
Appeal Decision

Site visit made on 18 August 2020

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 24 August 2020

Appeal Ref: APP/E2205/D/20/3253829

Little Hegg Hill, Smarden Bell Road, Smarden TN27 8NX

- 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 Mr Bryan Rodrigues against the decision of Ashford Borough Council.
 - The application Ref 19/00708/AS, dated 22 January 2020, was refused by notice dated 18 March 2020.
 - The development proposed is erection of first floor flat roof extension off ground floor wall, incorporating and extending the existing dormer windows including alterations to fenestration at ground and first floor level and installation of flue on the south elevation (retrospective).
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Decision

1. I dismiss the appeal.

Main Issue

2. This is the effect of the extension on the character and appearance of the countryside area including the appearance of the original building and the setting of the listed building.

Reasons

3. Local Plan Policy SP1 states the strategic objectives of conserving the natural environment and designated heritage assets, as well as to create the highest quality design, and Policy SP6 sets out the considerations to promote that design quality. Landscape character and design is the subject of Policy ENV3A, and Policy ENV13 concerns the conservation and enhancement of heritage assets. Policy HOU9 is specific to standalone annexes which are to be suitable in size, scale and materials and clearly ancillary and visually subordinate to the principal dwelling and is not to result in significant harm to the character and appearance of the surrounding area.
4. The principal dwelling is listed Grade II and is now referred to in list entry number 1119643 as Little Hegg Hill, although the list description leaves no room for confusion with the building to the south now called Hegg Hill Cottage, the name given in list entry number 181252 supplied by the Council.
5. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires 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. Paragraph 193 of the 2019 National Planning Policy

Framework 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.

6. As stated in the bullet points above, the proposal is retrospective, and the extension appeared substantially complete at the time of the site inspection and as shown on the application drawings. As with the Council's analysis of the changes, the alteration to the windows and doors is acceptable alone and the effect of the flue could be mitigated through dulling its surface reflection or painting.
7. The pre-existing drawing is of a barn-like structure with 2 small pitch-roofed dormers set well within the margins of an otherwise plain roof with part hip-ends. That building would have appeared as an appropriate outbuilding in a rural area and within the setting of the listed building, and being granted permissions in 1989 and 2005, both after the listing of the adjacent cottage in 1980, would have been considered to meet the requirements of the 1990 listed building legislation as well as the Development Plan of the time.
8. The works that have been carried out have effectively replaced or amalgamated the 2 small dormers into a long flat-roofed dormer that has a front elevation continuous with that of the ground floor walls, giving the impression of a 2 storey structure for much of the length. The margins of sloping roof left at the sides and above this unattractive feature are limited and the first floor windows appear arbitrarily placed relative to the small pitched roofs above. Even if they are the remains of the previous dormer roofs, and drawings 101 and 103 differ in their position, the effect is jarring and disruptive to the composition.
9. It does appear to be the case that the building, and the elevation in question, is not readily seen from public viewpoints due to the roadside vegetation and the distance from footpaths, but the preservation of listed buildings and their setting does not rely on a public view. The cottage is small and displays the architectural features of a rural cottage, within a setting of a garden and countryside. The historic significance derives from its age and construction. The catslide roof to the rear is a distinctive and plain feature, which is visually disrupted and overwhelmed by the fussy detailing now apparent on the outbuilding in replacement for the restrained dormers as permitted. In conclusion of this analysis, the changes to the first-floor front elevation cause harm to the setting of the listed building through the strident design and arrangement of the flat roofed projection seen in close proximity to the plain catslide and historic detailing of the cottage.
10. It is noted that the Officer writing an e-mail to the appellant in February 2020 considered the harm to be 'more than substantial'. Paragraphs 195 and 196 of the Framework refer only to 'substantial harm' and 'less than substantial harm' and the web-based Planning Practice Guidance makes clear that the former is a high test which may not arise in many cases (Paragraph: 18a Reference ID: 18a-018-20190723). On the observations of the site inspection, the harm in this case would in fact be 'less than substantial' and paragraph 196 states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
11. The optimum viable use appears to have been secured and the 2005 permission apparently did not include the restriction in use applied in 1989.

There are however apparently benefits in providing for the restrictions in use of the listed building experienced by the appellant through disability, the full details of which have been made available in the Statement of Case and appendices. The extension and adaptation of the listed building were applied for under references 18/00233/AS and 18/00234/AS, but were refused, while photographs show restricted headroom under the sloping ceilings in the outbuilding that would have been overcome by the flat roof addition. Allowing the appellant to remain at home rather than having to be treated in care, if that was the option, would be a public benefit and would further the aims of the social and economic objectives in paragraph 8 of the Framework.

12. As decision maker appointed by the Secretary of State, the Inspector must have regard to the requirements of the Public Sector Equality Duty under the Equality Act 2010, and disability is a protected characteristic. In addition, the appellant has referred to the Human Rights Act 1998 and in particular, Article 8 and the right for respect for private and family life, and Article 1 of the first protocol on the protection of property are engaged. These are however qualified rights and may be outweighed by the legitimate interests of the wider community, which could in his case include the preservation of the setting of a listed building, a matter that is the subject of statute.
13. The proposal is for permanent development and it is not generally appropriate to limit the use of permanent development to a temporary time limit or to individual persons, as the development would remain long after the need has changed or ceased. In the balance and taking account of the duties on the decision maker set out above, the harm to the setting of the listed building is not outweighed by public benefits sufficient to grant permission.
14. Furthermore, the amendments suggested by the appellant, whilst possible to secure by condition with a time limit, would not address the main objection and the main cause of harm, which is the flat roofed addition. Other amendments referred to but not drawn would go beyond what is able to be considered under the 'Wheatcroft' principles, but could be the subject of a fresh application.
15. To conclude, the addition is poor design and causes harm to the setting of the listed building contrary to Policies SP1, SP6, ENV3A, ENV13 and HOU9, would fail the statutory test in the 1990 Act and would not accord with the aims of Chapter 16 of the Framework, and the public benefits do not outweigh the identified 'less than substantial' harm. Whilst elements of the social and economic objectives would be furthered the environmental objective of contributing to protecting and enhancing the historic environment would not be met, as great weight should be given to the conservation of designated heritage assets.
16. The conclusions of this Decision are proportionate and do not violate the appellant's Human Rights, and any compliance period for subsequent enforcement action would need to be based on consideration of the same statutory duties. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR