

Appeal Decisions

Site visit made on 11 January 2021

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an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 01 February 2021

Appeal A Ref: APP/K0235/C/20/3252397

College Farm, Church Road, Keysoe MK44 2JP

- 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 Simon Bates against an enforcement notice issued by Bedford Borough Council.
 - The enforcement notice was issued on 14 April 2020.
 - The breach of planning control as alleged in the notice is the erection of close boarded fences in the location of lines A, B, C and D on the attached Plan 2.
 - The requirements of the notice are i) All existing fence posts shall be cut off at ground level and the foundations left in situ and not grubbed out or removed; ii) If required following step (i) above (after removal of posts) levelling shall be effected by filling holes and depressions with material imported from outside the scheduled area; iii) Remove the close boarded fencing annotated A, B, C and D on Plan 2; and iv) Remove the waste materials arising from step (i) and (iii) above from the land edged in red on the attached Plan 1.
 - The period for compliance with requirements i), ii) and iii) is one month and with requirement iv) is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/K0235/D/20/3250699

College Farm, Church Road, Keysoe MK44 2JP

- 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 Mr Simon Bates against the decision of Bedford Borough Council.
 - The application Ref 20/00027/S73A, dated 8 January 2020, was refused by notice dated 3 March 2020.
 - The development proposed is construction of 1.5m timber fence with 0.5m trellis for climbing plants.
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Appeal C Ref: APP/K0235/W/20/3251733

College Farm, Church Road, Keysoe MK44 2JP

- 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 Mr Simon Bates against the decision of Bedford Borough Council.
 - The application Ref 20/00025/S73A, dated 7 January 2020, was refused by notice dated 3 March 2020.
 - The development proposed is temporary retention of timber fence and planting of hedgerow on exterior face.
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Appeal D Ref: APP/K0235/Y/20/3250707

College Farm, Church Road, Keysoe MK44 2JP

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Simon Bates against the decision of Bedford Borough Council.
 - The application Ref 20/00028/LBC, dated 8 January 2020, was refused by notice dated 3 March 2020.
 - The works proposed are construction of 1.5m timber fence with 0.5m trellis for climbing plants.
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Decision

Appeal Ref: APP/K0235/C/20/3252397

1. The enforcement notice is varied by the deletion of 'one month' in section 6 and the substitution instead of 'three months'. Subject to this variation the enforcement notice is upheld and planning permission is withheld for 'the erection of close boarded fences in the location of lines A, B, C and D on the attached Plan 2' at College Farm, Church Road, Keysoe.

Appeal B Ref: APP/K0235/D/20/3250699

2. The appeal is dismissed.

Appeal C Ref: APP/K0235/W/20/3251733

3. The appeal is dismissed.

Appeal D Ref: APP/K0235/Y/20/3250707

4. The appeal is dismissed.

Reasons

Background information

5. The two-storey house at College Farm is a Grade II listed building that was built in the 16th and 17th centuries with later additions. It has a timber frame with some coursed rubble and brick, though the building is mostly colour washed, under a clay tile roof. To the west of the house, beyond a gravelled access area, is a substantial group of former farm buildings that have been converted into residential accommodation. To the south and east of the house is a mainly lawned garden and to the north, beyond a small yard, is a single storey outbuilding. To the west and south-east of the garden and to the north of the garden and the outbuilding are the three elements of a moat and further to the north, beyond an 'island', is a fish pond. The College Farm moated site, associated banked enclosure, and fishpond are elements of a Scheduled Ancient Monument (SAM).

6. Four sections of close boarded timber fencing have been erected in the vicinity of the listed building. Fence A is about 1.3 metres high and 85 metres long and extends from the north corner of the outbuilding around the moat and, after four right angled corners, alongside the fish pond. Fence B is about 2 metres high and about 4 metres long and screens the yard area, within which is an oil tank, from the communal access area. Fence C is about 2 metres high and extends from the south-west corner of the house for about 7 metres to screen the garden area from the access area, and Fence D is about 1.3 metres high and 22 metres long

and is a continuation of Fence C to the north of an element of the moat. A retrospective planning application for the four elements of the fence was refused in 2019 and other subsequent applications were refused in 2020.

