



Appeal Decisions

Inquiry held on 11 and 12 November
and 1 December 2008

Site visit made on 12 November 2008

by **B Barnett** BA MCD MRTPI

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

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Decision date:
26 January 2009

Appeal Refs: APP/P1045/C/08/2070249 & 2070251 Land at Ednaston Manor, Ednaston, Derbyshire, DE6 3BA

- 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 Paul and Carol Pochciol against an enforcement notice issued by Derbyshire Dales District Council.
- The Council's reference is P9341 & ENF/07/00076.
- The notice was issued on 8 February 2008.
- The breach of planning control as alleged in the notice is *without planning permission, building and engineering operations comprising:*
 - (a) *the formation of a vehicular access to a classified road;*
 - (b) *the formation and surfacing of a driveway of varying width across the land within the curtilage of a listed building;*
 - (c) *the erection of 1.75m high green painted steel palisade fencing between points A and B within the curtilage of a listed building; and*
 - (d) *the erection of timber gates and gate posts within the curtilage of a listed building.*
- The requirements of the notice are to:
 - (a) *Remove all of the 1.75m high green painted steel palisade fencing from the land between points A and B;*
 - (b) *Remove the tarmac surfaced access and driveway which extends across the land as shown on the plan attached at DDDC1;*
 - (c) *Remove the timber gates and gate posts from the land;*
 - (d) *Remove all waste surfacing materials from the land to an authorised waste disposal facility or other storage facility;*
 - (e) *Restore the area of land currently occupied by the access and driveway to a grassed surface; and*
 - (f) *Replant a roadside hedgerow of crataegus monogyna "hawthorne" of 45-60cm high whips planted in a double staggered row at 30cm centres between the points marked "C" and "D" on the plan.*
- The period for compliance with the requirements is 2 months.
- The appeals are proceeding on the grounds set out in sections 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals succeed in part only. The enforcement notice is upheld and planning permission is granted for part of the development.

Preliminary Matters

1. At the inquiry the appellants withdrew grounds (b) and (e) and confirmed that their ground (c) appeals relate only to the fence.
2. It was agreed that, if upheld, the requirements of the notice should be corrected to clarify the reference to an attached plan and to make it clear that

only waste surfacing material arising from removal of the driveway had to be removed. It should also be varied by deleting the reference to where this material should be removed to, as this goes beyond what is necessary to address the breach. It was also agreed that, as there had been a vehicular access previously where the present one now is, the requirements should allow this to be reinstated. I have determined the appeal on this basis.

3. Ednaston Manor is a grade 1 listed building, designed by Sir Edwin Lutyens. It was built in the middle of grounds of about 20 hectares (49 acres). English Heritage has registered part of these grounds as of special historic interest. I shall refer to this area as the 'registered garden'. Although the original site was extended marginally many years ago and the appellants have recently acquired additional land to the west, for simplicity I shall use the term 'grounds' to refer to the site identified in the enforcement notice.

Ground (c)

4. The fence has been erected along about a third of the perimeter of the grounds. Where it runs parallel to Yeldersley Lane it is behind a substantial hedge and verge and the parties have agreed that it does not adjoin the highway. I have no reason to take a different view. Its erection would have been permitted development under Part 2, Class A of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) unless it falls within paragraph A1(d) attached to that Class, i.e. unless 'it would involve development within the curtilage of, or to a gate, fence, wall, or other means of enclosure surrounding, a listed building'.

Curtilage

5. In *Lowe v First Secretary of State and Tendring DC* [2003] JPL 1281, what comprised a curtilage was described as a question of fact and degree. It is not, in principle, restricted in size. However, it must fairly be described as being part of the enclosure of the house to which it refers. In that case, it was decided that the curtilage of a particular building could not possibly include the whole of the extensive parkland setting around it. The judgement in *Methuen-Campbell v Walters* [1979] 1 QB 525 indicates that for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter that the former in truth forms part and parcel of the latter.
6. To the south of the house, there is a terrace which is above the level of the grassland beyond and separated from it by a retaining wall similar in function to a ha-ha. To the east, there are formal gardens and some tennis courts all of which are separated from the grassland by hedges. To the north, a further hedge separates land close to the house from that further away.
7. Only to the west is the area immediately adjacent to the house not clearly defined and enclosed. Here a walled courtyard adjoins the main doorway, but next to this there is no distinct enclosure. This side of the house is, however, flanked by a driveway. Beyond the driveway is an extensive area laid out as an informal pleasure garden and arboretum. I have no doubt that occupants of the house use this area for their recreation and enjoyment. It was designed and laid out around the time the house was built as part of the planned grounds. However, it is very different in its function and nature from

the areas immediately adjacent to the house which are more confined, more formally laid out, and maintained to a more 'manicured' standard. In my view, once across the driveway one has left the area intimately associated with, and the enclosure of, the house and has entered its wider setting.

8. As a matter of fact and degree the curtilage of the house does not extend west of the driveway or beyond the terrace and the areas enclosed by hedges to the south and east.
9. The listed building includes not just the house but the terrace and the wall around the entrance courtyard. In my judgement, its curtilage is the same as that of the house. The terrace is clearly associated with the house and separated from the grassland below it, and its curtilage does not extend in that direction. The wall around the entrance courtyard is part of the access arrangements for the house and its curtilage includes the immediately adjacent driveway but it goes no further.
10. The northern boundary of the curtilage is less clear. Home Farm was constructed as stables and farm buildings associated with Ednaston Manor. It is not listed in its own right and in 1981 when determining an application for its conversion into dwellings the Council treated it as not being listed as a 'curtilage' building. They argued at the inquiry, however, that this was incorrect and that the Farm is within the curtilage of the listed building.
11. I see no need to determine this matter. If Home Farm does fall within the curtilage of Ednaston Manor, the northern boundary of that curtilage would be the edge of the avenue of trees bounding the driveway between the two buildings. The land beyond that is now mown, but appears to have been used for agricultural purposes prior to the work addressed by the enforcement notice. It is not intimately associated with, or part of the enclosure of, the listed building. If, alternatively, the Farm falls outside the curtilage of the Manor, that curtilage extends no further north than the hedge which encloses the area immediately adjacent to the house. Either way, the fence addressed by the notice is, throughout its length, well outside the curtilage of the listed building.
12. I recognise that English Heritage and the Lutyens Society have reached a different conclusion. However, they were not at the inquiry to explain their views. Their advice has not caused me to alter my conclusion on the matter.

Means of enclosure surrounding the listed building.

13. The Council has accepted, and I have no reason to doubt, that prior to the erection of the present fence, there was a means of enclosure in more or less the same position along most of its length. Along the western boundary of the grounds, only vestiges of the previous post and rail fence now remain. It has been replaced. Along Yeldersley Lane, a substantial hedge remains and the fence was erected to reinforce it.
14. The meaning of the phrase in the GPDO 'development to a gate, fence, wall, or other means of enclosure surrounding, a listed building' was considered in *Sumption and Sumption v Greenwich LBC and Rokos* [2008] JPL 783. In this judgement, it was determined that the relevant development may be to part of a means of enclosure, not necessarily to it all, and that the provision

applies not only where an existing means of enclosure is being altered in some way but also where it is being wholly replaced. In this case, for most of its length the fence addressed by the enforcement notice replaces or reinforces a previously existing means of enclosure. Its erection involved works to a means of enclosure. The question remains – does it surround the listed building?

15. 'Surrounding' is not defined in the GPDO or in the Act. It must be given a common sense interpretation. The fence encloses part of the perimeter of the grounds. Elsewhere this perimeter is enclosed by well established hedges, gates or substantial fences and it was clearly intended to complete and reinforce this enclosure so as to deter intruders. Although there are various hedges nearer the listed building, these do not encircle it or provide security but serve mainly to define specific parts of the grounds and separate them from each other. To the west, in particular, one can walk directly from the building to the fence through the trees.
16. In a physical sense, the fence is part of the enclosure of the grounds around the listed building. It surrounds the building along part of the perimeter of these grounds. Functionally, it is clearly intended to form part of the security ring around the house and in this sense, too, it surrounds the listed building. Although some of the hedges nearer to the listed building also surround it in part, they do not form a continuous enclosure. Their presence, and also the presence within the grounds of numerous trees and some dense patches of vegetation, do not affect my conclusion that along most of its length the fence surrounds the listed building in the context of paragraph A1(d).
17. When refusing leave to appeal in the *Sumption* case, Hughes LJ commented (J.P.L. 2008, 8, 1061-1071), that 'in some cases there could be a question whether a boundary around the extremity of a very large parcel of land is simply too far away properly to be described as enclosing the house'. It seems to me that this was intended to refer to much larger parcels than here, where at one point the fence is only about 150m from the listed building. In this context, it is significant that the appellants have recently acquired additional land to the west which they intend to farm. The fence does not provide a secure perimeter around all their land, but was erected primarily to enclose and provide security for the listed building.
18. A short length of the fence neither replaces nor alters anything, but is a wholly new means of enclosure. However, this is of no significance. Although it is not within the curtilage, in the context of paragraph A1(d) most of the fence surrounds the listed building. Its erection was a single act of development and it was not permitted development within the provisions of Class A of Part 2 of Schedule 2 to the GPDO. Planning permission was required but has not been granted. The appeals on ground (c) therefore fail.

Ground (a) and the deemed application for planning permission

Relevant Policy

19. Policy SF4 of the Derbyshire Dales Local Plan restricts development in the countryside except in specified circumstances which include where it provides for needs which can only be met in a rural area. Development must be appropriate in nature and scale, preserve or enhance the character and

appearance of the countryside and minimise its impact on the local environment. Policy SF5 seeks high quality development in keeping with its surroundings. Policies NBE7 and NBE8 seek to protect the landscape. Policy NBE16 addresses the setting of listed buildings. Policy NBE23 seeks to protect registered parks and gardens.

The main issues

20. As originally designed and laid out, the grounds of Ednaston Manor had two entrances. The principal one was from the south and there was a secondary access through Home Farm probably used mainly for agricultural and service traffic. This secondary access now serves only the dwellings which have been created at Home Farm. It no longer connects with the Manor or its grounds. The access, driveway and gates addressed by the enforcement notice re-create a secondary access to the Manor and its grounds.
21. It is entirely appropriate, in both an historic and a practical context, that there should be two useable vehicular entrances to a house of this size and its grounds. Parts of the grounds are still agricultural fields, although they appear to be used only for hay. It is reasonable for the appellants to want farm vehicles, general delivery traffic, and the relatively large vehicles involved in maintaining the grounds not to use the main entrance or pass close to their home if this can be avoided. The creation of such an entrance provides for a need which can only be met in a rural area and is, in principle, acceptable and consistent with Policy SF4. The Council broadly accepts this.
22. The main issue before me is the effect of the development on the setting of the listed building and on the rural character and appearance of the area, bearing in mind the special status of part of the grounds. In relation to the access, road safety also needs to be considered.

The vehicular access

23. It was agreed at the inquiry that, before the present one was created, the agricultural access in the same position probably consisted of a simple farm gate in line with the roadside hedge and 3 or 4 metres wide. The access now takes the form of a wide bell-mouth narrowing to about 5 metres at the rear where it merges into the new driveway. It is similar in its form and size to the access to Home Farm, and most of the nearby farm accesses along Yeldersley Lane have been widened into similar bell-mouths, no doubt to accommodate the manoeuvring requirements of modern vehicles.
24. I do not accept the Council's assertion that the present access is over-engineered. In its size and shape, it is in keeping with others in the area and its tarmac surface and stone kerbs are appropriate. It is also not a prominent feature, being visible over only a short length of the Lane, and its appearance will improve when the recent hedge planting matures. It does not harm the rural character or appearance of the area or the setting of the listed building.
25. The introduction of a limited amount of additional traffic onto Yeldersley Lane is unlikely to have increased the risk of accidents there. Overall, the development has probably benefited road safety, as the bellmouth allows vehicles to wait clear of the carriageway while the gates are being opened and has provided a useful place where vehicles using the Lane can pass.

