
Appeal Decision

Site visit made on 9 October 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/J1860/W/22/3313561

Winnall Cottage, Church Lane, Little Witley, Worcestershire WR6 6LP

- 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 Pat McElroy against the decision of Malvern Hills District Council.
 - The application Ref M/22/00784/FUL, dated 20 May 2022, was refused by notice dated 12 October 2022.
 - The development proposed is a replacement dwelling.
-

Decision

1. The appeal is dismissed.

Procedural matters

2. The National Planning Policy Framework (the Framework) was updated on 5 September 2023 and after the submission of the appeal. The historic environment and design policies have remained unchanged within the new version of the Framework, which is a material consideration.

Main Issues

3. The main issues are the effect of the proposal on:
 - The character and appearance of the area having particular regard to the settings of Rosemary Cottage and the Old School House, Grade II listed buildings and considering any non-designated heritage assets, and;
 - Bats.

Reasons

Character and appearance and heritage assets

4. The appeal site lies within Little Witley, a small village that is surrounded by fields and pockets of woodland. The settlement comprises mostly of detached dwellings and clusters of existing or former agricultural buildings. It has a loose-knit grain of development without an obvious core, but with St Michael's church being the natural focus. Around this central area are winding, narrow rural lanes whereby dwellings exhibiting a range of ages and forms sit within generous grounds. The prevalence of hedgerows and trees reinforces the natural setting of the settlement, and in many instances, shields the presence of built form. Overall, these factors result in a strong rural character and

appearance where natural features and the proximity and influence of the surrounding countryside are dominant aspects of the context.

5. The appeal site lies between two Grade II listed buildings along Church Lane. To the north is Rosemary Cottage, a 17th century detached timber framed cottage with brick infill walls and a brick stack. The dwelling is of a modest scale comprising a single main storey with attic accommodation, the latter served in part by small pitched roof dormers. The significance of the building derives principally from its surviving historic fabric and aesthetic value as an example of a 17th century rural cottage. In addition, some significance comes from its rural spacious setting in that the presence and proximity of the nearby rural landscape generally emphasises the importance of land and agriculture as part of a traditional rural way of life.
6. The Old School House lies to the southeast of the appeal site and dates from 1874. As its name suggests, it was originally a schoolhouse with a school room projection. It is a handsome L plan house built in red sandstone ashlar. Its definite Tudor Gothic style is evident in, amongst other features, the mullioned windows, steeply pitched roof, gables, porch and decorative chimneys. Its significance arises from several factors but principally the quality of its architecture. It also has historic value owing to its former use and how this reflects the social changes that took place in rural communities in relation to the provision of education. As such, the rural character of the nearby context makes some contribution to its significance, as this setting allows for a greater appreciation of the likely catchment and community the school would have served.
7. I am mindful of my statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving amongst other things, the setting of listed buildings.
8. The appeal site is a detached dwelling positioned roughly centrally within a large plot. Although there have been unsympathetic single storey additions on three sides, the original structure is discernible from the upper parts of the building and its principal, south facing elevation. They reveal a modest brick main body with central chimney stack, which would have had a regular rectangular footprint. Although two storey, the overall height and eaves are relatively low as accommodation is provided in the roof space, lit by windows in the gable ends and front gables.
9. There is a pleasing symmetry to the fenestration placement in the front elevation. Of probable mid-19th century origin, the original well-proportioned main body of the dwelling and some of its architectural features and materials combine to give the dwelling a degree of aesthetic charm. This is enhanced by the spacious grounds which reinforce its modest, traditional rural character and appearance. Hence, notwithstanding its somewhat neglected present condition, and subsequent alterations, the dwelling and grounds make a positive contribution to the character and appearance of the area.
10. Moreover, given its proximity, the appeal site comprises part of the wider rural context that forms the settings of Rosemary Cottage and the Old School House. Therefore, it makes a small, but valuable contribution to the overall significance of both these designated heritage assets.

11. The Council confirm¹ that Winnall Cottage is recorded on the Worcestershire County Council Historic Environment Record (HER) as a non-designated heritage asset of archaeological significance. This is largely due to its appearance on the first edition Ordnance Survey map for the area. This was not the case when the appellant submitted the planning application. The appellant is critical that the Council did not follow its own published processes or criteria for identifying and recording non-designated heritage assets. Moreover, he disagrees that the appeal building possesses any notable historical significance.
12. However, it is not within the scope of this determination to review how or whether the appeal property ought to have been recorded on the HER. Despite his reservations, the appellant does not provide evidence to show that Winnall Cottage has not been so recorded.
13. The footnote to policy SWDP6(B)(i) of the South Worcestershire Development Plan, February 2016 (SWDP) indicates that undesignated heritage assets for the purposes of the development plan are identified in local lists and heritage assets recorded in the HER. The Framework defines a heritage asset as, amongst other things, a building or site having a degree of significance meriting consideration in planning decisions because of its heritage interest. Planning Practice Guidance (PPG)² states that in some cases, local planning authorities may identify non-designated heritage assets as part of the decision making process on a planning application.
14. Taking these factors together with my observations of the appeal site, I find that Winnall Cottage is a non-designated heritage asset for the purposes of local and national planning policy. Its significance is in part derived from its modest scale and traditional architecture, but also the spacious and rural qualities of its grounds.
15. The proposal would demolish Winnall Cottage and construct a replacement dwelling. The proposed dwelling would have a considerably wider and deeper footprint in comparison³ to the extended cottage. The form would employ three projecting gables to the main body of the building, as well as lower side projections. A comparison of the existing and proposed elevations indicates the proposal would have a higher roof ridge. Thus, overall, the proposed dwelling would be significantly greater in volume than the existing cottage. This would result in a detrimental reduction in the spaciousness of the site that would be exacerbated by a large area of gravel driveway between the dwelling and Church Lane.
16. Furthermore, the footprint would lead to fairly shallow angles of roof pitch for the gable ends and projecting gables. Most of the fenestration and garage doors would appear as elongated rectangular openings. Together with the significant width of the building, these elements would result in a definite horizontal emphasis to the structure. Complexity would arise from the various projections and the range of proposed materials, which includes render, brick, grey coloured cladding and grey UPVC framed windows.

¹ Paragraphs 2.2-2.3, Council's Statement of Case

² Paragraph: 040 Reference ID: 18a-040-20190723

³ Drawing number FP03

17. The overall massing, variety of materials, proportions and large footprint would be redolent of modern housing development synonymous with suburban areas. Therefore, I cannot agree that the proposed dwelling would have strong traditional elements as is suggested. As such, it would contrast harmfully with the generally simpler, modest, traditional form of the cottage to be removed.
18. Moreover, the proposed dwelling, owing to its increased scale and orientation towards Church Lane would have a more obvious presence relative to the road. It would also feature more prominently within the settings of both listed buildings. The erosion of the special rural qualities of those settings due to the removal of a positive feature (Winnall Cottage) and its replacement with an overtly suburban development would be detrimental to the significance of both designated heritage assets. However, cognisant that only part of those settings would be affected, this would be less than substantial harm in both instances.
19. Paragraph 202 of the Framework states that in these circumstances, the harm should be weighed against the public benefits of the proposal. Paragraph 199 confirms that when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
20. The proposal would provide a habitable and comfortable dwelling likely to bring the site back into active use. The dwelling would be constructed to modern standards and be energy efficient. Whilst much of this would be of private benefit to the intended future occupants, public benefits would flow from the economic activity associated with construction and in general terms from an improvement to the condition and performance of local housing stock. Nevertheless, the extent of such public benefits accruing from a single dwelling would be limited, and therefore insufficient to outweigh the great weight attributed to the harm. As such, the proposal would conflict with national policy to protect designated heritage assets.
21. Paragraph 203 of the Framework stipulates that in relation to non-designated heritage assets a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. The appellant contends that any heritage value of Winnall Cottage would be best preserved, interpreted and promoted on the public archive by recording the building prior to its removal. However, paragraph 205 of the Framework states that the ability to record evidence of a heritage asset to be lost should not be a factor in deciding whether such a loss should be permitted. Although the significance of Winnall Cottage is low, its loss would be total, and paragraph 189 of the Framework is a reminder that buildings of local historic value are an irreplaceable resource. Hence, its loss counts further against allowing the proposal.
22. In addition, policy SWDP21 of the SWDP states, amongst other things, that all development will be expected to be of a high design quality, will need to integrate effectively with its surroundings and reinforce local distinctiveness. For the reasons outlined above, the proposal would fail to do this. It follows that it would also fall short of the requirements of paragraph 130c) of the Framework which states that planning decisions should ensure developments are sympathetic to local character and history, including the surrounding built environment and landscape setting.

23. Moreover, I cannot agree with the appellant that the absence of conservation area status means the appeal site possesses no special qualities worthy of protection. Firstly, it is a heritage asset in its own right, and it lies in a sensitive part of the village between listed buildings. Furthermore, the National Design Guide (NDG) observes at paragraph 51 that most places have some positive elements of character, and it is these that can help to inform the character of new development.
24. Whilst I acknowledge that the wider area includes modern housing, there is little before me to suggest it displaced attractive traditional predecessors. It is not shown how the design advanced in this case would enhance positive qualities and improve negative ones, which the NDG⁴ explains is how well-designed new development ought to respond to its context.
25. A replacement dwelling is proposed given the appellant's conclusion that the costs associated with the refurbishment of Winnall Cottage would be prohibitive. He has reached that view in part based upon the structural appraisal⁵ undertaken and I have not seen technical evidence that undermines the recommendations made in that report. Hence, whilst this is a factor that weighs in favour of replacing the existing cottage, it would not fully justify the harm to the character and appearance of the area arising from the proposed replacement dwelling.
26. It is contended⁶ that the development proposed would have no more effect than the implementation of permitted development rights normally afforded to householders at the property. However, no specific scheme in that respect has been advanced to illustrate that assertion. Moreover, given the appellant's position regarding the prohibitive costs associated with refurbishing the present cottage, it seems unlikely that he would proceed in implementing any significant works under permitted development. In the absence of a credible 'fall-back' scheme, a proper comparison with the appeal proposal cannot be made. Hence, it is not shown that any such effects would be equal or worse than the development proposed. Consequently, I give little positive weight to this matter.
27. The presence of vegetation and extent of the grounds means that the proposed dwelling could be well screened by planting, and conditions could secure further landscaping works. Even so, whilst that may limit the extent of harm, ultimately it would not address it. Neither is such an approach advocated in the Framework for achieving well-designed places. Instead, this confirms that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.
28. Accordingly, I find that the proposed replacement dwelling would be harmful to the character and appearance of the area owing to its unsuitable design and displacement of a local historic building. It would also cause unjustified harm to the significance of two listed buildings by harming their settings. Therefore, the proposal would be contrary to policies SWDP6, 21, 24 and 25 of the SWDP. Amongst other things, when read in combination, these policies require high quality design that also conserves and enhances the historic environment and integrates effectively with its surroundings.

⁴ Paragraph 40

⁵ Prepared by Structural Design Services Limited, 10.11.22

⁶ Section 7, p6, Appellant's Rebuttal

Bats

29. Policy SWDP22(A) of the SWDP stipulates that development which would compromise nationally protected species will not be permitted. There is no dispute that all species of bat native to the UK are protected species under the Conservation of Habitats and Species Regulations 2017 (as amended)(the Regulations).
30. The application was accompanied by a Preliminary Roost Assessment and Bat Survey Report⁷. The former concluded that Winnall Cottage offers a variety of potential roost features for bats and that the surrounding countryside contains habitat suitable to support the bat population. The subsequent bat survey found a day roost for an individual brown long-eared bat in the garage of the property. It also revealed common pipistrelle and soprano pipistrelle activity.
31. The removal of the existing dwelling therefore has the potential to disturb, kill or injure the roosting bat. Consequently, there is no dispute between the parties that the works would require a Bat Mitigation Licence under the Regulations, nor that this would be a separate process to obtaining planning permission. The government has issued advice⁸ that has direct relevance in these circumstances, and as such I have had regard to it as part of my determination.
32. The submitted bat survey contains recommendations and a mitigation strategy⁹ for the proposed development. It includes the provision of at least one bat box within the site, two bat access roof tiles, controls over lighting levels and a 'bat-friendly' landscaping scheme. The Council considers¹⁰ that those measures are generally appropriate and could be secured by condition.
33. However, they refer to derogation tests and assert that the appellant would be unlikely to obtain a mitigation licence from Natural England because the proposal is contrary to heritage planning policies with no overriding public interest justification. The government advice does state that local planning authorities must be satisfied that, if a licence is needed, it is likely to be granted before giving planning permission. It goes on to set out the three relevant licensing tests. This is to avoid circumstances where a developer obtains planning permission but is unable to implement it, as a licence is not forthcoming.
34. However, it does not say that failure to meet the licencing tests of itself amounts to a planning refusal reason. Indeed, the heritage concerns of the Council have already been considered under the first main issue.
35. Nevertheless, the evidence before me relating to the likely impact and proposed mitigation in relation to bats is out of date. The bat survey report is dated July 2022, and paragraph 4 confirms that it is valid for 12 months for planning purposes. Given the suitability of the surrounding habitat and prior presence of other bats, I cannot rule out that circumstances may have changed in the intervening period. Therefore, the proposed mitigation recommendations

⁷ Prepared by Focus Environmental Consultants

⁸ Protected species and development: advice for local planning authorities from Natural England and Department for Environment, Food and Rural Affairs, published 6.10.14 updated 8.9.22

⁹ Pages 3-5

¹⁰ Final paragraph of Ecology section, Council's Delegated Decision Report

carry only limited weight and are insufficient to convincingly demonstrate that all harm to bats would be appropriately mitigated.

36. In light of my finding on the first main issue I have not contacted the parties regarding an updated bat report as it is unlikely to be determinative to my overall decision.
37. Hence, I find that the evidence before me fails to show that adequate mitigation would be secured to avoid harm to bats. Therefore, the proposal would conflict with policy SWDP22 of the SWDP in this regard.

Other matters

38. The appellant points out that no objections have been made by the Council to the location of the proposal, nor in terms of the effect on the living conditions of nearby residents. Be that as it may, these are matters that would be requirements of other planning policies. The absence of harm in those respects does not amount to a positive benefit, and therefore is a neutral factor in the overall balance. Consequently, these are not matters that would lead me to find otherwise on the main issues.

Planning balance and conclusion

39. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The benefits arising from the proposal include the provision of a comfortable, energy efficient dwelling and the economic benefits associated with its construction. These attract limited weight given their likely extent.
40. Balanced against that is the harm to the character and appearance of the area and the historic and natural environment. The proposal would run counter to the expectations of statutory duties to protect listed buildings and bats, as well as conflict with national and local planning policies. Therefore, material considerations would not indicate that the proposal should be determined other than in accordance with the development plan.
41. Consequently, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector