



Appeal Decisions

Site visit made on 8 March 2021

by E Worthington BA (Hons) MTP MUED MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th April 2021

Appeal A: APP/M1005/W/20/3261521

Duffield Bank House Cottage, Duffield Bank, Duffield, Belper DE56 4BG

- 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 and Mrs C & M Wright against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2019/1204, dated 13 December 2019, was refused by notice dated 28 July 2020.
 - The development proposed is described as 'alterations to curtilage of listed building to allow parking and disabled access plus improvements to the property'.
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Appeal B: APP/M1005/Y/20/3261512

Duffield Bank House Cottage, Duffield Bank, Duffield, Belper DE56 4BG

- 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 and Mrs C & M Wright against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2019/1205, dated 13 December 2019, was refused by notice dated 28 July 2020.
 - The works proposed are described as 'alterations to curtilage of listed building to allow parking and disabled access plus improvements to the property'.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Application for Costs

3. An application for costs has been made by Mr and Mrs C & M Wright against Amber Valley Borough Council. The application is the subject of a separate decision.

Procedural Matters

4. Since the proposal relates to a listed building, I have had special regard to section 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
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Main Issues

5. The main issues are:

- whether the proposal would preserve a grade II listed building, Duffield Bank Cottage (Ref: 1335366) and any of the features of special architectural or historic interest that it possesses; and
- Whether the proposal would preserve the setting of the Derwent Valley Mills World Heritage Site (WHS).

Reasons

The listed building

6. The appeal property is a late 18th century detached cottage constructed of coursed square gritstone with gritstone dressings and has some later additions. It is set on sharply rising ground and sits in an elevated position behind a gritstone retaining wall with a hedge above. There is a pedestrian gate towards the southern end of the frontage.
7. The cottage is built in a simple compact vernacular form with some particularly distinct features including the use of locally made cast iron windows and rainwater goods. It is a good example of a modest workers dwelling built in locally quarried stone and typical of the industrial revolution period. It is within the Buffer Zone of the WHS, the boundary of which adjoins the appeal site to the west. The valley saw the birth of the factory system in the 18th Century, when new types of building were erected to house the latest technology for spinning cotton and the need to provide housing and other facilities resulted in the creation of the first modern industrial settlements.
8. The Council refers to the appeal property's connections with the Strutt family¹ and Thomas Lombe² and indicates that it was originally built by the Strutts. However, the appellants indicate that the cottage was built on land formerly owned by the Jodrell family by a quarryman William Bates who was associated with the nearby quarry. The cottage was passed on to his children on his death in 1841 and had various other owners before being sold to Rolls Royce as part of the Duffield Bank Estate in 1936. I have seen no conclusive evidence to demonstrate a direct association with the Strutts.
9. Nevertheless, the appeal property's practical traditional design, locally specific detailing, and semi-rural location suggests occupation that was historically linked to the surrounding rural landscape and its economy. This is commensurate with the site's close relationship to the WHS and the quarry. As such, the cottage has a social and evidential value reflective of the evolution of the local economy and the narrative of the area's important industrial past.
10. The listing for the cottage includes any free-standing object or structure erected before 1 July 1948 within the curtilage of the listed building under Section 1(5) of the Act. This is irrespective of whether or not it has been explicitly identified in the list description. In this instance this includes the front boundary wall, because this structure is within the historic curtilage of the listed building and appears to have been erected prior to 1948.

¹ notable local industrialists and mill owners in nearby Belper

² of Derby Silk Mill

11. The front boundary wall has two distinct phases of construction. The short section from the southern extent of the curtilage to just beyond the pedestrian gate is built of coarse ashlar of four courses, topped with semi-circular coping stones. This is well mortared and appears contemporary with the construction of the cottage (or its 19th century additions). The gate is set between two large quoins. From the northernly side of the gate, the wall gives way to a much less formal construction and consists of random rubble which is crudely coped and pressed into the soil behind.
12. The appellants indicate that when it was built the cottage was given a short stretch of formal walling as far as the gate, but that beyond that, the bank extended down to the roadside. When the road was surfaced and a footpath provided (probably in the early inter-war period in the face of increasing motor traffic in the early 20th century), the bank was cut back to make space for the footpath and gritstone boulders were used to retain the spoil behind. These were coped crudely to match the existing stretch of more formal walling surrounding the gate. The same approach was taken to the front of other properties to the north. The Council does not dispute these matters and based on my own observations on site and the evidence before me I see no reason to disagree with the appellants' findings in this regard.
13. Even so, despite its variation in age and construction, it remains that overall the wall is a prominent and historic feature of the listed building. Its continuous and unbroken nature along the road frontage and the resultant well contained garden area at the appeal property, contribute to the traditional semi-rural appearance and charm of the cottage as a vernacular building.
14. The land levels and in particular the elevated nature of the site in relation to the road, are a response to the local topography which is also a distinctive characteristic of the listed building. I accept that the level and profile of the land immediately behind the wall (including the backfill material) dates from the 20th century and the likely works to the highway described above. However, I am mindful that the cottage's garden area in this location would nevertheless been elevated in relation to the road prior to those works, by reason of it being part of the formerly unenclosed bank as described by the appellants.
15. The cottage is part of a cluster of properties on the eastern side of Duffield Bank, a 18th century turnpike road which is situated on the valley side above the river Derwent in a steeply undulating rural landscape. The western side of the road is undeveloped and more rural in character, with longer range views out across the valley. The cottage has a strong relationship with this collection of properties a number of which have links to the former industry in the area including the quarry to the east as workers accommodation and are reflective of the evolution of the local economy.
16. Taking all these factors into account, I find the special interest of the listed building, insofar as it relates to these appeals, is drawn from the integrity of its distinctive and historic front boundary treatment along with the characteristic landform of the site and its sense of enclosure. It is also drawn from its prominent siting on Duffield Bank and its relationship to the other buildings in that cluster of properties on the valley side and the semi-rural nature of the surrounding area which has links to the area's industrial past. The setting that results is part of the surroundings in which the appeal property is experienced

and contributes to its historic value. All these elements are important overall to the special interest of the building in terms of this appeal.

The effect of the proposal on the listed building

17. The proposal would introduce an access to facilitate off-street parking for the appellants' two cars and would lead to the removal of part of the wall and hedge fronting the road. The resultant opening would be 2.5 metres wide. Further removal of some of the hedge in the vicinity of the access would also be required to provide adequate visibility sight lines for vehicles.
18. I appreciate that the proposed opening has been reduced in width by the appellants. Nevertheless, a relatively substantial portion of the wall would have to be removed along with the significant excavation of a good deal of the garden behind in order to provide the two parking spaces. Notwithstanding the variation in its construction along its length, the removal of a section of the front boundary wall would involve the loss of part of the listed building's historic fabric.
19. The proposal would also modify the levels on the site in relation to the road, and be seen as a significant alteration to the landform of the front garden area. It would introduce a break to the currently uninterrupted enclosure of the frontage, open the site up to direct view from the road and erode the enclosed nature of the garden. I appreciate that the existing stone retaining walls within the site would form the boundary and enclosure to the rear and side of the proposed parking area, and that by their excavated nature they would be screened to some extent in views from the road.
20. Even so, the parking area would be prominently located close to the pavement edge where the development of the hardstanding and retaining walls along with the stationing of vehicles would give rise to a considerable and obvious urbanisation of the appeal site at roadside level. Although I appreciate that the parking of the appellants' two vehicles would be removed from the road in front of the house, I do not consider the more intermittent visual impact of these to be as substantial as that which would arise from the permanent development proposed.
21. Overall, the proposal would appear as intrusive and prominent development that would undermine the simplicity and charm of the cottage's distinctive road frontage and compromise the characteristic enclosed and elevated garden area.
22. In creating a gap in what is a significant length of continuous frontage, the proposal would also detract from the enclosed private character of this part of Duffield Bank itself which is a key feature of the cluster of buildings. I appreciate that there are existing breaks in the various front boundary walls and treatments there and a number of vehicle entrances and driveways provide the majority of the properties along this stretch of road with off-street car parking. I also accept that these reflect the change and adaptation of the buildings in response to more modern requirements. That said, the existing driveways and parking arrangements vary in width and layout and are in some instances narrow, situated between buildings, screened, set back from the road, and/or behind gates.
23. Whilst there are some examples of more prominent driveways and parking arrangements closer to the roadside, I am mindful that these do not relate to

listed buildings or share the appeal site's particular relationship with Duffield Bank. I am also aware that the Council regards some of the other properties nearby to be non-designated heritage assets. Nevertheless, I am not convinced that the nearby examples of prominent driveways and parking arrangements are development that should necessarily be repeated. The appellants refer to other listed buildings in the wider area which have off-street parking. However, I am not aware of the circumstances that led to those developments so cannot be sure that they are same as in the case before me. As such they do not justify the appeal scheme.

