



Appeal Decision

Site visit made on 23 April 2024

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2024

Appeal Ref: APP/C1760/C/23/3326189

Land South West of Mill House, Mill Lane, Longparish, Hampshire

- 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 Anthony Buckingham against an enforcement notice issued by Test Valley Borough Council.
 - The enforcement notice was issued on 24 May 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a green metal fence and metal palisade gate, over 1 metre in height and adjacent to the highway.
 - The requirements of the notice are: (i) Permanently demolish the green metal fencing and metal palisade gate. (ii) Remove from the land all materials and waste resulting from compliance with the step (i).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. There has recently been a revised National Planning Policy Framework (the Framework) published by Government. It however does not raise new issues that are determinative for the purposes of my assessment and therefore injustice to the parties does not arise.

The ground (a) appeal

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area, having particular regard to the setting of a Grade II Listed Building (the LB) and whether the proposals would preserve or enhance the character or appearance of the Longparish Conservation Area (the CA).

Reasons

4. The site is situated alongside a small bridge which crosses the River Test and which is part of a rural road that is private to the north, where it runs alongside a Mill. The road is therefore not likely used regularly for vehicular traffic but connects with footpaths and provides an area for recreation alongside the

water. As a result, the area has a tranquil and natural character that is dominated by well-established riverside vegetation and water.

5. The development before me relates to a boundary treatment which can be broadly broken down into 3 sections, namely a metal gate, metal fencing crossing the bridge, and a further section of metal fencing. These boundary treatments are situated adjacent to the highway.
6. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA) 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 which it possesses. Additionally, Section 72 of the LBCA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area.
7. These are accordingly heritage assets and so are irreplaceable. Therefore, any harm or loss requires clear and convincing justification. The National Planning Policy Framework (the Framework) advises that any harm which is less than substantial must be weighed against the public benefit of the development.
8. The CA appraisal places the site in the Upper Mill area. This area is dominated by the Grade II Listed Mill complex, which retains its original waterside setting, largely without the intrusion of recent development. The isolated position of the Mill, its association with the surrounding water courses and its verdant and natural river environment are significant contributors to the character and appearance of the wider CA and important components of the Listed Building's setting that contribute to its significance.
9. As found by a previous Inspector in their decision letter¹, the existing metal gate has a harsh and urban appearance. It is of a design that is commonly found in industrial settings, and as a result appears wholly out of place in the environs of the appeal site. I also find it to be untypical and injurious to the setting of the LB.
10. As also found by a previous Inspector, it is particularly harmful to see a length of fence extend along the side of the bridge. I also find that before me particularly incongruous and acts to provide separation in views from the public realm across the water. Whilst the remaining section of fencing is of a lighter weight design, it nevertheless does not integrate with its surroundings owing to its metal construction and height.
11. The 3 sections of boundary treatments, whether taken individually or as a whole, therefore result in a change of character and which adversely affect wider views as well as the setting of the LB from this vantage point, whether or not they are deemed important by the appraisal. The boundary treatment erodes the qualities that contribute to the significance of the heritage assets and landscape character. It does not have a small impact.
12. It is therefore not carefully or well designed and I do not accept that its colour or mesh design mitigate its impact. I also do not accept that planting, controlled by planning condition, would mitigate the impact of the

¹ Appeal ref 3310807/8

developments before me given it would not be practicable to plant along the bridge or in front of the gate.

13. I appreciate there is a section of close boarded fencing in close proximity of the site which is said to be a recent replacement. Whether or not this is lawful, I am not persuaded that other examples of potentially inappropriate fencing justify the retention of that before me.
14. I conclude the development is harmful to the setting of the LB and neither preserves nor enhances the character or appearance of the CA in contravention of Policies E1, E2 and E9 of the adopted Test Valley Borough Revised Local Plan DPD, 2016 (the LP). Together these Policies seek to ensure that development proposals integrate, respect, and complement existing character including landscape character and heritage.
15. In the terms of the Framework, the development results in less than substantial harm to the heritage assets and it must therefore be weighed against any public benefit that would arise from it.
16. I appreciate the security of the fishery is essential for it to function effectively and efficiently. However, there is only limited evidence of poaching and trespassing before me and that of vandalism amounts to damage to a small sign. Whilst the fencing and gate is said to have largely stopped such incidents, and which would also accord with Policy CS1 of the LP, I do not find this policy compliance nor the limited prior examples pertaining to site security and crime to outweigh the harm I have identified, even though I accept it would otherwise be desirable to do so². I also have very limited evidence that there has been harm to people or damage to a sensitive ecosystem. Moreover, I am not persuaded that all other feasible options have been pursued and/or discounted.

Other Matters

17. Whilst there would be interference with the First Protocol³ there is a legitimate aim that is in the public interest, namely in respect of the Main Issue above, and which is then necessary and proportionate in light of my findings.

Conclusion

18. There are no material considerations of sufficient weight that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the ground (a) appeal should fail.

The ground (f) appeal

19. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives steps.

² Crime and Disorder Act 1998; Framework para. 101

³ Article 1 Human Rights Act 1998

20. The breach of planning control relates to the entirety of the fencing and gate. There is also little evidence before me that any of it could have been erected through utilising permitted development rights. The ground (a) appeal has failed, and I did not find any part of the fencing or gate to be acceptable. It would therefore be inappropriate to under-enforce to retain part of the development.

21. As no other lesser steps are before me, the appeal on ground (f) therefore fails.

The ground (g) appeal

22. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short as 6 months is requested to allow time to agree an acceptable solution with the Council and for a revised planning application to be processed.

23. However, the Council highlights that the appellant has been in communication with them regarding acceptable and/or alternative schemes for over three years already, which is not disputed.

24. The desire to then pursue an alternative scheme does not demonstrate why the time given to comply with the notice is too short, noting that the works required are not in themselves unduly time consuming or difficult.

25. Whilst the appellant seeks an extension of time for practical reasons, and to avoid the site being vulnerable to theft, I am equally mindful that the breach of planning control should not be unduly perpetuated. The period given of 3 months therefore strikes the appropriate balance, and I also note the Council has powers under Section 173A(1)(b) of the Act albeit that would be a subsequent matter and is entirely for them.

26. The appeal on ground (g) therefore fails.

Overall Conclusion

27. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

28. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR