



Appeal Decision

Site visit made on 8 May 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th June 2024

Appeal Ref: APP/M2270/C/23/3329626

Land at Top Lodge, Pembury Road, Tonbridge, Kent TN11 0QG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Gavin Linsdell against an enforcement notice issued by Tunbridge Wells Borough Council.
- The notice was issued on 23 August 2023.
- The breach of planning control as alleged in the notice is without planning permission the construction of a gymnasium outbuilding within the curtilage of a listed building.
- The requirements of the notice are to:
 - (i) Demolish the gymnasium outbuilding on the Land as shown in its approximate location hatched green on the attached plan.
 - (ii) Remove all resultant materials, rubble and rubbish arising from compliance with step (i) above from the Land.
- The periods for compliance with the requirements is: six 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). 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 Decision: The appeal is dismissed and the enforcement notice is upheld.

Application for costs

1. An application for costs was made by Tunbridge Wells Borough Council against Mr Gavin Linsdell. This application is the subject of a separate Decision.

Preliminary Matters

2. In determining this appeal involving listed buildings I have had special regard to the desirability of preserving the buildings or their settings or any features of special architectural or historic interest which they possess in accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
3. The National Planning Policy Framework (the Framework) was re-issued during the course of the appeal. Changes to it in relation to the matters subject of the appeal were limited. I will take the latest version of the Framework into account in coming to my decision.
4. My attention has been drawn to a previous unsuccessful appeal (reference APP/M2270/W/22/3291698) relating to this development. I will take this into account in coming to my decision.

The Appeal on Ground (a) and the Deemed Planning Application

Main issue

5. Top Lodge is located within the Green Belt and the appellant and Council agree that the proposed development would not be inappropriate development within the Green Belt and would not harm the openness or permanence of the Green Belt. I see no reason to disagree with their conclusions in this regard.
6. As a result, the main issue is whether the outbuilding preserves the Grade I listed building of Somerhill, Grade II listed building of Top Lodge and its effect on the significance of the Grade II Somerhill Registered Park and Garden (RPG), or their settings.

Reasons

7. Top Lodge comprises a former gatehouse to the country house of Somerhill, constructed in the late 19th century. It is located outside a bend in the road, so in a prominent position on the main A21 leading from Hastings to London, and this entrance was, historically, the principal approach to the mansion. The gatehouse is constructed of various traditional materials, predominantly stone at ground floor with timber framing and white rendered inserts to the slightly jettied first floor. It is of a Tudor style with an intricate plan form and ornate architectural features. It was built by the Goldsmid family, owners of Somerhill, as one of a number of gatehouses occupied by staff of the family. Its significance and special interest arises from its historic links to the main house of Somerhill with its historic park and garden, and its historic fabric and ornate, high quality architectural features.
8. Somerhill was a high-status country house dating to the early 17th century at a high point overlooking the town of Tonbridge. It is now in use as a school. It is an important and substantial building with a historic and intimate association with the surrounding parkland and associated buildings, such as the gatehouses including Top Lodge. Its significance arises from its grand architectural qualities, surviving historic fabric and remaining relationship with the surrounding landscape. That surrounding landscape, including the associated buildings, are an important part of the setting, making a valuable contribution to the significance and the special interest of the heritage asset of Somerhill.
9. The significance of the RPG arises from the relationship with Somerhill as a mature, natural park on a hill with extensive views. It was developed through the 19th and 20th centuries within a late 18th to early 19th century park. Top Lodge makes a positive contribution to the significance of the park and garden as the southern boundary and historic entry point to the estate. Whilst it is no longer a main entry or exit to the estate, its contribution to that significance and special interest remains.
10. Top Lodge is largely surrounded by mature woodland that significantly reduces views of the building from the surroundings. However, it is visible in views from a section of the A21, described as "a not insignificant stretch" in the previous appeal decision, particularly from north-bound vehicles as they head down the hill. That relationship is unlikely to have significantly changed as the route of the road in the immediate vicinity has not substantially altered, even during the dualling of the road and alterations to the junction outside Top Lodge in

recent years, except that a fence has been erected adjacent to the carriageway in front of the property.

11. The outbuilding is constructed with a stone plinth with timber framing above. In this regard, it reflects the materials and is similar to their arrangement on Top Lodge. However, its gable ends are significantly shallower than those of Top Lodge, albeit there is some variety on those of the gatehouse. It is of a simple rectangular layout, lower in height and set behind Top Lodge when viewed from the A21 and on the access drive.
12. I consider that the outbuilding now appears at least as prominent as Top Lodge itself due to the size, predominantly light coloured walls, topography and angle of view through surrounding woodland when viewed from the A21. As existing tree planting matures, or if further tree planting were to take place, the visibility of the building may reduce to some extent. Even in closer views, its light colour, size and location means that it visually competes to some extent with Top Lodge and diminishes the way the listed building is experienced from its surroundings. The previous decision described Top Lodge as no longer "experienceable as an isolated and outlying single entity consistent with its inception and historic purpose" due to the addition of the outbuilding.
13. In relation to the relationship between the gym and Somerhill, as the previous decision states: "There is no intervisibility between the gym and Somerhill and it occupies a small peripheral part of the RPG. However, the fundamental alteration that has occurred to Top Lodge's immediate setting means that it can no longer be read as an impressive standalone building consistent with its historic role as a gateway and perimeter marker to Somerhill and its surrounding designed landscape. As such, the gym is incongruous to Somerhill's setting and appears as an unexpected and undesirable addition at the historic principal entry point to the estate. It thus diminishes, albeit in a modest way, the heritage significance of both Somerhill and the RPG."
14. I note that there was a previous brick outbuilding at the property. It was likely to have been located closer to the A21 but within woodland and lower on the slope of the hill. As a result, the location, lighter coloured materials and likely larger size, mean that the gym is more prominent than the previous outbuilding within the setting of Top Lodge and Somerhill as well as within the RPG.
15. My attention has been drawn to North Lodge, another gatehouse to Somerhill and of a similar style and age to Top Lodge, located on the entrance to the estate from a slip road to the A21. It is prominent in views from that road and the adjacent roundabout. It is not individually listed, although may be within the curtilage and/or setting of Somerhill and the RPG. I note that North Lodge has been extended and outbuildings constructed, but I have limited information as to whether these were approved or whether they were considered to preserve the heritage assets and/or their settings. It is located within wooded parkland in a more secluded location at the bottom of the hill, such that the visibility of outbuildings is limited. The outbuildings appear to be of a different style to that constructed at Top Lodge. As a result, this outbuilding needs to be considered on its own merits.
16. For the reasons given above, I conclude that the outbuilding harms the contribution that setting makes to the special interest and significance of the listed buildings of Top Lodge and Somerhill and it harms the significance of the

RPG. In the language of the Framework that harm equates to less than substantial harm to the significance of the heritage assets. Nevertheless, this is a matter of considerable importance and weight in this case.

17. Paragraph 208 of the Framework establishes that, where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The benefits in this case relate to the need for the building to provide space for the appellant and his family. That is primarily a private benefit. Consequently, any public benefit is minimal and does not outweigh the identified harm to the significance of the listed buildings and RPG.
18. Therefore, the development does not comply with paragraph 208 of the Framework. It is also contrary to Policies EN1, EN11 and LBD1 of the Tunbridge Wells Borough Council Local Plan, Policy 4 of the Tunbridge Wells Borough Core Strategy and the Framework that seek to conserve and enhance heritage assets, including listed buildings and registered parks and gardens and have special regard to their settings. Where development would be likely to affect a historic park or garden the policies seek that no significant harm would be caused to its character, amenities or setting.

Other Matters

19. I note the reasons that the appellant began work prior to obtaining planning permission, such as availability of labour, and the associated costs. The appellant suggested that early discussions with Council Officers were positive, which lead them to proceed with the development. However, these matters do not outweigh the harm arising to the setting of heritage assets.
20. Other potential development at the property has been referred to, including boundary walling and new entrance driveway, extension to the house (including that approved in 2012) and construction of an annex or garage. However, these would be separate developments and are not in front of me to consider.
21. I understand that a number of changes may have been made to the listed building by a previous owner, but these are not subject of this enforcement notice.
22. My attention has been drawn to the demolition of other listed buildings to make way for widening of the A21 and speculation as to whether Top Lodge was also considered for demolition. However, those would have been subject of different considerations, including public benefits derived from the road widening, and I need to deal with this outbuilding on its individual merits.

Conclusion

23. For the reasons set out above, I conclude that on balance the development does not accord with the development plan as a whole. The appeal on ground (a) therefore fails.

Formal Decision

24. 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.

AJ Steen

INSPECTOR