



Appeal Decision

Site visit made on 8 August 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2023

Appeal Ref: APP/W4705/C/22/3310806

6 West Scholes, Queensbury, Bradford BD13 1NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mohammed Kamran against an enforcement notice issued by City of Bradford Metropolitan District Council.
- The notice was issued on 29 September 2022.
- The breach of planning control as alleged in the notice is the unauthorised fencing, walls, stone pillars and gates forming combined boundary structure.
- The requirements of the notice are:
Step1: Reduce the unauthorised combined boundary structure consisting of fence, walls, gates and stone pillars to a height of 1 metre along the entire length of the unauthorised combined shown on the attached plan from points A to C
OR
Step 2: Reduce the height of the gates and stone pillar components of the unauthorised combined boundary structure to a height of 1 metre
And
Step 3: Dismantle and remove the metal frame and fencing panels from the unauthorised combined boundary structure.
- The period for compliance with the requirements is:
Step 1 – Three calendar months
Step 2 – Three calendar months
Step 3 – Three calendar months
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.

Summary of Decision: 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.

The ground (a) appeal

Main Issues

1. The main issues are as follows:

- Whether the development would be inappropriate development in the Green Belt;
- The effect of the development on the openness of the Green Belt;
- The effect of the development on the character and appearance of the area;
- The effect of the development on the setting of the nearby listed building, West Scholes House and Cottage; and

- If the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriateness

2. The appeal site is located within the Green Belt. The Council state that the development is inappropriate and harmful to the openness of the Green Belt. I have not been referred to any policies within the development plan pertaining to development in the Green Belt. However, I have been directed to the National Planning Policy Framework (the Framework).
3. The Framework states that inappropriate development in the Green Belt is by definition harmful and should not be approved except in very special circumstances. Paragraph 149 of the Framework states that the construction of new buildings in the Green Belt shall be regarded as inappropriate development. One exception to this, set out in Paragraph 149(d) is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
4. The details before me of the previous fence are limited to photographs of sections of the boundary treatment. These details indicate close boarded timber fence panels and timber lattice fencing along some of the walled boundary, whereas other sections appear to have had no fencing at all. It is difficult to gauge from the photographs how high the previous fence was. However, despite the appellant's contention that the existing fence is no higher than the previous fence, based on the photographs, the existing appears significantly higher, particularly compared to the previous lattice fencing, and certainly where there was no fencing at all. Therefore, the fence is materially larger than the one it replaced and consequently fails to comply with Paragraph 149(d).
5. None of the other exceptions to Paragraph 149(d) apply and the fence is therefore inappropriate development within the Green Belt, which, by its very definition, is harmful to the Green Belt and should not be approved except in very special circumstances.

Openness

6. The fence is significantly larger than the previous fence and introduces new fencing in places where there was previously none. The erosion of three-dimensional space arising from the overall size of the fencing in itself results in an erosion of openness. Moreover, the previous lattice style fencing and gates allowed a high degree of visual permeability, whereas the existing is of a solid construction and therefore further diminishes the openness of the Green Belt.
7. I conclude therefore that the development unacceptably harms the openness of the Green Belt.

Character and appearance

8. The appeal site is located within a small settlement that generally comprises local stone properties that vary considerably in their size and design.

Boundary treatments are typically low, stone walls composed of local stone that enable their host property to have a visual open relationship with the streetscene. In places there are hedges that rise above these boundary walls; however, their host dwellings remain clearly visible in the streetscene. Overall, the traditional boundary treatment of properties makes a positive contribution to the historical architectural context and open character of the area.

9. The development the subject of the appeal comprises a low, traditional wall with composite fence panels sitting atop. In addition, the entrances to the property off Brewery Lane comprise substantial stone pillars with high composite gates to match the fencing.
10. The fence runs a significant length along Brewery Lane and returns slightly along the north east boundary of the property. In addition, its height rises substantially above the low boundary wall. Due to their significant length and height, the fence, gates and pillars unduly dominate the streetscene and introduce an incongruous feature that diminishes the openness of the area. This incongruity is exacerbated by the use of the contemporary composite panels that fail to reflect the palette of traditional boundary materials in the locality.
11. This diminishment of openness and its incongruity is also experienced when approaching Brewery Lane at the junctions with Cockin Lane, as the fence panels are clearly visible adjacent to the junction. Moreover, when approaching in a south westerly direction along Brewery Lane, due to the topography of the land, the fence panels rise high in the landscape, exacerbating their dominance and incongruity.
12. I note the appellant's argument that plants can be grown to screen the fencing and refers to examples where this has happened. However, these examples are of much lower stone walls and a hedge. Due to the height of the fence, it would take a significantly long time for any vegetation to establish to such an extent that it would have any reasonable mitigating effect by covering the majority of the fence.
13. The appellant also suggests painting the metal frames of the fence panels brown to help reduce their visual prominence. However, I do not consider that painting them would adequately mitigate their prominence or incongruity.
14. The appellant also directs me to the use of composite materials for gates in the locality. However, these are on a significantly smaller scale in comparison to the appeal development and therefore cannot be considered direct comparisons that weigh in its favour.
15. I find therefore, the development has a significantly harmful effect on the character and appearance of the area, contrary to Policies DS1, SC9 and EN3 of the City of Bradford Core Strategy Development Plan Document (DPD) 2017, which, amongst other things, seek to ensure development is of a good design, contributes to high quality places and protects the character and appearance of the area.

Setting of the listed building

16. West Scholes House and Cottage (the listed building) is a Grade II* listed building that lies to the north of the appeal property, on the opposite side of

the lane. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting.

17. The listed building is a late 17th century house constructed of traditional stone with a stone slate roof with fine historical architectural detailing. The property is set back from the road, the boundary with which comprises shrubs and trees set behind a traditional stone wall. The significance of the setting of the listed building derives from its historical architectural context.
18. The northern most corner of the appeal site is directly opposite the listed building. Travelling along Brewery Lane in a south westerly direction, both the listed building and the point at which the appeal fence returns along the north boundary of the site can be seen in the same view. The use of contemporary materials are in marked contrast to the traditional materials of the listed building and appear as an incongruous addition that diminishes the historical architectural context. This is exacerbated by the elevated position of the fence along this boundary, resulting in it rising significantly higher than the traditional boundary wall of the listed building.
19. I conclude that the appeal development harms the setting of the adjacent listed building by being incongruous additions and represent 'less than substantial' harm in terms of the National Planning Policy Framework (the Framework).
20. In which case, under paragraph 202 of the Framework the harm to the setting of the listed building should be weighed against any public benefits of the proposal, including, where appropriate, securing the asset's optimum viable use. The appellant argues that the development is required in order to secure the site as instances have occurred in the past involving anti-social behaviour. Notwithstanding these instances, the security of the site would be a private benefit to the appellant rather than a public benefit.
21. Against this background, the development significantly harms the setting of the listed building. I consider there are no public benefits that would be sufficient to outweigh the less than substantial harm that I have identified, giving considerable weight and importance to paying special attention to the desirability of preserving the setting of the listed building. As such, the development conflicts with Policy EN3 of the DPD, which seeks to ensure development conserves or enhances the heritage significance and setting of Bradford's heritage assets. It would also fail to comply with the heritage objectives of the Framework.

Other considerations

22. Paragraph 148 of the Framework states that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. I turn now to address other considerations that, potentially, might clearly outweigh harm arising from inappropriate development in the Green Belt and the erosion of openness so as to provide the very special circumstances required to justify a grant of planning permission.

23. The development provides increased security to the site. I acknowledge that there have been anti-social instances in the past, including smashing bottles, damage to cars and people shouting. Furthermore, the site is within close proximity to the neighbouring Junction Inn public house from which there may have previously been some intervisibility between the two properties. I also note the increase in crime rate in the wider area. However, there is no evidence before of why the appeal development is the most appropriate form of security. It seems to me that there are likely alternative ways of securing the site that would have less of an impact than the appeal development, for example CCTV or increased boundary planting. In addition, there may be more suitable alternative methods of securing the guard dogs within the site.

Planning balance

24. The development has harmful implications for the Green Belt in terms of inappropriate development and the erosion of its openness. Whilst the overall loss of openness would be moderate, the Framework establishes that substantial weight should be given to any harm to the Green Belt. Furthermore, the development significantly harms the character and appearance of the area and the setting of the listed building. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
25. Whilst the development provides improved security for the appeal site and minimises maintenance, I do not find that this clearly outweighs the harm to the Green Belt, the character and appearance of the area and the setting of the listed building. I find therefore, the very special circumstances required to clearly outweigh the harm to the Green Belt have not been demonstrated. Consequently, the proposal would conflict with objectives of the Framework to protect the Green Belt.

Conclusion on the ground (a) appeal and the deemed planning application

26. For the reasons given above, having regard to the development plan as a whole, the approach in the Framework and all other material considerations, the appeal is dismissed. I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The ground (f) appeal

27. This ground is that the notice requirements are excessive. Depending on the purpose of the notice, this can be assessed against the question of whether the requirements exceed what is necessary to remedy the breach of planning control; or, any injury to amenity.
28. The appellant states the metal frame of the fence panels will be painted brown to help it blend in with the surroundings. However, as I have found in my consideration of the ground (a) appeal, painting the metal brown would not sufficiently mitigate the harm caused by the development by reason of its height, length and use of inappropriate materials.
29. I therefore conclude that the ground (f) appeal must fail.

Conclusion

30. 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.

Alexander Walker

INSPECTOR