



Appeal Decisions

Site visit made on 12 October 2020

by C Jack BSc MA MA(TP) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2020

Appeal A - Ref: APP/C3810/W/19/3242332

Nyton House, Nyton Road, Westergate PO20 3UL

- 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 Harvey Hillary for Nyton House Residential Care Home against the decision of Arun District Council.
 - The application Ref AL/42/19/PL, dated 12 April 2019, was refused by notice dated 5 September 2019.
 - The development proposed is the construction of a ten bedroom dementia unit on the grounds of Nyton House Care Home.
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Appeal B - Ref: APP/C3810/Y/19/3242340

Nyton House, Nyton Road, Westergate PO20 3UL

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Harvey Hillary for Nyton House Residential Care Home against the decision of Arun District Council.
 - The application Ref AL/43/19/L, dated 12 April 2019, was refused by notice dated 5 September 2019.
 - The works proposed are the construction of a ten bedroom dementia unit on the grounds of Nyton House Care Home.
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Decision - Appeal A

1. The appeal is allowed and planning permission is granted for the construction of a 10 no. bedroom dementia unit with attached covered walkway in the grounds of Nyton House Care Home and including the conversion of an existing garage into a staff day room, the erection of a new garage with laundry room, garden store and external bin store, demolition of various outbuildings and sections of wall and the re-landscaping of the existing garden areas at Nyton House, Nyton Road, Westergate PO20 3UL in accordance with the terms of the application, Ref AL/42/19/PL, dated 12 April 2019, subject to the conditions set out in the attached Schedule.

Decision - Appeal B

2. The appeal is allowed and listed building consent is granted for the construction of a 10 no. bedroom dementia unit with attached covered walkway in the grounds of Nyton House Care Home and including the conversion of an existing garage into a staff day room, the erection of a new garage with laundry room, garden store and external bin store, demolition of various outbuildings and sections of wall and the re-landscaping of the existing garden areas at Nyton House, Nyton Road, Westergate PO20 3UL in accordance with the terms of the

application Ref AL/43/19/L dated 12 April 2019 and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Preliminary Matters

3. The description of the proposal in the headings above is taken from the application form. A more detailed description of the proposal was subsequently given on the Council's decision notices, and by the appellant on the appeal forms. This included reference to the proposed attached covered walkway, conversion of an existing garage to a staff day room, the erection of a new garage with laundry room, garden store and external bin store, demolition of various outbuildings and sections of wall and re-landscaping of existing garden areas, which are all elements of the overall proposal as originally applied for and I have considered the appeal on this basis.
4. While the description of the proposal is the same in both appeals, the documents clarify that the Council's concerns in Appeal B relate to the proposed works involving the removal of sections of historic walls in the grounds of Nyton House, a listed building.
5. I saw during my visit that Nyton Farm Cottage and Nyton Gable, two cottages forming part of a non-listed terrace adjacent to Nyton House, are being converted for dementia care provision of 9 bedrooms in connection with the use of Nyton House, pursuant to a recent consent by the Council. The third cottage in the terrace, Wyncote, is owned and occupied separately.
6. Drawings 209 Rev P1 and 210 Rev P1 are dated after the applications were submitted to the Council. I have treated these drawings, both titled Analysis of Knighton Grange Impact, as illustrative only for the purposes of both appeals.

Main Issues

7. The main issues are the effect of the proposals on i) the special interest of Nyton House, a Grade II listed building, and on the setting of the neighbouring Grade II listed building known as Knighton Grange Cottage and ii) the living conditions of neighbouring occupiers, with particular regard to privacy, outlook, and sunlight.

