
Appeal Decision

Site visit made on 24 November 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19 January 2024

Appeal Ref: APP/B3030/C/23/3324868 65 Westhorpe, Southwell NG25 0NE

- 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 Mr Benjamin Clarke against an enforcement notice issued by Newark & Sherwood District Council.
- The enforcement notice, numbered 22/00118/ENFB, was issued on 31 May 2023.
- The breach of planning control as alleged in the notice is *Without planning permission, operational development consisting of the erection of 2 sets of gates along the front boundary of the Land, adjacent to the highway.*
- The requirements of the notice are to reduce the height of the two sets of gates to a height not exceeding 1 metre.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended ('the 1990 Act').

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Main Issue

1. The Council's reasons for issuing the notice concerned the effects of the development on the Southwell Conservation Area and to the setting of a nearby listed building at 58 Westhorpe. The effects of the development on heritage assets is thus the main issue in the appeal.

Reasons

2. The gates in question are each around 2m high and painted an off-white colour. Although the gates have been erected without the requisite planning permission, the Council's notice does not seek their removal entirely, but a reduction in their height to not more than 1m. This underenforcement is thus the context within which the effect of the gates on the relevant heritage assets falls to be considered.
3. Those heritage assets consist of the Southwell Conservation Area ('CA'), consisting of much of the south side of the beautiful town of Southwell, and centred around the Grade I Listed Minster. The appeal site lies towards the western extremity of the CA, off the main Oxtun road on the narrower residential street of Westhorpe. The site lies opposite a paddock and at a point of urban to rural transition, with the former farmhouse at no. 58, the Grade II Listed building, to its northeast with some intervisibility between the sites. The appeal site lies within the wider although not immediate setting of no. 58.

4. The Southwell Design Guide advises that boundary treatments should reflect the local vernacular. Whilst policy DH3 of the Southwell Neighbourhood Plan does not contain anything of direct application, its supporting text explains that heritage conservation is a particular local priority and that development proposals should respond to the particular characteristics of the CA in their location. Policy DH1 requires development proposals to demonstrate how they have taken account of the Design Guide and any relevant CA appraisals. The Council's Local Plan policies, specifically Core Policy 14 and Development Management Policy DM9, are consistent with national policy ('the Framework', including the iteration issued in December 2023) which in turn reflects the statutory obligations arising under the Planning (Listed Buildings and Conservation Areas) Act 1990. They are specifically found in sections 66 and 72 of that Act; namely to have special regard, in the case of a Listed building, to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses and, in the case of a Conservation Area, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. The Framework requires that harm to heritage assets (amounting to less than substantial harm, as the Council say applies here) should be clearly justified and outweighed by other considerations of public benefit if it is to be permitted.
5. The gates have replaced former five-bar gates thought by the Council to be more appropriate to the relevant heritage assets than the close-boarded gates that have now been erected. The appellant does not seek to justify any harm caused, having carried out the development oblivious to the need to obtain planning permission. It is accepted that the present colour of the gates is somewhat insensitive, and the offer is made to remove one set of them (the secondary set at the western end of the front boundary). However, the Council's preference for a five-bar gate would be impractical for the appellant in view of the need to restrain dogs and children and to deter unwanted entry onto the property. He draws to my attention several sets of similarly-sized and close-boarded gates in the vicinity including, as I observed during my site visit, an almost identical set at Hall Farmhouse as well as others closer to the appeal site.
6. The Council seek to emphasise that the presence of similar developments is not an indication of their acceptability, pointing out that the majority of planning enforcement cases are not proactively sought out by officers of the Council, but instead result from reports or complaints. Accordingly, say the Council, the potential presence of similar developments that have not resulted in enforcement action cannot be considered to be material considerations when considering the acceptability or otherwise of the development that is the subject of the appeal.
7. Whilst accepting that planning enforcement may be a reactive service, in the absence of any indication by the Council that it is sought to remove any other gates in the vicinity I accept that the other sets of gates referred to by the appellant form part of the local vernacular. The appellant specifically points out two similar sets of gates that have received planning permission, one of which are to the front of a listed building. Whilst accepting that five-bar gates would generally be more appropriate to this semi-rural locality and historic setting, I do not find the particular type of gates found in the area to be of a consistent style: the historically significant boundary treatments seen in the area are the brick boundary walls rather than any particular form of gate.

8. The gates in question are set within a tall boundary hedge; taller than the gates themselves. This serves to significantly diminish their impact. Whilst I accept the thrust of the Council's point that the gates give something of a defensive impression, the front boundary treatment at the site is, although otherwise soft landscaped in the form of the hedgerow, designed not to allow overlooking of the site which is otherwise secluded from the street scene. The gates in themselves do not add to this sense of seclusion.
9. The Council's suggestion of reducing the height of the gates to no more than 1m would overcome this 'defensive' aspect of the gates, but they would remain close-boarded and, I should presume, would remain painted in the present off-white colour that is so jarring in the street scene. In the round, I find the appellant's suggestion of painting the gates in a more sympathetic colour to be considerably more beneficial to the heritage assets of concern here than the outcome that would be achieved by upholding the Council's notice in its present form. This is because the existing colour of the gates is much more unsympathetic than is their height.
10. I have given consideration to the parties' cases as to the removal of one set of gates: this is also offered by the appellant. Those proposed to be removed are the western set, which appeared to me to be set back a little further from the highway and not having the same impact on the street scene as the eastern set which are slightly larger as they incorporate a pedestrian entrance. In the event I do not find the removal of one set to be necessary because the effects of both sets of gates could be neutralised with a suitable colour scheme.
11. Taking the requirements of the Council's enforcement notice as the baseline position here, I do not find that this outcome would affect the setting of the Listed building at no. 58 or fail to conserve or enhance the CA. The resulting development would therefore comply with the development plan for the area and conditional planning permission will be granted.

Conditions

12. It follows from my reasons in the foregoing paragraphs that a condition is required in order to ensure that the gates are painted and maintained in a suitable colour and finish, in order to overcome the reasons for the notice having been issued.

Conclusion

13. For the reasons given above I conclude that the appeal should succeed on ground (a). Planning permission will be granted for the matters alleged and the enforcement notice will be quashed.

Formal Decision

14. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of two sets of gates to the front boundary of the property on land at 65 Westhorpe, Southwell referred to in the notice, subject to the following conditions:
 - (1) Unless within 3 months of the date of this decision details of a painted or stained finish to the gates hereby permitted have been submitted to the

local planning authority for approval, and unless the approved finish is completed within 2 months of the local planning authority's approval (or such longer timescale as may be approved) the gates hereby permitted shall be removed in their entirety.

- (2) The finish approved to the gates pursuant to the above condition shall, following application, thereafter be retained and properly maintained in accordance with the approved details.

Laura Renaudon

INSPECTOR