



Appeal Decisions

Site visit made on 29 June 2009

by **P N Jarratt BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State
for Communities and Local Government**

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**Decision date:
7 July 2009**

Appeal Refs: APP/L2820/C/09/2099016 & 2099017

Land at Jordan House, 2 Newton Way, Braybrooke, LE16 8LR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr and Mrs Everard against an enforcement notice issued by Kettering Borough Council.
- The Council's reference is ENFO/2008/00120.
- The notice was issued on 20 January 2009.
- The breach of planning control as alleged in the notice is without planning permission the erection of a means of enclosure within the curtilage of a Grade II Listed Building, namely; the construction of a stone wall with hurdling fence above, with white painted timber gates for vehicular access on the western boundary of the property, and a white painted timber gate for pedestrian access on the northern boundary of the property.
- The requirements of the notice are to permanently remove the stone wall with hurdling fencing and the white painted vehicular and pedestrian gates from the northern and western boundaries of the property.
- The period for compliance with the requirements is 6 months.
- Appeal 1 (2099016) is proceeding on grounds (a) and (f) set out in section 174(2) of the Town and Country Planning Act 1990 as amended. Appeal 2 (2099017) is proceeding on ground (f) only, because the prescribed fees have not been paid within the specified period.

Decision

1. I allow the appeal insofar as it relates to the stone wall and gates and grant planning permission 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 stone wall, (including the coping stones) and the white painted timber gates for vehicular access on the western boundary of the property and a white painted timber gate for pedestrian access on the northern boundary of the property forming a means of enclosure on land at Jordan House, 2 Newton Way, Baybrooke, LE16 8LR.
2. I dismiss the appeal and uphold the enforcement notice in respect of the remaining parts of the development, namely the woven hurdling fencing above the stone wall between the two gateposts, and refuse to grant planning permission in respect of that development on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

The appeal under ground (a)

3. The main issues in this appeal are the effects of the unauthorised development on the setting of a listed building and on the character or appearance of the Conservation Area.
4. The appeal property is a grade II listed building in a prominent position at a junction close to the road bridge over the River Jordan. There are a number of other listed buildings in the vicinity and the appeal property is within the Baybrooke Conservation Area.
5. Other than the pedestrian gate the unauthorised means of enclosure is on the side boundary set back behind a wide grass verge. It is constructed of pale coloured coursed limestone capped with what appears to be reconstituted stone copings on the wall and the gate piers. Above the wall is a woven hurdling fence which provides a degree of privacy to the patio area to the rear of the appeal property. White painted pedestrian and vehicular gates give access into the property. Beyond the vehicular gates is a substantial hedge along the side of the appeal property. The wall, gates and fence appear to be well constructed. Because of their recent construction the materials appear fresh as they have yet to weather in appearance.
6. The means of enclosure replaces a dark-stained close-boarded fence with pedestrian and vehicular gates in a similar position to the unauthorised development. Additionally the appellant has provided evidence that vehicular gates have existed in a similar position to those currently erected and that a wall may also have existed at some time. Elsewhere in the Conservation Area a variety of boundary treatments and materials are evident although there are no local examples of the use of hurdle fencing.
7. The means of enclosure is prominent from a number of public viewpoints. It is visible when approaching the crossroads from the south and it is particularly prominent when viewed from Newland Street and the church where the wall and fence is seen face-on with the simple gable of the listed building behind. However, a more modern flat roof extension with railings and a pyramid shaped glazed roof light is also visible at the rear of the appeal property, illustrating that more contemporary features are part of the street scene.
8. There is a variety in the colour and texture of the stone used in boundary walls or buildings elsewhere in the Conservation Area which appear to range from a pale grey to orange and brown hues. Whilst the stone of the unauthorised development appears fresh and lighter than other stone I anticipate that the fresh appearance will subdue in time as it weathers. Although the Council is concerned that the capping is modern and does not reflect the cock and hen on the church wall or the rounded coping on the bridge, it reflects a contemporary approach already reflected in the appeal property. I find that design and appearance of the stone wall has no adverse effect on the setting of the listed building or on the character or appearance of the Conservation Area.
9. I find nothing unacceptable with the painted timber gates. Their design is appropriate to their location and function. As they replace gates in similar

positions I do not consider that the gates alone could have affected the setting of the listed building or harmed the character or appearance of the Conservation Area. I have noted the concern of the Council in respect of the previous pedestrian gate being dark brown to match the close boarded fencing but I consider that the white paint employed complements the creamy yellow colour of the listed building. I do not consider that the colour of the gates is fundamental to this decision and therefore a condition controlling colour is unnecessary.

10. However I consider that the woven hurdle fencing to be inappropriate in its context. It introduces a form of fencing and a material not otherwise used within the Conservation Area. The novelty of the material and its uncharacteristic appearance contrasts with the simplicity of the stone wall, competing with the listed building and adversely affects its setting. It also creates a discordant feature in the street scene and fails to preserve the character or appearance of the Conservation Area. However, should the woven fencing be removed and replaced with an alternative and more appropriate type of treatment, then the harm it causes to the setting of the listed building and to the Conservation Area could be overcome.
11. I conclude that because of the hurdle fence, the unauthorised development does not accord with national planning guidance set out in PPG15: Planning and the Historic Environment and with policy 13 of The North Northamptonshire Core Spatial Strategy.
12. I note that the Council has recently refused consent for the wall, woven fence and gates under the Planning (Listed Buildings and Conservation Areas) Act 1990 but that is an independent decision of the Council separate to this appeal determined under the Town and Country Planning Act 1990.
13. For the reasons given above and having had regard to the many representations in support of the structure from local residents, including those of the Parish Council, I conclude that the appeal should succeed in part insofar as it relates to the stone wall and gates, and fail in part, insofar as it relates to the hurdle fencing.

The appeals under ground (f)

14. The appellant's case is that the Council's concerns could be addressed by the removal of the hurdle fence. As will be evident from my split decision on the ground (a) appeal, I share that view.
15. I have considered whether the requirements of the notice should be varied before being upheld, to exclude that part of the development for which a conditional permission is being granted.
16. However, that could give rise to two inconsistent permissions; the conditional one being granted, and an unconditional one deemed to have been granted under s173(11) as a result of the variation cutting down the requirements.
17. To avoid this possibility, I have decided that the notice should not be varied. Instead, I place reliance on section 180 of the 1990 Act to mitigate the effect of the notice so far as it is inconsistent with the permission. This approach accords with judgment in *R v Chichester Justices Ex Parte Chichester DC* [1990] 60 P & CR 342. Section 180 provides that where a planning permission

is subsequently granted for the same development, or for some part of it, the permission overrides the notice to the extent that its requirements are inconsistent with the planning permission, but the notice does not cease to have effect altogether.

P N Jarratt

Inspector