



Appeal Decisions

Hearing held on 17 February 2021, Site Visit made on 9 March 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 18 March 2021

Appeal A: APP/F1610/C/19/3234015

Land at Williamstrip Hall, Hatherop Road, Coln St Aldwyns, Cirencester, Gloucestershire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr John Kennedy against an enforcement notice issued by Cotswold District Council.
- The enforcement notice was issued on 21 June 2019.
- The breach of planning control as alleged in the notice is without planning permission, removal of a curving section of dwarf wall, carrying railings and two stone gate piers and the construction of a dwarf wall and railings and high stone wall with pedestrian gateway flanked by stone gate piers on the Land.
- The requirements of the notice are:
 - i. Permanently remove from the Land the wall, piers and pedestrian gate;
 - ii. Permanently remove from the Land the dwarf wall and railings;
 - iii. Restore the Land to the condition it was in prior to the unauthorised works being carried out.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 1990 Act as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Appeal B: APP/F1610/F/19/3234010

Williamstrip Hall, Hatherop Road, Coln St Aldwyns, Cirencester, Gloucestershire

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr John Kennedy against a listed building enforcement notice issued by Cotswold District Council.
- The enforcement notice was issued on 21 June 2019.
- The contravention of listed building control alleged in the notice is the removal of a curving section of dwarf wall, carrying railings and two stone gate piers and the construction of a dwarf wall and railings and high stone wall with pedestrian gateway flanked by stone gate piers.
- The requirements of the notice are:
 - i. Permanently remove the wall, piers and pedestrian gate;
 - ii. Permanently remove the dwarf wall and railings;
 - iii. Restore the land to the condition it was in prior to the unauthorised works being carried out.
- The period for compliance with the requirements is 6 months.
- The appeal is made on the grounds set out in section 39(1)(c), (e), (j) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Summary of Decision: No further action is taken.

Appeal C: APP/F1610/X/19/3234013

Land outside the entrance to Williamstrip Park, Hatherop Road, Coln St Aldwyns, Cirencester, Gloucestershire GL7 5AT

- The appeal is made under section 195 of the 1990 Act as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Creath Estates Ltd against the decision of Cotswold District Council.
- The application Ref 11/02679/CLOPUD, dated 8 June 2011, was refused by notice dated 1 July 2011.
- The application was made under section 192(1)(b) of the 1990 Act as amended.
- The development for which a certificate of lawful use or development is sought is “the construction of a wall to enclose land, the wall not exceeding 1 metre in height above existing ground level and constructed using natural stone”.

Summary of Decision: The appeal is dismissed.

Background

1. Williamstrip Park is a grade II listed, substantial country house dating from the early 18th century. It is situated within an extensive parkland estate of much earlier origins. The appeals concern modifications undertaken at the Hatherop entrance; the southern of three formerly lodged, carriage drive entrances into the estate. According to extracts from a series of Ordnance Survey maps, the Hatherop Lodge was demolished sometime between 1960 and 1976, at which time a short and fairly discreet section of hoop top railings over a dwarf wall was installed. It seems probable that the historic inner stone gate piers were repositioned further back along the drive, along with a gate. The historic outer stone piers remained in situ forming a termination of the stone wall, which surrounds that part of the estate.
2. The notices allege the removal of the mid-20th century works, described as a curving section of dwarf wall, carrying railings and two stone gate piers. The development/works subject to the enforcement notices comprise a section of drystone walling extending in a curve between the remaining two outer piers across the former vehicular entrance. There is a solid timber pedestrian gate between two new stone piers, positioned centrally within the wall. In addition, there is a section of hoop top railings over a dwarf wall which extends in an opposite curve between the outer piers, encompassing a central gate. The wall and railings enclose an elliptical area of raised turf containing a paved pathway between the two gates and a retained cherry tree.

Preliminary Matters

3. My attention has been drawn to two appeal decisions against the Council’s refusal to grant retrospective planning permission and listed building consent¹. As these appeals concern the same development/works as are before me, and are relatively recent, I afford these decisions significant weight.
4. The Enforcement Notice (EN) contains some minor discrepancies in the wording between the allegation and the requirements. Firstly, the allegation uses the words “pedestrian gateway” whereas the first requirement says “gate”. The Council’s intention is clear since the gate could not exist without the gateway.

