

Appeal Decisions

Site visit made on 22 August 2024

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2024

Appeal A Ref: APP/A5840/W/24/3345997

Vacant Site at Red Post Hill (Rear of 19 Village Way), London SE21 7AN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Red Post Limited against the decision of the Council of the London Borough of Southwark.
 - The application Ref is 23/AP/2901.
 - The development proposed is: the erection of a 1.8m high wall to the southern end of the site along the boundary with Lydenhurst House.
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Appeal B Ref: APP/A5840/Y/24/3345996

Vacant Site at Red Post Hill (Rear of 19 Village Way), London SE21 7AN

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
 - The appeal is made by Red Post Limited against the decision of the Council of the London Borough of Southwark.
 - The application Ref is 23/AP/2902.
 - The works proposed are the erection of a 1.8m high wall to the southern end of the site along the boundary with Lydenhurst House.
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Decision – Appeal A

1. The appeal is dismissed.

Decision – Appeal B

2. The appeal is dismissed.

Main Issues

3. The appeal site is a parcel of land to the north west of the Grade II listed building, Lydenhurst House, also known as 19 Village Way. There is no dispute that both the outbuilding to the north of Lydenhurst House and the boundary wall enclosing three sides of the appeal site with Lydenhurst House are within the curtilage of the listed building and formed part of the land since before 1 July 1948. Accordingly, by reason of section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the 1990 Act), the outbuilding and boundary wall should be treated as part of the listed building.

4. The proposal subject of both appeals comprises the erection of a 1.8 metre high wall. This would span across the southernmost boundary of the appeal site with Lydenhurst House. The plans indicate that the proposed wall would be attached to the existing boundary wall at its westernmost end and the outbuilding at its easternmost end.
5. The two appeals concern the same scheme under different, complementary legislation. Having regard to the duties imposed by the legislation¹ and the provisions of the National Planning Policy Framework (the Framework), as well as the nature and location of the works and development proposed, I have considered both schemes together, identifying the main issues as follows:
 - whether or not the proposal would preserve the Grade II listed building, Lydenhurst House, or its setting or any features of special architectural or historic interest which it possesses;
 - Whether or not the proposal would preserve or enhance the character or appearance of the Dulwich Village Conservation Area;
 - The effect of the development on protected trees;
 - The effect of the development on biodiversity; and
 - Whether or not the proposal would be acceptable, having regard to relevant policies and guidance on fire safety.

Reasons

Heritage

- Special Interest and Significance

6. Lydenhurst House is described as an Early 18th century building in Georgian Style. The appellant's heritage statement highlights the special interest and significance of the building as being derived from its architectural and historic interest. I can agree with this, having regard to the evidence before me.
7. Pertinent to the appeals, the appellant suggests that the building's immediate setting of a private, hidden garden bound by an 18th century brick wall characterises the insular setting of the house. I agree that the heritage asset enjoys a private setting within the 18th century red brick wall that forms a prominent enclosure along three sides of the appeal site and the adjoining, current Lydenhurst House plot. The tithe maps provided by the appellant demonstrate that this enclosure formed the boundary of the historic garden area serving the house. Indeed, the appellant suggests that this was constructed at the same time as the house and that it forms a key part of the building's historic setting.
8. Although part of this enclosed land (i.e. the appeal site) is overgrown with mature trees and vegetation, I have no reason to doubt how the appellant suggests that this land was used historically in association with Lydenhurst House.

¹ Sections 16(2), 66(1) and 72(1) of the 1990 Act.

9. I can agree that the mature vegetation on the appeal site acts as an attractive green backdrop and contributes to the building's significance by virtue of it being within its setting. In addition to this, when compared to the area outside of the boundary wall enclosure, the appeal site provides a more tranquil area within which the heritage asset can be better experienced.
10. However, the appeal site makes a greater contribution than this. Whilst I acknowledge that the appeal site is not maintained in the same way as the land closest to Lydenhurst House, it is enclosed with the heritage asset in a manner that does not appear to have substantially changed since the construction of the house and its enclosure. As such, the original purpose of the land enclosed with Lydenhurst House, which includes the appeal site, is still legible. For this reason and for the reasons set out above, the setting of the heritage asset, including the appeal site, makes a substantial contribution to the special interest and significance of Lydenhurst House. In this regard, I am in agreement with the findings of the previous Inspector².
11. Whilst there may well be limited visibility of the northern section of the existing wall, it is intact and still serves the purpose of enclosing the appeal site with the current Lydenhurst House plot. The existing wall is a physical reminder of the extent of land intended to serve the main house and within which the heritage asset is best experienced and its significance appreciated.
12. As for the outbuilding, there is no dispute that this has been substantially altered. Nevertheless, the purpose for which it was historically built is still legible and it remains a building that is subordinate to the main house.
13. For the reasons given above, both the outbuilding and the existing wall contribute to the special interest and significance of the listed building.
14. The Dulwich Village Conservation Area Appraisal, dated February 2006 (CAA), points to the historic and architectural interest of the Dulwich Village Conservation Area (DVCA), which comprises its special interest and significance. The CAA advises that the character of the DVCA is established by the historic layout of property boundaries and thoroughfares, the sense of openness and greenery, the street furnishings and hard and soft surfaces, routes through the area, views along streets as well as between buildings and other townscape characteristics. The CAA says that all of these make a positive contribution to establishing the special interest of Dulwich village.
15. Of relevance to the appeal, the CAA notes that the open spaces formed by private, large rear gardens have generally been preserved. It acknowledges that there are a few examples of gardens being developed for housing, and says that this has largely been at the cost of the village's open character. It points to the adjoining Pond Mead as an example of this. Nevertheless, Lydenhurst House and its curtilage, including the outbuilding and formal brick boundary wall enclosure, contribute positively to the character and appearance of the DVCA as a whole, and its significance as a designated heritage asset.

² Appeal decisions APP/15840/E/06/2015424, APP/15840/A/06/2016943, APP/15840/E/06/2015440 and APP/15840/A/06/2017118

- The Effect of the Proposal

16. Paragraph 205 of the Framework informs that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 206 goes on to say that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
17. There is no dispute that the historic garden area serving Lydenhurst House comprised the current Lydenhurst House plot and the appeal site. As noted above, the proposed wall would span across the width of this historic garden area, physically and visually severing the appeal site from the remaining land serving Lydenhurst House. At a height of 1.8 metres, it would form a substantial, permanent impediment across the land that formed the historic garden to the House. The effect of this would be to amputate the appeal site and the historic wall enclosure around it from Lydenhurst House.
18. Clearly the appeal site is not maintained in the same manner as the current Lydenhurst House plot. The legal severance of the appeal site from Lydenhurst House is a likely contributing factor. Whilst, as I note above, the appeal site still provides a tranquil space within which the heritage asset can be experienced, I acknowledge that it is not in a condition that reflects its historic purpose. Nevertheless, the connection of this land to Lydenhurst House is still obvious. The proposal would interfere with this connection, causing detriment to the legibility of the historic garden of the House. It would, therefore, have a negative effect on how the heritage asset would be experienced and its special interest and significance appreciated from within the appeal site.
19. I cannot agree with the appellant's suggestion that the proposal would reinstate the original composition of the garden. Lydenhurst House was constructed with a large, enclosed garden to serve it, which includes the appeal site. The fabrication of a smaller enclosed garden area with Lydenhurst House would turn its back on this element of the heritage asset's special interest.
20. I acknowledge that the hedgerow and vegetation along the boundary of the appeal site with Lydenhurst House has had the effect of separating the two areas of the former historic garden, to a degree. Although intended as a boundary treatment, this landscaping is nevertheless reflective of the verdant character of the large garden plots described in the CAA and the wider DVCA. The effect of this hedgerow boundary in separating the appeal site from Lydenhurst House is not, therefore, as notable as would be the case with the proposed 1.8 metre high solid brick wall.
21. In addition to the above, the plans indicate that the proposed wall would be attached to the listed building (i.e. attached to the existing enclosure and the outbuilding) at both its western and eastern end. Despite this, I acknowledge that the wall would do little to alter the character or form of the outbuilding, such that it would diminish the contribution that this building makes to the special interest and significance of the heritage asset. I cannot, however, say the same with regard to the existing wall. As I note

above, the proposal would physically separate both the land and the existing wall enclosing the appeal site from the current Lydenhurst House plot. This would have a negative effect on the legibility of the historic purpose of this part of the existing enclosure. It would, therefore, follow that the contribution made by the existing wall to the special interest and significance of the heritage asset would be diminished.

