



Appeal Decision

Site visit made on 19 May 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2020

Appeal Ref: APP/C1435/C/19/3232879

Land at Old Station House, Station Approach, Mayfield, East Sussex

- 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 Mr Brian Hickey against an enforcement notice issued by Wealden District Council.
 - The enforcement notice was issued on 18 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a close-boarded, trellis-topped wooden fence ("the Fence") in excess of 1 metre in height adjacent to the highway, and the erection of wooden entrance gates ("the Gates") in the approximate position shown by a green line on the attached plan.
 - The requirements of the notice are:
EITHER
 - (i) Demolish, dismantle and remove the Fence and all fence posts and/or piers from the Land
 - (ii) Demolish, dismantle and remove the Gates and all gate posts and/or piers from the Land
 - (iii) Remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirementsOR
 - (i) reduce the height of the Fence to a height not exceeding 1 metre at any point along the length of the Fence
 - (ii) reduce the height of the Gates to a height not exceeding 1.8 metres at any point along the width of the Gates
 - (iii) remove from the Land all materials, rubble, rubbish, debris, tools and equipment arising from compliance with the above requirements
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

1. It is directed that the enforcement notice be:

- varied by deleting both sentences stating "Time for compliance: 2 months after this notice takes effect" within section 5 (What you are required to do) and their replacement with "Time for compliance: 3 months after this notice takes effect".

- corrected by deleting the words stating “Spatial Objectives 5, 7 and 8, and Policies AF1, AF2, WLP3, EA4, EA5, BED1, HE1 and HE5 of the draft Wealden Local Plan 2018” under section 4(ii) of the Enforcement Notice
2. Subject to this variation and correction, the appeal is dismissed, and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

3. The Enforcement Notice refers to a number of policies within the draft Wealden Local Plan 2018 (DLP), which was withdrawn on 19 February 2020. Therefore, I have not taken into consideration the DLP, except to delete reference to these policies within the Enforcement Notice. I consider that a minor correction is therefore necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.
4. The Old Station House and the adjoining station building, are of a high architectural standard, with the former originally of Tudor Revival and the station building retaining many of its original features including the entrance porch with lead lights and stained glass. Given the architectural interest of these buildings together with their historical association with the former Cuckoo Railway Line (as outlined below), I consider these buildings are non-designated heritage assets.

Ground (a) appeal and the Deemed Planning Application

Main Issues

5. The main issues are the effect of the development on character and appearance of the High Weald Area of Outstanding Natural Beauty (AONB) and the Mayfield & Coggins Mill Conservation Area (CA).

Character and appearance

6. Station Road is a private road which leads to Mayfield Close, a residential cul-de-sac. The site falls within the High Weald AONB and the newly extended CA¹.
7. The National Planning Policy Framework, 2019 (the Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area. Paragraph 193 of the 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. Paragraph 194 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset, should require clear and convincing justification.
8. Paragraph 197 of the Framework states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in

¹ The CA was extended in March 2017.

determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. The Framework defines the setting of a heritage asset in terms of the surroundings in which it is experienced.

9. With regards to the High Weald AONB, the Framework at paragraph 172 states that "Great weight should be given to conserving and enhancing landscape and scenic beauty in... Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues".
10. The Wealden Local Plan, 1998, explains that Mayfield is an historic village, situated on a ridge-top providing extensive views of the surrounding countryside, all of which lies within the High Weald AONB. The village is residential in character and comprises low density development with a number of large properties set within spacious curtilages in an informal layout with variable plot sizes. There is extensive mature landscaping and tree cover both within the individual gardens and on many boundaries, screening many dwellings. During my site visit I observed that the spacious and landscaped gardens within the area particularly contributes to the overall open and verdant character and appearance of the CA, in keeping with the natural beauty and character of the High Weald AONB.
11. The arrival of the former Cuckoo Railway line and the former station building/house in the late C19 was instrumental to the village expanding westwards away from its historic core. Therefore, in terms of historical significance, the Old Station House and adjoining station building, extends beyond the building itself, but also makes a positive contribution to the CA. I also note that the CA was extended to this part of the village in 2017 in part to incorporate the historic development at its western end.
12. The appeal property is located on a curve and the tall close boarded fence together with the entrance gates, runs for a considerable length along the curve. Given its height, length and prominence, it forms a large, obtrusive and incongruous feature in the street scene which is at odds with the prevailing open and verdant character of the CA. Furthermore, due to its excessive height, length and scale, the unauthorised fence and gates detracts from the appreciation of the Old Station House and former Station building, a non-designated heritage asset. Consequently, the development is not in keeping with the character and appearance of the CA, resulting in harm to its significance, and the High Weald AONB.
13. I appreciate that there was a pre-existing old fence, trellis and vehicular gate, prior to the current development, and the appellant considers that the harm could be overcome by returning the height of the fence and trellis to 1.8m. However, I do not consider that this would be satisfactory in terms of overcoming the harm caused to the character and appearance, particularly given that the site is located in an area predominantly characterised by low boundary treatments and landscaped gardens.
14. Furthermore, the pre-existing fence has now been removed and there is no substantive evidence to demonstrate that it extended around the entire frontage of the site, and the Council's own evidence indicates that part of the frontage of the site comprised roadside vegetation. The pre-existing fence appears to have been in a dilapidated state, and therefore I do not consider

that it lends support for the current development which is higher and extends across a larger area of the site. Nor would additional landscaping or treatment of the timber overcome the harm identified.

