
Appeal Decisions

Site visit made on 4 April 2022

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 27th April 2022

Appeal A: APP/K3605/C/21/3285897

Appeal B: APP/K3605/C/21/3285898

Land at 10 Church Road, East Molesey, Surrey KT8 9DR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal are made by Mr Luke Dejahang (Appeal A) and Mrs Natalie Dejahang (Appeal B) against an enforcement notice issued by Elmbridge Borough Council.
- The enforcement notice was issued on 30 September 2021.
- The breach of planning control as alleged in the notice is:
Within the last 4 (four) years and without planning permission, the erection of front entrance gates, including the double gates for vehicular access and the single gate for pedestrian access.
- The requirements of the notice are:
 - a) Permanently remove the double gates and the single gate (for vehicle and pedestrian access respectively)
 - Or**
 - Reduce the double gates and single gate to no higher more than 1 metre above ground level.
 - b) Remove any resultant waste from complying with Step a).
- The period for compliance with the requirements is Two (2) calendar months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.
- Appeal B is proceeding on the grounds set out in section 174(2) (g) of the 1990 Act.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Preliminary Matters and Background

1. As set out above there are two appeals on this site. They relate to the same enforcement notice, therefore, to avoid duplication I have dealt with them together in the reasoning below unless specified differently.
2. In 2017 planning permission¹ was granted for front and side boundary walls, piers and gates to a maximum height of 1.79m. In 2019 planning permission² was granted for entrance gates to a height of 2m following removal of the existing gates (the 2019 permission). The existing gates cited within that planning permission are the gates that are the subject of the enforcement notice before me.

¹ Ref No: 2017/3707

² Ref No: 2019/1443

The Notice

3. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
4. Within the requirement a) there is a typographical error as the word '*more*' between '*higher*' and '*than*' is superfluous and is therefore not necessary. As such, I intend to delete the word '*more*' from requirement a). I am satisfied that this correction would not result in any injustice to the appellants or the Council as it is made solely for reasons of precision.

Appeal on ground (a), deemed planning application (Appeal A only)

Main Issue

5. The main issue is whether the front entrance gates preserve or enhance the character or appearance of East Molesey Kent Town Conservation Area (EMKTCA), whether they preserve the setting of a nearby listed building and whether they preserve the significance of each of these heritage assets.

Reasons

6. The appeal property is a substantial modern detached dwelling that has been altered using a classical architectural theme. The adjacent house appears to have been recently remodelled utilising a similar architectural theme. The front entrance gates are of solid painted timber set between piers of a relatively tall brick boundary wall. The appeal site is within the north-western portion of EMKTCA and it is opposite the Church of St Paul (the church) which is a grade II listed building.
7. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCAA) requires that, in the exercise of planning powers in conservation areas, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Section 66(1) of the LBCAA requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. The glossary to the National Planning Policy Framework (the Framework) states that the setting of a heritage asset comprises the surroundings in which it is experienced.
8. The church is located within an attractive central landscaped area at the junction of Church Road and Palace Road. As such, it provides a focal point and its spire is a landmark within this area. The surrounding area is mainly residential. Based on the evidence before me and my observations, the significance of this part of EMKTCA is mainly drawn from the church, its attractive landscaped setting and the large, detached dwellings set in generous plots together with the relationship of the buildings to the spaces around them. Due to size of the residential plots and the mature landscaping within them this part of EMKTCA has a verdant and spacious character and appearance.
9. I consider that the significance of the church is mainly derived from its use, age, form, fabric and architectural features. That significance is experienced

from within the central landscaped area but it is also experienced from the surrounding public realm given its position at the junction. That central position also means that there is intervisibility to and from the church and its landscaped area for occupants and visitors to the dwellings facing the church. The aesthetic and evidential value of this landscaped and residential setting makes an important contribution to the significance of the church. Taking into account all of the above, the appeal site can be treated as forming part of the setting of the church.

10. There is a variety of boundary treatments in the vicinity of the site and a large proportion of these boundary treatments comprise landscaping and low walls/fences. In addition, the majority of the dwellings have either open gateways or gates that are largely of permeable designs which provide views into their verdant garden areas. Those existing and predominantly open gateways, and indeed those which I observed which have decorative metal gates, all contribute to the spacious appearance of the properties within the vicinity of the appeal site. The views through these gateways reinforce the verdant and spacious characteristics and appearance that contribute to the significance of EMKTCA. In contrast the solid design of the front entrance gates erected on the appeal site materially restricts views through into the site. As a result, they erode the spacious character and appearance of this part of EMKTCA.
11. The gates are seen in views, at certain points, from the public realm with the church and its landscaped area. The gates do not block views of the church, nor do they visually compete with it. Nevertheless, the erosion of the spacious character and appearance of the area also appreciably erodes the aesthetic value that the appeal site makes to the residential setting of the church and the contribution that that setting makes to the significance of the listed building.
12. The gates approved by the 2019 permission were of the same width and a similar height to that existing on the site. However, they were decorative metal gates with a permeable design. I understand the reasons for the appellant's choice of materials for the gates and their finish, and I recognise that the overall design and appearance of the gates is compatible with the classically themed architecture of the dwelling. I acknowledge that the house and trees within the site are visible above the boundary wall and gates.
13. In addition, there are examples of other tall brick boundary walls and solid gates within Church Road and Palace Road. The appellant has also drawn my attention to other solid gates that are within the surrounding area and these are shown in a number of photographs that the appellant has submitted. However, I observed that the instances of solid gates in EMKTCA are very much in the minority and I do not know the precise circumstances or planning considerations surrounding those other examples. In any event, the ones I saw served to confirm that such gates produce significant solid barriers that restrict views through those sites and detract from the character and appearance of the area. Therefore, they do not set a precedent that should be repeated. I have, in any case, determined the appeal on its own merits.
14. In conclusion, the front entrance gates do not preserve the character or appearance of the EMKTCA and they erode the contribution that the setting makes to the special interest/significance of the listed building. The

magnitude of that harm may be concluded to be localised in the context of the conservation area as a whole and only slightly adverse in relation to the overall special interest of the listed building. Nonetheless, the expectations of the Act are not met, and in the language of the Framework, the development causes less than substantial harm to the significance of the heritage assets. In those circumstances, paragraph 202 of the Framework says that this harm should be weighed against the public benefits of the development. Even though, I have found that the harm to the significance of the heritage assets is less than substantial it is not to be treated as a less than substantial objection to the development. I have attached great weight to the desirability of avoiding any such harmful effect.

15. The appellant has stated that the gates were installed to increase privacy and security of the property. Nevertheless, those are private benefits for the appellant rather than public benefits. However, even if they were to be considered as public benefits, I am not persuaded that there are no other solutions available that would help to deal with these concerns. Therefore they have limited weight, and in my judgement, they do not outweigh the great weight to be given to the harm to the heritage assets. Consequently, the development does not comply with paragraph 202 of the Framework.
16. It also conflicts with Policies CS7 and CS17 of the Elmbridge Core Strategy and Policies DM2 and DM12 of the Elmbridge Development Management Plan. These policies, amongst other things, expect that all new development will enhance the local character of the area, that specific attention will need to be given to areas of high heritage value including the Kent Town conservation area, require new development to deliver high quality and that planning permission will be granted for developments that protect, conserve and enhance the Borough's historic environment. Taking into account paragraph 219 of the Framework I consider that these policies are consistent with the Framework and that therefore this conflict has full weight. I conclude that the development conflicts with the development plan as a whole. In this case, there are no material considerations to indicate that the appeal should be determined other than in accordance with the development plan.

Other Matters

17. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are considered the most relevant to this appeal.

Conclusion – ground (a) appeal and deemed planning application

18. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

The ground (g) appeals (Appeals A & B)

19. Ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. The notice states 2 calendar months for compliance but the appellants have stated that 90 days instead of 30 days is required in order to allow for the survey, fabrication and installation of suitable gates. However, the requirements of the notice only specify that the gates are to be removed or reduced in height. In addition, drawings of the proposed replacement gates

were submitted with the 2019 permission. Moreover, there is a need for expediency in remedying the harm caused to the character and appearance of the area.

20. In the circumstances, I consider that the compliance period set out in the notice is reasonable and proportionate. Therefore, the appeals on ground (g) fail.

Overall Conclusion – both Appeals A & B

21. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction.

Formal Decisions – both Appeals A & B

22. It is directed that the enforcement notice be corrected by: -

- deleting the word 'more' from requirement a).

23. Subject to this correction the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

D. Boffin

INSPECTOR