



Appeal Decision

Site Visit made on 8 December 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd December 2020

Appeal Ref: APP/C1570/W/20/3257872

Cedar Cottage, Crow Street, Henham CM22 6AG

- 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 Oskar Klonowska against the decision of Uttlesford District Council.
 - The application Ref UTT/19/3008/FUL, dated 5 December 2019, was refused by notice dated 26 February 2020.
 - The development proposed is construction of 2 new 4 bed dwelling houses.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are: -
 - whether the proposal would preserve the setting of the Grade II listed buildings, known as 'Cedar Cottage' and 'Pair of Cottages Immediately to North of Cedar Cottage', and the extent to which it would preserve or enhance the character or appearance of the Henham Conservation Area.
 - the effect of the proposal on the ecological and biodiversity value of the site and the nearby Hatfield Forest Site of Special Scientific Interest and National Nature Reserve; and
 - the effect of the proposal on the safe and efficient operation of the highway network in the vicinity of the appeal site.

Reasons

Significance and settings

3. The appeal site concerns the rear garden of Cedar Cottage, which wraps around the rear of Suckling Cottage¹, both of which are Grade II listed and situated within the Henham Conservation Area (CA). The cottages appear to be of 18th Century origin and are timber-framed with intricate half-hipped thatched roofs featuring characteristic upturned cap-ends, attic rooms served by deeply set dormer windows and centrally set chimney stacks. Cedar Cottage is arranged on an I-shaped plan form with a second external stack to the north end. The façades of both cottages are finished in white-painted plaster, the fronts of which include a projecting gabled porch. They are separated from the frontage of Crow Street by a wide grass verge and low hedges.

¹ Listed as 'Pair of Cottages Immediately to North of Cedar Cottage'.

4. The cottages were most likely built as single properties but later subdivided and then more recently returned to single cottages. This is evidenced in the listing description for Suckling Cottage, which is now a single dwelling having been converted and extended to its rear. That permission granted by the Council also included an extension to the north side of the cottage. Cedar Cottage is currently served by a detached garage and store, which is sited behind Suckling Cottage. I understand that this has been refused planning permission and is the subject of enforcement proceedings.
5. Despite the more modern alterations and the approved extension to Suckling Cottage, the significance of the cottages is derived from their architectural and historic interest, as noteworthy examples of 18th Century cottages in the village. In particular, the matching materials of construction and thatch roofs ensure that their architecture is harmonious and together they form an attractive composition.
6. I am mindful of the definition of 'setting' in the National Planning Policy Framework (the Framework) as being the surroundings in which a heritage asset is experienced. The ordnance survey plans of the village illustrate that the garden of Cedar Cottage was once considerably smaller and aligned with that of Suckling Cottage. The setting of the listed buildings has therefore changed over time. The undeveloped qualities of the land to the rear of the cottages, provided by the existing garden to Cedar Cottage, and the established planting of its western boundary provides a backdrop to the cottages and a transition to the paddocks and agricultural fields beyond. This ensures that they are prominent within the surrounding area, including in views from the north around the war memorial and across Crow Street. The garden therefore makes a positive contribution to the setting of the listed cottages, which contributes to their understanding and significance. Although the as yet constructed extension to the north side of Suckling Cottage would partially reduce the visibility to the rear into the garden, its furthest extent would still be apparent due to the presence of the trees at the western boundary.
7. The CA covers a significant extent of the village and contains numerous listed buildings, many of which are thatch cottages that originate from the 16th-18th Centuries. The arrangement of streets is very conspicuous, as the principal routes through the village feature a spacious arrangement of houses behind wide grass verges featuring spring-fed ponds. While some houses are set behind those to the frontage of Crow Street, they are predominantly arranged to the frontage within spacious plots, with gaps between and set against a backdrop of mature planting. This largely contains the houses and provides a transition to the paddocks and agricultural fields that envelope the village.
8. The centre of the village, to the south of High Street, between Crow Street and Hall Close, is more densely arranged with buildings closer to the carriageway. There are also examples of backland development, particularly to the north of Church Street and High Street. While these bring greater variety and informality to the pattern of development and architecture in the village, they are spatially distinct from the more open, spacious and greener parts.
9. Despite more recent developments, as far as is relevant to this appeal, the significance of the CA today is principally derived from the considerably positive contribution made to its character and appearance by the open and spacious

arrangement of high quality houses set within mature landscaped plots and back from the streets behind wide grass verges and ponds.

10. Given the prominent location of the appeal site, its spacious and contained backdrop and openness and undeveloped qualities; and the architectural and historic qualities of Cedar Cottage and Suckling Cottage, that are typical of the village, make significantly positive contributions to the character and appearance of the CA, which contributes to its understanding and significance.

The Proposal

11. The proposal is for two detached houses to be sited behind Suckling Cottage and served by the existing driveway between the cottages. This would be extended further back into the site with a turning area at the end and planted to either side with a beech hedge, which would also continue along the rear boundary of Suckling Cottage. Between the new houses would be a pair of double garages, while a triple garage opposite would serve Cedar Cottage. A new wall would enclose the remainder of the northern boundary of the retained garden of Cedar Cottage.
12. The houses would be of two-storeys and arranged on a narrow cruciform floorplan. The central gables would be jettied and roofs steeply pitched, but the eaves would be lower to the wings, which would feature projecting dormer windows. The materials would include brickwork plinths, with pargetted render and timber weatherboarding above, and plain tiled roofs.

Effect of the proposal on the setting of the listed buildings and the character and appearance of the Henham Conservation Area

13. The proposed planting within the site would have a limited effect in softening the presence of built development to the rear of the listed cottages. Moreover, the existing garage and store in the garden of Cedar Cottage is visible from Crow Street and around the war memorial. Even if the approved extension to Suckling Cottage were to be constructed, the proposal would still be evident within the garden and would erode its undeveloped qualities and the space it provides around the cottages and between the open countryside beyond. Furthermore, I accept that the proposed dwellings may have been designed based on Essex Design Guide principles but, due to their scale and proximity to the cottages, they would compete with them and enclose Suckling Cottage to a harmful extent.
14. The reduction space around the cottages and the presence of the proposed built development to the rear would be harmful to the setting of the listed buildings and would fail to either preserve or enhance the character and appearance of the CA. The site could not therefore be said to be significantly under-used, as it forms a crucial part of the setting of the listed cottages.
15. I will address the implications of the use of the existing driveway in respect of highway safety later, but for the purposes of this main issue, I have assumed that the access would need to be widened. Several driveways, including for Cedar Cottage, already traverse the green verges in Crow Street, but these are of a simple form and appearance and finished in unbound material. The effect of widening and resurfacing the driveway would therefore exacerbate the harm that would be caused by the presence of built development, particularly in

respect of the open green verge within Crow Street, which contributes to the setting of the listed building and the character and appearance of the CA.

16. I have had regard to the planning permission for development at The Wyndies, in Crow Street. I accept that it is a listed building and the permission included rebuilding part of a barn and a new dwelling, but that site is situated within the denser context of the village centre, referred to above. That site therefore has different characteristics to the appeal site and its immediate surroundings, so it would not be for comparable development. In any event, I have considered the appeal scheme on its own individual merits.

Public benefits and conclusions on the first main issue

17. The statutory duties in Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) are matters of considerable importance and weight. Paragraph 192 of 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. 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.
18. The proposal would be harmful to the setting of the Grade II listed buildings and the character and appearance of the CA. This would have a negative effect on the significance of these designated heritage assets. In my view the harm that I have identified would equate to less than substantial harm to their significance. I note that the appellant arrived at a similar conclusion. In such circumstances, paragraph 196 of the Framework identifies that this harm should be weighed against the public benefits of proposals, which includes the securing of optimal viable use of listed buildings.
19. The appeal scheme would help to address the acute housing supply deficit in the district and, being a small scheme, it could be built-out relatively quickly. I also recognise that the proposal could reduce pressure on land in the Green Belt to be released and there could be fewer opportunities to provide additional housing in the development limits of the village. Nevertheless, given the scale of the development and because the Framework is clear that making efficient use of land should include taking into account the desirability of maintaining an area's prevailing character, I attach limited weight to these benefits.
20. Future residents would not be restricted to travelling by private motorised transport to access the services and facilities available in Henham, which could be conveniently accessed by walking from the site. The bus services through the village also offer regular access to Stansted, Bishop Stortford and local secondary schools. Railway Stations in Elsenham and Stansted Mountfitchet also offer services to London Liverpool Street. Some economic benefits would therefore arise from, for example, employment and procurement of materials during the construction period and future occupiers would also contribute to the rural economy through labour supply and expenditure. In spite of this, the scale of the proposal limits the weight that I can attach to these benefits.
21. The proposed development could provide net gains for biodiversity, through planting of the site and enhancements set out in the appellant's Preliminary Ecological Appraisal. However, given that there is no substantive evidence

before me of how the net gain has been measured, I am only able to attach limited weight to this as a benefit.

