
Appeal Decision

Site visit made on 28 March 2017

by Paul Freer BA (Hons) LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 April 2017

Appeal Ref: APP/R0335/C/16/3158017

Land at 22 Prince Consort Drive, Ascot, Berkshire SL5 8AW

- 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 Patrick Argi against an enforcement notice issued by Bracknell Forest Borough Council.
 - The enforcement notice was issued on 28 July 2016.
 - The breach of planning control alleged in the notice is failure to comply with condition No 7 of a planning permission Ref 12/00690/FUL granted on 5 October 2012.
 - The development to which the permission relates is alterations to the previously approved for the erection of a four bedroom detached house with allocated garages following demolition of existing dwelling and garage planning application reference 12/00323/FUL, consisting of revisions to ground floor layout. The condition in question is No 7 which states that: No gates shall be provided at the vehicular access to the site. The notice alleges that the condition has not been complied with in that 1.8m high gates and gate posts have been erected and retained.
 - The requirements of the notice are:
 - (i) Remove from the land to which the notice relates both pairs of wooden gates and gate posts located in the approximate positions shaded green on the plan attached to the notice, and
 - (ii) Remove from the land to which the notice relates all materials and debris resulting from compliance with (i) above.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice upheld.

Preliminary Matter

1. The appeal site is within the Green Belt. The Council does not consider the gates and gate posts to be inappropriate development in the Green Belt. Having regard to paragraph 89 of the National Planning Policy Framework (Framework), I see no reason to take a different view. I also note that, in dismissing a previous planning appeal for entrance gates at this property, the Inspector adopted the same approach (APP/R0335/D/14/2223757). In these circumstances, it is not necessary for me consider whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is outweighed by other considerations, such that very special circumstances exist to justify the development. I shall therefore focus upon the main issue raised by this appeal, as derived for the reasons for issuing the notice.
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The appeal on ground (a) and the deemed planning application

2. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issue raised is the effect of the wooden gates and gate posts on the character and appearance of the area.
3. In March 2010, the Council adopted a Character Area Assessment Supplementary Planning Document (SPD). This SPD defines the character of specific areas in the Borough, referred to as Study Areas, and interprets policies within the Core Strategy insofar as they apply to those Study Areas. The appeal site falls within the East of Bracknell Study Area, within Chapter 6 of the SPD. The SPD describes Prince Consort Drive as having a very distinctive and positive character derived, in part, because it retains the appearance of its origins of being carved out of the woodland. The SPD goes on to explain that Prince Consort Drive has an open and welcoming character due to the limited boundary treatments and lawns.
4. I found that the description in the SPD accurately reflects the character of Prince Consort Drive. In particular, I noted that the majority of the dwellings feature soft boundary treatments, typically comprising hedges, shrubs and trees sitting behind areas of lawn. Boundary fences, where they do exist, are typically open post and rail fences. It is this preponderance of soft landscaping that provides the open and welcoming character described in the SPD.
5. Within this area of typically open and soft frontages, by reason of their height, generally solid appearance and dark colour, the wooden gates and gate posts are stark and incongruous features. Indeed, in my view, they represent the very antithesis of the open and welcoming character exhibited by the remainder of Prince Consort Drive. For these reasons, I find that the wooden gates and gate posts subject to the notice are significantly harmful to the character and appearance of Prince Consort Drive.
6. The appellant points to a number of other properties in Prince Consort Drive that have gated entrances. I was able to view these as part of my site visit. However, in the context of Prince Consort Drive as whole, gated entrances are in the minority. There are also lengthy stretches of frontage where there are no gated entrances. Consequently, the overwhelming character of Prince Consort Drive remains that of open frontages dominated by soft landscaping.
7. I conclude that the wooden gates and gate posts unacceptably harm the character and appearance of the area. I therefore conclude that the wooden gates and gate posts are contrary to Policies CS7 of the Bracknell Forest Borough Local Development Framework: Core Strategy (Core Strategy), as well as Policy EN20 of the Bracknell Forest Borough Local Plan. These policies require, amongst other things, that development promotes local character and a sense of local identity.
8. The reason for issuing the enforcement notice also cites Policy CS23 of the Core Strategy. However, on my reading, that policy relates primarily to matters such as sustainable travel and highway safety. These matters form no part of the reasons for issuing the enforcement notice, and I therefore consider that Policy CS23 of the Core Strategy is of only limited relevance to the main issue identified above.

Other Matters

9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the wooden gates and gate posts fail to accord with the development plan in one respect. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
10. The reason for imposing condition No 7 of planning permission Ref 12/00690/FUL was in two parts, the second of which related to the visual amenities of the area. This reason has been fully addressed in the main issue above, and on the basis of that assessment I found that the gates and gate posts unacceptably harm the character and appearance of the area. It follows that condition No 7 of planning permission Ref 12/00690/FUL is necessary to protect the character and visual amenities of the area.
11. The first part related to highway safety but, as indicated above, highway safety forms no part of the reasons for issuing the enforcement notice. Although not expressly referred to in the Planning Officer's Enforcement Report, I note that the wooden gates and gate posts are set back from the highway, such that there is sufficient space for a vehicle to wait off the highway whilst the gates are opened. I am therefore satisfied that the wooden gates and gate posts subject to the enforcement notice do not prejudice highway safety.
12. Nevertheless, this is not to say that the reasons for condition No 7 of planning permission Ref 12/00690/FUL are not necessary or are unreasonable in this respect. It is entirely conceivable that entrance gates positioned closer to the highway may not provide sufficient space for a vehicle to wait off the highway whilst the gates are opened, and therefore pose a risk to highway safety. Notwithstanding that the existing gates do not offend highway safety, I am therefore satisfied that condition No 7 of planning permission Ref 12/00690/FUL is necessary in the interests of highway safety.
13. The appellant refers to the Procedural Guide to Enforcement Notice Appeals published in March 2016, and in particular to the advice that an appellant can suggest a planning condition that they think would mitigate the impact of the development if the appeal succeeds on ground (a) and planning permission is granted. The condition proposed by the appellant is that no gates shall be provided at the vehicular access to the site until details of the gates have been submitted to and approved in writing by the Local Planning Authority. The appellant indicates that he intends to submit a planning application to discharge that condition should the appeal be allowed.
14. Given that the Council does not consider the gates to be inappropriate development in the Green Belt, I have given careful consideration as to whether the deemed planning application could be granted subject to the condition proposed by the appellant. However, I have found that the wooden gates and gate posts unacceptably harm the character and appearance of the area, such that planning permission ought not be granted for them. In those circumstances, it is not open to me to impose the condition proposed by the appellant.

Conclusion on the ground (a) appeal

15. I have found that condition No 7 of planning permission Ref 12/00690/FUL is necessary to protect the character of the area. It is also necessary to safeguard conditions of highway safety on Prince Consort Drive. Consequently, the condition is necessary in respect of both reasons for the imposition of that condition and, although only briefly stated, the two reasons for imposing the condition are both soundly based. I therefore consider that the condition does not impose unjustifiable or disproportionate burdens on the appellant, and I find nothing unreasonable in the imposition of that condition. I am also satisfied that the condition accords with all the other tests for conditions set out in the Framework and the Planning Practice Guidance.
16. Accordingly, the appeal on ground (a) fails.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed planning application.

Formal Decision

18. 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.

Paul Freer

INSPECTOR