
Appeal Decision

Site visit made on 13 August 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 August 2019

Appeal Ref: APP/B1930/W/19/3227817

Ayres End House, Ayres End Lane, Harpenden AL5 1AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs J Mathers of Cupcake Clothing Limited against the decision of St Albans City & District Council.
 - The application Ref 5/19/0179, dated 24 January 2019, was refused by notice dated 21 March 2019.
 - The development proposed is a new gated access and revised parking layout.
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Decision

1. The appeal is allowed and planning permission is granted for a new gated access and revised parking layout at Ayres End House, Ayres End Lane, Harpenden AL5 1AL in accordance with the terms of the application, Ref 5/19/0179, dated 24 January 2019, and the plans numbered Drawing 5325 137A Proposed new entrance elevations and street scenes and Drawing 5325 121E New entrance and driveway - site plans, subject to the following condition.
 - 1) Prior to the relevant part of the development, details of the materials and external finish of the gates hereby permitted shall have been submitted to and approved in writing by the local planning authority. Development shall be carried out fully in accordance with the approved details.

Procedural Matters

2. Notwithstanding the company name used in the application form, the appellant has subsequently confirmed that the name of the business is Cupcake Clothing Limited, and I have reflected this in my heading above.
3. The appellant has submitted two revised plans with the appeal referenced 5325 137A and 5325 121E. Plan 5325 137A differs from the original plans in that the annotations refer to the fence infilling the former access as matching the height of the existing boundary fence at approximately 1.3 metres in height rather than the 1.8 metres previously referred to. The height reference now corresponds with the details of the street scene drawing. Similarly, the annotations used in the proposed new entrance plan shown in Drawing 5325 121E have been amended to reflect the details shown in the street scene. The height of the fence shown flanking the new entrance is shown as 1.8 metres high and the reference to a 5 bar gate has been omitted.

4. As these matters affect relatively minor matters such that the annotations accord with the originally submitted proposed street scene drawing¹, I do not consider that it significantly changes the nature of the development. On that basis, I am satisfied that no parties would be prejudiced by my determining the appeal in relation to the revised plans.
5. Planning permission² for alterations to the access was previously granted. I observed on site that works have largely been completed in relation to the access, brick gate posts and fencing. However, the lattice gate does not accord with the gate details in the appeal proposal and I note that there is reference to it being a temporary arrangement³ subject to the outcome of this decision. Therefore, I shall determine the appeal on the basis of the amended plans submitted.

Main Issues

6. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt, including its effect upon openness, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - The effect of the proposal on the character and appearance of the area, and;
 - If found to be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

7. Development within the Green Belt is inappropriate with the exceptions of the types of development listed in paragraphs 145 and 146 of the Framework. Criterion d) of paragraph 145 allows for the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Paragraph 146 includes engineering operations provided that they preserve its openness and do not conflict with the purposes of including land within it.
8. Policy 1 of the City and District of St Albans District Local Plan Review, November 1994 (LP) seeks to restrict development in the Green Belt and specifies certain developments that would not be inappropriate. However, it predates the Framework policy by a considerable period. Paragraph 213 of the Framework advises that due weight should be given to policies that predate the publication of the Framework, according to their degree of consistency with it. There are some discrepancies between Policy 1 and the Framework in relation to the exceptions specified, and in the references to the consideration of landscaping, design and external appearance within the context of the impact on the Green Belt.

¹ Reference 5325 137

² Reference 5/2018/2358 dated 5 November 2018

³ Paragraph 3.4 of Appellant's statement

9. The appeal proposal relates to a replacement access to serve Ayres End House within its existing grounds. The construction of the access itself has previously been granted permission on the basis that it would constitute an engineering operation that would preserve the openness of the Green Belt and would not conflict with the purposes of including land within it. Consequently, the parties agree⁴ that this would fall within one of the exceptions in paragraph 146 of the Framework and I have no basis to take a different view.
10. Essentially, the parties disagree as to whether the proposed fencing, gate posts and gates would be inappropriate development. On the evidence before me, I am satisfied that the gates, gate posts and fences proposed would fall within the definition of a building, which includes any structure or erection, set out in section 336 of the Town and Country Planning Act 1990. As such, it would be reasonable to rely on this definition in applying paragraph 145 d) of the Framework. The appeal proposal would be a replacement for the original access point within the same grounds and therefore, although located further to the west, the replacement fence and gates would be a building in the same use.
11. Turning to the question of whether the proposed fence and gates would be materially larger than the ones it would replace, the amended plans indicate that the original access would be closed using close boarded fencing of a height to match the existing boundary fencing either side, and I observed this had been implemented at my site visit.
12. The new access would be flanked by close boarded fencing of approximately 1.8 metres in height, tapering down to match the existing fencing adjacent to the road. The curved metal framed, teak boarded gates would reach a maximum height of approximately 2.2 metres in height with approximately 2 metres high brick pillars either side. This would replace a section of approximately 1.2 metre high timber fencing adjacent to the road and the established planting behind.
13. Whilst paragraph 145 d) states that the replacement building should not be materially larger, this does not prohibit any increase at all, and therefore, a non-material increase in size would be permissible under the definition. This requires a judgement as to the impact of the specific proposal. Moreover, in contrast to Policy 1 of the LP it does not necessitate the general consideration of the siting, design and external appearance of the development.
14. Although the proposed gates, gate posts and fencing at the new access point would be higher than the original timber fencing by up to a metre in the central part of the gate, this would be a limited section set back into the site. Moreover, when seen within the context of the relatively wide frontage to Ayres End House, it would not represent a significant increase in size to the overall boundary treatment. Whilst I acknowledge that the proposed gates and brick posts would have a more formal and solid appearance than a 5-bar gate, this does not affect how large the respective gates and gate posts would be, which is the determining factor in paragraph 145 d).
15. Accordingly, based on the evidence presented, the fencing, gate posts and gates in the appeal proposal would not be materially larger than the original gate and fence replaced and as such, would fall within the exception for new

⁴ Delegated officer report, Page 3, second paragraph

buildings within paragraph 145 d), which in this case attracts greater weight than the exceptions listed in Policy 1 of the LP.

16. Paragraph 145 d), in contrast to other parts of the same paragraph and paragraph 146, does not include a specific caveat that the development should preserve the openness of the Green Belt and not conflict with the purposes of including land within it. On that basis, notwithstanding the references to caselaw made by the Council that relate to other listed exceptions in the national policy, as the proposal falls within the remit of paragraph 145 d) there is no requirement to further assess the impact on openness of this aspect of the proposal, as it is implicitly taken into account in the exception.
17. Consequently, I find that the gates, gate posts and fencing would not be inappropriate development in the Green Belt and there is no need to consider the impact on openness further.

Character and appearance

18. Ayres End House is a large detached property in an Arts and Crafts style, set back from Ayres End Lane within generous grounds. There are a cluster of buildings at this point, many of which are in residential use. Consequently, there are several access points onto Ayres End Lane in proximity to the appeal site. Ayres End Lane has a predominantly rural character due to its narrow width, informal verges and hedgerows either side.
19. The boundary of the property with Ayres End Lane comprises predominantly of a wooden close boarded fence with established tall planting behind, comprising mostly of non-native species. As a result, its appearance is commensurate with a domestic garden in contrast to nearby native hedgerows. Nevertheless, as it largely screens views to Ayres End House and garden, it thereby contributes positively to the verdant rural character of Ayres End Lane.
20. The appeal proposal would replace the original access to Ayres End House with a close boarded fence of a similar height and planting behind, such that, in time as planting becomes established, it would appear as a continuation of the existing boundary treatment. As such, its appearance would be in keeping with the established surroundings and would ensure that overall, there would be no increase in the number of entrance points onto Ayres End Lane from the property. Furthermore, the replacement access to the west would be of a comparable width to the original.
21. The gates would be flanked by brick gate posts and tapered close boarded fencing around the mouth of the entrance and would be constructed from dark timber panelling. The curved simple style, height and materials of the gates would be reasonably in keeping and proportionate to, the status and appearance of Ayres End House. The gates would be set approximately 7.2 metres into the site from the lane, and therefore, although visible, they would not be particularly prominent in wider public views as it would be significantly screened by the existing planting nearer to the road boundary.
22. The Council considers that the 5-bar gate on the previously approved scheme would be more appropriate given the site's rural location. I accept that a 5-bar gate has rural connotations as it is commonly used for field accesses. Nevertheless, Ayres End House is an established detached property of some grandeur with domestic characteristics and cultivated grounds, and it would not

be unreasonable for the entrance point to take design cues from this, given that policy 69 of the LP encourages new development to take account of its context. I have seen little evidence to support the assertion that the proposed timber solid gates reflect distinctly urban characteristics, and they would broadly accord with the close boarded vertical timber fence that is already present across the remaining frontage. As such, within this setting, the height and more solid appearance of the gates when coupled with their unobtrusive siting, would strike a reasonable balance between the period style of Ayres End House and the rural character of Ayres End Lane.

23. Therefore, I find that the appeal proposal would accord with the requirements of policy 69 of the LP that, amongst other matters, require it to achieve an adequately high standard of design that takes account of the surrounding context.

Other Matters

24. I note Ayres Barn is a Grade II listed building located to the east of the appeal proposal. I am required to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess. However, neither party suggests that the proposal would adversely affect the significance of this heritage asset. Furthermore, the appeal proposal would result in the access to Ayres End House being moved further away from the listed building. Therefore, I have no reason to find that the proposal would fail to preserve the setting of the listed building.

Conditions

25. Given that the development has already commenced the standard three year period in which the planning permission may be implemented is unnecessary. For clarity, I accept that there should be reference to the submitted amended drawings, although as a significant part of the development has already been carried out, I have referred to these in my formal decision.
26. The evidence indicates that a higher fence had been erected across the original access point and in those circumstances, it is not surprising that the Council suggested specific conditions to require a reduction in height and planting to accord with the submitted plans. However, I observed at my site visit that the fence height has now been reduced in order to match the height of the fencing either side, with planting behind it similar to the established hedgerow along the boundary. Therefore, there is no need to impose a specific time period in order to secure this by condition, nor to require additional landscaping details and implementation.
27. The Council suggest a condition to agree the external finish of the development. However, the dark stained timber fencing I observed on site is a reasonable match with the existing fencing on the boundary, and the brick pillars are acceptable. Nevertheless, I accept that in the interests of safeguarding the character and appearance of the area, it is reasonable to agree the details of the external finish of the gates proposed, as the example photograph relates to a different style of gate and uses generalised terms. However, this is not so fundamental that it should be done prior to any development taking place, and in any event, a significant part of the development has been carried out. Nor is it necessary to agree further design

details, as these are sufficiently clear in the submitted plans. Therefore, I have amended the wording accordingly.

Conclusion

28. I conclude that, the appeal proposal would not be inappropriate development in the Green Belt and would not be harmful to the character and appearance of the area. Therefore, for the reasons given above, the appeal should be allowed.

Helen O'Connor

Inspector