Reasons

The listed buildings – significance

8. Nyton House is a substantial country house, first listed Grade II in 1958, set in large grounds including formal gardens which are typical of its era. The list description indicates that the house, historically called Nyton and later Nyton Farmhouse, dates in part from the 16th Century or earlier, with a late 17th Century red-brick façade. More recently various outbuildings, alterations, and extensions including a conservatory have taken place, including in relation to its use as a residential care home for older people. Nevertheless, Nyton House remains a very attractive building with many historic architectural features, including sash windows, largely intact.
9. The house occupies a countryside location, a short distance outside the village of Westergate, set behind a prominent roadside flint wall. A cluster of nearby agricultural buildings is partially visible from the grounds, including from the proposed position of the dementia unit. Various other walls, predominantly of

flint or brick, feature within and around the grounds of Nyton House, including surrounding a formal walled garden. These walls make a strong positive contribution to the character and appearance of the immediate and wider settings of both Nyton House and the neighbouring Knighton Grange Cottage, which shares a walled boundary with the appeal site. The latter property, a 'chocolate box' timber framed house with thatched roof, portraying attributes of a typical timber framed local vernacular building, is also Grade II listed and identified on the list as Nyton Cottage, dating from the 17th Century but possibly with earlier origins.

10. Based on the above, the significance of Nyton House today derives principally from its architectural and historic interest as a noteworthy example of a house and grounds indicative of the elevated historic status of the Nyton Grange country estate. The significance of Knighton Grange Cottage lies mainly in its architectural and historic interest as an aesthetically pleasing example of local vernacular character, appearance, and construction methods.

The listed buildings – effects of the proposal

11. The proposed dementia unit would be located in an area of walled garden, situated behind the terrace of cottages and offset from the main house and more formal garden area. The unit would be single storey and, while its function would be strongly related to the current use of Nyton House, its modern design and form, subservient scale, and the degree of separation, would ensure that it would not compromise or compete with the historic fabric or status of Nyton House itself, or the outlook from that listed building across the more immediate gardens.
12. The introduction of the new unit in this walled, principally grassed, garden area would inevitably erode the generally spacious and undeveloped nature of this part of the grounds, which would adversely affect the historic character and appearance of this area in particular, and the wider grounds and setting to some degree. Moreover, the removal of sections of wall adjacent to Nyton Farm Cottage to allow emergency vehicle access; adjacent to the common boundary wall with Knighton Grange Cottage; and adjacent to the rear of Nyton House, would fail to preserve the historic fabric and integrity of parts of these walls.
13. Historic flint walls, including in Nyton Road, are recognised for their contribution to the character of the parish and its architectural history, as Policy EH11 of the Aldingbourne Neighbourhood Development Plan sets out. However, the harm arising in this case would be limited by the relatively modest extent of walls to be removed, that the substantial majority of the historic walls in the grounds of Nyton House would be retained, and the proposed reuse of flint from the walls such as for detailing on the new unit. Furthermore, the modest section to be opened-up closest to Knighton Grange Cottage has already largely fallen away where the wall, and garden area around the former swimming pool generally, is in relatively poor condition.
14. The new dementia unit, which would be around 5.2m in maximum ridge height, would be partially but clearly visible from Knighton Grange Cottage, above the historic boundary wall which stands roughly 3m in height. This would, in the main, affect the setting of Knighton Grange Cottage as experienced from its rear garden, from where the surrounding setting is largely free from built form, with an overriding impression of trees and sky. One wild cherry tree on the

appeal site would be removed, and there would be some visual encroachment by modern built form into the setting of, and established outlook from the gardens of, Knighton Grange Cottage.

15. This would fail to preserve the setting of Knighton Grange Cottage. However, the degree of harm would be moderate given that the principal feature of the nearby setting and outlook at the rear of this property would remain the substantial historic wall and a number of trees. In addition, the hipped roof of the new unit would slope away from the common boundary, and the new built form, insofar as it would be visible above the wall, would be seen largely against the backdrop of the existing terraced properties albeit these are more distant. The roof would consist of a series of ridges, thereby the visual mass of the roof profile would be limited such that it would not be unduly overbearing. Together, these factors would ensure the unit would not be a significantly dominant presence in relation to Knighton Grange Cottage.
16. The proposed red zinc roof cladding would introduce a modern material into the historic setting of the listed buildings. While this would have a different appearance from thatch, and the clay tile roofs at Nyton House and the terraced cottages, it would facilitate a relatively lightweight appearance to the new roof, befitting of the modern design approach for the unit, and would further differentiate it as a 21st Century addition to the wider historic setting. It would also take suitable reference from the red brick colour tones in several nearby buildings, and from the predominantly 20th Century agricultural buildings that are partially visible from the site and from Knighton Grange Cottage.
17. The various other elements of the proposal, aside from the dementia unit itself and the works to the walls, would have no significant effects on the special interest of the listed buildings.

