



Appeal Decision

Site visit made on 12 August 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 October 2020

Appeal Ref: APP/M9496/C/20/3254516

Land at Brackenburn, Riddings Lane, Curbar, Hope Valley in the county of Derbyshire

- 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 Nigel Troth against an enforcement notice issued by the Peak District National Park Authority.
 - The enforcement notice was issued on 12 May 2020.
 - The breach of planning control as alleged in the notice is:
On 27 November 2013 planning permission ref: NP/DDD/0913/0809 ("the consent") was granted for the 'construction of a replacement dwelling', subject to conditions
(1) Condition 4 of the consent states:
Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 (or any order revoking or re-enacting that Order) no alterations to the external appearance of the dwelling shall be carried out and no extensions, porches, ancillary buildings, satellite antenna, solar or photovoltaic panels, hard standings, gates, fences, walls or other means of boundary enclosure shall be erected on the site without the National Park Authority's prior written consent.
It appears to the Authority that condition 4 of the consent has not been complied with in that: Without the Authority's prior written consent, and necessary planning permission, building operations have been carried out on the land comprising the construction of gates and abutting gateposts ("the gate").
(2) Condition 17 of the consent states:
Prior to the erection/provision of any timberwork, including doors and windows, a detailed scheme for the external finish of the timberwork shall be submitted to and approved in writing by the National Park Authority. The development shall thereafter be carried out in accordance with the approved specification and the timberwork shall be permanently so maintained.
It appears to the Authority that condition 17 of the consent has not been complied with in that: Without the submission of a scheme or the Authority's written approval, window frames have been provided throughout the replacement dwelling and finished in a brown stain.
 - The requirements of the notice are:
 - (a) Remove the gates (and abutting gateposts) and remove all the materials used in their construction and/or demolition from the land.
 - (b) Remove the brown stain finish applied to all window frames in the building, and apply a replacement paint finish in one of the following colours from the 'RAL Classic Colour Chart':
 - (i) RAL 9001 – Cream
 - (ii) RAL 9003 – Signal White
 - (iii) RAL 9016 – Traffic White
 - The period for compliance with the requirements is six 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.
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Decision

1. The appeal is dismissed, 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.

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

2. The main issue is the effect of the use of brown stain on the window frames and, the gate and gateposts on the character and appearance of the dwelling and the area generally.
3. Brackenburn is a relatively large recently constructed replacement dwelling which sits in reasonably generous landscaped grounds within the Peak District National Park. The National Planning Policy Framework (the Framework) requires great weight to be given to conserving and enhancing landscape and scenic beauty in National Parks, which have the highest status of protection in relation to these issues.
4. Brackenburn is located close to Riddings Lane but sits below road level. The land broadly south of the house slopes downwards towards the River Derwent such that in views from the river the dwelling occupies an elevated position. Notwithstanding established trees and vegetation, the house is visible from both Riddings Lane and from the public right of way which runs parallel to the River Derwent and which the Authority stated is well used. The surrounding area is distinctly rural in character and predominantly consists of detached dwellings set in generous grounds of varying age and design.
5. The fenestration of a building forms an integral part of the design and contributes to a buildings visual interest. As stated in the Peak District National Park Authority design guide (the design guide) windows are a character defining feature in a property and are among the most important features of an elevation. They are the buildings eyes and as such deserve special care and attention.
6. Stain is not a traditional finish, as stated in the design guide, and has no relevance to traditional finishes. Historically external joinery was either painted or if it was oak left to weather naturally. Various colours have been used however; white is the predominant finish, in contrast farm outbuildings had doors and windows traditionally painted in reds, green or blues.
7. Notwithstanding its relatively recent construction, the appeal property, including the design and arrangement of the windows, has been designed and built to reflect the appearance of a traditional dwelling.
8. The use of stain results in the windows having a dark appearance, which lack definition and contrast. This does not reflect the style of the dwelling and therefore appears at odds with and detracts from its character and appearance, such that the visual interest of the dwelling is harmed.
9. Whilst I note that the windows in the former dwelling were stained, the Framework states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.

10. The appellant referred to and provided photographs of various window treatments, including some stained windows in the locality. However, I note that the examples of stained windows are largely confined to properties of more modern design in which they do not necessarily look out of place, in contrast with the design of the appeal dwelling. In any event, I do not know how these came to be and their existence does not justify the harm to the appearance of the appeal property.
11. Some of the examples included windows painted with various, non-white, colours and what appears to be untreated oak. Those examples represent traditional finishes and do not have the same harmful effect as the stained windows subject of the appeal.
12. The gateposts are reasonably substantial in size and project above the height of the adjoining walls. Whilst the colour of the stone will become more subdued over time and the use of caps is not necessarily objectionable, as a result of the use of coursed stone and their resultant decorative appearance, the gateposts contrast with the simplicity of the adjoining stone walls and create a discordant feature in the streetscene.
13. The gate itself is relatively substantial and whilst the materials are appropriate, its opening mechanism results in a visible section projecting above one side of the boundary wall which appears incongruous. Overall, I consider the gate and gateposts have a distinctly suburban appearance which is at odds with the more traditional appearance of the dwelling and its rural setting.
14. Whilst I acknowledge the appellant's reasons for wanting the gates which relate to security and privacy, this does not outweigh the identified harm, particularly as it has not been demonstrated that the gate and gateposts subject of the appeal are the only means by which these needs could be met. Consequently, this is a matter of limited weight.
15. The appellant provided photographs of other gates and gateposts, a number of which I observed at my site visit. However, overall, those examples are more straightforward in terms of their design and method of opening. Whilst there are some examples of taller gateposts most do not have the obvious difference in height with the adjoining walls or such stark contrast in the detailing of the stone. Accordingly, these examples do not provide a precedent to justify the appeal scheme.
16. Overall, for the reasons given above I conclude that the staining of the windows and the erection of the gate and gateposts has caused material harm to the character and appearance of the dwelling and the area generally. This is contrary to the overall design aims of Policies GSP2 and GSP3 of the Core Strategy¹ and Policy DMC3 of the Development Management Policies². It also conflicts with the design aims of the Framework and guidance contained in the Authority's design guide.
17. The Authority referred to Policy L1 of the Core Strategy and Policy DMC1 of the Development Management Policies. These policies relate to landscape character and whilst I have identified harm to the character and appearance of the dwelling and area generally, it has not been demonstrated and I have not

¹ Peak District National Park Local Development Framework Core Strategy Development Plan Document – Adopted October 2011

² Development Management Policies Part 2 of the Local Plan for the Peak District National Park Adopted May 2019

found harm to wider landscape character. Consequently, I find there is no conflict with these policies. However, the lack of harm to landscape character is a neutral matter which cannot outweigh the identified harm. Policy GSP1 of the Core Strategy relates to the purposes of the National Park and does not advance the Authority's case.

Other Matters

18. Whilst stained windows may hide dirt there is no substantive evidence which demonstrates that they are easier to maintain. In any event these are matters of little weight which do not outweigh the identified harm.
19. I acknowledge that the breaches were not intentional and note the misgivings expressed by the appellant about the difficulty obtaining planning permission. However, this and local objections to the original scheme and that the appellant was not professionally represented have no bearing on the planning merits of the development nor my assessment.
20. For the above reasons and with regard to all other matters raised, I conclude that the appeal on ground (a) should not succeed.

The appeal on Ground (f)

21. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
22. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.
23. In this case the enforcement notice requires the windows to be painted and the gate and gateposts to be removed. As such I find its purpose is to remedy the breach of planning control.
24. Under this ground of appeal the appellant argued that the enforcement notice should be varied to allow the alteration of the existing gates and gateposts or to allow him to replace the existing gates and gateposts to reflect what was there before.
25. If I were to vary the requirements, I would need to do so with a necessary degree of precision so that the appellant was clear what needed to be done to comply with the notice. However, there are no details before me to suggest how the appellant proposes to alter the existing gate and gateposts and only a Google Street View image of the former gate and gateposts. Consequently, I find I am unable to vary the requirements.
26. In order to remedy the breach of planning control, it is not excessive to require the windows to be painted and the gate and gateposts to be removed. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

The appeal on Ground (g)

27. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that the six months given in the notice is too short and suggests that 18 months would be more appropriate to enable sufficient funds to be raised, for an alternative scheme (in respect of the gate and gateposts) to be agreed with the Authority and for a contractor and appropriate materials to be secured to undertake the works.
28. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be removed. The appellant's submission largely relates to the time before the works can commence - when funds can be raised, and a contractor can be appointed.
29. Whilst the appellant's concerns are understandable, six months would be a sufficient period in which to submit an application for an alternative gate and gateposts and if approved implement any such scheme. As such, I consider the period of six months, as specified in the notice, is proportionate to the breach of planning control that has occurred.
30. Accordingly, the appeal on ground (g) therefore fails.

Conclusion

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

Felicity Thompson

INSPECTOR