
Appeal Decisions

Site visits made on 13 October & 24 November 2020

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 Decision 2020

Appeal A: APP/F1610/W/19/3239888 **Glebe House, The Square, Bibury GL7 5NS**

- 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 made by Sir Christopher & Lady Anne Evans against the decision of Cotswold District Council.
 - The application Ref 19/00399/FUL, dated 31 January 2019, was refused by notice dated 9 August 2019.
 - The development proposed is the erection of fencing, installation of replacement gates and raising of 7m section of existing boundary walling.
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Appeal B: APP/F1610/Y/19/3239891 **Glebe House, The Square, Bibury GL7 5NS**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) against a refusal to grant listed building consent.
 - The appeal is made by Sir Christopher & Lady Anne Evans against the decision of Cotswold District Council.
 - The application Ref 19/00400/LBC, dated 31 January 2019, was refused by notice dated 9 August 2019.
 - The works proposed are the installation of wall spikes, signage and replacement gates, and the raising of a 7m section of existing boundary wall.
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Decisions

Appeal A

1. The appeal is dismissed insofar as it relates to the fencing.
2. The appeal is allowed insofar as it concerns the installation of replacement gates and raising of 7m section of boundary walling and planning permission is granted for installation of replacement gates and raising of 7m section of boundary walling at Glebe House, The Square, Bibury GL7 5NS in accordance with the terms of the application Ref 19/00399/FUL, dated 31 January 2019, subject to the following condition
 - 1) Before works commence on the raising of the wall, details of the intended materials, bond and mortar mix shall be submitted to and approved in writing by the local planning authority, and the development shall then be undertaken in accordance with the approved details only.

Appeal B

3. The appeal is dismissed insofar as it relates to the fencing.

4. The appeal is allowed insofar as it concerns the installation of wall spikes, signage and replacement gates, and the raising of a 7m section of boundary wall and listed building consent is granted for the installation of wall spikes, signage and replacement gates, and the raising of a 7m section of boundary wall at Glebe House, The Square, Bibury GL7 5NS in accordance with the terms of the application Ref 19/00400/LBC dated 31 January 2019, subject to the following condition
 - 1) Before works commence on the raising of the wall, details of the intended materials, bond and mortar mix shall be submitted to and approved in writing by the local planning authority, and the works shall then be undertaken in accordance with the approved details only.

Main issues

5. The main issues common to both appeals are
 - a) the effect of the works on the significance and setting of Glebe House;
 - b) whether they would preserve the character or appearance of the Bibury Conservation Area, and their effect on its significance as a heritage asset and
 - c) their effect on the setting and significance of various listed buildings in the vicinity.
6. A further issue relevant to Appeal A is whether the development would conserve and enhance the landscape and scenic beauty of the Cotswolds Area of Outstanding Natural Beauty (AONB).

Procedural matters

7. The submitted security plan showed how the various measures subject of these 2 appeals were to be installed around the entire site boundary. Much of the work has now been undertaken, and I have assessed the appeals on the basis that it is intended the works would be completed in their entirety.
8. Although not mentioned in the description of the works on the application form for Appeal B, the fence is identified as being part of this listed building consent application on the decision notice and the appeal form, and so I have considered it accordingly. However, if it does not in fact require listed building consent that would have no bearing on my findings about its acceptability under Appeal A.

Reasons

Background

9. The Bibury Conservation Area contains a range of individually designed historic properties and buildings that are built in a simple local vernacular style and in a palette of materials that are traditionally typical to the area. When their arrangement and layout are also taken into account, they make a positive contribution to the conservation area's significance by reflecting the evolution of this rural village over many centuries.
10. The Grade II listed Glebe House (listed as The Glebe House) was formerly the vicarage. Its significance is partly because it continues to appear as a dwelling

of status from the mid-19th Century, while its special architectural and historic interest can be found in the way this status is still strongly reflected in its detailing. It stands in large grounds, with much of its boundary being enclosed by tall stone and brick walls with copings on top. This boundary treatment, which forms part of the listed building under section 1(5) of the Act, adds to the significance by strongly and sympathetically defining the extent of the dwelling's extensive historic curtilage. Given the status of the building, its detailing, its location in the midst of the village and its associations with the church, Glebe House makes a strong positive contribution to the conservation area.

11. To the east and west of the grounds of Glebe House are the back gardens of other Grade II and Grade II* listed buildings, including Westwood Cottage (also known as Jesus Almshouse) and No 37¹, both of which are referred to below. These display a great deal of variety in their precise design and form. However, the significance of these various properties lies broadly in the way that, despite alterations over time, they still reflect their origins as simple, individually designed rural dwellings dating predominantly from the 17th to 19th Centuries. The boundary treatment to Glebe House encloses part of the rear garden of some of these adjacent listed buildings and so potentially affects their setting by providing part of the context for those buildings to be experienced.
12. Further to the west, across the river is the Grade I listed Arlington Row. The significance of this, among other things, lies in it being an exceptional terrace of historic cottages that sits in a sympathetic village context.
13. Bibury is in the AONB, and according to the *National Planning Policy Framework* (the Framework), this is a designation that has the highest status of protection in relation to landscape and scenic beauty.

Gates, signage and the raising of the wall

14. The gates have been erected across the property's main vehicular entrance on the southern side of the site. I have little firm information about the historic treatment for this gateway, but I consider the design and scale of what is now before me respects the context.
15. On the southern boundary 2 signs have been added to warn of security measures. Again, although clearly modern features and, by definition, intended to be noticeable, their scale is not inappropriate, and they do not adversely affect an appreciation of the historic walling or the character and appearance of the conservation area.
16. In the south-west corner of the site, behind the Grade II listed Westwood Cottage, the boundary wall drops in height for about 7m of its length, with the height variation being addressed by sweeping copings. It is now to be raised to give a uniform height. The variation and the associated swept copings are both features original to the walling. However, if a condition is imposed to control materials and the bond to be used then, given the scale of the change, I am not satisfied that the loss of these 2 aspects of the wall would harm its significance or that of Glebe House. Furthermore, as the taller wall round the

¹ Although referred to as No 37 in the appellants' Heritage Statement (property 22 on the plan of listed buildings around the site) and listed as '37, A433', it appears to be referred to elsewhere in the submissions as 38 The Square and 38 The Street and is identified as 38 on the location plan.

appeal property is already apparent from the rear garden of Westwood Cottage, this would not result in a treatment that overwhelmed that adjacent listed building, harmed its setting or significance, or detracted from the conservation area.

17. As they would be small-scale sympathetic works within the village these elements of the scheme would not adversely affect the AONB.
18. Accordingly, I conclude that the gates, signage and raised walling before me would not fail to preserve the special architectural or historic interest of Glebe House and so would not harm its significance. Moreover, these works would not harm the settings or significance of the listed buildings around the site, and would not fail to preserve the character or appearance of the Bibury Conservation Area. As such, they would not conflict with Policies EN10 and EN11 of the *Cotswold District Local Plan*, which seek to protect heritage assets, the Framework or the Act. Moreover, they would not harm the landscape and scenic beauty of the AONB and so in this regard would not conflict with Local Plan Policy EN5 that places great weight on protecting the AONB.

Spikes and fencing

19. The appellants have added strips of metal spikes to the top of much of the historic boundary wall around Glebe House to deter intruders from climbing over. These spikes are utilitarian and functional, and as a consequence appear discordant in this historic context. Therefore, when seen from the appeal site, from neighbouring gardens and from public land, they cause some harm to the significance of the building and the conservation area.
20. However, their effect on the fabric is minimal and they are clearly a modern addition to the wall that, historically, has always been intended to deter unauthorised entry onto the property. Moreover, around the southern side of the site they are not particularly visible from the adjacent pavement as the wall is relatively tall, and indeed runs through bushes, trees and shrubs in many places. Therefore, they cause less than substantial harm to the significance of Glebe House and the conservation area, but for these reasons the level of this harm is at the lower end of the scale.
21. While the appellant has draped imitation plastic leaves over the spikes, I have no certainty as to how these will weather or how they will be affected by the passage of time, and so their presence has not been something to which I have afforded significant weight.
22. The scale of the spikes, the height of the wall and its location generally at the end of gardens means that were they are found behind neighbouring listed properties, they do not appear as a discordant or intrusive feature and do not harm the settings of those buildings.
23. The walling bounds only a proportion of the appellants' large site. The remainder, which is primarily the northern half, has been enclosed with galvanised razor wire fencing (the raised fencing) up to about 2.5m in height. This part of the property was generally bounded by a relatively low plastic-coated mesh fence (the original fencing), and onto this the meshed galvanised razor wire has been attached. In the long-term it is intended it will be either covered with ivy or within a blackthorn/hawthorn hedge.