7. The National Planning Policy Framework (NPPF) defines the setting of a heritage asset as the surroundings in which such an asset is experienced, and the significance of a heritage asset to be the value of such an asset to this and future generations because of its heritage interest. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act) states that in considering whether to grant listed building consent or planning permission for development which affects a listed building or its setting the Secretary of State shall have special regard to the desirability of preserving the building or its setting. Harm to a heritage asset must, in accordance with established case law, be given considerable importance and weight in the decision making process.

Appeal A Ref: APP/K0235/C/20/3252397

The ground (c) appeal

8. The ground (c) appeal relates to Fences A and D. The Appellant maintains that these two elements "...lie outside the residential curtilage of the house and as such benefit from permitted development rights" afforded by Class A of Part 2 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 2015 GPDO). Development is not permitted under Class A of Part 2 if "(d) it would involve development within the curtilage of a listed building".

9. The curtilage of a listed building is not the same as the residential curtilage of a house. The listed building is within the area that is a designated SAM. The listing description for the SAM mentions the remains of a post medieval farmhouse and stables on the island and low earthworks that suggest the presence of other additional buildings. Clearly the moat, the west element of which has been filled in to create the access area, was introduced to provide physical protection for a substantial group of buildings. The house that is present today probably postdates all previous buildings on the site but is nevertheless inextricably linked with the SAM, through location and history. The SAM is therefore, as a matter of planning judgement, the curtilage of the listed building.

10. Fences A and D are, as a matter of fact and degree, within the curtilage of the listed building. They are not, for this reason, development permitted under the provisions of Class A of Part 2 of Schedule 2 of the 2015 GPDO. The ground (c) appeal thus fails.

The ground (a) appeal

11. The main issue in the ground (a) appeal is the effect of the fence, Fences A, B, C and D, on the character of the rural area and on the setting and significance of the listed building and the SAM.

12. The fence, in total about 118 metres long and though varying in height, has a uniform, monotonous, and uninteresting appearance. It is visually impermeable and obstructs views of the listed building and across and towards the SAM. It is prominent and visually intrusive and weathering in the future would not diminish the harm it causes to the character of the rural area and to the setting and significance of the listed building and the SAM. The harm to the significance of the heritage assets is less than substantial but is of moderate magnitude. The fence

conflicts with policies 28S, 29 and 41S of the Bedford Borough Local Plan 2030. Paragraph 196 of the NPPF states that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset the harm should be weighed against the public benefits of the proposal.

13. The fence does prevent the possibility of children falling down the steep sides of the moat and into deep water but there are other types of less visually intrusive fencing that would prevent that possibility. Fence B does mostly screen the oil tank from the access area but, again, a less harmful alternative fence could achieve the same result. The success of the barn conversion scheme, the removal of an 'unsightly' pole barn and planning permission for a large car port structure alongside the fishing pond are public benefits, because they improve the setting of the listed building and the SAM. Neither these nor any other matters mentioned by the Appellant, either individually or collectively, outweigh, as a matter of planning judgement, the less than substantial harm that is caused by the fence to the significance of the heritage assets.

14. The fence harms the character of the rural area and the setting and significance of the listed building and the SAM. The ground (a) appeal thus fails and planning permission is withheld for the erection of close boarded fences in the location of lines A, B, C and D at College Farm, Church Road, Keysoe.

The ground (f) appeal

15. The Appellant's only comment relates to the deletion of reference to Fences A and D in the requirements of the notice if the ground (c) appeal is successful. The ground (c) appeal has failed so no variation of the requirements is necessary. The ground (f) appeal thus fails.

The ground (g) appeal

16. The COVID-19 crisis would not prevent contractors removing the fence but it is recognised that the current situation does have an impact on the time it takes to organise and carry out work. It would not be reasonable to delay the compliance period until social distancing requirements are permanently eased by the Government, because no one knows when this will be so the compliance period would be imprecise, which it cannot be. However, in recognition of the crisis it would be reasonable to extend the compliance period to be three months. The ground (g) appeal thus succeeds and the enforcement notice has been varied accordingly.

Appeals B and D Refs: APP/K0235/D/20/3250699 and Y/20/3250707

17. The appeals relate to Fences B and C and the works proposed are the reduction in height of the fences by 0.5 metres and the addition of 0.5 metres of trellis to the top of the lowered fences. The main issue is the effect of the proposed fences/trellis on the rural character of the area and on the setting, historic interest, and significance of the listed building. The two sections of fence have been considered on their own merits and without regard to the presence of Fences A and B, which must be removed pursuant to the outcome of Appeal A.