¹ Refs APP/F1610/W/18/3213690 and 3213691 dated 26 March 2019.

However, the wording of the requirement should flow from the allegation and it should be corrected to gateway.

5. Similarly, the allegation describes a “high stone wall”, whereas the first allegation omits the words “high stone”. Again, the meaning is clear but it is necessary to correct the requirement to reflect the allegation. The main parties agreed both of these corrections could be made without injustice. Although the Listed Building Enforcement Notice (LBEN) has the same wording, I have not made corresponding corrections since I have found that notice to be a nullity.

Appeal C

6. In an LDC appeal the onus of proof is on the appellant to show that, on the balance of probabilities, the development would be lawful at the time of the application. The subject of the application was a curved section of stone wall, not exceeding 1 metre in height. It would be positioned across the Hatherop entrance, extending between the existing boundary walls but not physically attached to either wall.
7. The main issue is whether the Council’s decision to refuse to grant a LDC was well-founded. The appellant’s case is that the proposed development would have fallen within that ‘permitted’ under Article 3 and Schedule 2, Part 2, Class A to the Town and Country Planning (General Permitted Development) Order 1995² (GPDO 1995), which concerns the erection of a gate, fence, wall or other means of enclosure. Under A.1.(d), development was not permitted under Class A if it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding a listed building.
8. The dispute centres on whether the development would be within the curtilage of a listed building. The appellant argues that the curtilage extends only to the pre-existing boundary features which surrounded the parkland in this location, specifically the railings, piers, gate and the stone wall. It is claimed that the tarmac area where the wall would be sited is not part of the curtilage, despite being within the ownership of the Williamstrip Park.
9. As set out above, the development would have been situated at the Hatherop entrance, which is one of three formerly lodged entrances to the estate. The Hatherop Lodge has now been demolished but it appears on Ordnance Survey maps dated 1921 and 1960. The appellant argues that the maps cannot be relied upon in relation to the matter of curtilage. In addition, it was argued that the estate was used for military purposes during WW2 and, at that time, it is likely that the Lodge would have been severed from the main house in terms of use and function. It is maintained that its status at the date of listing is unclear.
10. The GPDO does not attempt to define the term ‘curtilage’ and there is no other all-encompassing, authoritative definition. The Courts have often addressed the meaning of ‘curtilage’, most frequently in relation to listed buildings. During discussions, I was referred to the criteria laid down in *Calderdale*³ for identifying curtilage and the decision of the High Court in *Lowe*⁴, which concerned the extent of the curtilage to a large listed country house. I have

² LDC appeals made under s192, concerning proposed use or development, should be decided on the Order as in force at the date of the application.

³ *Attorney-General ex rel. Sutcliffe and Others v Calderdale Borough Council* [1983] 46 P&CR 399.

⁴ *Lowe v First Secretary of State* [2003] EWHC 537 (Admin).

considered a number of additional cases to ensure all authorities of relevance are taken into account. These are set out below.

11. One of the earliest was the Court of Appeal decision in *Methuen-Campbell*⁵. In that case it was held that for land to fall within the curtilage of a building, it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building. It was possible that this may extend to ancillary buildings, structures or areas such as outhouses, a garage, a driveway and so forth. A curtilage may consist of more than one parcel of land, need not have been conveyed or demised together and might even fall within another, broader curtilage.
12. The case of *Dyer*⁶ provides authority that the term 'curtilage' bears its restricted and established meaning connoting a small area forming part and parcel with the house or building which it contained or to which it was attached. Subsequently, in *McAlpine*⁷ it was held that "there is no rigid definition to a curtilage", but that it is a feature constrained to a small area about a building; apparently in "intimate association" with such building; and no physical enclosure is necessary to define it, "but the considered land must be part of the enclosure with the house".
13. The Inspector's reasoning in *R (oao Sumption)*⁸ is relevant in that the smallness of land was a relative factor as a matter of fact and degree. The Inspector's decision was in fact quashed. The case is nonetheless noteworthy as authority that a lack of historic connection between the land and a listed building can be a relevant fact but it is not determinative. It is necessary to determine the status of the land from the factual situation existing at the date of the application. On the facts in *Sumption*, the curtilage did extend over a 'recently expanded garden' where the land was clearly capable of such use, some work had been done to it, there was access to it and it was part of the land attached to the building and being enjoyed with it. In those circumstances the historical lack of connection was not capable of carrying weight. The Court also made reference to the Oxford English Dictionary definition of 'curtilage' as 'an area of land attached to a house and forming one enclosure with it'.
14. In *Sinclair-Lockhart's Trustees*⁹ it was found that - "The ground used for the comfortable enjoyment of a house or other building may be regarded as being within the curtilage of the house or building" and - "It is enough that it serves the purpose of the house or building in some necessary or reasonably useful way."
15. The Court of Appeal in *Skerritts of Nottingham Ltd*¹⁰ described the decision in *Dyer* as plainly correct, though commenting that "this court went further than it was necessary to go in expressing the view that the curtilage of a building must always be small, or that the notion of smallness is inherent in the expression." In addition, at first instance "the deputy judge was mistaken in treating *Dyer* as having such clear force as he thought it had." Thus, the decision makes plain that there should not be a rigid application of the concept of size.

⁵ *Methuen-Campbell v Walters* [1979] 1 QB 525.

⁶ *Dyer v Dorset CC* [1988] 3 WLR 213.

⁷ *McAlpine v SSE* [1995] 159 L.G. Rev. 429.

⁸ *R (oao Sumption) v Greenwich LBC* [2007] EWHC 2276 (Admin).

⁹ *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195.

¹⁰ *Skerritts of Nottingham Ltd v SSETR (No. 1)* [2000] EWCA Civ 60.

16. The High Court in *Lowe* found assistance from the Dyer judgment - "The expression 'curtilage' is a question of fact and degree. It connotes a building or piece of land attached to a dwelling and forming one enclosure with it. It is not restricted in size, but it must fairly be described as being part of the enclosure of the house to which it refers. It may include stables and other outbuildings, and certainly includes a garden, whether walled or not. It might include accommodation land such as a small paddock close to the house. However, it could not possibly include the whole of the parkland setting in which the house lay, nor the driveway along which the fence was erected". It was held that the Inspector fell into error for placing reliance upon ownership and the reasons for erecting the fence.
17. The concept of "curtilage" was more recently reviewed by the High Court in *Burford*¹¹ where it was noted that the use of land as incidental to the enjoyment of a dwelling house is not determinative of the land being curtilage. The case reaffirmed the criteria laid down in *Calderdale* for identifying curtilage, namely: (1) the physical layout of the [listed] building and the structure; (2) their ownership, past and present; (3) their use or function, past and present.
18. Having regard to all the authorities it is apparent that whether land comprises 'curtilage' is a question of fact and degree to be considered on a case by case basis and, thus, primarily a matter for the decision maker.
19. Caselaw has confirmed that the curtilage land need not necessarily be small, but that did not mean the relative size between the building and its claimed curtilage is not a relevant consideration. This appeal concerns a large country house set in extensive parkland. Whether or not the whole of the parkland forms the curtilage is not before me since I am considering a specific area of land. Crucially, the appellant is not disputing that the curtilage extends to the Hatherop entrance, only its precise line relative to the driveway.
20. The Hatherop gateway to the estate is intimately associated with the principal listed building due to its function as one of three formal carriage entrances. It served the Hall in a reasonable way. In addition, there was a historic connection between the former Lodge, the carriage entrance and the Hall. *Lowe* refers to curtilage as being fairly described as part of the enclosure to the house to which it refers. I consider that the historic entrance formed part of the enclosure to the house, which would have been apparent from its function as a formal gateway set within historic boundary walls. Also, the parkland between the entrance and the Hall provides its historic setting. Its function and association with the country house remains evident, despite any decline in the landscape during the 20th century.
21. The proposed wall would be sited within the ownership boundary adjacent to the highway. I appreciate that ownership is not determinative in itself. However, in this case the land where the wall would be sited forms part of a formal entrance; part of which was formerly occupied by a Lodge that was itself intimately associated with the listed building. Whether or not the Lodge was put to another use for a relatively short period does not alter this.
22. Furthermore, there is little logic to the argument that the curtilage should be defined on the basis of the wall, railings and piers that were installed in the

¹¹ *Burford v SSCLG* [2017] J.P.L. 1300.

mid-20th century. This would be accepting an arbitrary boundary which resulted from a relatively recent alteration, as opposed to considering the relationship, function, use and layout of the land in question. The appellant's assessment of the extent of curtilage would, in my opinion, be an erroneous approach having regard to the caselaw set out above.

23. I find, as a matter of fact and degree, that the land on which the wall would be sited would be within the curtilage of the listed building. Therefore, the proposal would not have been 'permitted' development under Article 3 and Schedule 2, Part 2, Class A to the GPDO 1995.
24. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of a wall to enclose land, the wall not exceeding 1 metre in height above existing ground level and constructed using natural stone was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal A on ground (c)

25. The main issue is whether the appellant has shown that the matters alleged do not constitute a breach of planning control. This turns on whether the development is within the curtilage of a listed building.
26. I have considered whether parts of the development would fall within that 'permitted' under Article 3 and Schedule 2, Part 2, Class A to the Town and Country Planning (General Permitted Development) Order 2015 (GPDO 2015), which concerns the erection of a gate, fence, wall or other means of enclosure.
27. As I have found the curtilage extends beyond the line established by the mid-20th century alterations, the whole of the development is within the curtilage of a listed building and would not be permitted under Article 3 and A.1.(d) of Schedule 2, Part 2, Class A of the GPDO 2015. Express planning permission would have been required for the development and, in the absence of any such permission, the development constitutes a breach of planning control.
28. The appeal on ground (c) fails, therefore.

Appeal B

The Listed Building Enforcement Notice

29. Section 38(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act) provides that a LBEN shall specify the alleged contravention and require such steps as may be specified in the notice to be taken (a) for restoring the building to its former state; or (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent.
30. The steps specified in the notice relate to both s.38(2)(a) and (b), which causes ambiguity. Requirement 3 uses the word 'restore' indicating s38(2)(a) is the intended purpose of the notice. However, restoration may be taken to mean returning the building to its former state. This is its former 'authorised' state; the state at the time of listing or as approved through listed building

consents. There is no evidence before me that the works to the Hatherop entrance, that were executed in the mid-20th century, were carried out with the necessary consent. However, there is limited evidence of the entrance as it existed prior to those works and at the date of listing in 1952. In acknowledgement of this difficulty, the Council clarified that the purpose of the notice was to alleviate the effect of the unauthorised works under s38(2)(b). I was invited to correct the notice accordingly.

31. This presents a further problem because the requirement is to restore the land to the condition it was in prior to the unauthorised works being carried out. The Council's clarification of the purpose of the notice assists in that it indicates the "unauthorised works" refer to the most recent alterations to the entrance, which removed the previously unauthorised dwarf wall, railings and gate piers. However, during the Hearing, it was explained that the Council was not seeking to have the mid-20th century features reinstated. Instead, it was suggested that there should be a negotiation between the appellant and the Council to agree a scheme to alleviate the effect of the latest unauthorised works. This would not accord with 38(2)(b), which requires the notice itself to specify the further works necessary. The notice does not do this with sufficient clarity.
32. The Courts have held that a notice must be drafted so as to tell the recipient fairly what he has done wrong and what steps he had to take to remedy it¹². Upon its construction, the notice is defective since its statutory purpose is ambiguous. Even if I were to correct the notice to clarify its purpose under s38(2)(b), the requirements would remain uncertain. The Council suggested I simply delete the third requirement. However, the effect of this would be the removal of the walls and railings with no alternative, leaving an open entrance.
33. The primary purpose of the LBCA Act is to provide a framework within which listed buildings, their settings or any features of special architectural or historic interest are preserved from harmful alterations or demolition. The removal of the walls and railings without replacement would be in direct conflict with that purpose. Indeed, the Council acknowledged that although it considers the unauthorised walls and railings to be harmful, the lack of any entrance would be equally harmful¹³. There is no guarantee that agreement would be reached on a scheme of alleviation, even if such discussions were to take place, since there would be no obligation for the appellant to take any action other than to comply with the requirements as specified in the notice. Therefore, I am not satisfied that I could make the corrections suggested without injustice to both parties.
34. Overall, I conclude that the LBEN is bad on its face and a nullity. In these circumstances the appeals under the grounds set out in section 39(1)(c), (e), (h) and (j) of the LBCA Act 1990 as amended do not fall to be considered.

¹² *Miller-Mead v MHLG* [1963] 2 WLR 225.

¹³ Discussion on alternative option 4, Appeal A on ground (a) and Appeal B on ground (e).

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

Preliminary Matter

35. The appellant accepted the findings of the previous Inspector and confirmed that he is not seeking the retention of the unauthorised entrance in its current form. However, the appeal on ground (a) is that planning permission should be granted for the matters alleged. The terms of the deemed planning application are derived from the allegation, hence, planning permission is sought for “the removal of a curving section of dwarf wall, carrying railings and two stone gate piers and the construction of a dwarf wall and railings and high stone wall with pedestrian gateway flanked by stone gate piers”.
36. I am also invited to consider a split decision on the basis of the following options: (1) the retention of the dwarf wall and stone wall, piers and gates; (2) retention of stone wall, piers and gates; (3) the retention of the railings and dwarf wall; (4) retention of the dwarf stone wall only.

Main Issues

37. The main parties agreed the main issues are:
- Whether the development preserve a Grade II listed building, ‘Williamstrip Park’, its setting and any features of special architectural or historic interest it possesses;
 - Whether the development preserves or enhances the character or appearance of the Hatherop Conservation Area.

Reasons

38. Williamstrip Park is a Grade II listed building. The listed building itself has an obvious aesthetic value; its significance and special interest are derived from its architectural form, layout and surviving historic fabric and historic associations. Providing points of permeability and denoting the extent of the estate, its boundary walls and entrances are aspects that contribute to the significance and special interest of the Grade II listed building. They also form part of its setting.
39. The Hatherop Conservation Area (CA) designation primarily focusses on the cluster of Cotswold stone-built buildings that makes up the core of the village; as well incorporating Williamstrip Park and some of the associated estate, and another substantial former country house and its grounds located on the opposite side of Hatherop Road. The continued legibility of the relationship between these substantial houses and the village is evidently a key contribution to the heritage significance of the CA. Due to its prominent location on a primary route through the village and CA, the historic entrances and boundary walls associated with Williamstrip Park also make a positive contribution to character and appearance of the CA as a whole.
40. I understand that the Hatherop driveway incorporated a historic road through the village, which was re-positioned when the estate was expanded sometime in the late 18th or 19th century. The Lodge was constructed in the 19th century and would have formed a prominent feature, having a clear association with the estate. Nonetheless, it is apparent that the appearance of the Hatherop entrance has evolved over the years. The demolition of the Lodge and

associated alterations to create a 'low-key' entrance has had a significant impact on how the entrance is perceived and experienced as part of the setting to the listed building. In addition, a stone Chapel has been built just beyond this entrance and the driveway has become a tree lined footpath. This has further changed the relationship of the entrance with the listed building and how it appears within the CA.

41. The development as it stands now is not without merit, if considered in isolation. However, the arrangement of the curving wall and railings focusses attention to the enclosed grassed area as opposed to the country estate which lies beyond the timber gate. This is at odds with the function of a formal gateway such as this, which forms a prelude to the estate and its early 18th century listed building.
42. The railings and the wall together form a visual barrier between the village and the estate, thus interrupting the perceived permeability of the estate boundary in this location. The barrier effect is accentuated by the design of the railings because the gate is concealed within them. Also, the hooped top design is out-of-character in this locality. As such, the development adversely affects the setting of the listed building, which in turns harms its significance. The development interrupts the legibility of the relationship between Williamstrip Park and the wider CA, adversely affecting its heritage significance.
43. The appellant has suggested there is a fallback position resulting from permitted development rights. However, as I have found the curtilage of the listed building extends beyond the position of the pre-existing entrance, there is no viable fallback argument. Nor would a landscaping scheme overcome the harm that I have identified to the significance of the heritage assets.
44. Paragraph 193 of the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Given the relatively localised impact, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
45. Under such circumstances, paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the proposal. The appellant is of the opinion that the proposal would be beneficial because of the increased security it provides and because it enables public access to the Chapel. However, I consider the enhanced security to be a personal benefit and access to the Chapel is not dependent on the scheme as it currently stands. I have also taken account of the support of an interested local resident, who considers the development to be an improvement to that which existed previously. However, these matters taken as a whole do not outweigh the harm identified.
46. I find the construction of a dwarf wall and railings and high stone wall with pedestrian gateway flanked by stone gate piers fails to preserve the setting of the listed building and the character and appearance of the Hatherop Conservation Area. This would fail to satisfy the requirements of the LBCA Act, paragraph 193 of the Framework and would conflict with policies EN1, EN10 and EN11 of the Local Plan 2011-2031, which seek to protect designated heritage assets.

47. Option 1 is an alternative proposal, which essentially involves the removal of the hooped top railings leaving the stone wall, piers and gateway and the dwarf wall. I saw that, in reality, the dwarf wall is a single course of stones which appears as little more than a kerb in the street scene.
48. My main objection to the development as it stands is the effect of the wall and the railings together. If the railings were removed, the grassed area would not be the focus and the eye may be drawn to the estate beyond the wall. The stone Chapel is visible over the unauthorised wall, even with the gate closed. The form, location and design of the Chapel is indicative of it being part of a larger estate and, hence, its presence gives a strong indication that a building of importance lies within the parkland.
49. The Council remains concerned that the wall itself forms an impermeable barrier that severs Williamstrip Park from the village and the CA. Its alignment is also considered unacceptable since it cuts across the sweeping line of the former driveway, which itself followed the route of a historic village road. However, I saw that, despite the intervening line of the wall, the retained wide driveway at its junction with the road remains evident. This indicates the existence of a former vehicular route. Moreover, I am not satisfied that the retention of a wide gateway would necessarily assist the interpretation of the heritage assets, since the driveway through the estate no longer exists. An asymmetric gateway, with open style gate, would simply reveal a footpath.
50. Turning to the matter of permeability, the wall as it stands contains a gate which leads to the footpath through the estate. I understand that access is allowed on occasion to enable the use of the Chapel by the community. Although no longer vehicular, there is still a gateway to the estate at the Hatherop entrance. The formality of the entrance remains and is consistent with a country house of merit. It is not overly grand and, while it has a different character to the remaining lodged entrances, I do not consider it to be inappropriate given the evolution of this part of the estate.
51. The Council accepts that there has not been a loss of historic fabric. I consider that the drystone wall is sympathetic to the listed building, and it reflects the historic wall which surrounds parts of the estate. Such features are typical within the CA and, therefore, it does not appear as an incongruous structure in the same way that the railings do. Similarly, I do not consider that the wall itself impacts the legibility of the relationship between Williamstrip Park and Hatherop Castle. The two estates remain, and can be interpreted as, integral features that have historic significance within the Conservation Area.
52. I accept that the symmetry of the entrance was not a feature when the Lodge was present. Nonetheless, this arrangement was altered when the Lodge was demolished and the function of this entrance has also evolved with the estate. Therefore, the form of the entrance may take a different approach without this necessarily causing harm to the significance of the heritage assets.
53. I consider that appropriate landscaping to enhance the appearance of the wall and highlight the gateway is necessary. The parties have previously agreed to the imposition of a condition requiring a landscaping scheme and its wording was discussed during the Hearing. The appellant requested an additional clause to allow for re-submission should the details be refused and any appeal dismissed. Given the relatively straightforward nature of the required

landscaping scheme, I consider this outcome unlikely. Moreover, any such clause may lead to imprecision in the wording.

54. Therefore, taking account of the above, I consider that the development comprising the dwarf wall and high stone wall, piers and gateway (Option 1) would not harm the significance of the designated heritage assets, subject to a landscaping condition. Given this finding, there is no need to consider the other options.
55. I appreciate that my conclusion differs in some respects from the conclusion of the previous Inspector. However, it is clear that the previous decisions considered the unauthorised entrance as a whole and I have reached similar findings on the scheme as it stands. Although it was open for the Inspector to consider a split decision, they would not necessarily take this route unless specifically invited to do so.

Other Matters

56. The site is within the Cotswolds Area of Outstanding Natural Beauty (AONB). The parties agreed that the effect of the development was relatively localised and, therefore, it does not conflict with the statutory purpose of the AONB, which is to conserve and enhance the natural beauty of the area.

Conclusion

57. Given the above I find that, on balance, the development comprising the dwarf wall and high stone wall, piers and gateway would preserve the setting of the Grade II listed building and the character and appearance of the Hatherop Conservation Area. This would satisfy the requirements of the LBCA Act, paragraph 193 of the Framework and would not conflict with policies EN1, EN10 and EN11 of the Local Plan 2011-2031, which seek to protect designated heritage assets.
58. I conclude that the appeal should succeed in part only, and I will grant planning permission for the dwarf wall, high stone wall, piers and gateway, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission in respect of the other part of the matters. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Appeal A on ground (f)

59. The purpose of the notice is to remedy the breach of planning control. The appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters. The appellant has offered alternatives, which would not remedy the breach but are part of the development and have been considered under ground (a).
60. The third requirement uses the word "restore", and it is unclear whether it requires features to be re-instated. However, the Council has clarified that this is not the intention of the notice. In any event, removal of the unauthorised development as required by steps (i) and (ii) would remedy the breach. I consider that the third requirement exceeds what is necessary to remedy the breach of planning control and it should be deleted.

61. The appeal on ground (f) succeeds to this limited extent.

Appeal A on ground (g)

62. The appeal on ground (g) is that the period for compliance falls short of what should reasonably be allowed. The appellant is seeking 12 months to ensure there is sufficient time to implement the landscaping scheme. The planning permission pursuant to the ground (a) appeal forms a separate stand-alone permission and the condition I have imposed has its own time limits. As explained above, the requirements of the notice will cease to have effect so far as inconsistent with the planning permission. I consider that six months is an adequate length of time to remove the railings.

63. The appeal on ground (g) fails, therefore.

Conclusion

64. For the reasons given above I conclude that the appeal should succeed in part only. I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with corrections and a variation and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Formal Decisions

Appeal A

It is directed that the enforcement notice be corrected by:

- (i) the replacement of the word "gate" with "gateway" in paragraph 5(i);
- (ii) the insertion of the words "high stone" before "wall" in paragraph 5(i).

And varied by:

- (i) the deletion of requirement 5(iii).

Subject to the corrections and variation, the appeal is allowed insofar as it relates to the construction of a dwarf wall, and high stone wall with pedestrian gateway flanked by stone gate piers. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the construction of a dwarf wall, and high stone wall with pedestrian gateway flanked by stone gate piers at the land subject to the following condition:

- 1) The building operations hereby permitted shall be demolished to ground level, and the materials resulting from the demolition shall be removed, within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for landscaping shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

65. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the railings, and planning permission is refused in respect of the railings on the land, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

66. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding, should the Local Planning Authority have kept a record of this LBEN on any register, they should consider reviewing it.

Appeal C

67. The appeal is dismissed.

Debbie Moore

Inspector

APPEARANCES

FOR THE APPELLANT:

Neil Warner
of JPPC Chartered Town
Planners

Sarah Watt
Asset Heritage

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Moody
Senior Case Officer

Justin Ayton
Heritage Specialist