24. For part of its length behind the public toilets, the raised fencing along the northern half of the site's western boundary runs through dense vegetation and so is not readily apparent. As such, this section causes no harm to any designated heritage asset. For much of the rest of its length along this side of the site it is visible from the main road and from the paths by the river and meadows to the west, as it follows the top of the steep valley side. However, the distances of these views and the shadow cast by the trees, even in late Autumn when I visited, mean the raised fencing is not particularly intrusive. Rather, insofar as it can be seen it appears as a slender mesh feature with little awareness of it being razor wire or of a galvanised finish. Some form of fence along this ridge is not unexpected to act as a boundary to the adjacent gardens, and I have not been told that if the razor wire element were to be removed, the original fencing would also go. As such, if that part of the fence remained it would maintain much the same impression as the current arrangement, and while it would not be as high given the distance involved that height variation would not be appreciable.
25. Therefore, in these longer views the raised fencing does not cause harm to the character or appearance of the conservation area, and it does not harm the experience of Arlington Row or its setting. Moreover, when looking at the listed cottages that front onto the road to the west, as well as being relatively inconspicuous because of its set back and the shade of the trees, it is also at a much higher level. Consequently, I find it does not harm the settings of those listed buildings either.
26. The rear gardens of the houses along the western boundary of Glebe House, allow for closer views, but the steepness of the slope means that they are unlikely to be readily appreciated. This length of raised fencing can be seen though from the more open parts of the appellants' land, from the garden of No 37 to the east, and also along much of the site's northern and eastern sides where it is next to a driveway. It is also apparent from the fields to the north, although the crest of the ridge limits the extent of these views while the intervening trees screen it to some degree.
27. Whether seen from the driveway, from the fields, from No 37 or from more open areas of the appellants' grounds, the raised fencing is not attractive and is an alien feature in this context. This is because the meshed galvanised razor wire has a functional and utilitarian appearance that is compounded by its height and the manner in which it is attached to the top of the original fencing. As such it appears as a discordant and unsightly element that is appreciably at odds with the historic rural character of Bibury. It therefore causes harm, albeit less than substantial to the significance of the conservation area, and fails to preserve its character or appearance.
28. Moreover, the functional and utilitarian nature of the section along the northern and eastern boundaries, together with its height and construction, mean it detracts from the landscape and scenic beauty of the AONB when seen from the driveway. As accepted above the raised fencing is not harmful from a distance due to the slender nature of its razor wire, and so in this regard the lack of wide-ranging views of the development from the AONB is not, of itself, a factor that allays my concerns.
29. As stated, a section of the raised fencing is found on the eastern side of the site running along much of the side of the rear garden to the Grade II listed

dwelling referred to as No 37. An impact on this property was not cited by the Council, but the raised fence was brought up by its occupiers in their appeal submissions. Moreover, the appellants have discussed the positive effects of the intended measures in addressing any impact that may result from that length of fencing.

30. The significance of No 37 lies in part in it appearing as an attractive domestic rural property from the 17th Century, constructed in local materials and with detailing reflective of that period. Mindful again of the dominance of the raised fencing, its scale and its modern, functional and utilitarian form I consider it would undermine the historic context of this listed building, failing to preserve its setting and causing harm, once more less than substantial, to its significance.
31. Given its prominence, scale and nature, while less than substantial the level of harm the raised fencing causes is notably greater than that caused by the spikes.
32. The appellants are content for conditions to be imposed requiring hedge planting around the fence and the removal of the galvanised razor wire after 15 years, as by then they consider the hedging should have become sufficiently mature to act as a defensive barrier. However, the planting will take a while to become established, and over that period the harm I have identified will be caused to the conservation area and the AONB.
33. A personal permission has been suggested as well, requiring the raised fencing to be removed if the appellants no longer live there. However, any future occupiers would also have a need for security that, while maybe not the same as that of the current residents, would nonetheless be a reasonable expectation given the property's apparent status. Such a condition is therefore not justified.
34. Finally, artificial hedgerow panels have been attached to sections of the raised fencing in an attempt to reduce its impact, particularly on No 37. Again though, while I note the 25-year guarantee I have no knowledge as to how these panels will be affected by the passage of time and when close up their artificial nature is clearly apparent. Therefore, I afford limited weight to their presence. Whilst the Council suggested a condition requiring the state of these panels to be reviewed after 10 years, I have no evidence to show that is a reasonable timescale or, if I considered it too long, what shorter period would be appropriate. Such conditions do not therefore overcome my concerns.
35. However, the raised fencing is not apparent from Glebe House, whether because of distance or intervening vegetation, and is generally found where the older walling is absent or in a very poor state of repair. Therefore, it does not harm the setting of that listed building, and while it might, at points, be attached to historic fabric that is not to a degree that is harmful.
36. Accordingly, I conclude that the spikes fail to preserve the special architectural or historic interest of the listed building causing harm to its significance, the galvanised razor wire fencing causes harm to the setting of No 37, and both the spikes and the fencing do not preserve the character or the appearance of the Bibury Conservation Area, with the harm caused to the significance of all of these assets being less than substantial. The galvanised razor wire fencing also fails to conserve the landscape and scenic beauty of the AONB and so conflicts with Local Plan Policy EN5.