24. Views into the rear garden of the appeal property and the sloping land beyond are already possible above the wall and hedge and through the driveway to White Cottage to the north. The appellants refer to recent works at neighbouring White Cottage including the removal of the boundary wall between the two properties, which have opened up the views into the appeal property's rear garden as well as into the rear gardens of the group of buildings. I also saw at my visit that some of the hedge at the appeal property has already been removed in the vicinity of the proposed opening. I appreciate that the hedge could be removed in its entirety without the need for permission and that this would further increase views into the site and the visibility of the sloping land to the rear.
25. Nevertheless, the removal of the section of front wall as proposed and excavation of the site would create a gap at street level that would inevitably mean that more of the appeal property's garden, as well as the land beyond, would be visible from the road. Thus the distinctive sense of enclosure and privacy there would be further diminished. I understand that the appeal property's northern boundary wall adjoining White Cottage would be re-instated as part of the proposal. Whilst this would better bound the site, I am not convinced that it would in any way offset the erosion of the enclosed nature of the site's frontage that would arise from the appeal proposal. I am also mindful that subject to matters of land ownership, the re-instatement of that wall could be achieved in the absence of the appeal scheme.
26. The appellants argue that the current alignment of the wall is not historic and that in particular the section of wall subject to the appeal proposal has never followed the line of the road. Rather it was shaped to allow stopping, pulling in, and entering and exiting the highway via a sweeping access. They also indicate that the cottage previously enjoyed off-street parking and suggest that a stack yard or cart hovel, as referred to in William Bates' will in 1840, previously existed in the location of the proposal. I saw at my visit that there is a dropped kerb to the highway in front of the site in the position of the proposed parking area.
27. Having regard to the evidence submitted, including that relating to the nature of the backfill material, I share the Council's view that the existence of a previous opening/structures/parking arrangements has not been convincingly demonstrated. In any event, any such arrangements to provide parking for vehicles associated with the appeal property have long since ceased and any former structures or openings in the wall removed/blocked up. As such, this matter provides no substantiated support for the proposal.
28. Taking all these factors into account, I find that the proposal would erode the distinctive front boundary feature of cottage and lead to a loss of its historic

- fabric as well as significant changes to the property's distinctive land form. This opening up of the site and removal of its sense of elevated enclosure would detract from the simplicity of its historic form and design thus failing to preserve its special interest. The historic context of the cottage and its relationship with Duffield Bank and the other properties there would also be undermined as a result of the opening up of the site and the incongruent intrusion into its garden and prominent urbanisation of the site at street level.
29. I therefore conclude on this main issue that the proposal would fail to preserve the special interest of the listed building. I give this harm considerable importance and weight in the balance of this appeal.
30. The reasons for refusal for both applications do not refer to any development plan policies. However, the officer's report cites Policy EN24 of the Amber Valley Local Plan 2006 (Local Plan) which concerns listed buildings. This states that development will only be permitted where proposals contribute to the preservation of the listed building and its setting, having regard to the elements which make up its special interest, including the character, appearance, scale and its original function. Whilst it does not refer to the balancing of public benefits, I am content that this policy broadly aligns with the aims of the national Planning Policy Framework (2019) (the Framework) to conserve and enhance the historic environment. The proposal would be contrary to this policy.
31. The proposal would also conflict with Local Plan Policy L3 which requires proposals to reflect the principles of good design by (amongst other things) conserving or enhancing the quality and local distinctiveness of the natural and built environment (a). Whilst I note the appellants' view that this policy is out of date and inconsistent with the Framework, I am content that Policy L3 relates to design rather than heritage assets in particular, and in seeking to promote quality and local distinctiveness in the built environment generally accords with the aims of the Framework to achieve well designed places.

The Derwent Valley Mills World Heritage Site

32. As set out above, the site is within the Buffer Zone of the WHS, the boundary of which adjoins the appeal site to the west. The Derwent Valley Mills and the surrounding landscape have been given international recognition and are a place of global significance.
33. The cultural value of the WHS is described in the site's Statement of Outstanding Universal Value. This indicates that it contains a series of 18th and 19th century cotton mills and an industrial landscape of high historical and technological significance. The insertion of industrial establishments into a rural landscape necessitated the construction of housing for the workers in the mills, and the resulting settlements created an exceptional industrial landscape. The change from water to steam power in the 19th century moved the focus of the industry elsewhere and thus the main attributes of this remarkable cultural landscape were arrested in time.
34. The WHS is a designated heritage asset under the terms of the Framework, which establishes that the significance of the designated asset, derives not only from its physical presence, but also from its setting. The Buffer Zone has been defined in order to protect the WHS from development that would damage its setting. At Duffield, the Buffer Zone comprises the rising ground of Duffield

Bank to the east. The Buffer Zone includes attributes which are functionally linked to the WHS, particularly the rural landscape and give an essential context in which the WHS's outstanding universal value can be understood.

