
Appeal Decisions

Hearing Held on 3 August 2021

Site visit made on 4 August 2021

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 August 2021

Appeal A: APP/Q3305/W/20/3263809

The Cottage, Little Green, Mells, Frome BA11 3QR

- 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 Trustees of Viscount Asquith 1999 Settlement against the decision of Mendip District Council.
 - The application Ref 2019/2074/FUL, dated 20 August 2019, was refused by notice dated 24 September 2020.
 - The development proposed is refurbishment and extension of cottage, including the replacement of failed/rotted thatched roof with new roof structure covered in tiles, and the removal and replacement of failed/rotted internal walls and first floor structure. (Removal works being retrospective.) (Description amended 13.05.20).
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Appeal B: APP/Q3305/Y/20/3263811

The Cottage, Little Green, Mells, Frome BA11 3QR

- 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 Trustees of Viscount Asquith 1999 Settlement against the decision of Mendip District Council.
 - The application Ref 2019/2075/LBC, dated 20 August 2019, was refused by notice dated 24 September 2020.
 - The works proposed are refurbishment and extension of cottage, including the replacement of failed/rotted thatched roof with new roof structure covered in tiles, and the removal and replacement of failed/rotted internal walls and first floor structure. (Removal works being retrospective.) (Description amended 13.05.20).
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Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for refurbishment and extension of cottage, at The Cottage, Little Green, Mells, Frome BA11 3QR, in accordance with the terms of the application, Ref 2019/2074/FUL, dated 20 August 2019, subject to the conditions set out in the schedule at the end of this decision.

Appeal B

2. The appeal is allowed and listed building consent is granted for refurbishment and extension of cottage, at The Cottage, Little Green, Mells, Frome BA11 3QR, in accordance with the terms of the application, Ref 2019/2075/LBC, dated 20 August 2019, and the plans submitted with it, subject to the conditions set out in the schedule at the end of this decision.

Procedural Matters

3. As set out above, there are 2 appeals on this site. Each relates to the same scheme but they address separate applications for planning permission in the case of Appeal A, and listed building consent in the case of Appeal B. I have considered each on its individual merits, however, to avoid duplication I have dealt with the appeals together, except where otherwise indicated.
4. When originally submitted, both applications were similarly described as being for 'refurbishment and extension of cottage'. At the Council's request the parties agreed an amendment to the descriptions during the process of determination, with further addition of the phrase: 'including the replacement of failed/rotted thatched roof with new roof structure covered in tiles, and the removal and replacement of failed/rotted internal walls and first floor structure'. At appeal the parties have nonetheless agreed that this is largely irrelevant to the application subject of Appeal A. The appellant has additionally set out within the submissions, and confirmed at the Hearing, that the proper focus of Appeal B should be the refurbishment and extension of the cottage. This matter therefore requires further consideration.
5. Having reached an advanced state of decay, the removal of the roof and internal structure of the building occurred in 2014 without listed building consent. As set out in the Act, it is an offence to execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised. The parties dispute whether or not and to what extent this work was informally agreed by the Council, and the applicability of the defence set out in Section 9 of the Act. As such the determination of this matter falls outside the scope Appeal B, and it is ultimately for the Courts to resolve in the context of any proceedings for an offence brought by the Council. No such proceedings, or any other form of enforcement action have or has however been initiated by the Council during the past 7 years.
6. Whilst it is possible to apply for listed building consent retrospectively, listed building consent cannot be granted in retrospect. As the above works were undertaken in 2014, they cannot now be considered as if they are 'proposed'. In this regard, though the scheme would include the installation of a roof, it would not include replacement of a failed/rotted thatched roof, as the latter does not exist, and has not existed for 7 years. The same applies to the internal structure. For these reasons, if Appeal B was to be allowed on the basis of the amended description, it would not resolve the question of the legality of the works previously undertaken.
7. Though listed building consent can be granted for retention of the physical effects of unauthorised works, this is not proposed in the current case. Again, were Appeal B to be allowed it would not authorise the retention of the cottage as a semi-derelict shell. This and the above being so, it is unclear what purpose modification of the descriptions served. I am therefore of the view that the proper focus of these appeals are indeed the works for which permission/consent was actually sought. I have therefore considered the scheme below, and worded my decisions above, accordingly.
8. A revised version of the National Planning Policy Framework (the Framework) was published during the course of the appeals. The parties were given the

opportunity to comment on the relevance of any changes during the Hearing, and I have taken any comments into account in determining the appeals.

Main Issue

9. The main issue is the effect of the scheme on designated heritage assets, including whether it would preserve a Grade II listed building, its setting, or any of the features of special architectural or historic interest that it possesses; and whether it would preserve or enhance the character or appearance of Mells Conservation Area (the Conservation Area).

Reasons

10. The Cottage is a Grade II listed building. Whilst the Act sets out the desirability of preserving the special interest of listed buildings, the Framework makes clear that great weight should be given to the conservation of designated heritage assets.
11. Insofar as it is relevant to these appeals, the special interest and significance of the listed building resides, and otherwise previously resided, in its reputed origin circa 1700, its vernacular character, including construction in local stone and thatch, and its detailing. The list description acknowledges rebuilding during the C20th, and the extent of this work is made apparent by the current exposure of blockwork within the walls. Some of this work may have entailed the introduction of architectural salvage, a source of which may have been the large dwelling once adjoining the gable end. The provenance of other demolition material heaped within the grounds is unclear. The absence of the roof and internal structure clearly harms the special interest and significance of the building. How much harm the loss of fabric itself caused is unclear given that full details of the age and nature of the internal structure when fully intact are not available. It is however apparent that some original elements of the roof structure and the main fireplace have been lost. It would clearly be desirable for the building to be repaired and brought back into use as a dwelling.
12. The appellant has argued that the building lacks the special interest necessary to justify its listing. As the power to de-list a building is not transferred to Inspectors, resolution of this matter lies outside the scope of the appeals. That said, given that the building appears to have been listed chiefly on the basis of its external features, most of which survive, given that it was listed notwithstanding C20th rebuilding, and given that the roof and internal structure remain capable of reinstatement, I see no substantive justification for removal of the building from the list. It remains open for the appellant to pursue this matter outside the appeal process, however, in view of the above, I have not considered it any further.
13. The scheme seeks to reinstate the main roof structure at its previous pitch. This had evolved as a product of the gradual addition of accommodation at first floor level, resulting in the transformation of what originated as a single storey cottage, into a 2-storey cottage. Timbers previously present within the roof illustrated this process, and the shift from a steeply pitched roof to one whose pitch had, in relative terms, 'flattened'. This process of change, which perhaps occupied a period of 150 years, was common historically, and can be seen in other vernacular buildings. In this case it resulted in the roof pitch falling below 45°, meaning that its thatch covering was no longer able to properly shed

rainwater. Though the roof nonetheless appears to have been maintained at its flatter pitch for many years, the lifespan of the thatch on each rethatching would have been much reduced. This would have left the building vulnerable to lapses in maintenance, and thus is likely to have contributed to the condition of the building as recorded in 2014. Given the above, and presumably also given that the case relates to a roof no longer in existence, the parties agree that thatch should not be reinstated at its previous pitch. This is not therefore a matter subject of dispute.

14. The previous roof pitch was not original, but it was a direct product and expression of the building's historic evolution. It also helped to inform the external character and appearance of the building as listed. In both regards therefore it held significance, and in the first instance its reinstatement would be appropriate. Given that the parties are agreed that thatch should not be reinstated at the previous pitch, it follows that an alternative hard roof covering would be required. That specified is common amongst historic buildings locally, and indeed appears to have been introduced to other buildings likely to have been thatched in the past. The appellant states that this would represent a logical and historically relevant further stage in the evolution of the building, and this argument is indeed persuasive in the context of the scheme in question.
15. The change in covering would clearly represent a break with the history of the building, and the profile, texture and detailing of the roof would all differ from that which existed previously. However, were thatch to be used on the basis favoured by the Council, and at the 45° pitch generally agreed as suitable by the parties, it would require the introduction of a wholly new roof form. This would not directly reflect the roof form which existed previously, or therefore have a direct basis in the history or past evolution of the building. Indeed, notwithstanding continuity in use of materials, the introduction of a steeper, bulkier roof form would obscure perception of the historic background and identity of the building.
16. The adverse effects would be accentuated by the likely implications of conforming to building regulations related to fire safety. Such changes could entail the introduction or elaboration of features on the roof, including stone tabling, with little or no place in the history of the building.
17. In view of the foregoing, the introduction of a tiled roof covering would be harmful, representing a change in character and resulting in a loss of special interest and significance. However, more extensive changes in character and loss of special interest and significance would arise from the modifications required to enable the use of thatch. That being so, I find that the proposal, being less harmful than the alternative, would be the most acceptable on balance.
18. The proposed extension and internal works are not generally subject of dispute. The Council has however expressed its dissatisfaction at the proposal to incorporate timbers intended to recall those of the original roof, and the 'speculative' design of a framed partition. It seems unlikely to me that anyone would mistake such features as original fabric, being obviously part and parcel of the wholesale renewal of the interior. Whilst I therefore see no particular harm in their inclusion, the representative roof timbers could be omitted, and

details of the partition design could be subject of further agreement by condition.

19. More particular objection has been raised in relation to the formation of new openings where these would involve interventions into parts of the fabric apparently unaffected by the C20th rebuilding. The parties are however agreed that the specific details and dimensions of these openings could be subject of further refinement via condition, and I agree.
20. The site is also located within the Conservation Area. Insofar as it is relevant to the appeals, the special interest and significance of the Conservation Area resides in the historic layout of the village, and the collection and interrelationship of historic buildings and spaces that it contains. As appeal property is one such building, it makes a positive contribution to the significance of the Conservation Area, notwithstanding its currently derelict state.
21. Historic buildings within the Conservation Area feature roofs covered with a mix of materials, amongst which thatch and clay tiles are each frequent. In this regard both types of material make a strong contribution to the local distinctiveness of the Conservation Area. Aside from bringing the dwelling and plot back into use, the change in roof covering relative to that which previously existed would be the most obvious external expression of the scheme. In this regard the installation of tiles would not appear in any way at odds with the character and appearance of the Conservation Area at large. Though tiles would nonetheless lack the historic value of thatch, this would be truer of the new roof form that would be required to enable use of thatch at 45°. Bringing the plot and dwelling back into active use would otherwise have a broader positive effect on the character and appearance of the Conservation Area. I am therefore satisfied that the scheme would, on balance, preserve the character and appearance of the Conservation Area.
22. I have therefore found that the scheme would preserve both the special interest of the listed building, and the character and appearance of the Conservation Area. Clearly, it would not do so without causing less than substantial harm to the significance of each. However, in this case, consistent with my findings above, such harm would be outweighed by the public benefit of seeing the building refurbished in the realisation of its optimum viable use. Whilst justified therefore on the grounds of heritage benefit, it is of additional note that the reintroduction of the dwelling into the housing stock would also deliver some broader, albeit limited social and economic benefits to the locality.
23. For the reasons outlined above I conclude that the scheme would have an acceptable effect on designated heritage assets, preserving the listed building, and the character and appearance of the Conservation Area. With regard to Appeal A, and insofar as it is relevant to Appeal B, the scheme would thus comply with Policy DP1 of Mendip District Local Plan 2006-2029 (the LP) which seeks to secure development that contributes positively to the maintenance and enhancement of local identity and distinctiveness; Policy DP7 of the LP, which seeks to secure high quality design; and Policy DP3 of the LP which supports proposals that preserve the significance of heritage assets. The scheme would otherwise satisfy the requirements of the Act, and heritage policy set out within the Framework.

Conditions

24. In relation to both Appeal A and B I have imposed standard conditions setting out the timescale for the commencement of development/works, and, in relation to Appeal A, the approved plans. This is for sake of certainty. No authority exists to impose a plans condition on a listed building consent. I have however made reference to the plans within my decision. For the avoidance of doubt, the plans are the same as those listed in relation to Appeal A.
25. In relation to Appeal B I have additionally imposed a range of conditions which cover the specification of works to the walls, and materials and detailing, either where these matters are not adequately covered on the submitted plans, or where scope exists to further finalise such details as necessary, and as set out in my reasons above. I am satisfied that these matters can be properly covered by condition as they do not fundamentally affect my overall assessment of the appropriateness of the scheme. A pre-commencement condition is required in respect of works to the walls given that these will form a logical starting point of the scheme's implementation.

Conclusion

26. For the reasons set out above I conclude that Appeal A and Appeal B should be allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

Appeal A

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Except insofar as they show details of doors, windows and glazing, internal openings, fireplaces, hearths, and surrounds, the development hereby permitted shall be carried out in accordance with the following approved plans: 3745-01A; 3745-02 A; 3745-03 A; 3745-04 A; 3745-05 B; 3745-07 A; 3745-08; 3745-09 A; 3745-16 A; 3745-13; 3745-14; 3745-16 A; 3745-22.

Appeal B

- 1) The works authorised by this consent shall begin not later than 3 years from the date of this consent.
- 2) The works hereby authorised shall not commence until a full specification of works to be undertaken to the external walls and chimney stacks, including the way in which they will be finished internally, has been submitted to and approved in writing by the local planning authority. The works shall then be carried out in accordance with the approved specification.
- 3) Construction of the extension hereby authorised shall not proceed above slab level until sample panels of the facing stonework and cladding have been provided on site and approved in writing by the local planning authority. The approved sample panels shall then be retained on site until

the work is completed, and the facing stonework and cladding of the extension shall be constructed to match.

- 4) Notwithstanding the plans submitted in relation to the works hereby authorised, details, which shall include elevations at scale 1:10, and sections at scale 1:5 of all new:

- doors, windows and rooflights, including their fitting and glazing;
- internal openings;
- fireplaces, including hearths, and surrounds; and
- partitions;

shall be submitted to and approved in writing by the local planning authority prior to their installation, formation or provision within any part of the building. The works shall then be carried out in accordance with the approved details.

- 5) Prior to the works hereby authorised commencing in relation to the roof, samples of the tiles to be used, including details of ridge tiles and their fitting, shall be submitted to and agreed in writing by the local planning authority. The building shall then be roofed in accordance with the approved details.
- 6) No flues or vents shall be fitted unless the details of the product to be used and its location have first been submitted to and approved in writing by the local planning authority.

APPEARANCES

For the Appellant

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Martin Llewellyn BA Arch(Hons) Dip Arch RIBA

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For the Council

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Interested Parties

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Documents presented at the Hearing

Photo c.1900

Photo c.1965