The Planning Inspectorate

Appeal Decisions

Site visit made on 27 June 2017

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 4th July 2017

Appeal A: APP/C3105/W/17/3169437
Appeal B: APP/C3105/Y/17/3169567
Springfields House, Station Road, Cropredy, Banbury, Oxon OX17 1PP

- Appeal A 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 same Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
- Appeal B is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to vary or discharge conditions of a listed building consent.
- The appeals are made by Mr & Mrs M Gault against the decisions of Cherwell District Council.
- In Appeal A the application Ref 16/02228/F, and in appeal B the application Ref 16/02229/LB were both dated 14 November 2016, and were each refused by notices dated 10 January 2017.
- The applications sought planning permission and listed building consent for retrospective boundary fence and gates without complying with conditions attached to planning permission Ref 16/00992/F and listed building consent 16/00993/LB, both dated 15 July 2016.
- The conditions in dispute are;
  3) Within six months of the date of this permission the fence shall be stained in accordance with a sample, including colour and finish, which shall have been submitted to the Local Planning Authority within three months of the date of this permission. The development shall be implemented fully in accordance with the approved details and maintained as such thereafter.
  4) Within six months of the date of this permission the gates shall be painted in accordance with a sample, including colour and finish, which shall have been submitted to the Local Planning Authority within three months of the date of this permission. The development shall be implemented fully in accordance with the approved details and maintained as such thereafter.
  5) Within six months of date of this permission a method statement for the encouragement of the growth of ivy upon the fence shall be submitted to and approved in writing by the Local Planning Authority. The ivy shall be encouraged to grow upon the fence in accordance with the approved method statement and maintained as such thereafter.
- The Reason for each condition was- To ensure the satisfactory appearance of the completed development and to comply with Policy ESD 15 of the Cherwell Local Plan 2011-2031, saved Policy (28 of the Cherwell Local Plan 1996 and Government guidance contained within the National Planning Policy Framework.

Decision Appeal A

1. I allow the appeal and grant planning permission for boundary fence and gates at Springfields House, Station Road, Cropredy, Banbury, Oxon OX17 1PP in accordance with the application Ref 16/02228/F dated 14 November 2016, without compliance with conditions number 1), 2) and 3) previously imposed

on planning permission Ref 16/00992/F dated 15 July 2016 and subject to the following conditions:

4) Within 3 months of the date of this decision, a sample and specification of the proposed paint application, including preparation, colour and finish, shall be submitted to the Local Planning Authority for approval. Within 3 months of the date of that written approval the gates shall be painted in accordance with that approval and shall be maintained as such thereafter.

5) Any plants growing on the fence which within a period of 5 years from the date of this decision die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Decision Appeal B

2. I allow the appeal and grant listed building consent for boundary fence and gates at Springfields House, Station Road, Cropredy, Banbury, Oxon OX17 1PP in accordance with the application Ref 16/02229/LB dated 14 November 2016, without compliance with conditions 1), 2) and 3) previously imposed on planning permission 16/00993/LB dated 15 July 2016 and subject to the following conditions:

4) Within 3 months of the date of this decision, a sample and specification of the proposed paint application, including preparation, colour and finish, shall be submitted to the Local Planning Authority for approval. Within 3 months of the date of that written approval the gates shall be painted in accordance with that approval and shall be maintained as such thereafter.

5) Any plants growing on the fence which within a period of 5 years from the date of this decision die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reasons

3. It is clear from the Officer Report that the original decision to grant planning permission and listed building consent was taken on balance, and only on the basis that the effect of the gates and fence could be made acceptable by conditions imposed on those approvals. These Appeal Decisions are not able to revisit those original decisions to permit the development and works, but are only able to consider the need for the conditions.

4. The Council's decisions would have been taken with the duties in the Planning (Listed Buildings and Conservation Areas) Act 1990 in mind. Sections 16(2) and 66(2) require special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, and section 72(1) states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Paragraph 132 of the National Planning Policy Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be.

5. Looking first at the fence and the ivy growth, it is the fact that at the time of the site visit, the ivy had grown considerably and had all but obscured the major part of the fence on the outward face. The fence itself had weathered where open to light as would have occurred during the intervening winter. Whilst the inside face that falls within the immediate setting of the listed building is more utilitarian in construction, plants are beginning to soften that effect. As seen at the site visit, there would be no merit in disturbing the ivy growth to add the stain treatment sought in condition 3) and the passage of time would provide for more weathering and more growth rendering staining superfluous. Condition 3) should be removed.

6. For that reason, condition 5) is no longer required insofar as it mentions a method statement, and it would not be reasonable to require the maintenance of planting beyond the usual 5 years. It would however be reasonable and necessary to ensure that degree of protection while planting is establishing, and a replacement condition is proposed to that end.

7. Turning to condition 4) and the gates, the Council stated in the Report that they are *'stark and non-traditional in appearance and cause less than substantial harm to the setting of the listed building. No justification has been put forward with the application for the retention of the gates as existing that could outweigh this identified harm'.* Nevertheless, permission and consent had been granted, presumably with the view that painting would bring them to an acceptable 'traditional' appearance.

8. The gates are stark and whilst weathering, are still of a non-traditional style. The dense foliage around the entrance does reduce the effect on the conservation area, but this would be less in winter months. On the basis that the Council's decisions stand, the harm to the significance of the listed building's setting and to the character and appearance of the conservation area can only be mitigated by the application of paint to a suitably dark and opaque finish, it being for the Council to agree that detail. As a result, condition 4) is still necessary and its retention is reasonable in order for the works and development to accord with saved Local Plan Policy C18 and Policy ESD 15 of the Cherwell Local Plan 2011-2031, as well as the requirements of Chapter 12 of the Framework on the conservation of the historic environment.

9. The wording of condition 4) needs adjusting as at present the 6 months that the appellant would be bound by to carry out the work includes the time taken by the Council to approve the samples, and that is not reasonable.

10. The web-based Planning Practice Guidance states that decision notices for the grant of permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. (Paragraph: 031 Reference ID: 21a-031-20140306). In these cases conditions 1) and 2) that the Council attached were not needed for retrospective applications in any event, so there is no reason to restate them. The new permission and consent retain the numbering of the previous conditions for clarity. With those provisions it is concluded the appeal should partly succeed. A new planning permission and listed building consent are granted without the original conditions but substituting others.

S J papworth

INSPECTOR