The heritage and planning balances

37. The Framework states that heritage assets should be conserved in a manner appropriate to their significance. Moreover, any harm to the significance of any designated heritage assets should require clear and convincing justification. If less than substantial harm is identified to a designated heritage asset, that should be weighed against the scheme's public benefits (the heritage balance).
38. The reason for the measures subject of these appeals is to protect the appellants' home, Glebe House, from what I accept to be a very real threat of a significant and traumatic robbery. I also do not question that the protection of the property from robbery over the last 2 years has been achieved, to a great extent, by the measures before me now. I appreciate that in this regard the spikes and fencing are an additional level of protection that play a different role to the CCTV cameras and alarms on the house. The prevention of crime is a public benefit to which I attach significant weight in my determination, as it not only affects the appellants' family and home, but also has wider implications for the village and for policing in the area. However, it still needs to be balanced against the harms identified.
39. To my mind reducing crime is a clear and convincing public benefit that is sufficient to outweigh the limited nature of the less than substantial harm caused by the spikes. As such, this aspect of the scheme does not conflict with Local Plan Policies EN10 and EN11, the Framework or the Act.
40. Turning to the raised fencing, I accept some form of security for the site is appropriate. However, mindful of the harm I have identified and taking account of the strong protection for designated heritage assets found in the Framework, it has not been shown that there is not an equally effective deterrent fencing that is more suited to this historic location. As such, I am not satisfied that protecting the property with the raised fencing now before me is a public benefit of sufficient weight to outweigh the harm, albeit less than substantial, to the conservation area and No 37. Indeed, even if I were to look at the proposal as a whole and take into account the public benefits resulting from the effects of the spikes, gates, signage and raised walling in tackling crime, that would not outweigh the harm I have identified from the raised fencing.
41. I have no evidence to consider that this raised fencing is necessary to ensure the optimum use of the property as a dwelling continues.
42. The appellants say they could erect 2m high razor wire fencing as 'permitted development' without any further controls, thereby arguing it is preferable to have this taller raised fencing as it would be subject to control through conditions. Even if such works can be undertaken, the location, alignment and design of this suggested 'permitted development' option is not before me, and in any event it would be lower than what is now proposed and so, in that regard, would not be as dominant. Mindful I have not attached significant weight to the effect of the planting due to the time it will take to become established, this is therefore also not a matter to which I attach significant weight. The Council suggested a condition relating to removal of 'permitted development' rights for boundary treatments and fencing, but such rights should only be removed in exceptional circumstances. As they are not taken away as a matter of course in the AONB or where heritage assets are affected, I am aware of no such circumstances existing in this instance.

43. Therefore, I conclude that the less than substantial harm to the significance of the conservation area caused by the galvanised razor wire fencing is not outweighed by the public benefits. I also conclude these public benefits do not outweigh its similar harm to the setting and significance of No 37. As such, this aspect of the scheme would conflict with Local Plan Policies EN10 and EN11, with the Framework and with the Act.
44. Turning to a wider planning balance, section 38(6) of the *Planning and Compulsory Purchase Act 2004* says any determination must be made in accordance with the development plan unless material considerations indicate otherwise. Again, for the reasons given above, although the desire to protect the property is understandable, doing so in this way is not a consideration of sufficient weight to justify a decision other than in accordance with the development plan, given the conflict identified in relation to Local Plan Policies EN5, EN10 and EN11 concerning heritage assets and the AONB.
45. Representations were made to the effect that the rights of the appellants, under Article 8 and Article 1 of the First Protocol of the *Human Rights Act 1998*, would be violated if the appeals were to be dismissed. These though are qualified rights, and have to be balanced against the great weight the Framework says is to be given to conserving and enhancing the AONB, and to the conservation of heritage assets. I accept the appellants could see dismissal of these appeals as interference in their family life and home. However, it would be in accordance with the law and is necessary to satisfy the legitimate planning policy aims to protect the designated heritage assets and the AONB. On balance, refusing planning permission and listed building consent for the raised fencing is therefore proportionate in the circumstances, and refusing this part of the scheme does not lead to an unacceptable violation of the appellants' rights under Article 8 and Article 1 of the First Protocol. Moreover, whilst not maybe a public benefit, even if I had taken this issue into account under the heritage balance it would not have led me to different findings.
46. Therefore, assessing the raised fencing under the wider planning balance I conclude there are no other considerations sufficient to justify decisions other than in accordance with the development plan when taken as a whole.

Conclusions

47. I have found that the installation of spikes, the erection of replacement gates and the raising of 7m section of boundary walling are acceptable, while I have found the fence is unacceptable. If a split decision was not possible, I would therefore have had to refuse both appeals. However, while I acknowledge that together they form a comprehensive package for the protection of the property, they are nonetheless distinct and separate elements in their own right. No particular difficulties have been highlighted concerning the use of a split decision. I therefore conclude that in these circumstances split decisions can be issued, allowing the spikes, gates, signs and raised wall but refusing the fence and the appeals should be determined accordingly. Although I have found that some lengths of the fencing do not cause harm, I am not satisfied that it is realistic or practicable to allow just those parts.

JP Sargent

INSPECTOR