



Appeal Decision

Site visit made on 20 September 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th December 2023

Appeal Ref: APP/G5180/D/22/3308709

Court Lodge, Church Road, Chelsfield, Orpington, Bromley BR6 7SN

- 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 Mrs Sarah Needham against the decision of London Borough of Bromley.
 - The application Ref DC/22/02667/FULL6, dated 5 July 2022, was refused by notice dated 31 August 2022.
 - The development is for boundary fencing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development has been implemented. I am therefore considering the appeal retrospectively.
3. The status of the flint and brick boundary wall, which forms part of the appeal site, was unclear in the evidence provided. However, both parties were given the opportunity to provide comment and, having regard to Section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), the parties agree that the wall is curtilage listed in respect of Court Lodge, a Grade II listed building. I have therefore determined the appeal on this basis.
4. Given the above and mindful that the development is also located within the setting of the Church of St Martin of Tours, a grade II* listed building, and Chelsfield Conservation Area, I have had special regard to the requirements of sections 66(1) and 72(1) of the Act.
5. The Council's decision notice makes reference to policies BE7 and BE8 of the Unitary Development Plan. It was confirmed during the appeal process that these policies were incorrectly applied, and the appropriate Local Plan policies have since been provided. The appellant was made aware of these and given the opportunity to comment. I have taken those Local Plan policies into consideration in making my decision.

Main Issues

6. The main issues are:
 - whether the development is inappropriate development in the Green Belt and, if it is, the effect of the development on its openness;
 - whether the development preserves the Grade II listed building, Court Lodge or its setting, the effect of the development on the setting of the

Grade II* listed building, Church of St Martin of Tours, and the extent to which the development preserves or enhances the character or appearance of the Chelsfield Conservation Area; and

- whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

7. The appeal site comprises Court Lodge, a large detached property set within expansive grounds. It is positioned to the west of Church Road, from which it is accessed. Court Lodge Cottage and The Coach House exist to the east, with the Church of St Martin of Tours positioned to the north.
8. The development comprises a fence along the boundary of the site, in particular its northern boundary, shared with the grounds of the Church of St Martin of Tours. The submitted plans illustrate four distinct sections of fencing. This includes Section A (facing Court Road), Section B (to the west of the church, facing the graveyard), Section C (above the established flint and brick walls, to the south of the church) and Section D (along the driveway to the church, facing its car park).

Whether inappropriate development

9. Policy 49 of the Bromley Local Plan (LP, 2019) broadly conforms to the general thrust of national Green Belt policy, setting out that inappropriate development in the Green Belt will normally be refused. Paragraph 147 of the National Planning Policy Framework (the Framework) sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved 'except in very special circumstances'.
10. Paragraph 149 of the Framework sets out that the construction of new buildings in the Green Belt is to be regarded as inappropriate development. A 'building' is defined in Section 336 of the Town and Country Planning Act 1990 to include any structure or erection and it therefore includes fences and gates. Fences and gates are not explicitly cited within the exceptions included at paragraph 149.
11. Consequently, the development is inappropriate development in the Green Belt, which is, by definition, harmful to the Green Belt. Substantial weight should be given to this harm. The development is contrary to the relevant provisions of LP Policy 49 and Policy G2 of the London Plan (2021), which in summary seek to protect the Green Belt from inappropriate development, and contrary to the provisions of the Framework which seek to protect the Green Belt. Although LP Policy 51 was referenced in the Council's decision notice, this is not relevant to the scheme, which is not for a dwelling in the Green Belt.

Openness

12. I saw during my site visit how intervening features in the landscape, including mature vegetation, mean there is fairly limited visibility of the site from the surrounding area. This includes visibility of the boundary treatments that are the subject of this appeal, although some glimpsed views of Section D are visible from Church Road. Nevertheless, the openness of the Green Belt is

readily apparent within the immediate area through the existence of mature trees and surrounding open fields.

