
Appeal Decision

Site visit made on 18 August 2020

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2020.

Appeal Ref: APP/E2530/Y/20/3251546
45 Haconby Lane, Morton PE10 0NP

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against the grant of listed building consent subject to conditions.
 - The appeal is made by Mr Gary Wade against the decision of South Kesteven District Council.
 - Listed building consent Ref S20/0337 was granted on 14 April 2020 subject to conditions.
 - The works proposed are: Erection of boundary fence within curtilage of listed building.
 - The condition in dispute is No 1 which states that: *The existing fence shall be reduced in height to no higher than 1.0 m in height following the existing gradient and base of the fence, along its entirety by 31 May 2020.*
 - The reasons for the condition is: *To conserve the significance of the heritage asset in accordance with Policy EN6 of the South Kesteven Local Plan.*
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Decision

1. The appeal is allowed and listed building consent Ref S20/0337 for erection of boundary fence within curtilage of listed building is varied by deleting condition No 1 and substituting for it the following condition:
 - 1) The existing fence forming the boundary with Haconby Lane only shall be reduced in height to no higher than 1.0 m in height following the existing gradient and base of the fence, and including sections on each side of the entrance gate, before 31 December 2020.

Procedural Matters

2. The Council raised an internal query with regard to whether Listed Building Consent (LBC) was required. I am satisfied that Listed Building Consent is required as the fence is attached to 45 Haconby Lane.
3. Although the application is for planning permission and LBC, the appeal is against the LBC. For the avoidance of doubt my reasoning is concerned only with the LBC.
4. The officer's report and the appeal statement describe the fencing as 2.4 metres tall, yet the drawings show that it is 1.8 metres tall and I confirmed this at my visit. I have based my reasoning on the plans and my observations at the visit.

Background and Main Issues

5. The appellant removed existing boundary treatments, which included a hedge, fencing and the remains of a stone wall, at 45 Haconby Lane (No 45) which is

one of two attached cottages listed as a Grade II listed building. The road and rear northern and western boundaries were replaced with timber lap fencing and a field gate. The field gate gives access to a hardstanding in front of No 45 as well as access to 47 Haconby Lane (No 47).

6. The Council has issued Listed Building Consent subject to a condition requiring a height reduction of the fence to 1 metre. The Council argues that the appellant had agreed to this condition when the situation was discussed prior to determination. However, the appellant argues that fencing at the current height is necessary to secure the garden for a visiting child and valuable working dogs.
7. The main issue therefore is whether the disputed condition is necessary and reasonable, having particular regard to the desirability of preserving the listed building, any feature of special architectural or historic interest, and its setting, as required by section 16(2) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act).

Reasons

8. Numbers 45 - 47 are archetypal mid 18th century Fenland cottages of rubble construction with first floor accommodation within a steeply pitched tiled roof on the edge of a small village. They ~~have~~ are of modest scale and proportions, and are sited gable end to the road.
9. There is an opposing terrace of four similar attached cottages, (Nos 37 - 43) a short distance away. Although extended and altered, these cottages appear to have a similar underlying form and construction to Nos 45 - 47. A single storey rubble outbuilding at No 43 and hard against the road boundary appears to date from a similar period to the cottages.
10. Nos 45 - 47 are closer to Haconby Lane and appear to be largely unaltered in comparison with Nos 37 - 43. The listing states that Nos 45 - 47 are included for group value.
11. This group of modest vernacular buildings is now enclosed by contemporary dwellings with more conventional frontages facing the road. The group's anomalous layout relative to the road, together with its underlying architectural consistency and alignment, suggests that it was built as a rural cluster at roughly the same time. The group's separation from grander and larger stone dwellings closer to the church and the village centre, a few hundred metres away, is likely to be indicative of the social and economic evolution of this rural village.
12. The significance of Nos 45 - 47 is therefore derived from their largely intact historic fabric, their modest proportions and spatial relationship with nearby buildings dating from a similar period.
13. Number 45 is the closest cottage to the road and the most visible from the public domain. Its original proportions, largely intact detailing and distinctly rural character is visible from Haconby Lane, particularly when approaching from the south as there are direct views of its front elevation across the hardstanding.
14. When viewed from the road, No 45's modest scale is dominated by the fence, particularly where it is located on rising ground to the rear. The fence also has

a rather suburban appearance which is exacerbated by its scale and extent. This is incongruous in the context of these former rural cottages. I conclude that the fence along the road boundary detracts from the appreciation of Nos 45 – 47 and is detrimental to their setting. Consequently, the fence along the Haconby Lane boundary has an adverse effect on the significance of Nos 45 – 47.

15. The northern boundary to No 45 abuts the hardstanding to an adjacent dwelling. Views of Nos 45 – 47 are in any case obscured by the elevated ground, a tree and a large shed situated in the corner of the garden. I am satisfied that this section of fence does not have an adverse effect on the appreciation of No 45.
16. Number 47 has a larger garden than No 45. Although I can appreciate that a 1.8 metre fence between the dwellings might appear oppressive at closer range it is not unusual when separating rear gardens. Moreover, an internal garden fence at this height would have little adverse impact on the wider appreciation of these two dwellings. Retaining this section of fencing at 1.8 metres would not have an adverse effect on appreciation of No 45.
17. I can appreciate the appellant wishes to ensure that the garden is secure. However, that argument is undermined by the presence of the field gate which would be fairly easy for a child or intruders to climb over even with all three remaining boundaries at 1.8 metres tall.
18. Furthermore, the evidence from interested parties as well as the appellant's photographs indicate that the boundary hedges were formerly about 2.5 – 3 metres tall. The hedge sections shown in the photographs are dense and form a secure barrier. Reference is made to gaps in the original fencing on the road boundary but there is no evidence that these gaps could not have been made good. Consequently, I give no weight to the argument that the fencing provides essential security.
19. The harm to the significance of Nos 45 – 47 arising from the retaining the road boundary fencing at 1.8 metres would amount to less than substantial harm as set out in Paragraph 196 of the National Planning Policy Framework (the Framework). This states that where a development would lead to less than substantial harm to a designated heritage asset, that harm should be weighed against the public benefits of the proposal. The benefits arising from this development are entirely private.
20. The provisions of Paragraph 196 are reinforced by Policy EN6 of the Local Plan¹ (LP) which states that development causing harm to the significance of a heritage asset or its setting, will only be granted permission where the public benefits of the proposals outweigh the potential harm. As noted above, there are no public benefits to these works.
21. With regard to the condition, I am mindful that the application would have been refused consent had the Council understood that such a condition was unacceptable to the appellant. A height reduction to 1 metre along the road boundary would be proportionate to the scale and proportions of Nos 45 – 47. Although the fence would retain its suburban appearance, there would be less

¹ South Kesteven District Council Local Plan 20100 – 2036, January 2020

adverse impact on the setting of Nos 45 - 47. I conclude therefore that with regard to the boundary with Haconby Lane, the condition is reasonable and necessary to preserve the setting of these listed buildings.

Conditions

22. The condition attached to the Listed Building Consent (LBC) requires action by a date that has now expired. In any case this applied to all fencing on all three boundaries, whereas I have found it appropriate to apply this condition to one boundary only.
23. Condition 1 is imposed so as to make the fence acceptable in planning terms. I have set a deadline for compliance because permission is being granted retrospectively and it is not possible to use a negatively worded condition to secure the approval and implementation of the fence reduction before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met. I have therefore allowed the appeal and varied the condition to allow a period of some four months to undertake the required works.

Public Sector Equality Duty

24. I appreciate the arguments advanced in relation to the provision of secure amenity space for a family member and have given this due regard, as required by the Equality Act 2010 and the Public Sector Equality Duty. However, as I have noted above, even if the fencing was retained at its current height on all boundaries, the garden would not be secure. As such, even if I gave weight to the security of that family member, it remains that these works would not provide that security. Moreover, I am satisfied that there are alternative means of providing security that would be more sympathetic to the listed buildings' setting.

Other matters

25. Concerns regarding the Council's handling of this case are not within the remit of this appeal. With regard to other residential development, this fence has more direct visual impact on a listed building than houses some 150 metres away. In my experience the maintenance of a road verge does not necessarily require the removal of adjacent hedges.
26. A concern has been raised in relation to overlooking at 22 Haconby Lane (No 22). However, the window on No 45's gable is not particularly high on the wall. Moreover, Nos 22 and 45 are separated by a lean-to at No 45, Haconby Lane itself and No 22's front garden. This distance appears to amount to around 20 metres which is generally considered appropriate separation.

Conclusion

27. The works fail to preserve the setting of Nos 45-47 with regard to the Haconby Lane boundary. This is contrary to section 16(2) of the Planning (Listed Building and Conservation Areas) Act 1990, as well as LP Policy EN6 as outlined above, and national guidance. The remaining sections of fencing do preserve the setting of Nos 45 - 47 and are not contrary to the legislation, relevant local policies or national guidance outlined above.

28. In the light of the above, I have allowed the appeal subject to a varied condition.

A Blicq

INSPECTOR