22. Notwithstanding this, limited details have been submitted to demonstrate the means by which the new wall would be attached to the existing structures, including the extent of interference with the historic fabric of the existing wall and outbuilding that might be necessary to provide stability to the wall. I have considered whether a condition could be imposed to require the necessary details to be submitted. However, without an indication of the extent of intervention necessary, I cannot be satisfied that the proposal would not have a negative effect on the contribution these structures make to the special interest and significance of the listed building by reason of any interference with its historic fabric.
23. I acknowledge that the design and materials of the proposed wall reflect the historic enclosure that is part of the heritage asset. This does not, however, alter my conclusions with regard to the effect of the development and works on the heritage asset and its setting.
24. My attention has been drawn to the planning permission for the development of two detached homes on the appeal site. Having regard to the evidence before me on this matter, the current condition of the site is not likely to be permanent. Indeed, if developed, the character of the appeal site is likely to change. That said, there is no suggestion that the new development would not be enclosed by the existing boundary wall with Lydenhurst House. Neither is it suggested that there is permission for the new development to be separated from the current Lydenhurst House plot by anything more than a landscaped boundary similar to the existing. For these reasons the development of the appeal site does not alter my conclusions in this case.
25. For the reasons set out above, I conclude that the proposal would not preserve the Grade II listed building, Lydenhurst House, its setting and any features of special architectural or historic interest which it possesses. In concluding as such, I have had regard to the requirements of sections 16(2) and 66(1) of the 1990 Act. Accordingly, the proposal would cause harm to the significance of the listed building.
26. I note above the contribution made by open spaces formed by private, large rear gardens to the special interest and significance of the DVCA. The proposal would diminish the legibility of the historic garden serving the Lydenhurst House by physically dividing it with a substantial and permanent structure.
27. That the proposal is unlikely to be visible from outside of the appeal site and the current Lydenhurst House plot does not diminish the effect the scheme would have on the DVCA. Indeed, private gardens are not usually visible from public vantage points, yet the CAA recognises the contribution made by historic gardens, such as that still legible at the appeal site and Lydenhurst House, to the special interest and significance of this conservation area.

28. In view of the above, the proposal would have an adverse effect on the contribution the appeal site makes to the character and appearance and thus special interest of the DVCA. For this reason, and having regard to the requirements of section 72(1) of the 1990 Act, the scheme would fail to preserve or enhance the character and appearance of the DVCA when considered as a whole, and would cause harm to the significance of this designated heritage asset.

- Heritage Balance

29. Due to the nature and extent of the proposal, I find the harm caused to the significance of the designated heritage assets would be individually and cumulatively less than substantial, but nevertheless of considerable importance and weight. In these circumstances, paragraph 208 of the Framework informs 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, where appropriate, securing its optimum viable use.
30. The appellant points to the benefits of the permitted development on the appeal site, which includes the provision of two homes, improvements to the condition of the site and the conservation of the existing wall that encloses the appeal site. They suggest that, in view of a legal covenant on the land requiring the construction of a boundary wall prior to any development, none of these benefits would be forthcoming in the event that the appeals are dismissed.
31. The Planning Practice Guidance on the Historic Environment informs that public benefits should flow from the proposed development. Whilst I understand the connection between the proposed wall and the housing development, the benefits identified above flow from the latter and not from the proposal before me. The benefits of the housing scheme would have been considered when permission was granted for it, so to count those benefits again in this case would not be appropriate. In addition to this, I can see no mechanism for ensuring that the housing scheme and, therefore its benefits, would materialise in the event that I allow the appeals.
32. Even if I were to take account of the benefits of the housing scheme in this case, the weight I attribute to them would be limited. I acknowledge that the use of the land is unlikely to return to a use as garden associated with Lydenhurst House. Indeed, I acknowledge that such a use may not be its optimum viable use. However, there is little evidence to demonstrate the steps taken by the appellant to explore other means of overcoming the legal restriction or requirement on the development, such that I could conclude that the proposal before me would secure the suggested benefits and the optimum viable use of the appeal site.
33. There may be economic benefits associated with the construction phase of the proposal, although these would be limited in view of the scale of what is proposed.
34. All of the above considered, I cannot be satisfied that any clear and convincing justification exists for the identified harm to the significance of the designated heritage assets in this case. The Framework makes clear in

paragraph 205 that great weight should be given to the conservation of a heritage asset. The public benefits I have identified are not sufficient to outweigh the harm that would occur to the significance of the Grade II listed building and the DVCA.

