
Appeal Decisions

Site visit made on 14 July 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 27 July 2020

Appeal A: APP/H2265/W/19/3242774

Appeal C: APP/H2265/W/20/3247978

Appeal E: APP/H2265/W/20/3252339

78 Pound Road, East Peckham, Tonbridge TN12 5BJ

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against refusals to grant planning permission.
 - The appeals are made by Mr & Mrs S Baker against the decisions of Tonbridge & Malling Borough Council.
 - In Appeal A the application Ref TM/19/00947/FL, dated 19 April 2019, was refused by notice dated 5 August 2019 and the development proposed is new independent single family dwelling in rear garden.
 - In Appeal C the application Ref TM/19/02901/FL, dated 9 December 2019, was refused by notice dated 4 February 2020 and the development proposed is new independent single family dwelling in rear garden.
 - In Appeal E the application Ref TM/20/00499/FL, dated 28 February 2020, was refused by notice dated 27 April 2020 and the development proposed is ancillary residential accommodation in rear garden.
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Appeal B: APP/H2265/Y/19/3242780

Appeal D: APP/H2265/Y/20/3247979

Appeal F: APP/H2265/Y/20/3252340

78 Pound Road, East Peckham, Tonbridge TN12 5BJ

- The appeals are made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against refusals to grant listed building consent.
 - The appeals are made by Mr & Mrs S Baker against the decisions of Tonbridge & Malling Borough Council.
 - In Appeal B the application Ref TM/19/00948/LB, dated 19 April 2019, was refused by notice dated 5 August 2019 and the works proposed are new independent single-family dwelling in rear garden.
 - In Appeal D the application Ref TM/19/02902/LB, dated 9 December 2019, was refused by notice dated 4 February 2020 and the works proposed are new independent single-family dwelling in rear garden.
 - In Appeal F the application Ref TM/20/00500/LB, dated 28 February 2020, was refused by notice dated 27 April 2020 and the works proposed are ancillary residential accommodation in rear garden.
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Decision Appeals A and B

1. I dismiss both appeals.

Decision Appeal C

2. I allow the appeal and grant planning permission for new independent single-family dwelling in rear garden at 78 Pound Road, East Peckham, Tonbridge

TN12 5BJ in accordance with the terms of the application, Ref TM/19/02901/FL, dated 9 December 2019, subject to conditions 1) to 7) on the attached schedule.

Decision Appeal D

3. I allow the appeal and grant listed building consent for new independent single-family dwelling in rear garden at 78 Pound Road, East Peckham, Tonbridge TN12 5BJ in accordance with the terms of the application Ref TM/19/02902/LB, dated 9 December 2019 and the plans submitted with it subject to condition 1) on the attached schedule.

Decision Appeal E

4. I allow the appeal and grant planning permission for ancillary residential accommodation in rear garden at 78 Pound Road, East Peckham, Tonbridge TN12 5BJ in accordance with the terms of the application, Ref TM/20/00499/FL, dated 28 February 2020, subject to conditions 1) to 7) on the attached schedule.

Decision Appeal F

5. I allow the appeal and grant listed building consent for ancillary residential accommodation in rear garden at 78 Pound Road, East Peckham, Tonbridge TN12 5BJ in accordance with the terms of the application Ref TM/20/00500/LB, dated 28 February 2020 and the plans submitted with it subject to condition 1) on the attached schedule.

Preliminary Matters

6. Appeals A/B and C/D concern differing arrangements of a building within the rear garden of the host property, for use as a separate family dwelling, while Appeals E/F are for a building which would be used ancillary to the residential use of number 78. Appeal A was refused planning permission for 3 reasons, including the loss of a weeping willow tree which at the time of the determination was considered by the Council to be an important specimen worthy of protection. A Tree Preservation Order was issued but not confirmed due to the tree being found to be diseased, and the Council confirmed in an e-mail of 25 February 2020 that this Reason for Refusal would no longer be supported.
7. As shown by the dates in the Headings above, the 3 scheme applications were made and considered sequentially; subsequent applications being made following refusal of the previous. The Council identified separate Reasons for Refusal in each case of the effect on the character and appearance of the area and the effect on the listed building, including its curtilage structures and its setting. This Appeal Decision will consider each proposal in turn under a single main issue as follows in order to avoid repetition and possible confusion.

Main Issue

8. This is the effect of the various proposals on the character and appearance of the area to include the listed building and its setting.

Reasons

Policy

9. Core Strategy Policy CP24 requires all development to be well designed and of a high quality in terms of detailing and use of materials; development that would be detrimental to the built environment, amenity or functioning and character of the settlement will not be permitted. Managing Development and the Environment Development Plan Document Policy SQ1 seeks proposals which reflect local distinctiveness, condition and sensitivity to change and should protect, conserve and where possible enhance the character and local distinctiveness of the area including its historic and architectural interest; and the distinctive setting of and relationship between the pattern of settlement, roads and landscape, urban form and important views.
10. Paragraph 124 of the 2019 National Planning Policy Framework states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. Paragraph 193 states 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.
11. The Council refer also to a Historic England publication, the current edition being *'Historic Environment Good Practice Advice in Planning Note 3 (Second Edition): The Setting of Heritage Assets'* December 2017.
12. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.

Findings Common to Each Scheme

13. The site is within a built-up area and there are shops and other facilities nearby, there is a bus route that passes the door and bus stops close to the site in both directions. The site should be regarded as being in an accessible location and both of the proposed uses would make better use of land.
14. The Council accept that they are not able to demonstrate a 5-year supply of housing land as required by paragraph 67 of the Framework, and whilst footnote 6 to paragraph 11 could act against a site containing a listed building being subject to the 'tilted balance', such lack would still be a material consideration which will be weighed in the balance as appropriate.
15. All three proposals are for a low, flat-roofed contemporary intervention within the curtilage of the listed building and it is agreed that the walls that form the boundary along the rear as well as part of the south of the existing plot and jutting out into the garden approximately mid-length, are curtilage listed structures. The boundary walls seen at the site inspection are of significance in providing evidence of the previous agricultural use, of particular interest in the now suburban wider setting, while their Flemish bond brickwork and sturdy form provide an attractive architectural setting for the garden.

16. Whilst the effect on the character and appearance of the area will be considered in each case, the Council's findings with regard to the effect on neighbouring outlook and amenity is concurred with now.

First Scheme; Appeals A and B

17. These appeals are for development and works described as a new independent single-family dwelling in the rear garden of the principle listed building, and the Council state that this would involve the demolition of the remaining farmstead walls. The appellants state this not to be the case, with the walls being incorporated into the proposed building, and a small part of the wall within the garden that would be demolished would have its brickwork re-used.
18. The walls in question are shown on the appellants' drawing A1501B-1004b. Comparison with drawings 1005b and 1006b shows how the new building would be erected hard up against them, and whilst incorporation could be feasible, there would be a reduction in evidential value and a likelihood of actual loss of fabric where new walls abut, and fixings have to be made. Being subsumed within the structure and internal space of the new building, they would lose much of their historic and architectural value and would be firmly divorced from the historic relationship with the farmhouse. The proposed incorporation within the fabric of the new building would cause harm to the significance of the curtilage listed walls.
19. The curtilage allocated to the new dwelling would be delineated by an extension across the site of the present wall which juts-out approximately mid-way back. The result would be a largely inward-facing patio house with hard edges all round. The west elevation on drawing 1030D indicates a solid wall with some planting but with some items visible above, albeit set back and hence not so visible from an eye-level viewpoint. Nevertheless, this hard delineation would appear abrupt and would reduce the setting to the rear of the principle listed building, further divorcing it from a farmstead setting, the remains of which are still evident in the rear garden.
20. It is clear however that the more important setting is to the front of the house, where there is a higher level of architectural significance and where the listed building has a dominant presence among the suburban dwellings along the road and to the rear. The effect on the setting of the rear of the farmhouse would be harmful, but less so than the physical and visual effect on the curtilage walls.
21. In that the walls would remain in fact, as well as the greater significance of the setting of the farmhouse being to the roadside elevation, the level of any of this harm would be 'less than substantial', a differentiation required between paragraphs 195 and 196 of the Framework. In this case the latter applies, and this states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. These will be weighed in the balance following consideration of the separation of the curtilage to form a new family home.
22. The Council consider that the subdivision of an existing garden would result in the proposal appearing cramped and that this would constitute overdevelopment of the plot, resulting in significant harm to the spacious

character of the area. Looking at the map of the area supplied as drawing A1501B-1000b, it is apparent that the present plot at number 78 is one of the more spacious in the area and much of the surrounding residential development sits on significantly narrower plots with many being shorter as well. There are elements of a spacious character around the junction of Bramley Road and Pound Road, and further afield there is a rural hinterland, but the overall character and appearance of the area is of a suburban density and form of development, comprising closely developed chalet bungalows and semi-detached houses.

23. The low form and constrained public view through where the existing garage would be demolished would result in limited perception of a change to the appearance of the area and the increase in activity likely would have no material adverse effect on the area's character.
24. Looking then at the public benefits of the proposal, the provision of housing in a sustainable location would be a benefit, the more so in a Council area that is unable to demonstrate a five-year supply of housing land. The removal of the sectional concrete garage would be a benefit to the public face of the listed building, although the removal of the conservatory style building in the north-east corner of the site should be given limited weight as its effect is largely benign, the curtilage listed wall being seen through it.
25. The appellants refer to the dwelling as being accommodation initially for elderly parents, and subsequently potentially for the appellants' children or they themselves, and they assert that the application is wholly personal and not commercial. However, whilst these are the appellants' present aspirations, requirements change over time and it would not be appropriate to restrict, by condition, the occupancy of a permanent dwelling to a particular person or family. For that reason, the weight that can be attached to personal needs is limited. There could be public benefits in caring for an elderly relative at home rather than away, but that benefit would be transitory, and the building would be likely to be in place long after the personal need has ended.
26. The development would further the economic objective in achieving sustainable development as set out in paragraph 8 of the Framework, and to the extent that weight can be attached to the appellants' aspirations, could be in line with the social objective. However, the environmental objective would not be well served by development which causes the identified harm to the significance of a listed building.
27. In the balance, the conclusion with regard to the first scheme is that the public benefits do not outweigh the harm to the listed building and operation of the 'tilted balance' is not appropriate; Appeals A and B should be dismissed as being contrary to Policies CP24 and SQ1, and the proposal does not reach the standard sought in Chapter 12 of the Framework on design nor those parts of Chapter 16 on designated heritage assets. The proposal would fail the statutory tests in the Listed Buildings and Conservation Areas Act.

Second Scheme; Appeals C and D

28. The description of the development and works is the same as for the first scheme, but the plan form of the dwelling would be smaller and is kept away

from the curtilage listed walls. The Council's Reasons for Refusal do not refer to the loss of walls but maintain the objection to the effect of the subdivision of the plot and the setting of the listed building. Listed Building Consent was withheld for lack of an acceptable development proposal.

29. The design of the dwelling is a reversal of the first scheme, being outward facing and making use of the space formed between the dwelling and the curtilage walls variously described as formal garden or wild garden and vegetable plot. The curtilage walls would be left intact and able to be appreciated as such, and whilst the dwelling would come between the former farmhouse and those walls, the low, unassuming design would introduce an attractive contemporary element that would sit comfortably within the open space presently forming part of the garden.
30. The appreciation and need to preserve a listed building, or any element of one, does not rely on there being a public view and the proposed dwelling would preserve the evidential and historic significance of the curtilage walls while the architectural significance would be retained. The relationship of the walls to the farmhouse would be disrupted but would not be as firmly divorced as in the first scheme. Instead of there being a solid wall at the division of the curtilage, the plans show a less formal landscape break as vegetation, and this would allow an unbroken visual continuity of the side curtilage wall from front to back and allow the wall that juts out to be seen as now.
31. Such an informal separation would reduce the effect on the setting of the rear of the farmhouse and the very different architectural treatment of the two dwellings would complement each other rather than confuse. Nevertheless, some harm would be caused to the setting of the listed building and the walls through interposing a building
32. As stated in the first scheme above, limited weight can be attached to family circumstances which would likely lead to this being an open-market dwelling, either soon or at some time in its life, with ownership and occupation separate from number 78. The largely open glazed west elevation could lead, in time, to pressure to erect a more formal separation between the curtilages, possibly of the harmful nature of the first scheme's wall. Within the curtilage of a listed building planning permission would be required as Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 does not apply and this would allow the Council to consider any proposal. A condition requesting a landscaping scheme as suggested would allow control of the initial arrangement.
33. Similar conclusions apply to this scheme as to the first scheme with regard to the effect on the character and appearance of the area through subdivision and the formation of a separate dwelling, as well as the views from the road where the garage would be removed.
34. To conclude, there would be some harm to the setting of both the principle listed building and the curtilage listed wall through separation, and whilst still 'less than substantial' the harm within that long continuum is considerably less for the reasons set out above. The web-based Planning Practice Guidance makes clear at Paragraph: 018 Reference ID: 18a-018-20190723 that within

each category of harm, the extent of the harm may vary and should be clearly articulated.

35. The public benefits would appear to be the same as identified for the first scheme, with only limited weight again attaching to those deriving from personal circumstances. Much the same considerations apply with regard to the 3 objectives in achieving sustainable development, other than the effect on the historic environment being justified.
36. In the altered balance pertaining to the second scheme, it is concluded that the more limited harm to the setting only of the listed building is outweighed by public benefits and that the scheme reaches the standard sought in Policies CP24 and SQ1 and the Framework on design and designated heritage assets, while this proposal would satisfy sections 16(2) and 66(1) of the 1990 Act and the requirement for special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Appeals C and D should be allowed, and both planning permission and listed building consent granted.

Third Scheme; Appeals E and F

37. There are distinct similarities in this scheme to the second scheme, other than the description of the use is one ancillary to that of the dwelling at number 78. The harm would again be to only the setting of the listed building and curtilage wall and this would be reduced by the even less formal and distinct delineation of the outdoor space, in that the ancillary accommodation would not need, and is not shown to be allocated, a separate curtilage. The quality of the architectural treatment would be similar to that of the second scheme and the flow of space without interruption between that and the principle listed building would integrate the new building into the setting with limited effects.
38. Although found to be acceptable in both the first and the second scheme, the effect on the character and appearance of the wider area would be less, due to this not being a separate dwelling, activity being spread over the total curtilage as at present.
39. The physical changes as a result of the lack of separate curtilage lowers the level of harm to the setting of the listed building further down the 'less than substantial' scale, and whilst still not a matter of there being no harm, the public benefits required to outweigh the harm would need to be considerably less. A condition would be required to link the building to the dwelling as ancillary accommodation only, and such accommodation is often used as a 'granny annexe', relieving pressure on the supply of small dwellings. Whilst great weight can still not be attached to the appellants' personal circumstances, they are not unusual in seeking to provide accommodation on-site for relatives.
40. This differentiates the public benefits of this scheme from those for open-market housing, and whilst the appellant has put forward arguments about housing land supply and fall-back positions, only limited weight needs be attached as the conclusion is that the new lower level of harm to the listed building is outweighed by the quality of the scheme and the public benefit of providing a more adaptable living space while continuing to preserve the fabric

of the former farmhouse. Any proposal to change or enhance the accommodation in the listed building could prove problematic.

41. The economic objective stated in the Framework would be met by increased use of local services, and the social objective of meeting the needs of present and future generations would be furthered. The ancillary accommodation would make effective use of land, reducing the need for less sustainable locations to be considered, while giving acceptable protection to the historic environment.
42. In the balance which has altered yet again with regard to the third scheme, the proposal would accord with the local and national policies and statutory requirements previously detailed, and permission and consent should be granted for Appeals E and F respectively.

Conditions

43. The appellant has agreed to the conditions supplied by the Council, including any that are pre-commencement, and this is sufficient proof of the agreement required by section 100ZA of the Town and Country Planning Act 1990.
44. In addition to those suggested, conditions listing the as-proposed drawings should be attached to the planning permissions for the avoidance of doubt and in the interests of proper planning.
45. Notwithstanding the details shown on the drawings, it is reasonable to include a requirement for details and samples of materials, and in the case of the new dwelling, a condition to secure and retain the additional parking is necessary. As stated in the Reasons, a landscaping scheme should be submitted to be sure of the boundary treatment between the 2 dwellings in Appeal C. A similar condition should be attached to Appeal E to ensure that the surrounds to the new building are appropriate to the setting of the listed building. In each case a 5 year requirement for replacing vegetation is sufficient.
46. The matter of permitted development rights in Part 2 of the Order was referred to in the Reasons for the second scheme, and the Council has suggested removal of various Classes in Schedule 2, Part 1 'development within the curtilage of a dwellinghouse' for the schemes that involve the formation of a new dwelling. The Reason cited for the condition refers erroneously to the site being within the Green Belt, but it would be reasonable to remove rights that could cause harm, in order to allow the Council to control proposals. Classes A and B should be removed for that reason, while Classes C and D have such limited effect that they should be allowed to remain. Class E is not available within the curtilage of a listed building.
47. In addition, reference has been made in the Reasons to Appeal E, for the ancillary accommodation, to the need to control that use. Although it is the fact that an independent dwelling of much the same effect has been found acceptable in Appeal C, the intent of the application is clear and the parking arrangements differ. A condition limiting the use to that ancillary to the dwellinghouse at 78 Pound Road should be attached to that permission.
48. The site is located within an area of archaeological potential and the maps supplied of the farm and surroundings 1871 to 1890 and 1907 to 1923 indicate

the possibility of below ground remains. It is reasonable that allowance should be made for archaeological study.

Conclusions

49. Accepting that there is no concern over the loss of a weeping willow, the main issues in all 6 appeals are similar. The conclusions above are that none of the 3 schemes has an adverse effect on the wider character and appearance of the area, and that due to the configuration of the site and the proposed building, the effect is limited to the principle listed building and the curtilage listed walls. The Framework allows for there to be some harm to a designated heritage asset and the level of harm determined is to be clearly stated and weighed against the public benefits of the schemes going ahead.
50. The harm varies over the 3 schemes, as do the benefits, and as set out in the Reasons to these Decisions, the result of carrying out that balancing exercise is that Appeals A and B for a large inward facing house would cause unacceptable and unwarranted harm and those appeals are dismissed, while the smaller house or ancillary accommodation in Appeals C and D, and E and F respectively, would cause less harm and that would be outweighed by public benefits, so that these appeal are allowed.

S J Papworth

INSPECTOR

Schedule of Conditions Planning Appeal C

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: (no prefix)1001, A1501D-1010, A1501D-1011, A1501D-1025, A1501D-1035, A1501D-1036, A1501D-1045, A1501D-1046, A1501D-1047, A1501D-1048 and A1501D-1050.
- 3) No development shall take place above ground until details and samples of materials to be used externally have been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out only in accordance with the approved details.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking and re-enacting that Order) no development shall be carried out within Classes A and B of Part 1 of Schedule 2 of that Order unless planning permission has been granted on an application relating thereto.
- 5) The dwelling hereby approved shall not be occupied until the area shown on the submitted layout as vehicle parking space has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.
- 6) The dwelling hereby approved shall not be occupied until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping and boundary treatment. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the dwelling or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 5 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species. Any boundary fences or walls or similar structures as may be approved shall be erected before first occupation of the dwelling.
- 7) No ground works shall take place within the site in order to implement the development until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (including a timetable for such investigation) which has first been submitted by the applicant and approved by the Local Planning Authority.

Schedule of Conditions Planning Appeal E

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: A1501C-1001, A1501C-1010,

A1501C-1011, A1501C-1025, A1501C-1035, A1501C-1036, A1501C-1045, A1501C-1046, A1501C-1047, A1501C-1048 and A1501C-1050.

- 3) No development shall take place above ground until details and samples of materials to be used externally have been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out only in accordance with the approved details.
- 4) The building and ancillary accommodation hereby approved shall not be occupied, until the area shown on the submitted layout as vehicle parking space has been provided, surfaced and drained. Thereafter it shall be kept available for such use and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any order amending, revoking or re-enacting that Order) shall be carried out on the land so shown or in such a position as to preclude vehicular access to this reserved parking space.
- 5) The building and ancillary accommodation hereby approved shall not be occupied until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscaping and boundary treatment. All planting, seeding and turfing comprised in the approved scheme of landscaping shall be implemented during the first planting season following occupation of the building or the completion of the development, whichever is the earlier. Any trees or shrubs removed, dying, being seriously damaged or diseased within 5 years of planting shall be replaced in the next planting season with trees or shrubs of similar size and species. Any boundary fences or walls or similar structures as may be approved shall be erected before first occupation of the building.
- 6) The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 78 Pound Road, East Peckham, Tonbridge TN12 5BJ.
- 7) No ground works shall take place within the site in order to implement the development until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (including a timetable for such investigation) which has first been submitted by the applicant and approved by the Local Planning Authority.

Schedule of Conditions Listed Building Consent Appeals D and F

- 1) The works hereby approved shall begin not later than 3 years from the date of this decision.