
Appeal Decision

Site visit made on 19 June 2018

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2018

Appeal Ref: APP/A2280/C/17/3179417

Open space at Guelder Rose Drive, Hoo St Werburgh ME3 9FX

- 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 Bells Lane Management Co Ltd against an enforcement notice issued by The Medway Council.
- The enforcement notice was issued on 8 June 2017.
- The breach of planning control as alleged in the notice is 'Without the benefit of planning permission erection of a close boarded fence around a listed pillbox.'
- The requirements of the notice are:
 - (i) Remove all close boarded wooden fencing and associated wooden posts from the land
 - (ii) Remove all the resultant debris and rubbish from the land arising from the requirements of i)
 - (iii) Restore the site to its condition prior to the commencement of the development
- The period for compliance with the requirements is one calendar month.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal on ground (a)

Main issues

1. The 'Four Pillboxes' of which the appeal pillbox forms part are a Grade II listed building. The close boarded fence has been erected around the pillbox, and although I was not able to see behind the fence at the site visit there is nothing before me to demonstrate that the fence is attached or affixed to the structure of the pillbox. As such, no works to the listed building are alleged and no listed building enforcement notice has been issued. In the light of this, I consider that the main issues in the ground (a) appeal are whether the development preserves the setting of the Grade II listed building and the effect of it on the character or appearance of the area.

Reasons

2. The appeal site is on the edge of a modern housing development, on the outside of the corner of the road, on a wide grass verge. Beyond is open agricultural land. There is a footpath in the agricultural field at a lower level. An anti-tank ditch, which has been filled in, is within the field.

3. The pillbox is one of four pillboxes off Bells Lane, which comprise a Grade II listed buildings. The group comprises two polygonal type 24 infantry pillboxes to the north and south of the group and two type 28 rectangular gun emplacements in the centre of the line. The appeal relates to one of the type 28 gun emplacements. The four pillboxes were constructed in 1940 as part of the Hoo Stop Line, an anti-invasion defended line stretching for about eight miles between the River Thames and the River Medway. The group's special interest relates to the rarer form of pillboxes and the particular group value with the location of the two gun emplacements in close proximity flanked by and supported by infantry pillboxes, providing a clear demonstration of the perceived weakness of the stop line at this point and the designs of the defensive planners.
4. The Council has provided photographs of the appeal pillbox prior to the erection of the close boarded fence the subject of the Notice. The openings within the pillbox had been filled in at the time of the photograph, with blockwork and there appeared to be no access to the internal space of the pillbox.
5. The residential development results in the other three pillboxes being within private space each associated with a single dwelling. The appeal pillbox is an important and prominent structure within the street scene. The erection of the close boarded fence totally envelopes the pillbox on four sides and the roof is at the level of the fence. The pillbox can therefore no longer be understood or appreciated within its immediate setting or the wider context of the filled in anti-tank ditch. As such, I consider that the close boarded fence results in harm to the setting of the group of pillboxes and particularly the appeal pillbox. This results in harm to the significance of the designated heritage asset. It also harms the street scene as it is located in a prominent position and the close boarded fence appears incongruous on the outside of the bend with open countryside beyond. This is contrary to Policy 18 of the Medway Local Plan (adopted May 2003) which resists development which would adversely affect the setting of a listed building.
6. Furthermore, paragraph 192 of the National Planning Policy Framework (July 2018) (the Framework) states that local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness. Paragraph 194 of the Framework states that any harm to or loss of the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification. In my view, the harm resulting from the fence to the significance of the heritage asset and the local character is less than substantial.
7. Paragraph 196 of the Framework states that in the case of less than substantial harm it should be weighed against the public benefits of the proposal. The appellant states that the fence was erected to prevent damage to the pillbox by youths who were riding bikes on it and trying to access the pillbox. Local residents were concerned that the youths could injure themselves as well as damaging the pillbox structure. The appellant states that the pillbox was sealed by Bellway Homes due to the antisocial behaviour of youths. The appellant is concerned if the pillbox is left open it could result in it being abused.

8. While I appreciate that the pillbox has in the past been the focus of antisocial behaviour, I am not satisfied on the evidence available that totally enclosing the pillbox is the only practical solution. No alternative management of the structure has been put forward by the appellant and no details of when the antisocial behaviour took place or what police action was taken has been provided. Furthermore, the photographs provided by the Council indicate that even without the fence in place the access to the pillbox was blocked in by blockwork so that it is unlikely that youths could enter the building if the close boarded fence were removed. I therefore consider that the harm to the designated heritage asset is not outweighed by the public benefits stated.
9. I therefore conclude that the close boarded fence harms the significance of the Grade II listed building and the character and appearance of the area. In the absence of sufficient public benefits to outweigh these harms the development conflicts with the Framework. For these reasons and having considered all matters raised, I conclude the appeal on ground (a) should fail.

Appeal on ground (f)

10. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. In appealing on ground (f) the appellant must give specific lesser steps which, in their view, would overcome the objections to the appeal development.
11. The appellant does not specify any lesser steps but does state that it is open to any alternative solutions that Medway Council can provide to ensure the structure remains safe whilst preventing youths damaging it.
12. No lesser steps have been provided or implied in the evidence provided. Therefore, in the absence of cogent evidence to the contrary, I conclude that the requirements of the Notice are not excessive. Accordingly, the appeal on ground (f) fails.

Formal Decision

13. 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.

Hilda Higenbottam

Inspector