35. For the above reasons, I conclude that the proposed works and development would fail to preserve the Grade II listed building, Lydenhurst House, its setting and any features of special or historic interest which it possesses. The proposal would also fail to preserve or enhance the character and appearance of the DVCA. Accordingly, the proposal would conflict with chapter 16 of the Framework.
36. In view of the above, the proposal would fail to accord with Policy HC1 (Heritage Conservation and Growth) of the London Plan, dated March 2021 (LP), as well as Policies P19 (Listed buildings and structures), P20 (Conservation Areas) and P21 (Conservation of the historic environment and natural heritage) of the Southwark Plan 2019-2036, adopted February 2022 (SP). These require, amongst other matters, that development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings. There is also a requirement to provide robust justification for any harm to the significance of the listed building that results from a proposed development. Furthermore, for development to be permitted, Policy P20 requires it to preserve or enhance the character or appearance of conservation areas.

Trees

37. The appellant's arboricultural note demonstrates that the proposed wall would be within close proximity to a number of protected trees within the appeal site. In particular, the plan accompanying the arboricultural note shows that the wall would be located particularly close to the Weeping Willow (T8) and Yew (T18), both described as being in a good condition. It would also be constructed close to T17, described as being in a fair condition. The root protection areas of T4 and T5, both cherry trees, would also be affected. The note identifies these trees as being in a good condition.
38. Whilst there is a dispute between the parties regarding whether or not T8 is visible from outside the site, I was able to appreciate the verdant character of the appeal site from the adjoining highway, which is likely to have included a view of the canopy of T17 and T18, their location being close to the eastern boundary. Notwithstanding this, there can be no doubt that T8 in particular, as well as T17, T18, T4 and T5 make a significant contribution to the verdant character of the appeal site and the adjoining Lydenhurst House plot, and that these trees add to the amenity of the area. Having regard to the condition of all but one of the trees referred to above and the contribution they make to the amenity and character of the area, including the wider DVCA, these trees have a high value.
39. The arboricultural note suggests that, provided certain measures are put in place, including excavation for the footings by hand and the protection of roots greater than 25mm, the construction of the wall would not pose a risk to the long term stability or health of the protected trees. This assessment has, however, been provided without the detailed foundation design of the

wall having been confirmed. It is assumed that concrete strip footing would be used.

40. I note the Council's objection to this form of foundation. It suggests that this would not be appropriate in such close proximity to the protected trees. The Council also says that continued root development may have an effect upon the wall and could lead to requests for the removal of the trees in the future.
41. I understand the parties' disagreement with regard to the acceptability of the wall in close proximity to particular trees on site and to the effect of future root growth on the wall. However, the parties' respective positions are not based on a confirmed foundation design. In view of this, I am unable to agree with the appellant with regard to the effect of the wall on the above-mentioned protected trees and that the wall would not result in the demand for their removal in the future. I conclude as such, having regard to the amenity value of the trees, the close proximity of the proposed wall to the protected trees, and the extent of root zone of some of the trees (T8 in particular) that would be affected by the wall.
42. All things considered, I conclude, on balance, that the effect of the development on protected trees would not be acceptable. I cannot, therefore, find the development in accordance with the requirement of Policy P61 (Trees) of the SP to retain and protect significant existing trees, particularly as the trees in question are, as listed in the Policy, designated with a Tree Preservation Order (TPO); have a high amenity value; are within a conservation area; and are within the curtilage and setting of a listed building.
43. Similarly, the development would conflict with the requirement of Policy P21 of the SP, which is that development must conserve and enhance the significance of, amongst other matters, trees within the curtilage of a listed building; trees that contribute to the historic character or appearance of conservation areas; and trees that are subject to a TPO.
44. There would also be conflict with Policy G1 (Green Infrastructure) of the LP, which informs that green features in the built environment should be protected and enhanced. Furthermore, the proposal would not accord with Policy P56 (Protection of amenity) of the SP. The Policy suggests that factors that can impact on amenity can be visual, and it informs that development would not be permitted when it causes an unacceptable loss of amenity. In addition, the proposal would not accord with the Framework and its emphasis on the value and need to retain trees.
45. The Council has also referred to LP Policy G5 (Urban greening) in its refusal of the application, but has not explained how the development would be in conflict with this Policy. Although relevant to landscaping, I have no reason to find the development out of accord with the Policy, particularly as the requirements relevant to development proposals relate only to major development.
46. In addition to this, the second reason for the refusal of the planning application subject of Appeal A refers to Policies SI4 (Managing heat risk) and SI13 (Sustainable drainage) of the LP. Policy SI4 relates to the need to

minimise adverse impacts on the urban heat island, while Policy SI13 relates to matters such as greenfield run off and the design of drainage. The Council has not, however, explained how these Policies relate to the second reason for refusal, which is based on the effect of the development on protected trees and biodiversity, the latter of which I consider below. Furthermore, the relevance of these policies is not obvious to me. Accordingly, I have no reason to find the development in conflict with these Policies.

