



Appeal Decision

Site visit made on 10 November 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Appeal Ref: APP/P1045/C/22/3303820

Willersley Castle, Cromford, Matlock, Derbyshire DE4 5JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (TCPA) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr V Philips/Globebrow Ltd against an enforcement notice issued by Derbyshire Dales District Council.
 - The enforcement notice is dated 27 June 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission the unauthorised erection of structures in the grounds of a listed building as shown on both aerial photographic views and individual photographs attached to the notice at annexes Plan 1 and Plan 2: 1. Octagonal Structure 2. Three poles and tyres 3. Wired climb through 4. Rope and tub balance 5. Run over platform 6. Air rifle shooting range 7. Archery range 8. Assorted climbing/rope walking structures 9. Axe throwing range 10. Raised timber planter with seating around 11. 2 x timber river bank landing stages.
 - The requirements of the notice are: a) Permanently cease the use of all structures in the positions identified on aerial photograph (annex Plan 1 of the notice), showing the location of the structures numbered 1-9 along with the corresponding individual photographs of the structures 1-9. b) Permanently cease the use of all structures in the positions identified on aerial photograph (annex Plan 2 of the notice), showing the location of the structures number 10 and 11, along with the corresponding individual photographs of the structures 10 and 11. c) Permanently remove all the structures, 1-11 identified on Plan 1 and Plan 2 of the notice from the land edged red on Plan 3 of the notice and reinstate the land to reflect its former condition prior to the provision/erection of the structures number 1-11.
 - The period for compliance with the requirements is 30 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - the deletion of the text of the requirements paragraph in its entirety and its replacement with the text: 'a) Permanently remove all the structures comprising: 1. Octagonal Structure 2. Three poles and tyres 3. Wired climb through 4. Rope and tub balance 5. Run over platform 6. Air rifle shooting range 7. Archery range 8. Assorted climbing/rope walking structures 9. Axe throwing range 10. Raised timber planter with seating around from the land edged red on Plan 3 of the notice b) Reinstate the land to reflect its former condition prior to the provision/erection of those structures.'; and

- the deletion of the text '30 days' from the compliance paragraph and its substitution with the text 'two months'.
2. Subject to these corrections, the appeal is allowed insofar as it relates to the two timber river bank landing stages and planning permission is granted for these on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.
 3. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to: Octagonal Structure; Wired climb through; Rope and tub balance; Air rifle shooting range; Archery range; Axe throwing range, and planning permission is refused on the application deemed to have been made for these elements under section 177(5) of the 1990 Act as amended.

The enforcement notice

4. The notice requires the cessation of use of the structures listed in the allegation. However, as no material change of use has been alleged, the requirements a) and b) for the use to cease are unnecessary. The removal of the structures is sufficient to meet the aims of the notice, and so I have directed that the notice be amended accordingly. I am satisfied that no injustice arises from this change.

Ground (c)

5. Ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. Under this ground, the onus of proof is on the appellant.
6. The gist of the appellant's argument is that the structures attacked by the notice do not fall within the definition of operational development for planning purposes. Development is defined in s55(1) of the TCPA as 1. the carrying out of building, engineering, mining or other operations in, on, over or under land, or 2. the making of any material change in the use of any buildings or other land.
7. The established three tests for considering whether or not a building has been created are size, permanence and attachment to the ground. Furthermore, the courts have held that operational development 'comprises activities which result in some physical alteration to the land, which has some degree of permanence to the land itself'. Ref *Parkes v SSE* [1979] 1 All ER 21172
8. With specific reference to the curtilage of listed buildings, Part 2, Class A of the GPDO relates to minor operations comprising the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Under paragraph A.1(d), such development is not permitted by Class A if it would involve 'development within the curtilage of, or to a gate, fence, wall or other means of enclosure surrounding, a listed building'.
9. The enforcement notice makes reference to the structures being in the grounds and also the setting of the listed building. The appellant picks up on this, arguing that the notice does not claim that the structures are in the curtilage of Willersley Castle, which is a grade II* listed building. However, he produces little evidence to show that they are not within the curtilage. From the evidence before me, it appears that Willersley Castle has an extensive curtilage, as befits a building of its status. Furthermore, I am satisfied that the structures that are the subject of the notice fall within that curtilage.

10. The question to be considered then is whether the structures in question meet these definitions, and require planning permission. With regard to the matter of permanence, the appellant argues that none of the structures are intended to be permanent. However, he gives no definite time frame or date to indicate where they are to be removed. For that reason, this factor cannot be definitive, and I shall go on to consider the physical attributes of each installation.
11. The **octagonal structure** has no walls or roof and is less than 1m high. On those grounds, I agree that it is not a building. However, it comprises posts that are set into the ground and rails that enclose an area of land. As it falls within the curtilage of the listed building, I am satisfied that it requires planning permission under Part 2 Class A.
12. The **three poles and tyres** installation comprises a gravelled area on the ground with timber bordering. There are three vertical posts and a stack of tyres that can be moved from post to post. Although the poles are fixed into the ground, the overall structure is too small to be reasonably be considered a building. Furthermore, it does not form a fence or means of enclosure. On those grounds, I find that it does not need planning permission.
13. The **wired climb through** and the **rope and tub balance** do not have roofs or walls. However, in a similar vein to the octagonal structure, they comprise posts set into the ground and rails which enclose areas of land. As they are within the curtilage of the listed building, I am satisfied that they therefore require planning permission under Part 2 Class A.
14. The **run over platform** is a piece of apparatus comprising a moveable platform. It can be lifted off the ground by one person and the appellant confirms that it is moved around the site. It is not attached to the ground. It is not big or heavy enough to be fixed to the ground by its own weight. This structure does not amount to a building or a fence or means of enclosure, and so does not require planning permission.
15. The **air rifle shooting range** and the **archery range** are field shelters with roofs and walls. They are large enough to be occupied by a number of people at a time whilst in use. I agree with the appellant that they may be considered buildings. I accept that they have no foundations, but I have not been presented with any definition of a building that requires the presence of foundations. In any event, it is evident that they are well enough fixed to the ground to serve the purposes for which they were constructed, and to be used safely. Whilst they are somewhat rudimentary, I am satisfied that these are buildings for which planning permission is required.
16. Assorted **climbing/rope walking structures** have no walls or roofing and there is no evidence that this installation amounts to a building. It does not appear as an enclosure, but simply as apparatus for activities. On this basis, I am satisfied that no planning permission is needed.
17. The **axe throwing range** comprises a field shelter and some posts. The shelter has walls and a roof. It is fixed to the earth, and the fact that it does not have foundations is, again, not determinative. I am satisfied that it amounts to a building for which planning permission is required, on similar grounds to the air rifle shooting range and the archery range structures above.

18. The raised **timber planter with seating** comprises a roughly circular arrangement of moveable bench seating. The benches are formed of long planks of wood set on rectangular timber supports. This installation does not amount to a building for planning purposes. Whilst it does surround an area with the planter at the centre, it is not a fence or wall, and does not amount to an enclosure in that sense. As an installation for the purposes of outdoor seating, I am satisfied that it does not fall into any definition of development requiring planning permission.
19. The two **timber river landing stages** comprise areas of decking to provide a landing point for canoes, in order to avoid erosion of the river bank. The appellant argues that they are not buildings, having no walls or roof. However, they are supported by posts set into the earth, and were evidently constructed or erected in their positions. They are big enough to have brought about a physical alteration to the land, which comprises the river bank.
20. Although the land is not within a domestic setting, it is useful to refer to the provisions of the Government's 'Permitted development rights for householders - Technical Guidance', (Ministry of Housing, Communities & Local Government 2019). This document sets out guidance for buildings within the curtilage of dwellings, and specifically includes garden decking within the definition of a building. Furthermore, a raised platform exceeding 0.3m in height is a building that will require planning permission in a domestic curtilage.
21. Taking this guidance and the factors above into account, I am satisfied that the landing stages amount to raised platforms that require planning permission. The appellant contends that other similar features are found on river banks for angling, but he is not aware of any such structures that have needed planning permission. However, each case is to be considered on its merits, and so this observation has not led me to a different conclusion on this particular matter.
22. In conclusion, I find that planning permission is required for the following: the octagonal structure; the wired climb through; the rope and tub balance; the air rifle shooting range; the archery range; the axe throwing range; and the two river landing stages.
23. Conversely, I have found that the three poles and tyres, the run over platform, the climbing/rope walking structures, and the planter and seating do not require planning permission. To that extent, the appeal on ground (c) succeeds, and I direct that the enforcement notice be corrected accordingly.

Ground (a) and the deemed planning application

Main Issue

24. The main issue is the effect of the development on the significance of the grade II* listed building, including its setting, and on the character and appearance of the Willersley Castle Registered Historic Park and Garden (RPG), the Cromford Village Conservation Area (CA), and the Derwent Valley Mills World Heritage Site (WHS).

Reasons

Heritage assets

25. Annex 2 of the National Planning Policy Framework (NPPF) confirms that world heritage sites, listed buildings, registered parks and gardens and conservation areas are designated heritage assets. The NPPF sets out that heritage assets should be conserved in a manner appropriate to their significance. When considering the impact of development on the significance of a designated heritage asset, great weight should be given to its conservation. The more important the asset, the greater the weight should be. It makes clear that significance can be harmed by development within the setting of a heritage asset.
26. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of conservation areas in the exercise of planning functions. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out that, in considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
27. The NPPF defines setting as the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral. It goes on to say that significance derives not only from a heritage asset's physical presence, but also from its setting.

Significance

28. Willersley Castle was built in 1792 by William Thomas for Sir Richard Arkwright. With its fine ashlar frontage, it is described as a large and severe castellated house in extensive grounds. The late 18th and early 19th century grounds and park are described more fully in the entry for the Willersley Castle Registered Historic Park and Garden.
29. The Statement of Outstanding Universal Value for the WHS describes an industrial landscape of high historical and technological significance in the Derwent Valley, including the pivotal contribution of Richard Arkwright in establishing the Arkwright System'. The housing that developed to service the mills and accommodate the industrial communities is of great significance to the WHS, as is Arkwright's own residence at Willersley Castle.
30. The building itself stands on an artificially levelled platform that was cut into the south facing rocky hillside. From here, the ground drops sharply towards the riverside meadows which form the southern section of the park. The Council's 'Cromford Conservation Area Appraisal' describes this area as being formed on the inside of a broad meander in the river, and highlights the importance of the parkland trees. This land is a key element of the setting of the listed building, both in views from it and towards it from across the river to the south.
31. Another important view is gained from the bridge to the east as one approaches the property. From here, the side elevation of the building is clearly visible across the parkland, emphasising the high status of the building

which is further underlined by its physical isolation from the village of Cromford.

32. It is apparent that the parklands were laid out to be experienced as a dynamic, sequential experience. The grounds extend further to the north of the principle listed building, with a path following the course of the river alongside Hagg Wood. Here, the landscape becomes much more dramatic, in contrast to the tranquil southern stretch by the river. Although one quickly loses sight of the building on this path, it nonetheless remains part of the experience of visiting the property as a whole, giving a further sense of its scale and grandeur.
33. From my observations on site, and the evidence before me, I find that Willersley Castle and its registered park and garden are of very high significance in heritage terms. The landscape setting around Willersley Castle makes a hugely positive contribution to its significance, adding both to the physical and social prominence of the building and the understanding of its interconnection with the industrial hinterland. The site also makes a positive contribution to the significance of the CA and the WHS through the aesthetic qualities of the listed building and the spaciousness of its grounds in contrast to the more tightly developed grain of the village.

Effect of the development

34. As noted above, I have found that a number of the structures that are the subject of the notice do not amount to operational development for planning purposes. I shall therefore consider the effect of the remaining structures on the significance of the heritage assets.
35. The air rifle shooting range and the archery range are directly to the south of the castle, in line with its principal façade. The octagonal structure, the wired climb through and the rope and tub balance are located to the south east of the listed building, and are more visible in the views from the bridge. The axe throwing range is situated to the west of the castle. It is not visible from the main approach to the building, and is further obscured by the land mass. Nonetheless, it directly affects the experience of the RPG.
36. The design of the landscape emphasises the natural elements such as the river, the trees and the form of the land. These elements complement the listed building, and provide a fitting setting. The development introduces structures that add visual clutter, and detract from the natural elements which should be to the fore in views to or from the listed building, or when moving through the designed park land.
37. The fact that they are predominantly of timber helps to a degree to integrate the structures. Nonetheless, they do not have an obvious functional or visual relationship to the design intent of the RPG. They are not the type of structure that would typically be found in a designed landscape of this historic era. Crucially, they disrupt the close visual relationship between the former house and its landscape setting. On that basis, these structures harm the setting of the listed building, eroding its significance, and in turn, the significance of the RPG, the CA, and the WHS.
38. Accordingly, overall, the development conflicts with the overarching statutory duties as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight, and with the

NPPF. In addition, it fails to comply with Policy PD2 of the Derbyshire Dales District Council Local Plan (LP), which seeks to conserve heritage assets in a manner appropriate to their significance.

39. Although serious, the harm to the heritage assets in this case would be less than substantial, within the meaning of the term in paragraph 195 of the NPPF. Paragraph 196 requires that, where there is less than substantial harm, the harm should be weighed against the public benefits of the works.
40. The appellant explains that the structures in question are required to facilitate the adventure element of the activity centre use. I have no doubt that the grounds of the castle provide opportunities for a wide range of pursuits and adventure due to their extent and layout. However, this needs to be balanced against the need to protect the significance of the heritage assets.
41. It is clearly of benefit to have the listed building in use, and the centre also offers opportunities for its visitors to experience and appreciate the heritage assets. I acknowledge these factors and also the need for the apparatus in terms of the facilities the centre offers. However, there is no evidence that these outcomes could not have been achieved through a scheme of development that would be more sympathetic to the heritage assets. That being the case, a grant of planning permission would not be justified. I accept that no alterations to any historic building have taken place, but that is neutral in my consideration.
42. I therefore find that insufficient public benefits have been identified that would justify or outweigh the harm I have identified to the heritage assets. The scheme therefore conflicts with the NPPF, which directs, at paragraph 193, that great weight should be given to the assets' conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to their significance.

The river landing stages

43. Whilst the river landing stages have introduced development to the riverside where none previously existed, they are fairly unobtrusive in appearance. Their simple form is in keeping with their purpose of providing access to and from the river for canoes. Taking these factors into account, I am satisfied that the stages do not harm the wider setting of Willersley Castle. For the same reasons, no harm arises to the RPG, the CA or the WHS.
44. Hagg Wood and the woodlands north and west of Home Farm are ancient woodlands, and the Council have raised concerns over the impact of the development on them. The NPPF states that planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland.
45. I have taken account of the representation from the Forestry Commission which refers to the guidance entitled 'Ancient woodland, ancient trees and veteran trees: advice for making planning decisions' from Natural England and the Forestry Commission, published 14 January 2022, which refers to both direct and indirect effects of development.
46. However, the appellant produces an email from a representative of Natural England following a visit to the appeal site. The email confirmed that they did

not wish to raise any issues regarding the impact of the development by the river. Conversely, the Council have not produced any detailed or quantitative evidence of direct or indirect harm in this particular case arising from the landing stages. In the absence of substantive evidence to the contrary, I find no conflict with LP Policy PD3, which seeks to protect biodiversity and the natural environment.

47. I have taken into account concerns raised over noise and disturbance from participants at the centre using the landing stages. However, there is no detailed or substantive evidence before me relating to the problems that have been alluded to. These representations have therefore not led me to a different conclusion on the main issues of the appeal.

Ground (g)

48. Ground (g) is that the time given to comply with the notice is too short.
49. The appellant explains that apparatus to support the adventure and exercise activities at the site are essential if the premises are to remain viable. He goes on to say that the removal of the facilities without their replacement would cause the termination of the operation. That being the case, he requires time for negotiations with the Council to re-site and/or redesign the apparatus, preferably over the winter months when the premises are not operational. He states that a compliance period of nine months would be needed for this process.
50. Appellants are entitled to assume success on any ground in an enforcement appeal, which means they are not obligated to consider an alternative development until the decision is made. However, in this particular case, the appellant has indicated that the apparatus in question will be changed as part of the offer at the centre. As the timescale of the appeal process has covered the winter months, it seems to me that there has been some time for the appellant to undertake this process.
51. Nonetheless, 30 days seems to me to be a tight timescale to make the arrangements and carry out the requirements of the notice. I consider that two months would be reasonable to provide the appellant with more leeway, whilst ensuring that the significance of the heritage assets is protected. I am mindful that the Council have powers to extend the period of compliance should this be justified.
52. To that extent, the appeal on ground (g) succeeds and I have directed that the enforcement notice be amended accordingly.

Conclusion

53. For the reasons given, I conclude that the appeal should succeed in part only, and I will grant planning permission for the two timber river bank landing stages, but otherwise I will uphold the notice with corrections and refuse to grant planning permission in respect of the other parts of the matters as set out above. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Elaine Gray INSPECTOR