26. I conclude that the vehicular access is acceptable and consistent with the Policies referred to above.

The driveway

27. The driveway is similar in its width and its tarmac surface to others laid out as part of the original design of the grounds. It follows a curved route reflecting the contours of the land, and from most viewpoints only part of it can be seen. It runs close to the edges of the site and so does not disrupt the appearance of the large area of mown grass through which it passes. Where it approaches and joins the avenue, which formerly linked the Manor and Home Farm and is part of the registered garden, it splits in two to accommodate turning movements but does not affect any of the trees.
28. It fits well into the planned landscape of the grounds. I do not accept the Council's argument that it should be replaced by 'wheel tracks' separated by a grass strip. There appears to be no precedent within these grounds for 'wheel tracks'. They would stand out as uncharacteristic additions to the landscape and have a harmful visual impact. In addition, they would be unlikely to accommodate adequately vehicles of the various sizes likely to use them. This would result in vehicles overrunning onto the grass causing damage to the surface and adding to the harmful visual impact.
29. If one did not know that it was new, one might think the driveway addressed by the enforcement notice was part of the original design of the grounds. I conclude that its construction has not harmed the setting of the listed building or the rural character and appearance of the area and was consistent with the Policies referred to above.

The gates and gateposts

30. These are over 2 metres high. The posts are of steel, clad with timber. The gates are of solid timber and have a curved top. They are very different in appearance from what one might expect across a farm access. They make a strong visual statement that they are there to keep people out and that they mark the entrance to 'somewhere special'.
31. It seems to me that this is just what one would expect at the entrance to such an exceptional property. Large ornamental steel gates mark its main entrance from the south and in this context the smaller and plainer gates and gateposts addressed here are unexceptional and appropriate. Their size, design and use of timber are in keeping with the secondary nature of the access and its location on a narrow rural lane.
32. The gates and gateposts cause no harm to the setting of the listed building or of the registered garden. Their effect on the rural character and appearance of the area is limited but beneficial in that they add interest and draw the attention of the passer-by to the fact that he or she is close to a site of national importance.

The fence

33. This is about 1.8m high and similar in form and materials to the palisade fencing often found around electricity sub-stations or industrial premises, although it is painted green. It is partially screened by a hedge where it runs

parallel to Yeldersley Lane, but its upper parts there are visible from this Lane and a section of it running south-west from the Lane is also in public view. Much of it can be seen from the field to the west, although this appears to have no public access. It can also be seen from various places within the grounds including from parts of the registered garden.

34. This is not the sort of fence one expects to see in the countryside. It is a utilitarian structure and because of its height, the width and narrow spacing of its vertical slats and the pointed tops to these slats, it has a relatively solid and unattractive appearance. Notwithstanding its colour and its partial screening by vegetation, it is not in keeping with, and it harms the character and appearance of the surrounding countryside, where hedges and lower post and rail fences are more characteristic. Its erection was inconsistent with Policies SF4, SF5 and NBE8. Its retention may encourage other landowners to enclose their property similarly. This may cause further harm, but would be difficult for the Council to resist because of the precedent set and because, in some cases, it may not require express planning permission.
35. The fence is entirely at odds with the high quality of design and materials found elsewhere on the site and, although the screening effect of vegetation reduces its visual impact, it detracts from the setting of both the listed building and the registered garden in a manner inconsistent with Policies NBE16 and NBE23.
36. Planning Policy Statement 1: Delivering Sustainable Development makes it clear that design which is inappropriate in its context should not be accepted, and having regard to its rural location and its relationship to the listed building and the registered garden, I consider that this is inappropriate design.
37. I accept that the appellants have a need to improve their security and that preventing, or deterring people from entering the grounds by the erection of a security fence is a reasonable objective. I am not convinced, however, that this requires the erection of such a crude and unattractive structure. Alternatives forms of fencing are available which would have a less harmful visual impact but would still enhance security.
38. I have carefully considered the suggestion that the fence could be hidden by planting, and that this could be achieved by a landscaping condition and a negatively worded maintenance condition. This would not overcome the harm caused by the development. It would take some years for planting to reach a sufficient height and density to screen the fence and, more significantly, having regard to the guidance in Circular 11/95 The Use of Conditions in Planning Permissions, I am not convinced that conditions could ensure complete and permanent screening. The Circular indicates that maintenance conditions should not normally be imposed when granting permission for buildings or works other than works of a continuing nature such as mineral extraction. However carefully it is selected, there can be no guarantee that planting will grow to its intended height and, after it is fully established, it would not be consistent with the guidance in the Circular to require the replacement of plants which fail through natural causes or because of accidental damage.

Conclusions

39. I conclude that the vehicular access, the driveway, the gates and the gateposts all have an acceptable effect on the setting of the listed building and on the rural character and appearance of the area. Their development was consistent with the Policies referred to above. In relation to these elements of the allegation, the appeals on ground (a) succeed and planning permission will be granted. I see no need to attach conditions as suggested by the Council in relation to the colour of the gates or the surface treatment of the driveway as these are acceptable as they are.
40. I conclude that the fencing causes unacceptable harm to the setting of the listed building and the rural character and appearance of the area. This harm outweighs its beneficial impact in improving security and could not be overcome by imposing conditions on a planning permission. In relation to this element of the allegation, the development does not comply with the relevant planning policies and the appeals on ground (a) fail. The enforcement notice will be upheld and planning permission will not be granted.

Ground (f)

41. The appellants' suggestion that the fence could be retained if screened by planting amounts to a ground (a) argument in relation to the granting of a conditional planning permission. Although the possibility of an alternative form of security fencing being erected was discussed, the deemed planning application before me relates to the development as built and it is not open to me to consider such alternatives. As no alternative steps were suggested which might secure the restoration of the land to its condition before the fence was erected, the appeals on ground (f) fail.

Ground (g)

42. Two months is long enough to undertake the required work but the appellants want five years so that a replacement hedge can become established before the fence is removed. I consider that this would be excessive as it is important that breaches of planning control are remedied promptly.
43. The Council has accepted that six months would be reasonable as it would allow time for consideration of an alternative form of fencing which, if agreed, could be erected when the present one is removed. However, as planning permission for such an alternative has not yet even been applied for, I see no need, at present, to allow additional time. S173A of the Act allows the Council to extend the period for compliance in appropriate circumstances. The appeals on ground (g) fail.

Overall Conclusions

44. The enforcement notice will be upheld.
45. Planning permission will be granted for the vehicular access, the driveway, the gates and the gateposts. S180 of the Act has the effect that the notice will cease to have effect so far as inconsistent with this permission. In view of this, there is no need to make the corrections and variations referred to in paragraph 2. Planning permission will not be granted for the fence.

Formal Decisions

46. I direct that the notice be upheld.
47. I grant planning permission, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for some of the development already carried out, namely:
- a) the formation of a vehicular access to a classified road;
 - b) the formation and surfacing of a driveway of varying width across the land; and
 - c) the erection of timber gates and gate posts.
48. I refuse to grant planning permission for the erection of the fence.

B Barnett

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr C Young	of Counsel
He called	
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Mr R R Repton BA	The Repton Group, 10 Derwent Business Centre, Clarke Street, Derby, DE1 2BU

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Hardy	of Counsel
He called	
Mr J Bradbury BSc MA MRTPI	Development Control Manager, Derbyshire Dales District Council
Mrs T Shaw DipURP MA MRTPI IHBC	Conservation and Design Officer, Derbyshire Dales District Council

DOCUMENTS SUBMITTED AT THE INQUIRY

Document	1	Bundle of correspondence between the parties
Document	2	Letter from Mark Harrison Plant Hire Ltd
Document	3	Detailed drawing of bow topped fencing
Document	4	Judgement in <i>SoS v Skerritts of Nottingham Ltd</i> [2000] EWCA Civ60
Document	5	Article from the 'Mail Online'
Document	6	Aerial photograph of Home Farm