



Appeal Decision

Site visit made on 10 January 2020

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 24 January 2020

Appeal Ref: APP/J3720/X/19/3234091

6 Manor Mews, Studley B80 7PR

- The appeal is made under section 26H of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) as amended by the Planning and Compensation Act 1991, against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Alan Neville against the decision of Stratford-on-Avon District Council (the LPA).
 - The application, Ref 19/01176/LBP, dated 25 April 2019, was refused by notice dated 7 June 2019.
 - The proposed works for which a certificate of lawful development is sought is to '*Make a dangerous section of wall safe by taking it down to soil level. Secure the property by erecting suitable fencing*'.
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Decision

1. The appeal is dismissed.

Matters of clarification relating to this application for a LDC

2. Section 26H (1) of the PLBCAA, provides for anyone, who wishes to ascertain whether any proposed works for the alteration or demolition of a listed building would be lawful, to make a LDC application specifying the works to be carried out. Section 26H (2) indicates that, for the purposes of this section of the Act, works would be considered to be lawful if they would not affect the '*character of the listed building as one of special architectural or historic interest*'.
3. Thus, any works or demolition applied for in a LDC application must firstly relate to works to a '*listed building*' and, secondly, if they are to be considered lawful, they must not affect its character as a building of special architectural and historic interest. If the works relate to a '*listed building*' and do affect its character as one of special architectural or historic interest, then listed building consent (LBC) is required and a LDC cannot be issued.
4. The PLBCAA defines '*listed building*' for the purposes of the Act. As well as any buildings specifically referred to (described and added to the list), the Act also refers to '*any object or structure fixed to the building*' (Section 1[5][a]) and '*any object or structure within the curtilage of the building which although not fixed to the building forms part of the land and has done so since July 1948*' (Section 1[5][b]) being deemed listed.
5. An appeal relating to an application for a LDC under Section 26H is confined to the narrow remit of reviewing the LPA's decision. It requires an assessment to be made as to whether the refusal of the application is, or is not, well founded. The assessment must be based on whether or not the proposed works, for which the certificate is sought, were considered to be lawful at the time of the application (25

April 2019). The merits of the proposed works are not relevant and there is no LBC application before me.

6. What needs to be assessed in this case is firstly whether or not the appeal wall is deemed listed in the first instance and, if so, whether or not its demolition would affect the character of the principal listed building, 'Mountbatten House'.

7. In a LDC appeal the burden of proof lies with the applicant and the relevant test is '*the balance of probabilities*'. National Planning Practice Guidance (PPG) indicates that an applicant for a LDC is responsible for providing sufficient information to support a LDC application and that, without sufficient or precise information, a LPA may be justified in refusing to grant a certificate.

Background information

8. The red brick wall (with blue brick coping), the subject of the LDC application, currently forms part of the boundary of the appellant's property at No 6 Manor Mews. This forms part of a development of new dwellings in Manor Mews (to the north of Manor House and the Coachmans Cottage) which were granted approval in 1978. The application reference is 78/01014/FUL and it was for the '*erection of four detached houses; the alterations and extension to the Coach House of the listed building and the demolition of the existing stables*'.

9. As referred to above the principal listed building is 'Mountbatten House' which was listed in Grade II* in 1967 (with amendments to the listing having been made in 1985). The other separately listed buildings in the vicinity of the appeal site are set out in section 2 of the Council's statement and include '*Gatepiers, Gates and Garden Walls west of Mountbatten House*' 1967; '*Garden Wall east of Mountbatten House* 1985' and '*The Cottage* 1969'. This latter property (No 97) is located at the corner of Manor Road and Alcester Road. I have noted the other application for listed building consent for demolition of a section of the wall from the owner of No 97 Alcester Road.

10. The appeal wall clearly pre-dates the main listing and I agree with the LPA that it is C19 or earlier. I noted during my site visit that it forms part of a much longer section of similar boundary walling which starts by abutting the listed cottage at No 97 Alcester Road and then extends southwards, stepping upwards, past the Coachmans Cottage and to the gate piers at Manor House. The northern gate pier has a nameplate for '*Manor House*' and the south gate pier has a nameplate for '*Mountbatten House*'. The wall then continues southerly across the frontage of '*Mountbatten House*'. The wall now forms a distinctive boundary along Alcester Road and although it now bounds separate properties, including No 6, it was evidently the boundary wall to '*Manor House*' and '*Mountbatten House*'.

The Main Issues

11. The main issues in relation to this application for a LDC are as follows:

- Whether or not the section of boundary wall is deemed listed by virtue of section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act.
- If so, whether its proposed demolition would affect its character of architectural and historic interest.

Whether or not the section of wall bounding No 6 is deemed listed

12. The Council refers to the three tests which the courts consider must be taken into account in order to establish whether or not objects or structures (referred to in Section 1(5) of the Act) should be treated as part of a listed building. These are: *the physical layout of the building or structure; their ownership both historically and at the*

date of listing; and the use or function of the relevant building , again both historically and at the time of listing’.

13. In this case the actual physical layout/position of the wall in question does not appear to have been altered since it was built. At that time it clearly formed the boundary to ‘Manor House’ and ‘Mountbatten House’. This was also the case when the principal building was listed. Clearly, since listing, the ownership of the section relating to No 6 has changed but the use or function of the wall in forming a boundary to the various properties has not changed since the wall was built, or since it was listed. It still forms a boundary to the various properties. As a continuous wall it is still recognisable as the original boundary wall along the main road to the land and curtilage of ‘Mountbatten House’.

14. At the time of listing in 1967 the appeal section of wall was in the ownership of No 101 Alcester Road, ‘Manor House’. This is also supported by information submitted with the application for the Manor Mews development in 1978. Evidence from maps provided by the LPA illustrates that the appeal land defined the boundary of 101 Alcester Road and still continues to bound the ‘Coachmans House’, as well as abutting No 97, although it is not ‘fixed’ to the listed cottage.

15. However, because the section of wall clearly pre-dates July 1948; because it formed part of the land to No 101 both prior to and at the point of listing and because it was ancillary to No 101 and defined its boundary along the public highway, I agree with the LPA that, as a matter of fact and degree, this satisfies the requirement of section 1(5b) of the PLBCAA.

16. Thus, despite the change in ownership, I conclude that the section of wall, the subject of this appeal, (as part of the rest of the original the boundary wall) remains to be considered as a structure within the curtilage of ‘Manor House’ and ‘Mountbatten House’ which, although not fixed to either building, forms part of the land and has done so since July 1948. It is, therefore deemed to be a ‘listed building’.

Whether demolition would affect its character of architectural and historic interest

17. Having seen the wall and having walked its length from the listed Cottage at No 97 and past both ‘Manor House’ and ‘Mountbatten House’, I consider that it remains worthy of its deemed listed status. Despite its poor condition in part and particularly its condition along the boundary of No 6, it is still an attractive part of the streetscene in this part of Studely, as well as providing an architecturally and historically interesting boundary to the listed buildings.

18. I consider that to demolish the section of walling as proposed would clearly affect the character of the listed structure. The merits of the case are not before me, but I agree with the Council that on the basis of the submitted information the proposal would be very likely to have such an effect so as to affect its character. By virtue of section 7 of the PLBCAA ‘no person shall execute or cause to be executed any works for the demolition of a listed buildingin any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised’. Therefore, in this case, the works would require listed building consent.

Conclusion

19. Because I have concluded that the section of boundary wall is deemed listed and because the works would be only be deemed lawful by virtue of Section 26H (2) if they would not affect the ‘character of the listed building as one of special architectural or historic interest’, I conclude that at the date of the application the proposed works would not have been lawful. It follows that I consider the LPA’s decision not to issue a LDC for the works was sound and that the appeal must fail. I acknowledge that the

section of walling is in poor condition and that this places a degree of responsibility on the appellant. However, this is a matter for the appellant as the current owner and cannot affect my conclusions in relation to whether or not a LDC should be issued for the works to make it safe by taking it down to soil level and erecting a fence.

Other Matters

20. In reaching my decision in this case I have taken into account all other matters raised. These include the planning history; the initial submissions; the submitted statements; the photographic submissions; the physical condition of the wall and all other comments by the parties. As indicated above I have also noted the listed building consent application from the owner of No 97 Alcester Road and the notes made following a meeting with the LPA on 15 April 2019. However, none of these carries sufficient weight to alter my conclusions on the two main issues and nor is any other factor of such significance so as to change my decision.

Formal Decision

21. The appeal is dismissed and a Lawful Development Certificate for the proposed works is not issued.

Anthony J Wharton

Inspector