22. Taking the above together, the public benefits that I have outlined would not justify allowing development that would be harmful to the setting of the listed buildings and the character and appearance of the CA. In accordance with paragraphs 193 and 196 of the Framework, considered together, I therefore conclude that the public benefits do not outweigh the great weight to be given to the less than substantial harm that I have identified.
23. In light of the above, I conclude that the proposal would have a harmful effect on the setting of the Grade II listed buildings and the character and appearance of the Henham Conservation Area. Hence, the appeal proposal would fail to satisfy the requirements of the Act, paragraphs 124, 127, 192 and 193 of the Framework and conflicts with the design and heritage aims of Policies ENV1, ENV2, GEN2, H4 and S7 of the Council's Local Plan.

Ecology and biodiversity

24. The Council is concerned that the proposal would have a harmful effect on wildlife, specifically bats and the roosting potential of the existing garage and store. The appellant has provided a specific Bat Survey in support of their Preliminary Ecological Appraisal (PEA) which specifically seeks to address those concerns. It is unclear whether the Council considered this in their statement but they maintain their reason for refusal.
25. The Bat Survey addresses the matters raised by the Council and I have no reason to doubt its conclusions or, for that matter, the recommendations for enhancement suggested in the PEA. The former suggests that the garage and store lacks the features that may offer potential roosting places for bats and there was also no evidence of the presence of bats.
26. The appeal site is also identified as being within the Impact Risk Zone for Hatfield Forest Site of Special Scientific Interest (SSSI) and National Nature Reserve (NNR). There is no substantive evidence before me in relation to the potential effect of the proposal on the ecological and biodiversity value of the designated site. However, I note that Natural England have not yet adopted an approach in relation to the impact on the designated site for schemes of housing of the scale proposed. The proportionate response would therefore be to consider the appeal on its own individual merits. Based on the evidence before me, and with knowledge that the Council did not appear raise concerns in this respect, there would not be a compelling reason for me to adopt a contrary position.
27. For the above reasons, I conclude that the proposed development would not have a harmful effect on the ecological and biodiversity value of the site or the nearby Hatfield Forest SSSI/NNR. Hence, the proposal would accord with the nature conservation aims of Policy GEN7 of the Council's Local Plan and paragraphs 170 and 175 of the Framework.

Highway Safety

28. The existing driveway serving Cedar Cottage would be used to access the appeal site. This is around three metres wide and is finished in unbound material to a similar width from the splayed junction with Crow Street to beyond the rear of the cottage.

29. The driveway is not currently wide enough to enable two vehicles to pass, clear of the carriageway. While the appellant currently uses the driveway, both of the proposed dwellings would accommodate four bedrooms, which could lead to a considerable permanent increase in its use by future occupants, services and deliveries. Vehicles entering the site would therefore be likely to have to wait stationary in the carriageway, or reverse out into Crow Street, to accommodate exiting vehicles. This would be an inconvenience and highway safety risk to users of the driveway and Crow Street.
30. I appreciate that other driveways in Crow Street are constructed of unbound materials, but the current absence of such material in the carriageway would not provide sufficient confidence that greater use of the driveway would not increase the possibility of unbound material entering the street. This would be of particular detriment to the safety of two-wheeled vehicles in the carriageway.
31. I am conscious of the guidance set out in the Essex Design Guide for streets with lower vehicle speeds, but the limit for Crow Street is 30mph and there is no substantive evidence before me to demonstrate that vehicle speeds are lower within the vicinity of the site. My presence at the site during my short visit would also not provide a representative picture of the extent and speed of vehicles. Similarly, while visibility is good in Crow Street in either direction and there is no recent evidence of accidents, this does not mean that accidents could not occur in the future.
32. The provision of an improved access is therefore necessary to serve the development, but the main parties disagree on the required width. The Council suggests it should be a minimum 5.5 metres for the first six metres, but the appellant has proposed an alternative width of 4.1m, with a resin bound aggregate finish. Given the width of existing accesses in the locality and the nature of their use, the appellant's proposal would be reasonable and proportionate to the scale of the development proposed.
33. The driveway crosses common land between the front boundary of Cedar Cottage and Crow Street and, due to ownership considerations, the Council has queried whether the appellant would be able to widen or change the surface material of the driveway. Nevertheless, with cognisance of the guidance outlined in the NPPG², a negatively-worded condition could be utilised that would prohibit development from taking place until a scheme of such works has been completed. Such a condition, with respect to land outside of the appellant's control, would not create unacceptable uncertainty, since there is nothing to compel the appellant to implement the development in any event.
34. For these reasons, I conclude that the proposed development would not have a harmful effect on the safe and efficient operation of the highway network in the vicinity of the appeal site. Hence, the proposal would accord with the highway safety aims of Policy GEN7 of the Council's Local Plan and paragraphs 108 and 109 of the Framework.

