



Appeal Decision

Site visits made on 30 April 2024 and 29 July 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2024

Appeal Ref: APP/B1930/C/22/3310392

Land at Toad Cottage 1 Bury Green Cottages and 1 Old Rectory Gardens, Wheathampstead, Hertfordshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Eva Anne Morris against an enforcement notice issued by St Albans City Council.
 - The notice was issued on 29 September 2022.
 - The breach of planning control as alleged in the notice is the erection of a fence on the boundary indicated in green on the attached plan Appendix 3.
 - The requirement of the notice is to: Remove the bush willow fencing installed to the north boundary of Toad Cottage 1 Bury Green Cottages and 1 Old Rectory Gardens, Wheathampstead indicated in green on the attached plan Appendix 3.
 - The period for compliance with the requirements is: 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) 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.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - In section 2 the deletion of the words "1 Rectory Gardens" and substitute instead the words "1 Old Rectory Gardens".
2. Subject to the above correction, the appeal is allowed and the enforcement notice is quashed. 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 a fence on land at Toad Cottage, 1 Bury Green Cottages and 1 Old Rectory Gardens, Wheathampstead, Hertfordshire, as shown on the plan attached to the notice.

Procedural Matters

3. A draft National Planning Policy Framework was published in July 2024. As the proposed changes would not materially affect the main issue or other matters in this case, the parties were not invited to make further comments. As the draft document is currently subject to consultation, it carries very little weight, but I have had regard to the current National Planning Policy Framework 2023 (the Framework).
4. The Wheathampstead Neighbourhood Plan 2020-2035 (WNP) was formally made on 12 July 2023. This document, which was still emerging at the time the appeal was made, now forms part of the development plan and I have determined the appeal on this basis.

5. At the site visit in April 2024, I was unable to gain access to Toad Cottage, 1 Bury Green Cottages ("Toad Cottage"), which is a listed building. As the Council's reasons for issuing the enforcement notice in part related to the effect of the fence on the setting of the listed building, I considered that access to the rear garden of the listed building was necessary. A further site visit was therefore arranged in July 2024 when access was provided by the owner of the listed building. The appellant and a representative from the Council were present at both site visits.
6. The appellant originally appealed on ground (a) only. Nevertheless, as part of the appellant's appeal submissions it was argued that the boundary between Toad Cottage and 1 Old Rectory Gardens was a wall, with the fence being erected inside the boundary of the appellant's property. This could be construed as a hidden ground (c) appeal. As such, the Council was given opportunity to consider and respond to the hidden ground (c) appeal, and I have determined the appeal with the additional ground.
7. The address specified in section 2 of the notice refers to "1 Rectory Gardens". However, it is clear from the appeal submissions and my site visits that the correct address is "1 Old Rectory Gardens". I will therefore correct the address specified in the enforcement notice. This can be done without injustice to either party.

Ground (c)

8. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control.
9. The appellant resides at 1 Old Rectory Gardens and contends that the boundary between the rear gardens of her property and Toad Cottage is a wall, with the fence erected around 40cm inside the boundary of her property. The Council consider that the fence does not amount to permitted development under Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"), and therefore constitutes a breach of planning control.
10. Subject to various conditions and limitations, Schedule 2, Part 2, Class A of the GPDO permits "*the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*". The Council are of the view that the fence has been erected within the curtilage of Toad Cottage and therefore fails to comply Class A.1(d) which states that development is not permitted if:

"it would involve development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building".
11. The GPDO does not attempt to define the term "curtilage" and there is no other all-encompassing, authoritative definition. Curtilage defines an area of land in relation to a building and is not a use of land. The extent of the curtilage of a building is a question of fact and degree, and it is therefore a matter for the decision maker, subject to the normal principles of public law.
12. The Council have referred to the case of *Sumption*¹, which is noteworthy as authority that a lack of historic connection between the land and a listed

¹ R (oao Sumption) v Greenwich LBC [2007] EWHC 2776 (Admin)

building can be a relevant factor, but it is not determinative. It is necessary to determine the status of the land from the factual situation existing at the date of the application. On the facts in *Sumption*, the curtilage did extend over a “recently expanded garden” where the land was clearly capable of such use, some work had been done to it, there was access to it, and it was part of the land attached to the building and being enjoyed with it. In those circumstances the historical lack of connection was not capable of carrying weight. The Court also made reference to the Oxford English Dictionary definition of “curtilage” as “*an area of land attached to a house and forming one enclosure with it*”.

13. In addition to the erection of the fence subject of this appeal, a boundary wall between Toad Cottage and 1 Old Rectory Gardens was also demolished. A listed building enforcement notice (LBEN) dated 29 September 2022 was issued requiring the demolished wall to be re-built. No appeal was made against the LBEN. At the time of my site visit in July 2024 the wall appeared to have only been partially re-built as it did not extend the full length of the boundary. Whilst it has not been expressly confirmed by the main parties, from the available evidence it appears that the LBEN has not yet been fully complied with.
14. Nevertheless, it is apparent that at the time the enforcement notice was issued the fence formed the boundary between the two properties. Although the fence may have been erected marginally further north than the original position of the brick wall, it is clear that the fence and all of the land to the south of it was accessible and will have formed part of the land attached to Toad Cottage and was being enjoyed with it.
15. Despite the partial re-building of the brick wall, the fence continues to form the only boundary treatment along a section of the boundary between the rear gardens of the two properties. Part of the fence is situated immediately adjacent to a paved area which forms an outdoor seating area within the rear garden of Toad Cottage. In my view, the fence encloses an area of land that is attached to the listed building.
16. I therefore find, as a matter of fact and degree, that the fence is within the curtilage of the listed building. It is not, for this reason, permitted development under the provisions of Class A of Part 2 of Schedule 2 of the GPDO. Accordingly, the appeal on ground (c) fails.

Ground (a) and the deemed planning application

Main Issues

17. The main issues are whether the development a) preserves the setting of the Grade II listed building known as “Toad Cottage, 1 Bury Green Cottages”, and b) preserves or enhances the character or appearance of the Wheathampstead Conservation Area.

Reasons

18. The appeal seeks planning permission for a fence which has been erected between the rear gardens of 1 Old Rectory Gardens and Toad Cottage, 1 Bury Green Cottages. Toad Cottage is a Grade II listed timber framed building dating from the 17th century, which has been re-fronted with purple bricks. Extensions believed to date from the 18th century have been added to the rear. The

- building was originally one cottage before being sub-divided into the existing semi-detached properties known as 1 and 2 Bury Green Cottages.
19. In my view the building has historic interest as a surviving example of a 17th century residential property situated on approach to the centre of the village, along with architectural interest derived from its simple form and consistent treatment and detailing of traditional materials. I consider the setting of the building, insofar as it relates to this appeal and its special interest, to include the open frontage and forecourt to the side, rear garden, and the views along the road within its immediate surroundings.
 20. The appeal site is located within the Wheathampstead Conservation Area (CA). The CA is focused around the historic spine of High Street, Hill Street, and Station Road in the centre of Wheathampstead village. Sloping down towards the river, High Street has the Grade I listed St Helen's Church and its churchyard at its heart along with several other listed buildings. Its special character is therefore derived, in part, by its large number of well-preserved buildings reflecting the evolution of the village over time.
 21. In the approach along Bury Green from the east the fence is set behind an expanse of shrubs and planting both within the curtilage of Toad Cottage itself, and the adjacent Parish Council garden. As a result, the fence is well screened and peripheral in the setting of the listed building. There are no prominent views of the fence when approaching along Bury Green from the west or along Old Rectory Gardens. Views of the listed building and along the road within its immediate surroundings are unaffected by the erection of the fence to the rear.
 22. Given the materials and construction of the willow fencing, which is further softened by planting and landscaping, I find that the fence does not appear as a harsh or incongruous feature and relates well to its setting. In addition, despite being relatively close to the rear elevation of Toad Cottage and exceeding the height of the partially re-built low-level brick boundary wall, the fence is not overly dominant or out of keeping with the listed building and its surroundings. I am therefore satisfied that the fence does not cause harm to the setting of the listed building or its significance.
 23. The front boundaries to properties in this part of the Conservation Area predominantly consist of low-level brick walls, hedging or low fences. However, the fence subject of the enforcement notice is sited between the rear gardens of the two properties and the front boundaries remain unaffected.
 24. As already set out above, the fence is particularly well screened and is not a prominent feature in the wider street scene with only partial views available. The presence of fences within the rear gardens of properties is not unusual in a residential setting such as this, and there is evidence of timber fences present in the surrounding area. This includes a very similar form of willow fencing used along part of the boundary of the adjacent Parish Council garden.
 25. The fencing is therefore appropriate in appearance and materials in relation to this particular context. The CA is not experienced differently as a consequence, nor is the significance of the CA affected.
 26. I therefore find that the development has a neutral effect on the setting of the listed building and preserves its significance. It also preserves the character and appearance of the CA. The development therefore accords with saved

policies 69, 85, and 86 of the City and District of St Albans District Local Plan Review (adopted November 1994), and policies W8 and W9 of the WNP. Together these seek to ensure that, among other things, developments complement local context and conserves the historic environment. The development also accords with the relevant advice in the Framework in this regard.

Conditions

27. I have considered the imposition of appropriate planning conditions, having regard to the six tests set out in the Framework. No suggested conditions have been put forward and given that the works have already been undertaken on site, I see no reason why any conditions would be necessary in this instance.

Conclusion on ground (a)

28. For the reasons given above, having considered the development plan as a whole and all other material considerations, the appeal on ground (a) succeeds and planning permission is granted for the development as described in the notice.

Conclusion

29. For the reasons given above, I conclude that the appeal succeeds on ground (a) and planning permission is granted in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended.

David Jones

INSPECTOR