35. The decision notice states that the appeal property was originally built by the Strutts and is therefore an attribute to the WHS. However, as set out above, I have seen no convincing evidence to demonstrate this or any substantive connection to the Strutts. Additionally, I note that the WHS Management Plan indicates that all the key attributes of the cultural landscape are within the boundaries of the WHS. Whilst some new additions have been identified in the Buffer Zone, these do not include the appeal site.
36. Nevertheless, the WHS Management Plan highlights that the protection of setting is particularly important here because of the location of the mills and their associated settlements within a rural landscape arrested in time. Thus I find that the setting of the WHS, in so far as it relates to these appeals, to be primarily associated with the historic importance and unaltered appearance of the surrounding rural landscape, which is reflective of the evolution of the local economy and contributes positively to the understanding of the social and cultural value of the WHS and the ability to appreciate it.
37. Turning to the effect of the proposal on the WHS, Local Plan Policy EN29 states that within the Buffer Zone, the Council will require all development proposals to preserve or enhance the setting of the WHS including views into and out of the site. The appeal property and the other buildings nearby on Duffield Bank are situated on the eastern side of the valley. The land to the west of the road is undeveloped and rural in character and is bounded by a low stone wall which allows long range views out across the valley. Thus there is inter-visibility between the river and the settlement of Duffield in the valley bottom to the valley slope and the properties on Duffield Bank.
38. That said, the appeal property is separated from the open land within the WHS by the main road of Duffield Bank. It sits in a well contained position within an existing long-established cluster of other properties. As such, it is seen very much as part of that pocket of built development rather than as part of the open rural landscape or wider countryside. Although I accept that the continuous boundary treatment at the appeal site, particularly its green and verdant nature which arises from the hedge, accords with the semi-rural character of the area, I am not convinced that in itself it is an important part of the surrounding rural landscape or contributes particularly to the setting of the WHS. As set out above, I am also mindful that the hedge could be removed in its entirety without the need for permission and regardless of the appeal scheme.
39. It has not been put to me that any particular views into or out of the WHS would be affected by the appeal proposal. In practical terms, although the appeal property is situated prominently fronting on to Duffield Bank, the proposal would not be substantial in scale and would be located at street level. Any views back from the valley bottom towards Duffield Bank would be taken at some distance and in the context described I am not convinced that the appeal proposal would be readily discernible.
40. Having regard to all these matters, and appreciating the sensitivity of the location, despite my conclusion on the first main issue in relation to the harm that would arise to the listed building, I find that the effect of the proposal on

the rural setting of the WHS would be minimal, and would not be sufficient to mean that the significance of the heritage asset would be in any way reduced. Thus I am satisfied that the proposal would not adversely affect the surroundings in which the WHS is experienced, or have any negative impact on the understanding of its outstanding universal value.

41. I therefore conclude that the proposal would preserve the setting of the WHS. Whilst not cited on the decision notice, I am content that the proposal would align with Local Plan Policy EN29 and the advice in the Framework concerning heritage assets in relation to this main issue.

The heritage balance

42. The Framework advises at paragraph 193 that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Bearing in mind the alterations would affect a curtilage structure, I find the harm to the listed building to be less than substantial in this instance, but nevertheless of considerable importance and weight. Paragraph 196 of the Framework requires that less than substantial harm should be weighed against the public benefits of the proposal, including where appropriate, securing its optimum viable use.
43. Paragraph 192 of the Framework requires at criterion (a) that the Council should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable use consistent with their conservation. However, whilst I note the appellants' view that the proposal would ensure the longevity of its use, I have seen nothing to demonstrate that the continued viable use of the appeal property as a residential dwelling is dependent on the proposal (since the building has an ongoing residential use that would not cease in its absence).
44. The appellants accept that the proposal would cause some harm (albeit minimal, and at the low end of less than substantial) to the significance of the host asset but argues that a number of public benefits would arise.
45. The proposal would provide off-street car parking for the appellants' two cars which currently have to be parked on the roadside. I appreciate that the appeal property is the only dwelling in this part of the road without off-street parking. Thus the proposal would remove two cars from the highway at what the appellants describe as a particularly difficult stretch of the road on the outside of a slight bend and at the apex of a slight rise. I saw at my visit that the road is relatively busy and that due to the narrowness of the carriageway, vehicles have to wait to pass any parked cars in the vicinity of the appeal property in the face of any on-coming traffic. I also understand that the appellants and their children feel vulnerable when entering or leaving their vehicles on the road at busy times.
46. However, whilst there is a good deal of support for the proposal on highway safety grounds, I have not been made aware of any particular instances of accidents arising from parked cars. There is no evidence to demonstrate that this part of Duffield Bank is particularly dangerous or that a lack of free flow of traffic causes any identifiable problems. Although the Highway Authority raises no objections to the proposal, it does not refer to any highway safety issues in the vicinity of the appeal site or to any highway safety benefits that would arise from the proposal. I am also mindful that parking on Duffield Bank is not

- prohibited and could still take place even if the proposal was allowed. The highway safety benefits of the proposal are therefore limited.
47. A structural report has been provided which finds that the northern section of the wall is of inferior materials and construction and indicates that poor maintenance and badly executed repairs, along with the growth of the hedge and other vegetation, have weakened and damaged the wall which overhangs the pavement. It concludes that this part of the wall would need to be taken down and rebuilt if its long term integrity is to be retained. However, the report does not find the wall to be unsafe or dangerous. With this in mind, although the proposal would result in the repair of the wall, its benefits in terms of public safety would be minimal. I am also mindful that repairs to the wall could in any event could be undertaken in isolation of the appeal proposal.
48. On this point, I have had regard to the appellants' argument that if the wall as a whole is to be retained it would need to be dismantled and rebuilt to such an extent that it would be an entirely new structure, and so of no intrinsic heritage value. I also understand that the stone removed from the wall to create the proposed opening would be re-used to repair the remaining part of the wall. However, I see no reason why the wall could not be sympathetically repaired or rebuilt to ensure its longevity in the absence of the appeal scheme in such a way that the special interest of the building and the significance of the heritage asset would be preserved. As such, no public benefits would arise in this regard. Whilst this approach would lead to the recycling of materials, the proposal's public benefits in terms of sustainability and conserving natural resources would be minimal given its very limited scale.
49. The appellants suggest that the research provided by their consultant has furthered the understanding of the history of the appeal building and could be lodged in the appropriate archive to aid continued wider public understanding of the WHS. Whilst this would be of public benefit, given its relatively narrow focus and since the documents submitted as part of the planning application and appeal are already in the public domain, it would be of only very modest public benefit. It is also argued that the opening up of the frontage would allow better views and appreciation of the listed building and the characteristic landform of the site that would better reveal the significance of the heritage asset. However, given my conclusions in relation to the first main issue, I do not regard this to be the case and so do not consider this to be a public benefit of the appeal scheme.
50. An electric charging point for a vehicle would be provided on the driveway and would help to tackle climate change. However, its contribution in this regard would not be great given the scale of the proposal and its public benefit would be extremely small. Finally, whilst the proposal would provide easier more direct and convenient access to the cottage for the appellants, their children and an elderly relative, including parking for a mobility scooter, these represent private benefits only.
51. Having carefully considered all these matters, I confirm that even taken together, the public benefits of the proposal are insufficient to outweigh the harm to the designated heritage asset that I have identified. For these reasons the proposed development and works would fail to satisfy the requirements of the Act and paragraph 192 of the Framework and would be in conflict with the development plan when taken as a whole.

Other Matters

52. The proposal includes the repair of retaining walls and removal of a rear retaining structure to which the Council raises no objections. However, given my findings in relation to the proposed car parking area it has not been necessary for me to consider this matter further.
53. The description of development on the application forms includes the creation of disabled access and the appellants refer to their grandmother who stays at the property at the weekends and uses a mobility scooter. I have seen no further detail or explanation of these matters. Nevertheless, I have had regard to the Equality Act 2010 and the Public Sector Equality Duty (PSED) to which I am subject. Section 149 (7) of the Act sets out the relevant protected characteristics which include age and disability. Since there is the potential for my decision to affect a person(s) with a protected characteristic(s) I have had due regard to the three equality principles set out in Section 149 (1) of the above Act.
54. The negative impacts of dismissing the appeal arise since the house would not be provided with off-street car parking as sought. However, these impacts are mitigated by the possibility of an alternative scheme to meet the stated needs of disabled access and mobility scooter parking. As such, in my view the adverse impacts of dismissing the scheme on those with protected characteristics would be proportional having regard to the legitimate and well-established planning policy aims to protect heritage assets. Even when taken alongside the other considerations forwarded by the appellant, the PSED considerations would not outweigh the harm I have identified in this case.

Conclusion

55. For the above reasons, and taking all other matters raised into consideration, I conclude that both appeals should be dismissed.

E Worthington

INSPECTOR