



Appeal Decision

Site visit made on 7 January 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 25 February 2020

Appeal A Ref: APP/J3720/C/19/3230367

Appeal B Ref: APP/J3720/C/19/3230368

**Land at River Cottage, Tiddington Road, Stratford-upon-Avon,
Warwickshire CV37 7AE**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Robert McLachlan and Appeal B is made by Dawn McLachlan against an enforcement notice issued by Stratford-On-Avon District Council.
 - The enforcement notice was issued on 2 May 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a 0.8 m stained wooden fence above an existing wall which cumulatively is 1.8 m in height and the erection of a stained wooden sliding gate 1.8 m in height (when measured from the public highway) both adjacent to a highway used by vehicular traffic.
 - The requirements of the notice are
 - a) Remove the fence which has been erected above the existing wall and gates along the alignment of A-B (as shown on the Plan) from the Land.
 - Or
 - b) Remove the fence which has been erected above the existing wall and reduce the height of the sliding gate to no more than 1 metre in height as identified along the alignment of A -B (as shown on the Plan) from the LandAND
 - b) Remove all the materials associated with points a) and b) above.
 - The period for compliance with the requirements is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended and the application for planning permission deemed to have been made under Section 177(5) of the Act as amended falls to be considered.
 - Appeal B was also made on ground (a) of Section 174(2) (a) of the Town and Country Planning Act 1990.
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Decision

1. Appeal A is dismissed and planning permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act as amended and the enforcement notice is upheld. Appeal B has lapsed.

Procedural Matters

2. The appeals were initially made by Robert and Dawn McLachlan against the enforcement notice on ground (a). In respect of the appeal by Dawn McLachlan, the ground (a) appeal and the application for planning permission deemed to have been made under Section 177(5) of the Act as amended has lapsed as prescribed fees were not paid. The prescribed fees have been paid

by Robert McLachlan in respect of the ground (a) appeal and his application for planning permission deemed to have been made under Section 177(5) of the Act is proceeding.

The appeal under ground (a) and the deemed planning application

3. Ground (a) is that planning permission should be granted for the matters stated in the notice.
4. The main issue is whether the development would preserve or enhance the character or appearance of the Stratford upon Avon Estate Conservation Area (the Conservation Area).
5. Conservation Areas are designated heritage assets as defined by the National Planning Policy Framework (the Framework) and great weight is to be given to their preservation and conservation. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 also requires that special attention be given to the desirability of preserving or enhancing the character or appearance of a conservation area.
6. The Conservation Area Appraisal identifies that the approach from Tiddington Road to the town is characterised by houses set back from the road with established gardens. Whilst, boundary treatments do vary, mature vegetation and low stone walls are to be found together with visual gaps for access and drives which do create an open character. The appeal dwelling is a two storey dwelling that is not set back from the road and is side on to the pavement with an overhanging bay window at first floor level. Nevertheless, it is the first dwelling on the north side of Tiddington Road. The River Avon is to the rear of the appeal site and Clopton Bridge which is a scheduled monument is around 140 metres away and is described in the Conservation Area Appraisal as an important pedestrian and vehicular entrance and exit view to the town.
7. The position of the appeal dwelling together with its side on design does mean that it is visually prominent and is described by the appellant as unique. There is a close boarded fence to the west of the appeal dwelling along the appeal site boundary with the pavement, made up of vertical wooden panels with a wooden gate and soft landscaping in the form of vegetation behind at least part of it. To the other side of the dwelling, there is a white boundary wall of around 1 metre.
8. The development, the subject of the notice, is made up of new fencing that has been erected above the white wall and a sliding gate at the end of the wall and fencing. The fence and gates are made of stained horizontal wooden panels. The combined height of the white wall with the fencing above and the sliding gate is around 1.8 metres. The increase in height above the existing boundary wall with the addition of the sliding gate forms one continuous line of horizontal fencing adjoining the side elevation of the dwelling along the boundary with the pavement.
9. Whilst the Conservation Area appraisal does state that views to the river are generally obscured to this side of Tiddington Road, the boundary treatment still has to be assessed as development within the Conservation Area. Whilst the development does take the place of a former hedgerow, the addition of fencing and a gate is new development that has to be assessed.

10. Whilst I observed at my site visit that there has been some fading of the light colour of the wooden horizontal panels since earlier photographs, the length of the fence which lacks soft landscaping with the addition of the gate is still visually prominent and not in keeping with the streetscene. I do not share the appellant's view that soft landscaping to the development is provided by the backdrop to the River Avon as there is no visual relationship between the development and the river when viewed from the highway.
11. Details of a number of dwellings with different boundary treatments along Tiddington Road up to No 119 have been provided by the appellant. However, the boundary treatments of the dwellings referred to are not of the same style as the development and largely include brick walls or traditional fence panels or hedges. Dwellings on Tiddington Road generally have access and drives on the frontages so that any boundary treatment has visual gaps but that is not the case at the appeal site. The circumstances that relate to existing individual boundary treatments will also differ such as boundary treatments that cannot be enforced against due to being in situ for more than 4 years. I do not consider that the other boundary treatments referred to are comparable to the development either in terms of location or materials.
12. The appellant seeks to rely upon the Supplementary Planning Guidance entitled Development Requirement SPD (April 2019)(the Guidance). Despite the development fronting onto Tiddington Road, the appellant considers that the development is a side boundary. The Guidance for side and rear boundaries states that "boundary treatments should be of brick, hedging or other appropriate materials such as ivy screens which can soften the wall and add character." Irrespective of whether the development is a front or side boundary, the development does not fall within the Guidance for side boundaries.
13. The Council had indicated that a fence of up to 2 metres could have been erected under permitted development rules behind the original hedgerow that has now removed. The appellant has interpreted this as meaning that a 2 metre fence erected behind the existing 1 metre high wall would be permitted development and would be no different to the development. However, there is no evidence before me that the appellant proposes to do this and it would not address the gate issue. Any alternative boundary treatment is likely to require either express planning permission or would need to be assessed under the relevant provisions of the Town and Country Planning (General Permitted Development) Order 2015 including whether or not the proposal would be adjacent to the highway which would be a matter of fact and degree. The example given by the Council where a 2 metre high fence would have been largely hidden by the original hedgerow is not necessarily comparable to putting a 2 metre fence behind a 1 metre wall.
14. I note that there have been discussions between the appellant and the Council with regard to suitable boundary treatments and the appellant believes that he has received inconsistent advice. Whether or not that is the case, I have to assess the development as it exists now. However, I do not agree that the appellant has created a trellis as the new fence is solid with horizontal panels. The Oxford English Dictionary defines a trellis as a light frame made of long narrow pieces of wood that cross each other, used to support climbing plants. I understand that the electric sliding gate is easier to exit and enter the appeal dwelling, however, the Council is not alleging highway safety.

15. Whilst the appellant describes the garden behind the development as his rear garden which requires privacy, any boundary treatment has to be assessed in the context of the Conservation Area designation. Privacy could be achieved by considering other alternatives such as the trellising that the appellant indicates the Council suggested. The appellant has referred to personal family circumstances increasing the need for privacy with which I sympathise. However, any permission granted would be permanent and run with the land and not be limited to occupation by the appellant and his family. It is for this reason that personal circumstances rarely justify the grant of planning permission. The appellant has referred to enforcement action being in breach of Article 8 of the Human Rights Act and the Right to respect to private and family life. However, Article 8 is a qualified right and interference can be justified in certain circumstances. In this case, the Council's actions were necessary to uphold planning law and were no more than is required to uphold that law.
16. Having regard to the prominent location of the appeal site, the height and design of the development does appear out of place in an area where boundary treatments are largely of more traditional design and generally have soft landscaping and/or visual gaps. I do find that the development does not preserve or enhance the character or appearance of the Conservation Area as required by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The harm caused to the significance of the Conservation Area is less than substantial. In accordance with paragraph 196 of the Framework, the harm that I have identified should be weighed against any public benefits of the development. The appellant has referred to the need to prevent crime and securing personal safety as being a public benefit. However, there is no evidence before me to show that alternative boundary treatments would not achieve the same aims. I therefore do not consider that these matters are public benefits of sufficient weight to outweigh the harm to the Conservation Area.
17. For the reasons above, the development would harm the character and appearance of the area and would fail to preserve or enhance the character or appearance of the Conservation Area. The development is therefore contrary to Policy CS.8 of the Stratford-on Avon Core Strategy 2011-2031 (the Core Strategy) which states that the District's historic environment will be protected and enhanced. It would also be contrary to Policy BE8 of the Stratford-on-Avon Neighbourhood Development Plan 2011-2013 (the Neighbourhood Plan) which states that proposals which result in less than substantial harm must demonstrate public benefit outweighing that harm. It would also be contrary to Policy CS9 of the Core Strategy and Policy BE2 of the Neighbourhood Plan which collectively refer to responding to and reflecting local character. The ground (a) appeal therefore fails.

Conclusion

18. I conclude that Appeal A should not succeed. Appeal B has lapsed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

E. Griffin

INSPECTOR