
Appeal Decisions

Site visit made on 6 January 2014

by Jane V Stiles BSc(Hons)Arch DipArch RIBA DipLA CMLI PhD MRTPI

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

Decision date: 21 January 2014

Appeal A: APP/X1735/A/13/2192141

2 Emsworth Road, Havant, Hants, PO9 2SR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss B Hutchinson against the decision of Havant Borough Council.
 - The application Ref APP/11/01254, dated 15 July 2011, was refused by notice dated 9 November 2012.
 - The development proposed is flint wall repairs. New boundary Railings and Pass Gate.
-

Appeal B: APP/X1735/E/13/2192143

2 Emsworth Road, Havant, Hants, PO9 2SR

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Miss B Hutchinson against the decision of Havant Borough Council.
 - The application Ref APP/11/01257, dated 15 July 2011, was refused by notice dated 9 November 2012.
 - The works proposed are flint wall repairs. New boundary Railings and Pass Gate.
-

Appeal C: APP/TPO/X1735/3083

2 Emsworth Road, Havant, Hants, PO9 2SR

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to [a] tree[/s] protected by a Tree Preservation Order.
 - The appeal is made by Miss B Hutchinson against the decision of Havant Borough Council.
 - The application Ref: APP/12/01235 dated 22 November 2012, was refused by notice dated 7 January 2013.
 - The work proposed is to fell 1 No. Lime (T1).
 - The relevant Tree Preservation Order (TPO) is TPO 1995/2011, which was confirmed on 20 July 2011.
-

Decisions

Appeal A: APP/X1735/A/13/2192141

1. The appeal is dismissed.

Appeal B: APP/X1735/E/13/2192143

2. The appeal is dismissed and listed building consent is refused for flint wall repairs and new boundary railings.

Appeal C: APP/TPO/X1735/3083

3. The appeal is dismissed.

Procedural matters

4. Number 2 Emsworth Road is a Grade II Listed Building and T1 is the subject of Appeal C against the refusal of TPO consent to fell.
5. I was not in receipt of a List Description at the time I visited the site and so I was not able to check the status of the subject wall in the documentation. Subsequently, the Council provided a List Description and sent confirmation that the Council's Statement is incorrect in that it states that the subject wall is listed in its own right. Instead it is curtilage listed and is not specifically described in the List Description. I shall therefore deal with these appeals on that basis.
6. Number 2 Emsworth Road is a former rectory which stands on the north-west corner of Emsworth Road and Lymbourn Road. The rectory dates from the 18th Century and is constructed of brick beneath a tile roof. The boundary fronting Emsworth Road is marked by a low brick wall with timber boarding above (replacing former railings) and ends in brick piers with finials.
7. To the right (west) of the main house is a stable and coach house dating from the early 19th Century. It is constructed of flint with a tile roof and a gabled front containing a hayloft door above a carriage door. Its flank wall is contiguous with the boundary wall fronting Lymbourn Road, itself a residential cul-de-sac. Part of the boundary wall has collapsed in the vicinity of a mature Lime tree (T1) which stands in the rear garden.

The applications the subject of these appeals

8. The application for planning permission (PP) and the application for Listed Building Consent (LBC) respectively the subject of Appeals A and B are both for the erection of metal railings and capped piers in place of the section of partly collapsed listed wall which fronts Lymbourn Road. The LBC application also includes repairs to the listed wall to facilitate the railings.
9. Both proposals were amended at the application stage by the deletion of a proposed pass-gate (formed by railings) and reduction of the overall width of the section of railings from 6.9m to 5.1m. The proposals include new brick capped piers (approximately 0.5m in width) with quoin detailing on either side of the railings. The railings would sit on top of sleepers which are intended to allow for future root movement of the tree.
10. The appeals are against the refusal of the proposals as submitted i.e. the revised proposals. However, the Appellant has asked me to also consider the

original proposal in respect of the length of railings. Having had regard to the Bernard Wheatcroft judgement, I am satisfied that I am able to do this on the basis that the 2 proposals amount to 2 alternative solutions to repairing/replacing the part collapsed boundary wall, the overall length of the 2 alternative proposals being no different.

Main Issues

11. The main issues in these appeals are:

Appeals A & B

- (i) The effect of the proposed works to the boundary wall on the character and appearance of the Grade II Listed wall, and on the Lymbourn Road Conservation Area.

Appeal C

- (ii) The effect of the proposed felling of the Lime (T1) on the character and appearance of the host environment; and whether the reasons given for the felling of T1 are sufficient to justify this course of action.

Reasons

Appeals A and B

- 12. The stable and coach house and associated flank boundary wall are of a different character to the principal LB and they are subservient in both scale and character to that of the principal LB. The flank wall of the stable/coach house is built of brick and flint and has a rustic appearance of considerable charm. To the front and rear of the stable/coach house, the flank boundary wall is contiguous with its flank wall. Immediately to the rear of the stable/coach house is a replaced section of boundary wall built of red brick and believed to have been constructed in the 1970s prior to the designation of the Conservation Area, the remainder of the boundary wall is of flint construction with some brick stringer courses and piers.
- 13. The immediate setting of the Rectory owes its character to the harmony produced by the juxtaposition of the Rectory with the stable/coach house and to the quality of the space created between them; and to its garden spaces both front and rear. The wider setting of the Rectory owes its character to its location on the corner of Emsworth Road and Lymbourn Road, and to its relationship with, amongst other things, the other properties in Lymbourn Road. The rear flank boundary wall encloses the rear garden of the house and is an important feature of the setting of the LB, which provides seclusion and privacy to the rear garden.
- 14. The subject flint wall runs broadly parallel to the flank boundary of No. 66 East street which is located on the opposite corner of Lymbourn Road. These parallel stretches of wall create an important entry point into the Conservation Area. As such, the subject flint boundary wall not only forms a feature of special architectural interest to the Grade II Listed Building (No. 2) and its setting, but it is also an important landscape feature which is very much a part of the character and appearance of the Lymbourn Road Conservation Area at its entrance point.

15. Beyond the 2 parallel flank walls, the properties in Lymbourn Road all front the street. They are subservient in size and character and they have little or no front gardens. Therefore, it is not appropriate to compare the subject wall to the front boundaries of those properties.
16. To my mind, the proposed insertion of railings and sleepers towards the mid section of an otherwise continuous length of solid flank boundary wall, whether it be 6.9m or 5.1m in length, would introduce an incongruous feature which would have an adverse impact on both the special character of the Listed wall and on the character and appearance of the Lymbourn Conservation Area.
17. I accept that metal railings might in certain circumstances be a feature of buildings contemporaneous to the Rectory (No. 2). However, I do not accept that simply because No. 2 originally had railings to its front boundary, it "might reasonably have had railings to the subject boundary also", as suggested by the Appellant. The function of the 2 boundary treatments is entirely different. In particular the flank boundary wall would have provided privacy and seclusion to the rear garden which would have been likely to have been laid out to complement the design and function of the Rectory. Such a large expanse of railings would open up views into the rear garden and result in a loss of privacy and seclusion, as well as a loss of coherence, thereby altering the character of the immediate setting both internally and externally to the subject wall.
18. I have no evidence as to whether the existing section of brick wall (itself a replacement of previous collapsed flint walling) was constructed prior to Listing in 1975. Therefore, I have no information as to whether it is authorised. But, the Council says it was constructed prior to the designation of the Conservation Area. In any event, I have no jurisdiction to determine the suitability of those works. Nevertheless, I would distinguish it from the proposed railings in as much as it does continue to provide a solid boundary treatment, which the proposed railings would not. Furthermore, I am mindful that successive alterations of indifferent or unsuitable quality can be cumulatively very destructive of a building's special interest. In this context, the introduction of yet 2 more materials into what was a continuous flint/brick boundary wall would begin to substantially erode its coherence and in turn its special architectural and historic interest in conflict with s16(2) and s66(1) of the Planning (Listed Buildings & Conservation Areas) Act 1990 and it would fail to preserve the character and appearance of the CA in conflict with s72(2) of that Act.

Appeal C

19. From the evidence, the boundary wall is likely to date from the 18th or early 19th century while T1 is estimated to have been planted in the early 1930s. As such, T1 post-dates the wall. The wall was Listed in 1975 while T1 was made the subject of a TPO in 2011. As such, protection was afforded to the wall prior to that afforded to T1. In these circumstances, I am of the view that the wall should take priority over T1.
20. From the evidence provided by the Appellant's arboriculturalist T1 is a mature Common Lime (*Tilia x europaea*) estimated to be about 84 years old. Currently, T1 has a height of 19m; DBH 83cm; and a crown spread N-6m, S-3m, E-6m and W-6m. However, given that Limes have the potential to live for 250 years, T1 could potentially have a long life ahead of it. Furthermore, a Lime has the potential to reach 40m in height with a stem diameter in excess of 200cm. But,

I am mindful that the future growth of T1 could potentially be contained by regular crown reduction.

21. T1 divides into 2 stems at about 4m in height and it has been pollarded at about 8m. The crown becomes multi-stemmed at the pollard points with the branches ascending sharply then arching to form a full and balanced crown. The tree shows signs of good vitality with annual shoot extension growth of between 20cm and 60cm. There is no evidence of crown dieback, with only minor deadwood within the crown. It is a prominent landscape feature on the west boundary of No. 2 which makes an important contribution to the setting of the LB and to the character and appearance of the Conservation Area.
22. From my site inspection, and from the Report put in by the Appellant's arboriculturalist, the main stem of T1 above the buttress flare is about 50cm distance from the inner face of the boundary wall; the buttress root at ground level is about 30cm distance; and the buttress root 30cm below ground level is about 20cm distant. The evidence of the Appellant's arboriculturalist is that there were no major roots visible at any point in or along the line of the collapsed wall but some minor roots were present. Further, there was no significant cracking or lifting of the pavement, kerbstones or road surface. I note that no trial holes appear to have been dug to ascertain more fully the pattern of root growth.
23. In these circumstances I concur with the Appellant's arboriculturalist's conclusion that it is unlikely that the growth of T1 to date has had a detrimental effect on the flint wall or that it has contributed significantly to its collapse. Furthermore, given that the tree post-dates the wall, I also concur with his conclusion that its roots are likely to have developed more extensively within the free draining and aerated soil of the garden than beneath the wall and the impervious road surface, albeit there is evidence that the road has been given a metalled surface in the more recent past.
24. That said, I share the concerns of the Appellant's architectural consultants that the potential future growth of the T1 in terms of the horizontal expansion of the trunk and the buttressing root growth at the base of the trunk could lead to future horizontal pressure being exerted on any replacement wall that is built. It follows, therefore, that space would be needed around the trunk to allow for this without risk of damaging the wall when repaired. It would not, however, require a gap in the solid wall extending to 5.1m or more.
25. There is no evidence from a Structural Engineer, or other expert as to the construction of the original wall. For example, in respect of the depth, dimensions and construction of its footings; the appropriateness/quality of its flint/brick construction; or its slenderness ratio. As such, I am unable to determine whether the wall has failed due to structural reasons unrelated to T1.
26. Even if, I were able to conclude that T1 had caused the subject wall to fail, which I am not, there is insufficient evidence that other more imaginative solutions have been pursued without success to secure the retention of both T1 and the reinstatement of the flint boundary wall. As a matter of law, responsibility for the Listed Building and T1 the subject of a TPO, rests with the property owner.

27. In my overall conclusion, T1 is a significant feature in the local landscape and appears to be in a sound and healthy condition. As such, it is of high amenity value. The proposed felling would result in undue loss and detriment to the setting of the Listed Building, the visual amenities of the streetscene and the Lymbourn Conservation Area in conflict with both national and local policy; and there is insufficient reason, at the present, time to justify this course of action. As such, the appeal must fail.

Jane V Stiles

INSPECTOR