18. The replacement of the top 0.5 metres of the fences with trellis would not, in itself, significantly reduce their uniformity and uninteresting appearance. Vegetation planted in front of the fences would take some time to become established and, even if it did, would not diminish the unrelenting uniformity of the fences. It is, in fact, the uniformity of the fences that is most visually harmful.

Fence B, given its location between the house and the outbuilding has little effect, in itself, on the character of the area. But Fence C obscures views across the garden area of the house and across the SAM from the access way and would do even if the upper part was trellis. The fence is also prominent and dominant in views along the access way from Church Road and Fence C would have, even in its altered form, an adverse effect on the rural character of the area.

19. The historic interest of the farmhouse rests, partly, on its position within the SAM and its relatively unaltered character. The altered fences, together and despite any vegetation that might become established, would, given their uniformity of appearance, be visually intrusive and would detract from the historic interest of the farmhouse. The fences, furthermore and given their prominence in particular, would have an adverse effect on the setting and significance of the listed building. The harm to the significance of the listed building would be less than substantial but would be of a moderate level.

20. Fences B and C, in their proposed altered form, would have an adverse effect on the character of the rural area and on the setting, historic interest and significance of the listed building. The fences would thus conflict with policies 28S, 29 and 41S of the Bedford Borough Local Plan 2030.

21. With regard to paragraph 196 of the NPPF the oil tank could be screened by other means and does not require there to be a fence between the house and the outbuilding, and the outcome of the appeal would not result in removal of the oil tank. In this regard the house will continue to be heated and in active use as a dwelling. Residential use of the converted farm buildings will have affected privacy and perceived security for occupants of the farmhouse. But securing privacy and security could be achieved by other means and does not require the introduction of harmful development.

22. The right to family life enshrined in Article 8 of the European Convention of Human Rights is acknowledged but does not outweigh the provisions of the Planning Acts and the requirement to preserve the historic interest of listed buildings. Neither of the two fences would prevent the Appellant's young children from falling into the moat from the lawned garden. Neither these nor any other matters mentioned by the Appellant, either individually or collectively, outweigh, as a matter of planning judgement, the less than substantial harm that would be caused by the altered fences to the significance of the listed building.

23. The altered fences would harm the rural character of the area and the setting, historic interest and significance of the listed building. The appeal thus fails and planning permission is withheld for the construction of 1.5m timber fence with 0.5m trellis for climbing plants at College Farm, Church Road, Keysoe.

Appeal C Ref: APP/K0235/W/20/3251733

24. The appeal relates to Fence A and planning permission is sought for its temporary retention for a period of three years whilst a hedgerow proposed to be planted in front of it becomes established. The main issue is the effect of the temporary retention of Fence A on the character of the rural area and on the setting and significance of the listed building and the SAM.

25. The fence, in itself, given in particular its uniform and uninteresting appearance, is harmful to the character of the rural area and to the setting and significance of the listed building and the SAM. The harm to the significance of the

heritage assets is less than substantial but is of moderate magnitude. The harm would remain for a considerable period and there is no certainty that a hedgerow would become established for the whole of the fence's length of about 85 metres. Even if a hedgerow became established over the temporary period the fence would initially remain unscreened from the north and east from beyond the moat and fish pond, and vegetation growing along the banks of the moat and fish pond would not in time provide adequate screening. The harm that would be caused, even for a temporary period, would be unacceptable. The fence conflicts with policies 28S, 29 and 41S of the Bedford Borough Local Plan 2030.

26. With regard to paragraph 196 of the NPPF the fence does prevent the possibility of children falling down the steep sides of the moat and into deep water but there are other types of less visually intrusive fencing that would prevent that possibility. The success of the barn conversion scheme, the removal of an 'unsightly' pole barn and planning permission for a large car port structure alongside the fishing pond are public benefits, because they improve the setting of the listed building and the SAM. Neither these nor any other matters mentioned by the Appellant, either individually or collectively, outweigh, as a matter of planning judgement, the less than substantial harm that would be caused by the temporary retention of the fence to the significance of the heritage assets.

27. The fence harms the rural character of the area and the setting and significance of the listed building and the SAM. The appeal thus fails and planning permission is withheld for the temporary retention of timber fence and planting of hedgerow on exterior face at College Farm, Church Road, Keysoe.

John Braithwaite

Inspector