



Appeal Decisions

Site visit made on 19 July 2022

by S Edwards BA MA TCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th October 2022

Appeal A Ref: APP/D1265/W/21/3288299

Grade 2 Listed Walled Garden, Wootton Lane, Wootton Fitzpaine DT6 6NH

- 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 Brooks against the decision of Dorset Council.
 - The application Ref WD/D/19/001088, dated 10 April 2019, was refused by notice dated 5 July 2021.
 - The development proposed is described as "Application to erect no.4 bedroom dwelling and full restoration of grade 2 listed wall surrounding site".
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Appeal B Ref: APP/D1265/Y/21/3288302

Grade 2 Listed Walled Garden, Wootton Lane, Wootton Fitzpaine DT6 6NH

- 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 Brooks against the decision of Dorset Council.
 - The application Ref WD/D/19/001089, dated 10 April 2019, was refused by notice dated 5 July 2021.
 - The works proposed are described as "Application to erect no.4 bedroom dwelling and full restoration of grade 2 listed wall surrounding site".
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Decisions

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

Application for costs

3. An application for costs was made by Mr and Mrs Brooks against Dorset Council. This application is the subject of a separate Decision.

Preliminary Matters

4. The applications were determined prior to the publication of the revised National Planning Policy Framework (the Framework) on 20 July 2021, which sets out the Government's planning policies for England. Policies within the Framework are material considerations which should be taken into account for the purposes of decision-making from the date of its publication. The parties have had the opportunity to comment on this during the course of the appeal, and I have had regard to the updated Framework in determining this appeal.
5. The proposed development and works affect a listed building, and I have therefore had special regard to sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). Both appeals relate to

the same site and raise similar issues, and I shall therefore consider them in a single document, in the interests of brevity.

Main Issues

6. The main issues are:

- In respect of Appeal A, whether the proposed dwelling would be suitably located, having regard to the requirements of national and local planning policies which seek to restrict residential development in the countryside;
- In respect of Appeal A, the effect of the proposal on the dark night skies of the Dorset Area of Outstanding Natural Beauty (AONB); and
- For both appeals, whether the proposal would preserve the Grade II listed building known as Kitchen Garden Wall at Manor Gardens, and attached shed, Wootton Lane (List Entry Number: 1228550), and any of the features of special architectural or historic interest they possess.

Reasons

Location

7. Policy SUS2 of the West Dorset, Weymouth and Portland Local Plan 2015 (WDWP LP) sets out the Council's spatial strategy for this area, which seeks to direct a greater proportion of development at larger and more sustainable settlements and, in rural areas, to the settlements with defined development boundaries (DDB). The appeal site lies within the village of Wootton Fitzpaine, which is not identified as a settlement benefiting from a DDB. Outside DDBs, Policy SUS2 states that development will be strictly controlled, and will be restricted to a number of exceptions. The appeal scheme does not relate to any of these exceptions.
8. The appeal site lies within a rural area characterised by a small cluster of residential properties, which also include a church. Whilst it is located approximately 2km away from the A35, there is no doubt that the site is remote from everyday services and facilities. Future occupiers of the development would therefore have to travel further afield to access employment or education opportunities, and to meet their day-to-day needs. As there are very limited alternatives, the residents would have to rely on private motor vehicles, which do not constitute a sustainable mode of travel.
9. Given the above, the proposal would not be suitably located, and would therefore conflict with the requirements of Policy SUS2 of the WDWP LP. Paragraph 80 of the Framework requires planning policies and decisions to avoid the development of isolated homes in the countryside, except in certain circumstances, notably if the development would represent the optimum viable use of a heritage asset or would be appropriate enabling development to secure the future of heritage assets. I shall return to this later in these decisions.

Dorset AONB

10. Despite the current condition of the enclosure and bothy, and the garden being largely overgrown, the appeal site makes an important contribution to the rich historic and built heritage of the Dorset AONB, as well as the sense of

tranquillity, remoteness and dark night skies, which are among the key characteristics of these nationally significant landscapes.

11. The appeal scheme includes extensive areas of glazing and in particular a large glazed ridge feature, which could spill light directly upward into the open night sky and surrounding landscape. No meaningful comparison can be made with glasshouses which would have been used in conjunction with previous horticultural activities, particularly as there is no indication that they would have required the use of artificial lighting.
12. The appellants suggest that the matter could be addressed by way of conditions requiring the submission of a lighting scheme which would have to be approved by the Local Planning Authority or restricting light emissions. Having regard to the dwelling's design, and in the absence of further evidence to the contrary, I cannot see how the issue could be overcome through the imposition of a condition meeting the relevant tests set out in paragraph 56 of the Framework.
13. Given the above, the appeal scheme would have a harmful impact on the character and special qualities of the Dorset AONB, and would therefore fail to conserve and enhance the landscape and scenic beauty of this sensitive area, contrary to the aims of paragraphs 130 and 176 of the Framework. The proposal would also be in conflict with Policies ENV1 and ENV10 of the WDWP LP. These make it clear that development which would harm the character, special qualities or natural beauty of the Dorset AONB will not be permitted, and seek to ensure that proposals contribute positively to the maintenance and enhancement of local identity and distinctiveness.

Heritage

14. The appeal site is a Grade II listed walled garden dating from the mid-18th century, which historically served Wootton House, a Georgian country house set in landscaped grounds on the southern side of Wootton Lane. The garden walls are constructed of red brick in Flemish bond, but the Hamstone copping only appears to have survived on the south-eastern and north-eastern sides. In the south-eastern corner of the walled garden, there is a gardener's bothy, which is built with red brick and a pyramidal three-sided slate roof.
15. The gardens are largely overgrown, whilst the walls and the bothy are in a poor state or repair, and thus are in need of significant works to ensure the long-term future of these designated heritage assets. The yard, which is also overgrown, comprises the remains of various decayed greenhouses and sheds, as well as a better preserved brick built boiler house.
16. Notwithstanding the above, the Grade II listed walled garden retains much of its significance, which is primarily derived from its architectural and historic interest, due to its pleasant construction and very rare rhomboid plan form. As a key component of the Wootton House's estate, the walled gardens were not solely used to grow fruit and vegetables but also reflected the conscious display of status and power sought by the house owners. The appellants' submissions suggest that the form was thought to have potential horticultural advantages in providing a greater length of southerly facing wall. The walled garden still forms a complete enclosure, which contributes to its significance, as a rare surviving example of the lozenge plan.

17. The proposed dwelling would be to a large extent sited within the north-western corner of the walled garden and the yard area. Although the proposal is relatively modern in its detailing, it is evident that the design approach stems from traditional horticultural buildings. Notwithstanding this, the overall scale and footprint of the proposed dwelling would be excessive and, as a result, would not represent a sympathetic addition within this sensitive environment. The harm would be exacerbated by the level of excavation required to create a basement level which, together with the associated walls and large terrace, would appear unnecessarily engineered. Not only would the proposed addition appear particularly intrusive in this highly sensitive context, but the appeal scheme would also give it an overtly domestic character and fail to have sufficient regard to the site's origins.
18. For the foregoing reasons, the appeal scheme would fail to preserve the special interest of the Grade II listed Kitchen Garden Wall, including its setting. It would therefore be contrary to Policy ENV4 of the WDWP LP and section 16 of the Framework which, amongst other things, require development proposals affecting designated heritage assets to conserve and where appropriate enhance their significance.

Other Matters

Whether enabling development

19. The construction of the proposed dwelling is presented as a form of enabling development, which is considered necessary to allow the conservation of the listed walls and bothy. The appellants' submissions suggest that alternative uses were considered, setting out the reasons why they were discounted, and why a single, open-market dwelling was thought to be a preferable option.
20. Alternative uses or owners do not appear to have been actively sought through appropriate marketing. However, as noted in Historic England's Good Practice Advice on "Enabling Development and Heritage Assets"¹ (GPA 4), market testing may not always assist the decision-maker, for example where a heritage asset is clearly without beneficial use or capable only of very limited beneficial use. Given that the affected heritage asset is a walled garden, which is physically separated from the country house it was historically associated with, and considering the circumstances of the case, a marketing exercise is unlikely to be particularly helpful here.
21. However, limited evidence has been presented to demonstrate whether efforts were made to find alternative sources of funding for the restoration works, prior to envisaging the appeal proposal. Furthermore, the advice contained in GPA 4 makes it clear that the sums of money generated through enabling development are provided to directly solve the conservation needs of the place. Having regard to the available evidence, including the financial information provided by the appellants, I note that the costs associated with the construction of the new property and subsequent value of the dwelling on the open market would be substantial.
22. The appeals are supported by a structural inspection and report, and costs information, which are now several years old. The presented evidence acknowledges that the walls have continued to deteriorate since the first report

¹ Enabling Development and Heritage Assets – Historic Environment Good Practice Advice in Planning Note 4 (2020).

that was produced in 2014, and the repair and restoration works are therefore likely to be higher than first thought. Whilst an updated cost analysis has been provided as part of the appeals, this information does not present a detailed account of the works required.

23. The main parties have suggested a condition aiming to secure the restoration and repair works of the walls and bothy, which would have to be implemented prior to the occupation of the proposed dwelling. In such circumstances, it is nevertheless unclear whether funds for the restoration works would be available early in the process. Though the suggested condition may enable the implementation of the restoration works, no mechanism has been presented to secure the future maintenance of the listed heritage assets, and thus their long-term conservation.
24. Whilst there may be some instances where it may be necessary to accept some harm, enabling development should ideally not harm the heritage asset it is intended to conserve. In this particular case, it has not been satisfactorily demonstrated that the appeal scheme represents the only solution to secure the restoration of the listed walls and bothy, and that there are no less harmful alternatives. For all these reasons, and even allowing for an appropriate margin of profit for the prospective developer, I am not satisfied that the appeal proposal would be the minimum necessary to address the conservation deficit and secure the long-term future of the listed garden walls and bothy. These considerations diminish the weight attributable to the proposal being viewed as a form of enabling development necessary to conserve a heritage asset.
25. In reaching this view, I have had regard to the appeal decision² which had been drawn to my attention by the appellants. Though I do not have the full details of this particular scheme, it is clear that the circumstances that led to this proposal being accepted do not represent a direct parallel to the appeals before me, particularly as the affected walled garden is a non-designated heritage asset.

Heritage Balance

26. The appeal scheme would cause less than substantial harm to the special interest of the Grade II listed structure, to which I ascribe considerable importance and weight. In accordance with the requirements of the Framework, the harm should therefore be weighed against the public benefits of the proposal. The repair and restoration works of the garden walls and bothy would reduce or remove risks affecting these heritage assets, and thus support their conservation. These considerations are capable of being regarded as a public benefit. However, given the magnitude of the harm which the appeal scheme would cause to the significance of the listed assets, such harm would not be outweighed by the presented public benefits.

Planning Balance

27. The appellants note that the Council is presently unable to demonstrate a five-year supply of deliverable housing sites. The Case Officer's Report confirms that the Council only has 4.93 years of Housing Land Supply, which represents a modest shortfall. In such circumstances, paragraph 11 d) of the Framework, as directed by Footnote 8, advises that the policies which are most important

² APP/K1128/W/17/3177770.

for determining the application are considered out-of-date, and planning permission should be granted.

28. This presumption does not however apply where the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. As detailed in Footnote 7 to the Framework, such areas or assets of particular importance include land designated as an AONB and designated heritage assets. The appeal scheme would fail to preserve the significance of the Grade II listed walls and the special qualities of the Dorset AONB, and the policies of the Framework in these respects provide clear reasons for refusing the appeal scheme. The tilted balance set out in paragraph 11 of the Framework is therefore not engaged in this instance.
29. The appeal scheme would make a contribution towards housing supply and choice, and support the restoration and repair works of the listed walls and bothy. However, they would be outweighed by the conflicts with the development plan and resulting harm that I have identified, with particular regard to the dwelling's location, but also the proposal's effect on the special interest of the listed structures and the Dorset AONB, to which I ascribe great weight.

Conclusion

30. There are no material considerations, which indicate that the appeals should be determined, other than in accordance with the development plan. For the reasons detailed above, and having regard to all other matters raised, I conclude that both appeals should be dismissed.

S Edwards

INSPECTOR