



Appeal Decisions

Site Visit made on 22 December 2020

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2021

Appeal A - APP/J1915/W/20/3258776

Cedar Cottage, Goldings Lane, Waterford SG14 2PX

- 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 Daniel Shipton against the decision of East Hertfordshire District Council.
 - The application Ref 3/20/1200/FUL, dated 25 June 2020, was refused by notice dated 25 August 2020.
 - The development proposed is Division of Cedar Cottage into two separate properties.
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Appeal B - APP/J1915/Y/20/3258779

Cedar Cottage, Goldings Lane, Waterford SG14 2PX

- 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 Daniel Shipton against the decision of East Hertfordshire District Council.
 - The application Ref 3/20/1201/LBC, dated 25 June 2020, was refused by notice dated 25 August 2020.
 - The works proposed are Division of Cedar Cottage into two separate properties.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matter

3. The site lies within the Metropolitan Green Belt and the Council concluded that the development would not constitute inappropriate development in the Green Belt. However, having reviewed the evidence I concluded that if taken as a whole, there was inconsistency in the officer's report and that this would be likely to fetter my reasoning. As such I notified both parties that I was considering including the effect of the development on the Green Belt as a main issue and invited the parties to provide additional comments in that regard. These have been taken into account in my decision.

Main Issue

4. The main issues are:
 - Whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and relevant local policies (Appeal A);

- Whether the development would preserve the historic features or special architectural interest, including setting, of the Grade II* listed Goldings, the Grade II listed Registered Goldings Park and Garden, and Grade II listed Wych Elm (Appeals A and B);
- The effect of the development on the living conditions of occupiers of Cedar Cottage with particular regard to overlooking (Appeal A); and,
- Whether the harm, by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If it is, would this amount to the very special circumstances necessary to justify the proposal (Appeal A).

Reasons

The site

5. Goldings Park and Garden is a former landed estate, with a 19th century landscaped park.
6. The park is characterised by low lying pasture and water meadows together with mature woodland and parkland trees. The gently rolling land has a bucolic and highly rural character which wraps around period buildings such as the 19th century country house, and its chapel and stables, as well as pockets of redevelopment. This redevelopment, of standalone dwellings and long residential terraces, appears to be located largely within the confines and in the vicinity of two former walled kitchen gardens whose walls and former ancillary buildings are evident today.
7. The western end of the two-storey brick Cedar Cottage appears to be one such former ancillary building. Its materials, proportions and detailing with a hipped slate roof, brick arched window openings, multi-paned casements and central chimney stack are consistent with 19th century typology. Its appearance is that of an estate cottage with moderate status. A two-storey eastern section is built on a lower level, and although it uses similar detailing and materials, it is not tied in. Full height second floor windows also suggest this is a modern addition.
8. There is a brick chalet bungalow style annex located side on to Cedar Cottage's large rear garden. This is built in the same style as the extension to Cedar Cottage. The development would comprise the subdivision of Cedar Cottage's plot and use of the annex as an independent dwelling.
9. Although much of the garden near the dwelling and the annex is highly developed with a knot garden, planting and decking, the plot's southern section is largely undeveloped, comprising grass between mature parkland (and protected) trees. This merges into the parkland on the other side of the park's east drive and also affords glimpsed views of the large open space in front of the nearby Bramley Cottage and the listed Wych Elm to the west and south-west of Cedar Cottage's garden.

Green Belt

10. Paragraph 146 of the National Planning Policy Framework (the Framework) states that the re-use of buildings is not inappropriate development in the Green Belt provided that they preserve the Green Belt's openness and do not

conflict with the purpose of including land within it. The essential characteristics of Green Belts are their openness and their permanence. Openness is generally accepted to be an absence of development. Development in this context is generally accepted to include activity as well as structures.

11. The development would comprise the sub-division of an existing plot, with a brick boundary wall built across an existing garden. This would amount to an intensification of use, additional structures, and the creation of a new vehicular access with a large hardstanding and turning area. Activity and structures would extend across the plot to a greater extent than is currently the case, as well as resulting in additional domestic paraphernalia and visual clutter. This would result in a loss of openness and a conflict with the purpose of including land within the Green Belt.
12. Openness has been defined in the courts as having a visual and a spatial component. In this case it is proposed to screen the development's garden and hardstanding from the east road with planting. However, this would obstruct existing glimpsed views from the estate's east road which in itself would represent enclosure and a loss of openness. Moreover, although the increased activity and structures would not necessarily be visible from the public domain, there would be a loss of openness on land which is currently undeveloped. Visibility from the public domain is not necessarily determinative when considering the effects of a development on the openness of the Green Belt.
13. Consequently, the development would be inappropriate development and the Framework states that substantial weight should be given to harm in the Green Belt.

Heritage assets

14. The wider context of this appeal is the Grade II* listed building known as Goldings, the Grade II Goldings Park Registered Park and Garden, and the Grade II listed Wych Elm.
15. There is very limited heritage information before me. The heritage statement does little more than replicate the text of the listings. There is no consideration of significance as required under Paragraph 189 of the Framework.
16. Sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) require me to have special regard to the desirability of preserving the building or its setting in the determination of the appeal proposals.
17. From what is before me and my observations at my visit, I have made my assessment on the basis that the Grade II* listed 19th century red brick and turreted Tudor style country house (Goldings) is the principal building within the estate, and that consequently Cedar Cottage is curtilage listed under Section 1(5) of the Act, and shall therefore be treated as part of the listed building.
18. The estate's east drive was constructed in the late 19th century and runs roughly parallel to the eastern boundary of the former kitchen gardens. A series of dwellings is accessed from the east road. One of these is the listed Wych Elm, a modest early 20th century chalet style red brick bungalow with tiled roof and a small gabled front facing dormer. Its design was influenced by

Lutyens, and it is situated on the eastern boundary of the former kitchen gardens. The listing includes a section of the original 17th century garden walls. The country house stands on elevated ground to the west and replaces an earlier 17th century mansion which was presumed to be located closer to the kitchen gardens.

19. Cedar Cottage is situated to the north-east of Wych Elm, and is attached on its western side to another dwelling, Bramley Cottage which in turn abuts the original kitchen garden wall on its other side, adjacent to a Tudor style arch and entrance. The location of Cedar Cottage and its location within a long range that extends from the kitchen garden appears consistent with the listing's reference to a range of 19th century gardeners' bothies that extended in an easterly direction from the south eastern corner of that garden.
20. The parkland appears to have extended directly to the kitchen gardens and its ancillary buildings. My reasoning in this regard is informed reinforced by the 1997 drawing with superimposed redevelopment demolitions. Although there was a cluster of buildings or structures on the northern part of the appeal site, there was a large open area in front of Wych Elm which extended to and included the appeal site. This open area ran down to the east road and would have merged visually into the parkland beyond.
21. The significance of Goldings is derived from its historic fabric and its spatial relationship with other period structures within the park, which reflect Goldings' role as the estate's focal point and the hub of the socio-economic structures and hierarchies that prevailed when the estate was a working entity.
22. The significance of the Grade II listed registered Park and Garden is derived from its underlying layout and wide expanses of pasture and parkland, as well as the spatial relationships and historic fabric of former estate structures and ancillary buildings. The mature protected trees on the site are clearly considerably older than the recent landscape design work on the appeal site, and the age and parkland character of these trees contributes to the prevailing parkland character.
23. The significance of Wych Elm is its historic fabric as well as its location in relation to the east road and the park, and other historic structures such as the remaining sections of kitchen wall, and other buildings, including the earlier part of Cedar Cottage.
24. The statement alludes to Cedar Cottage as a new build and re-build dating from the early 2000s, yet another section refers to the enlargement of Cedar Cottage subsequent to 1997. In any case, my observations, as set out above, suggest that the western part of Cedar Cottage dates from a far earlier period. Moreover, the limited evidence before me suggests that the land to the east of the kitchen gardens, which includes the appeal site and Cedar Cottage, was a hub of ancillary activity for the estate.
25. Having reviewed the listings for Goldings as whole I am also aware that the walls to the north kitchen garden, which include the Tudor style opening in the vicinity of Cedar Cottage, are also listed. This reinforces my concerns in relation to the importance of the former kitchen garden and nearby period structures.

26. As such, it is difficult to determine the significance of Cedar Cottage as a curtilage listed building and whether there is significance in its spatial or former functional relationships with Goldings, the wider Park and Garden and Wych Elm, and whether Cedar Cottage contributes to the settings of those other listed assets.
27. I have set out in relation to the Green Belt that the proposals would introduce additional structures and activity into the former open area between Cedar Cottage and Wych Elm as a consequence of subdividing the plot. This would diminish openness in the area to the south of Cedar Cottage.
28. With regard to the alterations to the annex, the demolitions plan indicates that the annex replaced an earlier structure and was built around twenty years ago. However, this plan also shows that the earlier part of Cedar Cottage was demolished in 1997 which, on the basis of my observations at my visit, does not appear to be the case. This leads me to conclude that the demolitions plan is not entirely accurate.
29. There is also inconsistency in that the statement states that Cedar Cottage was subdivided under a permission dating from 2000 which created Bramley Cottage to the east, and Cedar Cottage to the west. However, the site plan shows that Bramley Cottage is to the west of Cedar Cottage. This may be a simple error but the overall lack of clarity does not advance the appellant's arguments.
30. As such, although it seems likely that the annex and the extension to Cedar Cottage date from the early 21st century, and that the additional windows would have no adverse effect on this historically sensitive location, I am unable to reach this conclusion with any certainty.
31. As I am unable to assess the significance of the appeal site in relation to the evolution of the estate, and in the light of my statutory duties under the Act, I am obliged as the decision maker to take a precautionary approach. I must therefore conclude that the development would not protect the significance of Goldings, the registered Park and Garden, and Wych Elm. This would amount to less than substantial harm.
32. Reference is made to a heritage statement submitted in 2000. However, that is now twenty years ago. The Framework has been published since that submission and the Local Plan was made in 2018. Moreover, even if the Council is familiar with the estate, I am not. It is also clearly set out in Paragraph 189 of the Framework that the responsibility for heritage assessment lies with the applicant, not the Council.
33. The appellant advances the argument that there would be no impact on the curtilage of any listed building. However, Goldings was listed in 1968 and the evidence before me indicates that the western section of Cedar Cottage, which I have concluded is a former ancillary building on the estate, predates this listing by some considerable period. It is therefore curtilage listed and Historic England's guidance¹ states that *a building within the curtilage may have its own special architectural or historic interest or may contribute to the special interest in the principal buildings as part of the group.*

¹ Advice Note 10, Listed Buildings and Curtilage

34. I have concluded in my reasoning that there are overlapping and reciprocal influences of significance and setting in the vicinity of the appeal site. Even if Cedar Cottage was not curtilage listed, the appeal site lies adjacent to the listed Wych Elm and within the listed registered Park and Garden. The harm I have identified in relation to the setting of Goldings could also diminish the significance of Wych Elm and the registered Park and Garden.
35. Reference is made to Rose Cottage which is sited to the north of Cedar Cottage and separated from it by a vehicular access. However, I do not have the details of that application before me. In any case it appears to predate both the Framework and the Local Plan, and this appeal has to be determined in the current planning context.
36. I conclude that the proposals would fail to preserve the historic features or special architectural interest, including settings, of Goldings, Goldings Park and Garden, and Wych Elm. This would be contrary to Sections 16(2) and 66(1) of the Act. It would also be contrary to Policy HA1 of the Local Plan (LP) which requires development to preserve and enhance the historic environment, and LP Policy HA7 which require that proposals that affect the setting of listed buildings will only be permitted where the setting of the building is preserved. It would also fail to accord with LP Policy HA8 which states that development should protect the special historic character, appearance or setting of listed parks and gardens.
37. The development would also be contrary to Policy DES4 of the Local Plan (LP) which requires a high standard of design to reflect and promote local distinctiveness.

Living conditions

38. The appeal statement states that the dormer windows overlooking the rear elevation and garden of Cedar Cottage at a distance of 4 – 8 metres would serve a study and a bedroom. In my experience these would be considered as habitable rooms and it is generally accepted that overlooking from habitable rooms can result in a loss of privacy for those overlooked. Moreover, the area overlooked would include the space immediately behind Cedar Cottage's rear elevation and back door which would heighten the loss of privacy.
39. I give little weight to the arguments that mature vegetation could provide screening. Vegetation cannot be guaranteed to remain for the life span of a building, and in my experience there is little tolerance of mature trees in the vicinity of dwellings where they can contribute to shade and debris.
40. The officer report does not state that there would be no overlooking between habitable rooms, as argued in the appeal statement, but that *overlooking would be more harmful than the current arrangements*.
41. I agree that many gardens are overlooked, but generally separation distances are greater than would be achieved here, particularly given the side to rear orientation. Moreover, even where separation distances are limited in areas of dense development, it is good practice to avoid direct overlooking of other dwellings' rear elevations.
42. The development would be detrimental to the living conditions of occupiers of Cedar Cottage. This would be contrary to LP Policy DES4, which requires development to avoid significant detrimental impacts on the amenity of

occupiers of neighbouring properties and land, and to ensure that their environments are not harmed by privacy issues.

Heritage and Planning balance

43. Paragraph 196 of the Framework states that where there is less than substantial harm this should be weighed against the public benefits of the proposal. In this case there would be a small public benefit arising from the provision of one additional dwelling. However, this small benefit would be insufficient to outweigh the harm identified above in relation to the Green Belt, living conditions and in respect of my conclusions relating to the effect upon heritage assets.
44. The Framework states that inappropriate development should not be approved except in very special circumstances. Paragraph 144 of the Framework states that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, is clearly outweighed by other considerations. In this case, I conclude that very special circumstances do not exist.

Conclusions – Appeals A and B

45. Visual clutter is a generally accepted term in a planning context. There would be significant additional domestic paraphernalia on the plot as there would be activity associated with an additional dwelling.
46. The development would fail to accord with the Local Plan, national guidance and the Act and I have not found benefits of sufficient weight to outweigh the harm identified. I conclude that both appeals should be dismissed.

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INSPECTOR