



Appeal Decisions

Site visit made on 13 October 2020

by Stephen Brown MA(Cantab) DipArch RIBA

an Inspector appointed by the Secretary of State

Decision date: 14 December 2020

Appeal A: ref. APP/D3505/C/20/3249326

Hadleigh Hall, Pound Lane, Hadleigh IP7 5EQ

- 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 by Mrs Suzanne Angland – Hadleigh Hall Residents' Association Ltd - against an enforcement notice issued by Babergh District Council.
 - The enforcement notice, ref. 18/00185/LBA, was issued on 20 February 2020.
 - The breach of planning control alleged in the notice is the erection of a 1.8 metre high close-boarded fence within the curtilage of a listed building.
 - The requirements of the notice are to:
 - a) Demolish the fence indicated in green on the plan attached to the notice and remove all the fence panels, posts and associated materials from the site edged red on that plan.
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B: ref. APP/D3505/W/19/3242781

Hadleigh Hall, Pound Lane, Hadleigh IP7 5EQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is by Mrs Suzanne Angland, Hadleigh Hall Flats, Flat 11 against the decision of Babergh District Council.
 - The application ref. DC/19/01719, dated 5 April 2019, was refused by notice dated 21 June 2019.
 - The development proposed is for the erection of a new boundary fence to replace the old fence, which had partially collapsed and was beyond repair.
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Decisions

Appeal A: ref. APP/D3505/C/20/3249326

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: ref. APP/D3505/W/19/3242781

2. The appeal is dismissed.

Preliminary matters

3. The proposal in Appeal B is to retain the fence that is subject of Appeal A. The main issues in both cases are the same, and I have therefore treated Appeal A on ground (a) and Appeal B together.
4. Hadleigh Hall – which I refer to as ‘the Hall’ for the purposes of my decision – is a Grade II listed building. In the immediate surroundings are St Mary’s Church and The Deanery Tower – both listed Grade I; The Deanery – Grade II*; Deanery Lodge and the front wall of the Deanery Garden – both listed Grade II. All stand within the Hadleigh Conservation Area. I have therefore had special regard to the desirability of preserving the setting of the listed buildings, and paid special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Area as required by sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Background matters

5. The fence in question stands along the southern boundary of the Hall site, separated from the (unfenced) graveyard of St Mary’s Church by Church Walk the narrow pathway that serves the enclave around the church. It is a close-boarded timber fence, clearly erected quite recently.

Appeal A on ground (d)

6. This ground is that at the time the notice was issued it was too late to take enforcement action. In an appeal on ground (d) – known as a ‘legal’ ground – the burden of proof is on the appellant to show that this is the case on the balance of probabilities. In this case it is for the appellant to demonstrate that the fence is immune from enforcement action as a result of being substantially completed at least 4 years before the enforcement notice was issued on 20 February 2020.
7. In enforcement appeals brought on legal grounds it is long-standing government advice that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make an appellant’s version of events less than probable, there is no good reason to refuse the application, provided the appellant’s evidence alone is sufficiently precise and unambiguous to justify allowing the appeal on the balance of probability.
8. The appellant has submitted a photograph showing a section of a dilapidated fence in the same location as the present fence. I understand this photograph is from October 1987 immediately after the Great Storm. From the degree of disrepair I can well believe that this fence was of long standing. An image that appears to be from Google Street View shows the rather minimal remains of that fence – no more than a few boards attached to two fence rails. I understand this image is from September 2016.
9. It is clear that a fence stood along this boundary for very many years, well over the four years needed to establish immunity from enforcement action. However, the new fence differs from the earlier fence in that it is higher, which I understand resulted from the inclusion of gravel boards at the base of the fence. It is the new fence that would need to gain immunity in order to succeed on this ground.

10. I have been given no substantial evidence as to the time when the new fence was constructed – such as invoices from the contractor who did the work, or receipts for payment. However the indication from the Street View image is that the remains of the old fence were there in September 2016 – some 6 months after the critical date of 20 February 2016. Furthermore, the first complaint was received by the Council in June 2018. This is a prominent site, very much in the public view, and I would be surprised if the new fence did not become apparent and subject of a complaint quite soon after construction.
11. The appellant's evidence as to the date of construction of the new fence is by no means precise, and it appears likely that it was erected at some time between September 2016 and June 2018. In the light of this I am not persuaded that on the balance of probabilities the new fence was substantially completed four or more years before the enforcement notice was issued. The appeal on ground (d) therefore fails.

Appeal A on ground (a), the deemed planning application and Appeal B

12. From all that I have seen and read, I consider the main issue in these cases to be the effect of the new fence on the setting of Hadleigh Hall and other listed buildings in the vicinity, and on the character and appearance of the Hadleigh Conservation Area.
13. The fence extends some 22.5 metres along the southern Hadleigh Hall boundary. It is 1.8 metres in height, although I noticed that it is slightly higher to the left-hand side¹ of the wrought iron gate towards its western end. It is a conspicuous feature forming a significant proportion of the boundaries around the churchyard. This is particularly so when looking towards the appeal site from the Church, as well as when walking along Church Walk.
14. The buildings grouped around the churchyard – in particular the Deanery, the Deanery Tower, and Deanery Lodge are built predominantly of red brick. Boundary walls are of robust red brick construction. The Church itself is knapped flint with stone dressings. Houses to the east of the churchyard are of red brick, with white-painted paling fences to their front areas. Hadleigh Hall itself is built of red brick with stone dressings. Together they form an historic group of remarkable cohesion. The trees within the grassed churchyard and in the garden of the Hall provide a natural foil to the quite massive traditional construction of the buildings and boundary walls. As the Council say, the buildings are of high status and form the cultural and social centre of the settlement. I very much concur with the view that they are probably the most important part of the extensive Conservation Area.
15. In this context I consider the close-boarded fence is a highly incongruous feature, with connotations of somewhat low-quality modern development. The materials, form and details contrast poorly with those of the principal buildings and boundary walls. Although the colour might become less jarring as the timber weathers, or possibly be toned down by staining, this would not remedy the rather insubstantial and inappropriate nature of the construction.
16. I appreciate that residents of the Hall want to ensure the privacy and security of their garden. However, there are other means to achieve these aims that need not compromise the historic importance of this site.

¹ Looking from outside the appeal site.

17. I conclude on the main issue that the new fence causes significant harm to the setting of Hadleigh Hall and other listed buildings in the vicinity, and to the character and appearance of the Hadleigh Conservation Area. The development does not accord with the development plan. In particular Local Plan² Policies CN1 and CN06. The first of these includes aims to ensure that new development is of appropriate detailed design and construction for its location and pay particular attention to the form and nature of adjacent development and the surrounding environment. The second - Policy CN06 - includes aims to protect buildings of special architectural or historic interest - including curtilage structures - and to ensure that new works within the curtilage or setting of a listed building should be of appropriate scale, form, siting and detailed design to harmonise with the existing buildings and their settings.
18. I have found that elements of the proposed works would cause significant harm to the settings of the listed buildings and the character and appearance of the Conservation Area. However, this must be regarded as less than substantial harm in terms of paragraph 196 of the National Planning Policy Framework. Such harm should be weighed against the public benefits of the proposal, including securing the optimum viable use. In this case, the Hall itself is used in the optimum viable way, but the new fence is to the benefit of residents and provides little or no public benefit. These factors do not outweigh the harm I have found. The appeal on ground (a) therefore fails as does the planning appeal.

Conclusions

19. For the reasons given above I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application. I also conclude that Appeal B should be dismissed.

Stephen Brown

INSPECTOR

² The Babergh Local Plan (Alteration no. 2, adopted 2006).