



Appeal Decision

Site visit made on 4 July 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2022

Appeal Ref: APP/A1530/C/21/3289279

Land known as The Vines, The Quay, Wivenhoe, Colchester, CO7 9BT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ifor Edward David Bielecki against an enforcement notice issued by Colchester Borough Council.
 - The notice was issued on 18 November 2021.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the erection of a wooden boat shed and wooden fence to foreshore garden. (for the avoidance of doubt this is the wood boat shed and wooden fence in the photographs attached to this notice) ("The Activity").
 - The requirements of the notice are to:
 - (i) Demolish/dismantle/remove the wooden boat shed and wooden fence to foreshore garden from the land.
 - (ii) Remove all debris and detritus from the land in relation to (i) above.
 - (iii) Leave the land in a clean and tidy condition.
 - The period for compliance with the requirement is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. 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 Act.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the words "wooden fence" and the substitution of the words "wooden fence on the front boundary" in the allegation including the reference to photographs attached to the notice.
 - the deletion of the words "wooden fence" and the substitution of the words "wooden fence on the front boundary" in the first requirement.
 - the deletion of the third requirement and its substitution with the words "Restore the land to its condition before the development took place".
2. Subject to the corrections, the appeal is dismissed, 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 as amended.

Preliminary Matters

3. Compliance with requirement (iii) would be a subjective judgement. A requirement to restore the land to its condition before the development took place would be more appropriate and would meet the tests of being precise and

enforceable. No injustice would arise to either party should I make this correction to the notice, therefore I shall do so.

Ground (c)

4. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal, and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.
5. In order to achieve success on ground (c) the appellant must show that either there has been no development, or that planning permission is not required for whatever reason, or that what is alleged complies with the terms and conditions of a planning permission.
6. The appellant's submissions in relation to ground (c) relate only to fencing on the eastern and western side boundaries of the foreshore garden. During the course of consideration of the appeal the appellant has advised that he has obtained a Lawful Development Certificate (LDC) for boundary fencing on the eastern and western boundaries. I have been provided with a copy of the LDC and the Council has submitted a copy of its delegated report which confirms that the decision to grant the LDC was authorised.
7. In the light of the LDC the appeal under ground (c) succeeds in so far as it relates to the fencing on the eastern and western side boundaries.
8. The LDC does not cover the fencing which the appellant describes as on the front boundary and the appellant is not arguing that this fencing is lawful.
9. The notice refers to 'wooden fence to the foreshore garden' and states that this is shown on the photographs attached to the notice, which also include the wooden boat shed which is the subject of the notice. In order to address the effect of the LDC and my finding on ground (c), I shall correct the allegation to refer to 'the wooden fence on the front boundary'. A consequential correction is necessary to the requirements to ensure that they flow logically from the allegation.

Ground (a) and the Deemed Planning Application

10. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main Issue

11. The main issue is the effect of the shed and the fence on the front boundary on the character and appearance of the local area bearing in mind the special attention that should be paid to the desirability of preserving the setting of The Vines which is a Grade II listed building and the extent to which the shed and fence would preserve or enhance the character or appearance of the Wivenhoe Quay Conservation Area.

Reasons

12. The Vines is a two storey mid terraced house which is flanked by two similar cottages, Quay Cottage (which now appears to be called The Moorings) and

Berry House. The terrace faces the river and there is a track and land between the building and the jetties which extend towards the river. There is also a parking space which is perpendicular to the track providing space for one vehicle in front of The Vines.

13. The land between the buildings and the river is used in connection with the houses and as access to the river via the jetties. Of the three houses, the land associated with The Vines contains the most structures including the fences which were the subject of the LDC and the notice, as amended, and the shed and is clearly in use as amenity space by the occupiers of The Vines. On the land to either side of the appeal site there are fences and other features, including an umbrella at the time of my site visit, indicating that these areas are also being used as amenity space.
14. The Vines is a Grade II listed building, and it dates from the early to mid-19th century. The listing entry highlights its architectural interest and group value with Quay Cottage and Berry House. The listing also refers to the history of Wivenhoe and the significance which riverine trade and fishing played in the early development of the town. Shipbuilding is identified as a dominant industry in the 19th century including associated buildings such as housing.
15. The site lies within Wivenhoe Quay Conservation Area (the CA). The Townscape Analysis plan which has been submitted by the Council identifies the three cottages as listed buildings, the adjacent building at the end of Bethany Street as a building of townscape value and the view along Bethany Street towards the river as a positive vista. The Quay which lies further along the river frontage is identified as a key space within the CA.
16. Drawing together the information in the listing and in the townscape analysis it is clear that a visual connection between the buildings on the river frontage and the water is an important element of the character of the site and its surroundings. A footpath which is a public right of way, allows this relationship to be appreciated to a lesser or greater extent along the full width of the river frontage.
17. The appellant has provided a drawing which identifies structures which are between the buildings facing the river and the jetties for the length of the riverside between Smugglers Wharf and The Old Customs House. Beyond these particular points, development extends towards and much closer to the river and takes the form of comparatively modern flatted development.
18. Along the part of the river frontage identified by the appellant there are a range of character types in terms of the land between the buildings and the river. On the land opposite a group of houses known as The Folly, which are adjacent to The Old Customs House, there are a series of mature gardens including walls, fences and other structures. Continuing towards the quay, save for the fences and shed on the appeal site, the land is relatively open. At the other end of the Quay are the Royal British Legion (RBL) shelter, the sailing club building and the access to the passenger ferry. Beyond these buildings, the shed and structures, associated with Quayside Cottage/Maple Cottage as identified on the appellant's plan, are prominent features.
19. Thus, there is a significant stretch of The Quay and the access track adjacent to the cottages which is open and generally free from any form of shed or other structure. The appeal site falls within this area.