Biodiversity

47. The reason for refusal of the application subject of Appeal A suggests that the development would not provide the maximum possible provision towards the creation of habitats and valuable areas for biodiversity. In support of its position, the Council suggests that the scheme would not be as beneficial to habitat creation and biodiversity as a 'soft boundary'.
48. Whilst it may be the case that an alternative means of defining the boundary of the appeal site with Lydenhurst House would result in greater biodiversity benefits, this alone is not a reason to refuse the scheme before me.
49. Notwithstanding this, I am not satisfied that the development would not cause harm to trees on the site that are likely to provide wildlife habitats and contribute to the biodiversity of the site and its immediate surroundings. Furthermore, the appellant has not proposed any means by which the development would contribute to a net gain in biodiversity by including features to achieve this, as set out in Policy P60 (Biodiversity) of the SP.
50. I have considered whether a condition could be imposed to secure the necessary contribution in order to comply with the Policy. However, in view of the nature of the development and without any indication as to how the necessary contribution could be achieved, I cannot be satisfied that the development would be capable of complying with the Policy.
51. All things considered, I cannot conclude that the development would have an acceptable effect on biodiversity. The proposal would, therefore, conflict with Policy P60 of the SP, as well as the Framework, which informs that planning decisions should contribute to and enhance the natural and local environment.

Fire Safety

52. The Council suggests that, as there has been a failure to provide information regarding fire safety on site, the development and works would be in conflict with Policy D12 (Fire Safety) of the LP. The Policy does not, however, require the submission of a planning fire safety statement or reasonable exemption statement, which are referred to by the Council. The implications of whether or not these documents were submitted is a matter for the Council to consider.
53. Notwithstanding this, Policy D12 requires all development to achieve the highest standards of fire safety. Whilst I acknowledge that most of the criteria of the Policy apply to buildings, the implications of the proposed development and works on the safety of the users of the appeal site are

required by the Policy to be considered. In this regard, I note that the 1.8 metre wall would prevent access between the appeal site and the adjoining Lydenhurst House plot, in the event of a fire on either of these plots. Such access is, however, already prevented by the existing chain fence. Furthermore, I note that both plots benefit from a means of escape onto the adjoining highway.

54. In addition to the above, having regard to the materials to be used in the construction of the wall, I have no reason to find conflict with requirement 3) of the Policy, which is that development is constructed in an appropriate way to minimise the risk of fire spread.
55. Accordingly, I have no reason to conclude that the proposal would be unacceptable, having regard to relevant policies and guidance on fire safety, or that there would be conflict with either LP Policy D12 or the Framework.

Other Matters

56. Relevant to Appeal A, section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
57. In this regard, I have already considered the suggested public benefits of the scheme earlier in this decision, which include that the scheme would allow for the development of the site in the manner already permitted. Whilst these matters are also relevant to the overall planning balance for Appeal A, they carry limited weight for the reasons I have given.
58. In addition to this, the appellant suggests that the wall would provide the future residents of the appeal site and those occupying Lydenhurst House a degree of privacy. Whilst this may be the case, I have no reason to conclude that the same results cannot be achieved by another means, including a landscaped boundary.
59. The Council may have previously granted consent for a wall in the location now proposed. However, the evidence indicates that this permission is no longer extant. In addition, there have been material national and local policy changes since that permission with the publication of the Framework in 2012 and subsequent revisions to it, and with the most recent development plan in 2022. As such the policy context against which the applications were assessed was different. This is not, therefore, a matter that weighs in favour of the development and it does not alter my conclusions with regard to the harm that would be caused by the scheme that is before me.

Planning Balance

60. I have found the development to be in conflict with the development plan, when read as a whole. Having regard to all matters raised, I have no reason to conclude that my determination of Appeal A should be made otherwise than in accordance with the development plan.

Conclusions

61. For the reasons given above, I conclude that both Appeal A and Appeal B should be dismissed.

J Moss

INSPECTOR