Public benefits and conclusions on the first main issue

18. For the reasons of harm identified above, the proposal would fail to conserve or enhance the historic environment, which would result in conflict with Policy HER SP1 of the Arun Local Plan 2011-2031 (the Local Plan), which expects designated heritage assets including listed buildings, structures and their settings, to be given the highest level of protection in a manner appropriate to their significance.
19. The statutory duties in Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) are matters of considerable importance and weight. Paragraph 192 of the National Planning Policy Framework (the Framework) states that the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation should be taken into account in determining applications. Meanwhile, paragraph 193 of the Framework also advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Furthermore, paragraph 194 of the Framework also requires that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification.
20. Given that I have found that the proposal would result in some harm to the special interest of Grade II listed Nyton House, and the setting of Grade II

listed Knighton Grange Cottage, so failing to preserve both, it follows that there would be a negative effect on the significance of these designated heritage assets. I find the harm to be less than substantial in this instance, in the context of paragraph 196 of the Framework, but nevertheless it remains a matter of considerable importance and weight. In such circumstances, it is necessary to weigh the harm against the public benefits of the proposal, which includes the securing of optimal viable use of listed buildings.

21. The proposal would provide 10 dementia care bedrooms in a district where a need, undisputed in the evidence before me, has been identified for around 2000 new elderly residential placements in the 14 years to 2034, equating to around 143 each year. Other new placements towards this need including other dementia care opportunities may be forthcoming, as evidenced by a recent permission in the district for around 64 dementia placements, and the 9 placements being created at Nyton Gable and Nyton Farm Cottage. Nevertheless, the proposal for a ten-bedroom unit would make a further modest, but very important, contribution to the overall need, at an established residential care setting. This additional provision would be a public benefit of very substantial weight in the context of the need and the projected profile of the district's significantly ageing population.
22. A number of other benefits have been put to me associated with other elements of the proposal, such as the removal of several outbuildings including garages, and the provisions of newly landscaped gardens and removal of the redundant swimming pool. While there would be some modest conservation gains arising from these factors, they are limited in their scope as public benefits of the proposal, including because it is not clear that they could not be brought about independently from the proposed dementia unit. Other factors, such as the design and form of the unit being intended to reduce impacts on the host listed building are mitigations and not in themselves public benefits. Reference is also made to the removal of the conservatory attached to Nyton House but, while there may be conservation related public benefits to this, it is not specified on the application plans before me. The possible removal therefore does not carry significant weight as a public benefit in this instance.
23. In accordance with paragraphs 193 and 196 of the Framework, considered together, I find that the substantial public benefits arising principally from the contribution to elderly placement needs and dementia care, would in this case outweigh the great weight to be given to the less than substantial harm I have identified.

Living conditions

24. The dementia unit would be situated close to the rear gardens of Wyncote and Knighton Grange Cottage. As a single storey building, there would be no significant overlooking of either of these dwellings. Moreover, the respective boundary fence and wall are sufficiently tall at around 1.8m and 3m to prevent any significant loss of privacy to the neighbouring houses or their private gardens. Furthermore, the elevation closest to the boundary with Wyncote would have no windows or doors opening towards that dwelling.
25. The roof of the full length of the unit would be visible from most areas of the rear garden at Knighton Grange Cottage, above the boundary wall. However, the roof would slope away from Knighton Grange Cottage garden and it would be broken up into a series of ridges with a maximum height of about 5.2m.

This, together with the extensive provision of private garden at Knighton Grange Cottage, and the substantial boundary wall, would ensure that the proposal would not dominate the garden or the house. Thus, the proposal would not result in an overbearing effect of sufficient magnitude to harm the living conditions experienced there. There would be some shading of the garden area. However, due to the relative orientation, the form and height of the unit, and the generous private garden area, the effect of this on the living conditions at Knighton Grange Cottage would be limited.

26. The dementia unit would also be visible from the rear of Wyncote, both from the rear garden and from within the house. However, the moderate height of the unit, together with the degree of separation provided by the length of the rear garden at Wyncote, would again limit the effect of the proposal such that it also would not be unduly overbearing on the living conditions for occupiers of that property. The relative orientation of the unit and the rear garden of Wyncote would result in some shading of the rear garden, particularly towards the end of the day and when the sun is low in the sky. The effect of this would be principally in the part of the garden furthest from the back of the house and therefore would also not have a significant adverse effect on the overall living conditions there.
27. The relationship and effects of the proposal with Nyton Gable and Nyton Farm Cottage would be very similar to that with Wyncote. Whilst these cottages are themselves being converted from individual houses to dementia care provision in connection with Nyton House, the proposal would therefore also have acceptable effects on the living conditions of occupiers there. The various other elements of the proposal would also have no significant effects on the living conditions of nearby residents, including at Wyncote and Knighton Grange Cottage.
28. I conclude that the proposal would not harm the living conditions of neighbouring occupiers, with particular regard to privacy, outlook, and sunlight. It would therefore accord with the requirements of Local Plan Policy D DM1, which among other things seeks to ensure minimal impact to occupiers of nearby properties.

Other Matters

29. I note that assessments for this proposal relating to matters such as parking, drainage, and noise pre-date planning permission being granted for the 9-bed dementia unit at Nyton Gable and Nyton Farm Cottage. However, the noise and drainage assessments are specific to the proposal before me and there is no substantive evidence to indicate that they are no longer relevant or appropriate, or that the development would not otherwise be capable of being adequately provided for in these regards. Furthermore conditions, including to ensure satisfactory drainage provision, noise mitigation, and to secure the vehicle parking provision associated with this proposal, could reasonably be imposed.
30. I also acknowledge the concerns raised about the removal of historic walling with regards to the integrity of Knighton Grange Cottage. Works to the historic wall along the common boundary with Knighton Grange Cottage do not form part of the proposal. There is limited evidence or apparent likelihood of a support connection between the common wall and the wall perpendicular to it, due to the very poor condition of that part of the perpendicular wall, which has

significantly fallen away. Furthermore, there is no substantive evidence that the proposal would be likely to result in damage to Knighton Grange Cottage.

Conditions

31. The Framework sets out that conditions should only be imposed where they are necessary, relevant to planning and to the development (or works) to be permitted, enforceable, precise, and reasonable in all other respects. I have considered the Council's suggested conditions on this basis and have made amendments to the wording of those conditions imposed where necessary in the interests of clarity or the tests. In addition, I have amalgamated some conditions to avoid unnecessary duplication of requirements.
32. In addition to the standard time limit for both appeals, I have imposed a condition in respect of Appeal A which specifies the approved plans. This condition is not replicated in Appeal B as progressing the works in accordance with the submitted plans is part of the formal decision. Conditions relating to external materials, joinery details, and the reuse of flints are imposed in both appeals, because these are necessary to safeguard the significance of the listed buildings.
33. Further, in respect of Appeal A, conditions relating to tree protection are necessary to safeguard trees to be retained, and a condition relating to ecological mitigation and enhancement is necessary in the interests of protected species and biodiversity. Conditions relating to surface and foul drainage, energy supply, and parking provision are necessary in the interests of the satisfactory and sustainable operation of the completed development. Conditions relating to external lighting, landscaping, and gates are necessary in the interests of the character and appearance of the development. An obscure glazing condition is necessary in the interests of privacy. Construction management planning is necessary in the interests of the satisfactory operation of the site during the works, including with regards to the living conditions of nearby residents.

Conclusions

34. While there would be some harm to designated heritage assets and their settings, this would be outweighed by the public benefits, which provides a clear and convincing justification for the proposal. Therefore, for the reasons given above, I conclude that Appeal A and Appeal B should be allowed.

Catherine Jack

INSPECTOR

Schedule of Conditions

APPEAL A: APP/C3810/W/19/3242332

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans 210 Rev P2, 202 Rev P1, 203 Rev P5, 204 Rev P1, 205 Rev P5, 206 Rev P5, 207 Rev P3, 330-01-01A, 330-01-02A and 330/01/03 Rev B.
- 3) No importing or storage of any plant, contractors' buildings, or materials, or any works of demolition, shall take place on site until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of temporary contractors' buildings and security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - vi) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) All site preparation and construction activity shall be carried out in strict accordance with the Tree Protection: Construction Method Statements DH-330-01-07, 20 August 2019, by David Hares Landscape Architects.
- 5) All the trees shown on the landscaping plan 330-01-02A as "to be protected and retained" and any trees whose canopies overhang the site shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, unless specified in the previously approved details.
- 6) The development shall be carried out in strict accordance with the mitigation and enhancement measures specified in section 5 of the Ecological Impact Assessment dated 12 February 2019 by ECOSA Ltd. Such enhancements and mitigation measures shall be retained and maintained thereafter.
- 7) No development above damp proof course level shall take place until a schedule of materials and finishes and samples of such materials and finishes to be used for the external walls and roofs of the new buildings have been submitted to and approved in writing by the local planning

authority. The relevant works shall be carried out in strict accordance with the approved details and samples.

- 8) No development above damp proof level shall take place until a scheme has been submitted to and approved in writing by the local planning authority detailing how flint to be removed from the removal of walls or other buildings on site is to be reused on the site including in the repair of retained walls and detailing on the dementia care building. The approved scheme shall thereafter be implemented in full prior to the first occupation of the dementia care building.
- 9) No building hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 10) No building hereby permitted shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority. Such details shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 11) The dementia care building shall not be first occupied until details of the gates to be installed at the emergency vehicle access at the side of Nyton Farm Cottage have been submitted to and approved in writing by the local planning authority. Only gates in accordance with the approved details shall be installed.
- 12) The landscaping works shall be carried out in accordance with the approved details before the dementia care building is first occupied in accordance with details and an implementation programme to be agreed in writing by the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the

- completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 13) Details of the construction and materials of all new joinery (windows and doors) shall be submitted to and approved in writing by the local planning authority. All such joinery shall be implemented in accordance with the approved details prior to the dementia care building being first occupied.
 - 14) The dementia care building shall not be first occupied until a scheme for the incorporation of decentralised, renewable and low carbon energy supply sources (as described in the glossary to Annex 2 of the National Planning Policy Framework 2019) to provide for at least 10% of the energy supply of the development has been submitted to and approved in writing by the local planning authority, and the energy supply sources have been implemented as approved, unless it can be demonstrated that a fabric-first approach would achieve an equivalent energy saving. The approved sources, or alternative fabric-first approach measures, shall be retained and maintained thereafter.
 - 15) The dementia care building shall not be first occupied until vehicle parking has been laid out within the site in accordance with drawing 203 Rev P5 and those parking spaces shall thereafter be kept available at all times for the parking of vehicles.
 - 16) The dementia care building hereby permitted shall not be occupied until all bathroom and toilet windows have been fitted with obscured glazing and once installed the obscured glazing shall be retained thereafter.
 - 17) No external lighting shall be installed until details of the type, appearance, height and position of fitting, illumination level, and light spillage have been approved in writing by the local planning authority. Any external lighting shall be installed and maintained in strict accordance with the approved details.

APPEAL B: APP/C3810/Y/19/3242340

- 1) The works authorised by this consent shall begin not later than three years from the date of this consent.
- 2) No works above damp proof course level shall take place until a schedule of materials and finishes and samples of such materials and finishes to be used for the external walls and roofs of the new buildings have been submitted to and approved in writing by the local planning authority. The relevant works shall be carried out in strict accordance with the approved details and samples.
- 3) No works above damp proof level shall take place until a scheme has been submitted to and approved in writing by the local planning authority detailing how flints removed during demolition works are to be reused on the site including in the repair of retained walls and detailing on the dementia care building. The approved scheme shall thereafter be implemented in full prior to the first occupation of the dementia care building.

- 4) Details of the construction and materials of all new joinery (windows and doors) shall be submitted to and approved in writing by the local planning authority. All such joinery shall be implemented in accordance with the approved details prior to the dementia care building being first occupied.

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