⁵ Appendix 6 of the appellant's appeal statement

18. It is argued that overlooking has been worsened by the removal of some of the boundary planting and the installation of rear bifold doors by the owner of No 27. Be that as it may, these do not justify the original overlooking being worsened by the development.
19. Although it is claimed that removing the patio section would still necessitate the retaining wall, the cause of the increased overlooking is directly related to the development's extended higher garden and associated low fence. Leaving this area unpaved would not prevent the use of the extended higher garden and therefore this would not overcome the harm being caused.
20. Due to safety and liability concerns it is contended that a higher fence cannot be used. However, while the extended retaining wall has been noted as unable to support a high fence, the July 2024 Report recommended the retaining wall should be structurally designed to take such a feature. There is little compelling evidence presented to show a structural solution to safely support a higher fence could not be achieved. On this basis the reason for not providing a higher fence does not justify the harm the development is causing.
21. While some trees have been planted to the boundary by the owners of No 27, as shown by the 'before and after' photographs, these provide limited screening when not in leaf. The trees therefore do not acceptably mitigate the harm the development is causing.
22. Consequently, the development adversely affects the living conditions of the occupants of No 27 with regard to overlooking and privacy. It would be contrary to Policy SD8 of the Stockton-on-Tees Borough Council Local Plan 2019 (Local Plan) and Paragraph 135 of the Framework. These seek, amongst other matters, to ensure new development responds positively to the privacy and amenity of all existing occupants of land and buildings and provides a high standard of amenity for existing users.

Other Matters

23. I note the points that the previous owner of No 35 extended the garden without planning permission; that the appellant now owns the land and wishes to regularise it as residential garden; the garden character of the area would be maintained, and the Council have not raised significant concern regarding its encroachment into the area identified as being part of the 'Green Wedge'. However, these do not justify the harm the development is causing.
24. Given the environmental and social harm identified above, the development would not amount to a sustainable form of development as set out in Paragraph 7 of the Framework.
25. The Council did not raise significant concerns regarding character and appearance, and I see little reason to question this. However, the lack of harm is a neutral factor and does not justify the development. I have considered the main issues raised and the evidence presented in determination of the appeal.
26. The approach to identifying the most important policies is raised as an issue by the appellant and reference is made to caselaw⁶ in support of this. However, while the Council did not specifically refer to criterion 1(e) of Policy SD8 of the Local Plan, in

⁶ Wavendon Properties Ltd v SSHCLG and Milton Keynes Council [2019] EWHC 1524 (Admin).

the Officer Report it clearly listed the policy's criteria, including 1(e). It also specifically noted under the 'amenity of the neighbouring occupiers' section that Policy SD8 seeks development to provide 'acceptable privacy and amenity for existing and future occupants'. As such, the Council sufficiently identified the important policy in its decision.

27. At the application stage, reference was made to permitted development rights enabling the original patio to be raised by up to 300mm. However, while this may well be a fallback available, little substantive evidence is provided to allow a comparison of the effects on land stability and overlooking with that caused by the development before me. On the basis that the fallback would not extend the higher garden and would not require the retaining wall extension, I am not convinced that the harm from it would be worse than the development. As such it is not sufficient to justify the development.
28. The appellant has requested that, as the Council does not object to the change of use of the land to residential garden, at least part allowing of the appeal be considered. However, as the development's extended higher rear garden is an integral part of development of the land to residential garden use and construction is already substantially complete, then these elements are not both clearly physically and functionally severable. I therefore consider part allowing of the appeal is not appropriate.

Conclusion

29. For the reasons given above, and taking into account other matters raised, the appeal should be dismissed.

J Symmons

INSPECTOR