13. The Framework indicates that openness is an essential characteristic of the Green Belt and a fundamental aim of Green Belt policy is to keep land permanently open. The openness of the Green Belt has a spatial as well as a visual aspect. 'Open' can mean the absence of development in spatial terms, and it follows that openness can be harmed even when development is not readily visible from the public realm.
14. I accept that both the appeal site and church grounds are enclosed by boundary treatments and that this is typical of rural buildings, particularly domestic. I have been provided with photographic evidence (although undated) showing some of the fencing that previously ran along the site's northern boundary. Based on this, I consider that the fencing forming Section D is of a similar height to the previous fence that once stood in that location. There is no harm to openness in that respect.
15. However, and irrespective of the precise measurements, the existing fence at Section C appears substantially taller than a previous fence that once stood in that location. That previous fence, although still positioned atop the historic flint and brick wall, appears to have been relatively modest in height. The limited height of the previous fence would have allowed a greater sense of openness through the visibility of established planting and open sky over it and beyond.
16. Whilst mature trees and planting are still visible over the existing fence, it is clearly of a greater overall height. It is also of a substantial length. These matters, together with the solid construction of the fence, means that there is undoubtedly some loss of openness in that location. I have limited evidence before me as to whether there was a fence at Sections A and B historically and the form of those structures. As such, I cannot reach a conclusion in respect of openness for those sections. Even if those elements were found to be acceptable, I have found harm in respect of Section C. Accordingly, I conclude that the development harms the openness of the Green Belt, contrary to the provisions of the Framework which seek to protect it.

Heritage - special interest and significance

Court Lodge

17. Court Lodge is set within a large garden plot. It is a Grade II listed building¹, which dates from the 18th century. It is predominantly finished in red brick, with some flint, with a hipped tile roof over and Doric columns on either side of the front porch. A flint and brick wall exists along part of the site boundary. This is curtilage listed.
18. Based on the evidence before me, the special interest and significance of Court Lodge is largely derived from its historic and architectural interests. An important contributor in these regards, which is pertinent to the appeal, is its impressive manor house scale, set within a formal estate in the countryside.
19. The flint and brick wall, which sits on the shared boundary of the site with the Church of St Martin of Tours, in part defines the grounds of the listed building.

¹ List Entry Number: 1064332

It is built of materials which match the main house, is of traditional construction and adds authenticity to the rural setting of the main house. This wall contributes positively to the special interest and significance of the heritage asset. Given the wall's curtilage listed status, its conservation is afforded the same great weight as Court Lodge.

20. The open and landscaped grounds of Court Lodge have an historic, visual and functional connection with the main house. These grounds are clearly defined by boundary treatments, including walls, fences and mature landscaping. These grounds form part of the immediate setting of the listed building and it is from here that the asset is best appreciated. This immediate setting contributes positively to the special interest and significance of the heritage asset.

Church of St Martin of Tours

21. The Church of St Martin of Tours, a Grade II* listed building² which dates from the late 11th or early 12th century, extended and altered over time, including its restoration in 1857. The building is predominantly finished in flint and stone rubble with stone dressings and a tiled roof over. Based on the evidence before me, the special interest and significance of the Church of St Martin of Tours is largely derived from its historic and architectural interests. Important contributors in these regards are its age, surviving historic fabric, ongoing ecclesiastical use and connection with Brass Crosby.
22. The grounds of the Church of St Martin of Tours are clearly defined, in part, by the same boundary treatments as Court Lodge. Those enclosed grounds have a direct physical, visual, functional and historic connection with the listed church and form part of its immediate setting. These grounds provide a tranquil space within which the church is best appreciated, all set within verdant, rural surroundings. This immediate setting contributes positively to the special interest and significance of the church. The surrounding pastoral fields along with the appeal site form the wider setting of the church. This wider setting allows an appreciation of the interrelationship between the church and the surrounding rural community. This wider setting contributes positively to the asset's special interest and significance.

Conservation area

23. The appeal property is located within the Chelsfield Conservation Area (the CA).
24. The special interest and significance of the CA is largely derived from the preservation of its historic village core, set within a wider rural setting. Consistent building materials of brick, render and tile dominate the village and CA, together with flint and brick boundary treatments. The appeal property, as a prominent manor house, together with the adjoining church, both set within verdant grounds, positively contribute to the rural character and appearance of the CA and thereby to its significance as a designated heritage asset.

Heritage – appeal proposal and effects

25. The development, insofar as it relates to the appeal, involves a close-boarded timber fence along various sections of the northern boundary of Court Lodge. In particular, the Council objects to Section C, which sits above an historic flint

² List Entry Number: 1084343

and brick boundary wall. I have no reason to disagree with the Council's findings in respect of the other sections of fencing.

26. The flint and brick boundary wall measures between approximately 1.52 and 1.59 metres in height. Together with the timber fence, the overall height of the boundary in this location measures between approximately 2.57 and 3.02 metres in height.

Listed buildings

27. The fence positioned over the flint and brick boundary wall (Section C) is stark in appearance. It appears as a dominant feature that is disproportionately tall relative to the modest historic wall. The cumulative totality of the fence has notably and harmfully eroded the historic and rural setting of Court Lodge. Although Court Lodge has historically formed a residential property, the addition of the overtly domestic fence over the flint and brick wall has had a harmful urbanising effect. This diminishes the ability to appreciate the significance of Court Lodge and weakens the contribution that the immediate setting makes to the significance of the heritage asset. Additionally, the fence detracts from and dilutes the modest and rural appearance of the boundary wall, weakening its contribution to the principal listed building, Court Lodge.
28. The development has also involved physical repairs to the flint and brick wall and the affixing of fence supports against it. However, no substantive detail of those interventions has been provided. Whilst the resultant loss of historic fabric in this respect is not significant, this does not lessen the harm overall.
29. In a similar manner to the above, the fence positioned over the historic wall, has also harmfully eroded the historic and rural setting of the Church of St Martin of Tours, from which the fence is highly visible. It has diminished the ability to appreciate the significance of the asset and has weakened the contribution that the immediate setting of the church makes to that asset's significance.
30. The appellant argues that Section C replaced a previous fence which was in a state of disrepair and was becoming a hazard. Evidence in the form of photographs has been provided to compare the development with the previous arrangement. However, no specific dates have been provided, or planning history given, to demonstrate the length of time those structures had been in place. Nonetheless, a fence does appear to have been in place over the flint wall for some years.
31. Be that as it may, and although no precise measurements of that previous fence have been provided, there is no evidence before me to demonstrate that it reached a similar height to the existing fence. Moreover, the existing fence is not a like-for-like replacement for the previous fence. Based on the evidence before me, that previous fence was constructed of panels of horizontal boards whereas the existing fence is a solid, vertical close boarded fence.
32. I acknowledge that the fencing is largely out of view from the public realm, albeit visible from some public vantage points, including adjoining Church Road and the footpath through the churchyard. However, listed buildings are safeguarded for their inherent architectural and historic interest, irrespective of whether public views of the building or any of their curtilage structures can be gained.

33. Overall, I conclude that the development fails to preserve the Grade II listed building, Court Lodge, and its setting, and fails to preserve the setting of Grade II* listed building, the Church of St Martin of Tours. Consequently, the development has harmed the significance of these designated heritage assets. In doing so, it is contrary to the requirements of Section 66(1) of the Act.

Conservation area

34. Notwithstanding the harm that has been identified above in respect of the listed building, the position, nature and extent of the development is such that it is not, apart from in some limited locations, readily visible from public vantage points within or adjacent to the CA. Unlike listed buildings, and Green Belt, the significance of a CA is dependent upon how it is experienced. For the reasons above, I consider that the development has a neutral effect on, and therefore preserves, the character and appearance of the CA as a whole.
35. Accordingly, I conclude that the development preserves the character and appearance of the CA and meets the requirements of Section 72(1) of the Act. As such, it does not harm the significance of this designated heritage asset. In this respect, the development would comply with the relevant provisions of LP Policies 37 and 41 and London Plan Policy HC1, which in summary seek to protect heritage assets. Nevertheless, the lack of harm in this respect does not weigh for or against the appeal and does not alter my conclusion in respect of the listed buildings.

Public benefits and balance

36. Paragraph 199 of the Framework advises that when considering the impact of a 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 alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.
37. With reference to Paragraphs 201 and 202 of the Framework, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given the extent of the development relative to the listed buildings and their settings, as a whole, I find the harm to be 'less than substantial' in this instance but, nevertheless, of considerable importance and weight. Under such circumstances, Paragraph 202 advises that this harm should be weighed against the public benefits of the development, which includes securing the asset's optimum viable use.
38. I accept that the development has resulted in the removal of the clearly dilapidated fencing which, according to the evidence, previously stood along the boundary of the appeal site (Section C). I also accept that the appellant has invested considerable sums of money in replacing the fencing and repairing elements of the curtilage listed wall, and note that the Church administration is satisfied with the development. Nevertheless, the primary outcomes of the development, namely the securing of the appeal property, are private benefits to the appellant and future occupiers. Whilst I wholly appreciate the appellant's desire to provide a private, safe and secure place to live, this does not provide clear and convincing justification for the identified harm to the significance of the listed buildings. Moreover, the appeal evidence demonstrates that the incidences that are said to have led to the development being carried out

largely took place during the COVID-19 pandemic lockdowns and, prior to this, had not been an issue.

39. Overall, the weight that I ascribe to the public benefits that accrue from the development is not sufficient to outweigh the considerable importance and weight that I attach to the harm I have found. Accordingly, the development fails to preserve the Grade II listed building, Court Lodge and its setting, and the setting of Grade II* listed building, Church of St Martin of Tours. Although I have found the development preserves the character and appearance of the CA, this is a neutral consideration in the balance.
40. Accordingly, the development is contrary to the requirements of Section 66(1) of the Act, and the relevant provisions of the Framework which seek to conserve and enhance the historic environment. The development also conflicts with the relevant provisions of LP Policies 37 and 38 and Policy HC1 of the London Plan which, in summary, seek to achieve high quality design in development and to protect heritage assets.

Other considerations

41. The Framework is clear that substantial weight should be given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the development, is clearly outweighed by other considerations.
42. I accept that the fence does not appear as 'isolated' by reason of it being located near to established buildings. I also accept that the previous fence required maintenance and potential replacement. However, these are not benefits and I afford these matters minimal weight.
43. The appellant sets out that the appearance of the fence, and materials used, are in keeping with the character and appearance of the area and that repairs have been made to the historic wall. Nevertheless, I have found the overall size and dominance of the fence over the flint and brick wall to cause harm to the significance of designated heritage assets. Therefore, I afford this matter limited weight.
44. As set out above, I fully acknowledge the desire of the appellant to improve the security of the site and the adjoining tenanted properties. However, it has not been demonstrated that the development before me is the only realistic solution to this issue and that other, less harmful, schemes could not deliver the same objectives. I therefore give this matter only limited weight.
45. Substantial weight must be given to the harm to the Green Belt by reason of the inappropriateness of the development, and the reduction in its openness. I have also found that harm is caused to the settings of Grade II and Grade II* listed buildings. I attach substantial weight to that harm. Therefore, I find that the other considerations in this case do not clearly outweigh the harm identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Green Belt Balance and Conclusion

46. The development is inappropriate development in the terms set out by the Framework and harms the openness of the Green Belt. The Framework requires that substantial weight should be given to any harm to the Green Belt.

47. Moreover, the development fails to preserve the settings of the listed buildings known as Court Lodge and the Church of St Martin of Tours. The harm to the significance of those designated heritage assets is less than substantial, but still of considerable importance and weight. It is not outweighed by any public benefits.
48. Overall, the harm identified is not outweighed by the other considerations and therefore the very special circumstances necessary to justify the development do not exist. Consequently, I conclude that the appeal should be dismissed.

A Price

INSPECTOR