15. In the terms of the Framework and paragraph 196, the harm that the unauthorised development has caused to the significance of the designated heritage asset, that is the CA, would amount to less than substantial harm. Accordingly, this should be weighed against the public benefits of the development.
16. The appellant states that the fence and gates provide additional privacy, safety and security for occupiers of the dwelling, and that the enclosed garden is important for achieving a viable use of the site as a family home. It is also stated the signage on the gates which identifies the property as a 'Station House' is a public benefit. However, the harm to the character and appearance of the CA, to which I afford considerable importance and weight, would not be outweighed by these benefits. Furthermore, I also consider that there would be alternative measures that could be explored to provide these benefits without causing harm to the CA. In this respect, the Council advise that an alternative scheme has been approved which incorporates boundary hedgerow along the frontage of the site with a picket fence or railings².
17. I therefore conclude that the development results in an incongruous addition, which is harmful to the High Weald AONB, and the character and appearance of the CA as a whole. As such, the development fails to preserve or enhance the character or appearance of the CA, contrary to the Saved Policies GD1, EN1, EN6, EN19, EN27 and VB26 of the Wealden Local Plan 1998, Policies SP01, SP02 and WCS14 of the Wealden District Core Strategy Local Plan 2013, and the Wealden Design Guide 2008. Together these requires that development within the High Weald AONB, will only be permitted if it conserves or enhances the natural beauty and character of the landscape, and that within Conservation Areas, proposals which do not preserve or enhance their existing character, scale and visual amenity will be resisted.
18. It would also conflict with the relevant requirement of the Framework which seeks to conserve and enhance the historic environment and AONB. Finally, it would not preserve or enhance the character or appearance of the conservation area as required by Section 72(1) of the Act. This carries considerable weight and importance to my decision.

Other Matter

19. Under the appeal on ground (f) the appellant states that the fence could be moved back from the back edge of the kerb line to allow an area in front of the fence to be landscaped, to help soften the appearance of the fencing. However, there are no plans before me to consider this alternative scheme which is also fundamentally and substantially different than the current development owing to the revised position of the fence. The ground (a) appeal is limited to considering whether or not planning permission should be granted for the whole or part of the development enforced against. It is therefore not open to me under ground (a) to consider an alternative scheme for a fence re-located within the site.

² Council ref: WD/2016/1425F approved on 24 February 2017, highlighted in Appendix 1 of the Council's appeal statement.

Conclusion on Ground (a) and the Deemed Planning Application

20. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The appeal on Ground (f)

21. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach". The enforcement notice requires the removal of the front boundary treatment or, in an acknowledgement of permitted development rights, to reduce the height of the fence height to 1m and the height of the gates to 1.8m. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
22. The appellant proposes four options. Firstly, it is suggested that the notice could require the height of the fence to return to 1.8m high and for the gates to return to 2m in height. However, I have already found above there is no substantive evidence to demonstrate that the entire pre-existing fence extended around the entire site frontage and there is no evidence to demonstrate that the pre-existing gates were 2m in height. I have also found under the appeal on ground (a) that the reduction in height of the front boundary treatment as suggested by the appellant would not be satisfactory in terms of overcoming the harm caused to the character and appearance of the AONB and CA.
23. Secondly, the appellant suggests that the fence could be moved back from the back edge of the kerb line to allow an area in front of the fence to be landscaped to soften the appearance of the fencing. I have already considered the merits of the alternative scheme under ground (a), and that this would result in a substantially different scheme than the current development. It is also unclear what effect this alternative scheme would have on the existing trees within the garden. Therefore, I cannot vary the requirements of the notice with precision.
24. Thirdly, the appellant states that a 1m high fence could be provided or retained on the site in the same location that would not require planning permission, and that the requirements of the Notice prevent this. However, this is not correct since the Notice allows this option.
25. With regards to the appellant's final suggestion that planning conditions could be imposed to require the surface treatment of the fence and additional landscaping to be undertaken, I have already found under the appeal on ground (a) that these suggestions would not be sufficient to mitigate the harm identified to the CA and the AONB. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. I therefore consider that there are no obvious solutions which would overcome the harm identified and there is also no obvious 'fallback' position.

26. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

27. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from two to twelve months, in order to enable further planting for the plants to become more established and prevent the site being 'opened up'.

28. I have identified under ground (a) that the development results in harm to the character and appearance of the CA and AONB. In my view, the twelve months requested by the appellant would be excessive. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In light of Government policy regarding Covid-19 and restricting social contact, I consider that this period needs to be prolonged by a further month. A 3 month period for compliance would strike a more reasonable and proportionate balance to comply with the notice. I shall therefore vary the period for compliance prior to upholding the notice to 3 months. I also note that the current situation with the pandemic is fluid and it is unclear how long restrictions associated with this will last. In this respect, the Council have powers under s173A(1)(b) to extend any period for compliance, a matter entirely at their discretion, without prejudicing their right to take further action.

29. To this extent, the ground (g) appeal succeeds and I will vary the notice accordingly.

Conclusion

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR