



Appeal Decisions

Site visit made on 9 November 2021

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 03 December 2021

Appeal A: Appeal Ref: APP/Y3940/C/21/3268426

Lavender Cottage, 149 Winsley, Bradford on Avon, Wiltshire BA15 2LJ

- 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 Mrs Patricia Bellham against an enforcement notice issued by Wiltshire Council.
 - The enforcement notice was issued on 1 February 2021.
 - The breach of planning control as alleged in the notice is without planning permission, operational development comprising the erection of a pergola in the approximate location hatched in blue on the plan attached to the notice entitled '*Location Plan*', and the erection of a fence in the approximate location marked with a red line between "A" and "B" on the plan attached to the notice entitled '*Location Plan*'.
 - The requirements of the notice are:
 - i) Demolish the pergola in the approximate location hatched in blue on the plan attached to the notice entitled '*Location Plan*';
 - ii) Demolish the fence in the approximate location marked with a red line between "A" and "B" on the plan attached to the notice entitled '*Location Plan*';
 - iii) Remove all the resulting materials from steps (i) and (ii) from the land.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: Appeal Ref: APP/Y3940/W/20/3264721

Lavender Cottage, 149 Winsley, Bradford on Avon, Wiltshire BA15 2LJ

- 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 and Mrs Bellham against the decision of Wiltshire Council.
 - The application Ref 20/07490/FUL, dated 1 September 2020, was refused by notice dated 25 November 2020.
 - The development proposed is retrospective planning consent for the erection of a garden pergola and 3 panel willow fence to provide a privacy screen to the south eastern corner of the garden.
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Decisions

Appeal A: Appeal Ref: APP/Y3940/C/21/3268426

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

Appeal B: Appeal Ref: APP/Y3940/W/20/3264721

2. The appeal is dismissed.

Appeal A: the s174 appeal on ground (a) and the deemed planning application and Appeal B: the s78 appeal

3. Since these two appeals are, in essence, the same, I shall deal with them together in this decision letter.

Main Issue

4. The appeal site occupies an important position within the Winsley Conservation Area (CA), across a narrow lane from St Nicolas (or Nicholas's) Church, a Grade II Listed Building. The main issue for the determination of these appeals is therefore the effect of the development on the character or appearance of the CA and on the setting of nearby listed buildings.

Reasons

5. The Council has not provided any CA appraisal, if indeed one exists. The CA map provided is also a little confusing. To the south-east of a solid line there is what may be another CA although that is not named and not shown in its entirety. In the absence of any evidence to the contrary, I have determined this appeal on the basis that the CA wholly enclosed by the solid black line on the map provided is the entire Winsley CA.
6. At the heart of the CA are the church and the older buildings on the historic street pattern around it. Many of these individual buildings are listed and the Council's conservation officer notes that their historic relationship to the church is largely unaltered since the Victorian period. An extract from a map of the 1895 to 1911 period illustrates this well.
7. The buildings are generally of stone blockwork with plain elevations beneath gable roofs. Windows tend to be relatively small with multiple small panes. There is a uniformity to the buildings in the heart of the CA which makes an important contribution to its character and appearance.
8. As important are the low to medium height stone boundary walls. Not only do these afford views of the buildings behind, they help to define the street pattern. In a few cases, they are topped by open railings. However, fencing to their rear is rare and, in one case where it is present, the Council has advised that it will be investigating what may be a breach of planning control. All told, the boundary walls make an important contribution to the character and appearance of the CA, both in and of themselves and in the way they allow the relationship between the listed buildings and the church to be observed and understood.
9. It should also be noted that the CA includes what appear to be more modern properties laid out on a typical 20th Century street pattern (part of Late Broads and Millbourn Close). Some of these properties back onto Bradford Road where it has been closed to vehicles. What appear to me to be the original stone boundary walls to either side remain. However, virtually up to the appeal property, high close-boarded fencing is set immediately to the rear of the wall to provide privacy to what I take to be the rear gardens of the residential properties. To my mind, this fencing is not characteristic of the CA

as a whole although it is towards its periphery rather than at its heart. It seems to me that Example 4 in the appellants' 'existing precedent examples' (which the Council was unable to identify and thus comment upon) shows this fencing.

10. The appeal property is part of a short terrace of characteristic stone buildings. It appears that, as built, the terrace comprised three small dwellings. It is now two, with the appeal property including both the centre and an end dwelling. The 'front' door now appears to be in the end elevation facing the church on the other side of Bradford Road. There is no garden or other private space to the north of the terrace; all the amenity space is to the south. Although representations from local people suggest that, prior to the appellants altering the space, there was a mature garden which provided some privacy, it is now totally open to views from the public domain across the boundary walls.
11. On the southern boundary and along the common boundary with the other dwelling in the terrace, willow fencing panels have been erected. In the officer report on the Appeal B planning application the Council acknowledges that *if, no more than 2m in height* this fencing would be permitted by Schedule 2, Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (emphasis added). In the Council's appeal statement relating to both appeals it states that 'the portion of the fence that falls under Permitted Development rights is beyond the control of the (Council)'. I assume therefore that in the interim the Council satisfied itself as to the height of these panels.
12. On what is the eastern boundary of the site, adjacent to the highway and opposite the church, are the further three willow panels that are the subject of the two appeals. The flat roof timber pergola sits in the corner of the appeal site behind these three panels but protruding above them and others on the southern boundary.
13. The appearance of the pergola had been softened by the time of my site inspection by the planting that covers much of the roof and the supporting pillars. Nevertheless, this does not alter the fact that, together, they partially close the previous open relationship with the church that was important to the character and appearance of the CA as a whole and introduce uncharacteristic features immediately to the rear of the stone walls whose importance and value I have already identified.
14. Moreover, this harm to the setting of the church and the significance of the CA is particularly apparent given the importance of what one local resident called 'this unique corner' in the street scene. Harm has been caused to the heritage assets by the development. The harm is, however, as the Council contends, 'less than substantial'.
15. The current version of the National Planning Policy Framework (Framework) is dated July 2021. However, the relevant passages are not materially different from those earlier, but then current, versions referred to by the parties. Framework paragraph 202 makes clear that where development leads to 'less than substantial' harm, that harm should be weighed against the public benefits of the proposal. In this case there are none. While local people have generally welcomed the refurbishment of the building itself, the pergola and the three fencing panels have been installed to serve a purely private purpose,

namely achieving some privacy when using the garden area. As a matter of national policy, this cannot weigh against the harm caused.

16. In concluding on the main issue, I am mindful of the duty imposed by s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the building (in this case the church) or its setting and the duty imposed by s72(1) of the same Act to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. These duties are reflected in the wording of the relevant development plan policies.
17. The courts have held that 'preservation/conservation' in context means the absence of harm. I have found that the development carried out does cause harm. It therefore fails to conserve or enhance the setting of a designated heritage asset and, similarly, fails to preserve or enhance the character or appearance of the CA as a whole. It therefore conflicts with Core Policy 58 of the Wiltshire Core Strategy (CS) adopted January 2015.
18. While not inherently of poor design, neither the pergola nor the fence panels respond to the value of the historic environment or are sympathetic to and conserving of the historic buildings. There is conflict too, therefore, with CS policy 57 (i) and (iii) in this regard.

Other matters

19. The appellants have drawn my attention to some other examples of fences and structures behind boundary walls in the vicinity of the appeal site. I have already noted Example 4 and would agree that Example 5 is a very unfortunate addition to the street scene. The Council advises that these panels do not require planning permission. Regarding the other three Examples, I would agree with the Council that none detract from the boundary wall as the primary feature and focus. In that regard, they are not comparable to the appeal development.

Conclusions

20. For the reasons given above the s174 appeal on ground (a) does not succeed and the deemed application for planning permission fails (Appeal A) and the s78 appeal is dismissed (Appeal B).

Appeal A: the s174 appeal on ground (g)

21. The appeal on this ground may, as the Council believes, be based on a misunderstanding that the two appeals would be determined separately and to different timescales. In any event, it is for the appellant to state, first, why the period for compliance allowed in the notice is too short and, second, to explain and justify an alternative period. The appellant has done neither which lends support to the notion that this appeal is based on a misunderstanding.
22. In any event, the notice requires the simple removal of two structures, the pergola and the fence panels. It does not attack the paving or gravel surround beneath the pergola. In my view, the two months allowed is perfectly reasonable to complete the requirements of the notice.
23. For these reasons the appeal on ground (g) fails.

Overall conclusions

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

Brian Cook

Inspector