Other Matters

35. Given my findings in relation to the setting of the listed building and the contributing role of the site, it is not necessary for me to consider the other

² National Planning Practice Guidance, Reference ID: 21a-009-20140306, Revision date: 06/03/2014.

criteria set out in Policy H4 of the Council's Local Plan with respect to the effects of backland development on overlooking, overshadowing, the extent it could be overbearing and disturbance caused by the use of the proposed access to the occupiers of the listed cottages.

Planning Balance

36. The Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise, which includes the Framework.
37. The Council has confirmed that it is not able to demonstrate a five-year supply of deliverable housing sites, as required by the Framework, so paragraph 11 of the Framework is engaged. However, I am mindful that in light of my findings in relation to heritage, paragraph 11d) i) of the Framework would apply. Accordingly, as the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the proposed development, the presumption in favour of sustainable development does not apply.
38. The development plan for the area includes the Council's Local Plan. While this predates the current Framework, it is clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to its publication. Due weight should be given to policies according to their consistency with the Framework
39. Policy GEN2 is generally consistent with the Framework in terms of its aim to achieve well designed places.
40. In the context of Policy S7 of the Council's Local Plan, the harm identified in the first main issue is centred on design and heritage, but the policy refers to development outside of settlement boundaries. In isolation of other considerations, this would not be wholly aligned with the more flexible and balanced approach implicit in the objectives outlined in the Framework. However, this does not fundamentally undermine the continued relevance of such an approach, particularly as its aim is to protect or enhance the character of the countryside from development that does not need to be there. This differs only slightly from the aim in the Framework to recognise the intrinsic character and beauty of the countryside. There is therefore still a clear rationale for development boundaries in order to protect the countryside while focusing growth within designated settlements. In light of this I have regarded the underlying objectives of the policy, as being generally consistent with the current Framework.
41. The approach to living conditions of occupiers outlined within Policy H4 is consistent with the aims of the Framework. However, the efficient use of land referred to in the Framework places a greater emphasis on factors contributing to appropriate densities of development, including the character and setting of an area. The approach to development affecting conservation areas and listed buildings outlined in Policies ENV1 and ENV2 are generally consistent with the aims of the Framework but, crucially, they fail to acknowledge the important balancing exercises required by the Framework in respect of public benefits. For these reasons, the policies are in conflict with the Framework.

42. Overall, while there are some inconsistencies of Policies ENV1, ENV2, H4 and S7 with the Framework, taken as a whole the policies referred to above are not to be regarded as out-of-date. I have therefore afforded full weight to the conflict of the proposal with the development plan, as set out in the first main issue.
43. I have already identified the benefits of the appeal scheme as part of the assessment of public benefits in undertaking the necessary balancing exercise in relation to the heritage assets. Furthermore, the proposal would not be harmful to ecology and biodiversity or highway safety. In terms of harm, the proposed development would not comply with development plan policy in respect of the harm to the setting of the Grade II listed buildings and the character and appearance of the Henham Conservation Area.
44. The proposal would not amount to sustainable development under the terms of the Framework. Overall, I find that the adverse impacts of the proposal are matters of significant and overriding weight against the grant of planning permission.

Conclusion

45. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR