



Appeal Decision

Hearing (Virtual) Held on 21 April 2021

Site Visit made on 22 April 2021

by C Jack BSc(Hons) MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 MAY 2021

Appeal Ref: APP/J0405/W/20/3256232

Dinton Castle, Oxford Road, Dinton, Aylesbury HP17 8TX

- 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 Jaime Fernandez Garcia against the decision of Buckinghamshire Council - Aylesbury Area.
 - The application Ref 20/00761/APP, dated 28 February 2020, was refused by notice dated 24 April 2020.
 - The development is the installation of brown windbreak netting and boarding over existing fence.
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Decision

1. The appeal is allowed and planning permission is granted for the installation of brown windbreak netting and boarding over existing fence at Dinton Castle, Oxford Road, Dinton, Aylesbury HP17 8TX in accordance with the terms of the application, Ref 20/00761/APP, dated 28 February 2020, subject to the following condition:
 - 1) The brown windbreak netting shall be removed, and the land restored to its former condition not later than five years from the date of this decision.

Preliminary Matters

2. As the development concerns a Grade II* listed building and its setting, I have had special regard to Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). I saw the fence works, comprising windbreak netting and boarding affixed to the pre-existing post and rail boundary fence, in situ as they have been carried out in full.
3. It was suggested at the hearing that the windbreak netting may not constitute development. However, there is insufficient evidence before me to make a formal determination on this point, which would anyway be beyond the scope of this appeal. I have therefore considered the appeal on the basis of the development as described in the application.
4. The Council's reason for refusal cites policy BE3 of its emerging Vale of Aylesbury Local Plan (the VALP). This was confirmed at the hearing to be a typographical error, with policy BE2 of the emerging VALP being the intended reference. The VALP remains at examination, with a further main modifications consultation and associated hearings having taken place since the Council's decision on the application. Copies of emerging policies BE1 and BE2 and the most recent main modifications were provided; and it was agreed that saved policies GP35 and RA8 of the adopted Aylesbury Vale District Local Plan 2004

(the AVDLP) remain the relevant development plan policies, and that they are consistent with the National Planning Policy Framework (the Framework) and attract full weight for the purposes of this appeal.

Main Issues

5. The main issues are:

- The effect of the development on the character and appearance of the area; and
- Whether or not the development preserves the Grade II* listed building, Dinton Castle, and its setting.

Reasons

Character and appearance

6. The site is situated on a prominent area of relatively high ground just off the main A418 between Aylesbury and Thame and outside the village of Dinton. While formerly part of a designed landscape, the countryside around Dinton Castle now has a predominantly rural and agricultural appearance with fields interspersed with hedges and trees and few readily apparent remnants of the designed landscape remaining. The area is defined as the Brill-Winchendon Hills Area of Attractive Landscape (AAL) for the purposes of saved Policy RA8 of the Aylesbury Vale District Local Plan 2004 (the Local Plan). The key attributes of the AAL were described at the hearing as being a distinctive, coherent, and intact landscape of high quality, consisting of villages and hills with panoramic rural views from many vantage points.
7. Commensurate with its origin as an eyecatcher folly, and whilst partially surrounded by trees, Dinton Castle is visible in the landscape from various viewpoints, including from the A418 and the Aylesbury Ring public right of way which runs adjacent to the listed building. The boarded section of the fence, which has the appearance of typical close-boarded fencing, is almost entirely screened from all public views by the assorted mature trees and other mixed deciduous and evergreen vegetation around the site frontage. The timber boards are weathered to a silver-brown, which blends into the immediate soft landscaping, even without the deciduous specimens being in full leaf.
8. Close-boarded fencing typically has a domestic character often associated with more suburban situations and, while I saw some other examples in the general area, is not prevalent nearby or characteristic of this part of the AAL. Nevertheless, due to its limited extent and very inconspicuous siting, the boarded section of fence in this case has no significant effect on the immediate or wider landscape or the overall character and appearance of the area. Whilst vegetation is not necessarily a reliable long-term screening method, there is no reason to suggest that the vegetation or the trees at and around the site, some of which are subject to a mixed species tree preservation order relating to a significant area around Dinton Castle itself, are particularly likely to be removed.
9. The windbreak netting consists of a form of synthetic, fairly close-weaved, flexible mesh in a dark brown colour. This has been stapled to the inside of the timber-bar front gates and to sections of the post and rail fence extending either side of the boarded section of fence. The post and rail fence also has

chicken wire type netting affixed to the outside, which I understand forms part of the boundary treatment agreed in connection with the residential conversion of Dinton Castle. The dark colour and dense weave of the windbreak netting give the affected sections of fence a significantly more solid appearance, relative to those sections remaining as post and rail and chicken wire only. As a result, the windbreak sections are more conspicuous in relatively close-range views but, due to their limited height and the presence of intervening vegetation, they are largely undetectable in longer views towards the site.

10. I was advised that similar windbreak netting has been used elsewhere in the locality. However, I saw no examples of this during my visit to the area and I am not persuaded that windbreak netting of this type forms part of the character and appearance of this part of the AAL. Moreover, it has a modest adverse effect on the appearance of the site in some relatively close-range views, which results in some harm to the overriding rural character and appearance of the AAL. As the most conspicuous area of netting is affixed to the entrance gates, mitigation by additional soft landscaping would not be a feasible solution.
11. I conclude that the development would harm the character and appearance of the area, contrary to the expectations of AVDLP policy GP35 that development should respect and complement the site and surroundings including with regard to materials and the historic scale and context of the setting. It would also be contrary to policy RA8, which among other things requires development to respect the landscape character of the AAL, unless appropriate mitigation measures can be secured.

The listed building and its setting

12. Dinton Castle is a Grade II* listed building, built in 1769 by Sir John Vanhattern as an eyecatcher sham castle within a designed landscape in the wider grounds of Dinton Hall. It is understood that, despite periods of habitation, the folly stood in a ruinous state for much of its existence, eventually being included on the Heritage at Risk register and posing a potential hazard to users of the adjacent public right of way. In recent years, the appellant has converted the building to a dwelling, including the associated creation of an enclosed residential garden, drive, and parking area. At the hearing, the very high significance of Dinton Castle as a designated heritage asset was not in dispute, with this significance deriving from key factors including the visibility of the structure as an eyecatcher; its rural setting and status and function in the landscape and that link to the history of the wider Dinton Hall park; and the iconic architectural style of the building which has been the subject of many artistic impressions.
13. The setting of the listed building, for the purposes of this appeal, is wider than the immediate castle and the garden area enclosed by the post and rail and appeal fencing, and includes the surrounding landscape which forms part of the views from the A418 and public paths from which the folly can be appreciated. Whilst the landscape around Dinton Castle has changed over the years including the advent of the main A418 running through it, this setting, and the various short-range and longer-range views in which the eyecatcher folly is a feature, forms an important intrinsic element of the asset's significance.
14. The boarded section of fence, for the same reasons set out in relation to character and appearance above, is largely indistinguishable in the landscape

and therefore has no significant effect on the landscape setting or, therefore, the significance of the asset. As such, it preserves the setting of the listed building and the special architectural and historic interest the building possesses.

15. The brown windbreak netting is clearly visible in some views of Dinton Castle, particularly the sections affixed to the entrance gates when viewed from the road or the footway along the road. This has a modest adverse effect on the visual quality of the setting of the listed building in some views which could not be satisfactorily mitigated by additional planting, for the same reasons as given above. However, Dinton Castle is exceedingly effective in its original design intention as a hilltop eyecatcher and, whether at close range or in longer views, the eye is inevitably drawn to the folly itself and generally upwards towards its turrets and other architectural features rather than downwards towards the boundary treatments. As a result, even in views in which the netting is discernible, it is not a significant factor in the appreciation of the asset in its setting.
16. Furthermore, the degree of permanence of the netting is a relevant consideration in relation to its effect on the setting of the listed building. The anticipated lifetime of the netting is not specified in the evidence but, as a relatively lightweight fabric simply stapled to the host fencing, it is clear it has an inherent degree of temporariness in its nature and that its installation is readily reversible. During the hearing, conditions relating to temporary permission or the future removal of the development were submitted on behalf of the appellant as potential options to address any harm arising to the setting.
17. A condition requiring the removal of the netting after a period of five years would provide certainty that the modest adverse effect on the setting, which cannot be satisfactorily mitigated by landscaping, would be addressed. It would also ensure that any degradation in the appearance of the netting over time, such as from the effects of weathering or wind damage, would be addressed in a reasonable period. Meanwhile, the temporary retention period would allow the various benefits of the netting to be realised, including preventing very young children from scaling the fence towards the road and allowing planting to establish.
18. I consider that, whilst the netting has resulted in a measure of perceptible change that has a very modest negative effect on the setting of the listed building, the effect of this on the overall significance and appreciation of the asset is neutral. I therefore consider the netting does not amount to harm in the context of paragraph 196 of the Framework. The very modest negative effect arising could be mitigated by a condition requiring the removal of the netting within five years, which would be consistent with the desirability of preserving the listed building and its setting.
19. I conclude that, subject to a condition to secure the removal of the netting within five years, the development would preserve the Grade II* listed building and its setting. On this basis, the development accords with the expectations of policy GP35 of the AVDLP, which among other things requires development to respect the historic scale and context of the setting.

Other Matters

20. Representations were made to the effect that Mr Jaime Fernandez Garcia's rights under Article 8 of the Human Rights Act 1998 would be violated if the appeal were dismissed. However, as the appeal is to be allowed on its merits, my decision could not lead to any such violation.

Planning Balance

21. There is modest harm to the character and appearance of the area arising from the windbreak netting. However, this harm is very limited, commensurate with the relatively temporary nature and limited extent of the netting and its degree of reversibility. Accordingly, and due to the factors contributing to the particular significance of this eyecatcher folly, the very modest harm to the character and appearance of the area does not extend to an adverse effect on the very high significance of the designated heritage asset and is therefore neutral in that respect. Moreover, in the specific circumstances of this case, a condition to secure the removal of the netting within five years would address the limited harm to character and appearance, and ensure that the listed building and its setting would be preserved, making the development acceptable in planning terms and in accordance with the development plan taken as a whole.

Conditions

22. A condition requiring the removal of the brown windbreak netting within five years is necessary in the interests of the character and appearance of the area and the ongoing preservation of the setting of the Grade II* listed building. The lesser period of three years initially suggested may be inadequate to allow the benefits in respect of establishing plants and safety to be reasonably effective. I have not imposed conditions requiring additional soft landscaping as this would not satisfactorily mitigate the adverse effects associated with the netting affixed to the front access gates. No other conditions are necessary as the development is already complete.

Conclusion

23. For the reasons given, I conclude the appeal should be allowed.

Catherine Jack

INSPECTOR

Additional Documents

1. Copy of emerging Policy BE1 of the Proposed Vale of Aylesbury local Plan as Proposed to be Modified.
2. Copy of emerging Policy BE2 of the Proposed Vale of Aylesbury local Plan as Proposed to be Modified.
3. ED243 Schedule of Proposed Further Modifications to the Modified VALP.
4. BE1 – Schedule of Proposed Further Modifications to the Modified VALP.
5. Additional suggested condition relating to removal within 3 years (CAMplan).
6. Additional suggested condition as above with temporary permission alternative (CAMplan).

Appearances for the Appellant

Mark Strawbridge BA(Hons) PGDipTP PGDipLA MRTPI IHBC FRSA - CAMplan
Jaime Fernandez Garcia RIBA - Appellant
Naomi Kate Wynburne – Appellant's wife

Appearances for the Council

Daniel Legg BA(Hons) – Planning Officer
Laura Levitt MA(Hons) IHBC – Principal Heritage Specialist

Appearances by Interested Parties

Stella Young – local resident
Blaise Brogan – local resident