20. I have identified the importance of the visual connection between the buildings and the river, and this survives in the character of that part of the river frontage within which the appeal site is located.
21. The shed at The Vines is described as a boat shed but its design and appearance are more akin to a garden shed commonly seen in a domestic setting. The shed has a low pitched roof which is higher than the fences that are the subject of the LDC, thus the fences have a limited screening effect. The photograph of the site from the river provided by the appellant also shows the visibility of the shed from that direction. By virtue of its position the shed is prominent and as a consequence of its design and appearance the shed is an alien feature in the street scene and has an adverse impact on the site and the surrounding area.
22. Part of the fence running along the front boundary, which is covered by the notice, has been reduced in height since the notice was served. However, the fence posts appear to have been retained at their original height. This reduction in height although reducing the visual impact of the fence results in the shed being more prominent. Furthermore, the curved trellis design of the front fence is at odds with the less domestic looking post and rail fences and gates on the adjacent land.
23. The appellant refers to the deliberate position of the shed adjacent to the car parking space to mitigate any visual impact. However, it is clear from the photograph provided by the appellant that even with a car parked on the parking area the shed remains visible. To that extent I do not find that the position of a car, which in any event is not a permanent feature, reduces the visibility of the shed to an extent that the harm which I have found would be fully mitigated.
24. The shed is not comparable to the RBL shelter, adjacent to the passenger ferry, or the sailing club building. It is reasonable to assume that these structures need to be adjacent to the river to fulfil their function. By comparison the shed is on private land, and it fulfils the needs of the appellant only. It follows that any adverse impact which it has on the setting of the listed buildings, or the CA is not justified by its need for a riverside position.
25. In terms of its function the shed is comparable with the shed at Quayside Cottage/Maple Cottage. However, that shed has the advantage of being close to the sailing club building and it is of a similar design. Also, it is on the edge of the wide concrete quay which sets it in a much less intimate context than the appeal site. On this basis I do not consider that the shed and structures at Quayside Cottage/Maple Cottage establish a precedent for the fence and shed on the appeal site.
26. Drawing together all of these points I conclude that on the basis of the position of the shed and its design and appearance and that of the front boundary fencing, these structures have a harmful effect on the character and appearance of the site and its surroundings which form part of the CA and are harmful to the settings of listed buildings.
27. Given the above, I find that the shed and front boundary fence fail to preserve the special interest of the listed buildings and the significance of the CA. Consequently, I give this harm considerable importance and weight in the planning balance of the appeal.

28. Paragraph 199 of the National Planning Policy Framework 2021 (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification. Given that the development does not affect the physical features of The Vines which are referred to in the listing description and is limited to the setting of the building and its contribution to the group value of the terrace, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
29. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal. The appellant has not specifically referred to any public benefits arising from the development. On the basis of letters of support for the scheme from his neighbours, he considers that the shed is a positive addition to the area. Notwithstanding whether or not this amounts to a public benefit there are other interested parties who have expressed the contrary view. Therefore, these comments carry limited weight.
30. Given the above and in the absence of any defined public benefit, I conclude that, on balance, the proposal would fail to preserve the special historic interest of the Grade II listed buildings and the character or appearance of the Wivenhoe Quay Conservation Area. This would fail to satisfy the requirements of the Act, paragraph 197 of the Framework and conflict with Policies ENV1, UR2, DP1 and DP14 of the Colchester Local Plan 2001-2021, Policy SP7 of the North Essex Authorities' Shared Strategic Section 1 Plan (2021) and Policy WIV12 of the Wivenhoe Neighbourhood Plan. These policies amongst other things seek to protect conservation areas from inappropriate development, to resist any development which would adversely affect a listed building or conservation area, to protect and enhance landscape and townscape and assets of historical value, to create well-designed places and not to impede the view of the river from the quay at Wivenhoe. As a result, the proposal would not be in accordance with the development plan.

Conclusion – Ground (a)

31. For the reasons set out above and having regard to all other matters raised I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused.

Conclusion

32. For the reasons given above, I conclude that the appeal should succeed in part, and I have corrected the notice accordingly. Subject to that correction and a correction to requirement (iii) I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Sarah Dyer

Inspector