
Appeal Decisions

Site visit made on 14 November 2023

by O S Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2023

Appeal A - Ref: APP/C1570/W/22/3305843

Apple Tree Cottage, Dunmow Road, Stebbing, Essex CM6 3RP

- 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 Christopher Foile against the decision of Uttlesford District Council.
 - The application Ref UTT/21/3518/FUL, dated 24 November 2021, was refused by notice dated 11 August 2022.
 - The development proposed is the erection of a dwelling.
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Appeal B - Ref: APP/C1570/Y/22/3305847

Pear Tree Cottage, Dunmow Road, Stebbing, Essex CM6 3RP

- 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 Christopher Foile against the decision of Uttlesford District Council.
 - The application Ref UTT/21/3519/LB, dated 24 November 2021, was refused by notice dated 10 August 2022.
 - The works proposed are the removal of part of a boundary wall to form access for a proposed new dwelling.
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Decisions

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

Preliminary Matters

3. A formal site location plan with the site edged in red and any other land owned by the appellant edged in blue, at a scale of 1:1250 or 1:2500, has not been submitted. However, an unscaled drawing with this information is included within the Design and Access Statement. This, combined with the other proposed drawings, is sufficient for me to understand the extent of the site and land ownership and I have reflected this throughout my Decisions as appropriate.
4. Although the listed building consent application has been made in relation to Apple Tree Cottage, it is Pear Tree Cottage and its curtilage that is affected by the proposal. Therefore, I have changed the address for Appeal B from Apple Tree Cottage to Pear Tree Cottage. I am content that this does not give rise to any procedural unfairness to any party because the submitted drawings are clear as to the affected wall and because both relevant properties are in the same ownership.

5. For Appeal A, the appeal site includes the access land within the curtilage of Pear Tree Cottage and the ill-defined land to the rear of both properties, which is only directly accessible from Apple Tree. The address is therefore a slightly grey area but I am content that it can remain as Apple Tree Cottage because this is sufficiently accurate, in combination with the drawings and other submitted material, to identify the appeal site.

Main Issues

6. The main issues are:
- the effect of the proposal on the character and appearance of the area, including the effect on the special architectural and historic interest of the grade II listed buildings Pear Tree Cottage¹, Apple Tree Cottage² and Stone Cottage³ with regard to their settings (Appeal A);
 - the effect of the proposed works on the special architectural and historic interest of the grade II Listed building Pear Tree Cottage (Appeal B);
 - whether or not the proposal makes an effective use of land (Appeal A); and,
 - the effect of the proposal on the living conditions of neighbouring occupiers, particularly with regard to noise pollution and overlooking (Appeal A).

Reasons

Character and appearance, and the setting of listed buildings

Existing

7. The appeal site is within the defined development boundary of Stebbing village. This part of Stebbing village is characterised by a traditional linear layout, with dwellings fronting onto the roads and gardens behind. There is some variety within this typology, but the fundamental layout of houses to the road and gardens behind is consistently maintained. Many of the dwellings have front gardens, some with car parking either in front of or to the side of the property.
8. Pear Tree, Apple Tree and Stone cottages are two-storey, timber-framed dwellings, from either the 17th or 18th Century. Their significance partly derives from their intrinsic architectural quality but also partly to their group value. In addition, the relationship of both Apple Tree and Stone cottages to their own gardens is an important part of their significance because it helps to define their status as dwellings and their historic relationship and layout, in particular that they are both dwellings facing onto the surrounding roads with small front and/or side gardens and larger rear gardens. There is a boundary wall that marks the rear of the rear garden of Pear Tree Cottage. It is not entirely clear from the evidence before me but it is likely that this is an original wall in the same location as when the property was built.
9. It is not clear from historic mapping or any other submitted evidence if the main part of the appeal site land has in the past been either functionally linked or in the same ownership as any of the three surrounding cottages. The boundaries on the mapping suggest it has not. It is particularly unlikely that it was previously linked to Pear Tree Cottage because of the historic rear

¹ List number 1168381

² List number 1112776

³ List number 1307026

boundary wall. As it stands now, this land cannot be accessed from either Pear Tree Cottage or Stone Cottage. It can only be directly accessed through a narrow gap from the garden of Apple Tree Cottage. It could, in theory, therefore, be used as an extension to the garden for that property. However, it feels annexed from the main garden both due to the narrowness of the gap and it being located off to the side. It instead is a rather ill-defined area of unkempt grassland the main characteristic of which is its openness and the breathing space it provides to the rear of the three listed buildings.

10. The appeal site also includes an area of land that runs from Brick Kiln Lane through the existing front driveway and parking area and rear garden for Pear Tree Cottage. This land runs directly alongside an existing outbuilding that belongs to Pear Tree Cottage. Pear Tree has a garage outbuilding, accessed from Brick Kiln Lane. It is unclear when this was built but no information has been provided to suggest it is original or historic.

Proposed

11. It is proposed to erect a one and a half storey dwelling on the land to the rear, with associated car parking. Access would be provided from Brick Kiln Lane along the area of land passing through Pear Tree Cottage's land. This would necessitate re-locating Pear Tree Cottage's existing front car parking to the rear. A section of the existing rear garden wall to Pear Tree Cottage would need to be demolished to create the proposed access.

Assessment

12. The proposal would constitute backland development because it would be on an open site to the rear of the established building line along both surrounding roads. It would not be infill development because it would not comprise the infilling of a defined and limited gap between existing properties in a continuous built-up frontage. The development of a backland site is uncharacteristic of the area and would not respect the existing urban grain.
13. The area of existing open space is relatively small and closely surrounded by existing dwellings to all sides. Whilst the proposed dwelling would be relatively small and only one and a half storeys, it would take up a relatively large proportion of this open land and would appear cramped relative to its surroundings. Introducing such excessive built form into an area that is open, subservient, backland would disrupt the historic grain of this part of the village, and harm the setting the three listed cottages.
14. The proposed access drive would cut through the existing front and rear gardens of Pear Tree Cottage. It would fragment the plot layout and divorce the cottage from its garage and outbuilding, running between the building and the cottage, harming this existing relationship. The requirement to re-locate car parking for Pear Tree to the rear would also significantly reduce the size of its useable rear garden area, urbanising it, and would further harm the layout of the cottage and its relationship to its own garden.
15. I acknowledge that there are some existing access routes through to the rear of properties along Brick Kiln Lane. However, these are to garages set slightly behind and to the side of the host dwelling. Unlike the appeal proposal, these layouts do not divorce the dwelling from its own garage and nor do they provide an access route through to a further dwelling to the rear.

Overall

16. The proposal would be an awkward, backland development that would not respect the existing street pattern and urban grain. It would be cramped relative to its surroundings, in particular the three immediately surrounding listed buildings, harming their settings. The proposed access road and the re-location of the car parking for the cottage to the rear would be uncharacteristic for the area. The proposal would therefore harm the character and appearance of the area, and the special architectural and historic interest of Pear Tree, Apple Tree and Stone cottages through harm to their settings. I assess the level of harm to be less than substantial. It consequently fails to comply with Policy GEN2 of the LP, which requires high quality design. It also fails to comply with Policy ENV2 of the LP, which protects the settings of listed buildings.

Listed building consent

Significance

17. Pear Tree has long been a residential property and part of its significance, in addition to those factors set out in the section above, derives from the building's association with the front and rear gardens and the ability to read this historic relationship and extent of the plot related to the cottage.
18. Most of the wall the subject of the proposed works appears to be historic brick. Part of it, though, is more modern, although built along the same line as the original wall. The wall appears to define the original rear boundary of the rear garden because it is in the same location as the boundary of the plot as confirmed by historic mapping. The significance of this is reinforced because behind the wall is an ill-defined open space that has no current functional relationship to Pear Tree. Historic mapping suggests this area has never had a functional relationship to the cottage.

Effect of works

19. The proposed demolition of approximately 3m of the wall would largely be in the area with modern bricks but it would also involve the loss of historic fabric. The combination of the loss of part of the wall and the creation of the proposed driveway would also lessen the legibility of the original rear wall and layout of Pear Tree Cottage and its plot. The appellant has suggested that part of the wall could remain but this would not be possible whilst simultaneously providing vehicular access. If just a brick course flush to the ground were retained, then this would still involve the loss of most of the original fabric, and the legibility of the original rear wall would still be substantially lost.
20. The proposed fragmentation of the plot layout and divorcing the property from the outbuilding that I have described above would also cause harm to the significance of Pear Tree Cottage.

Overall

21. The proposed works would therefore result in the loss of historic fabric and lessen the legibility of the home and its original plot. Consequently, the proposed works would harm the special architectural and historic interest of the Pear Tree Cottage Listed building. I assess the level of harm to be less than substantial.

Effective use of land

22. The proposal is within the defined development limits of Stebbing village. The open part of the appeal site is currently largely unused, with only a tangential relationship to Apple Tree Cottage. However, it is a relatively small area and in an awkward location to the rear of existing properties and their rear gardens to all sides. Therefore, although it is not being actively used at present, this does not represent a significant under-use of land. One dwelling is proposed, however, as set out above, this represents excessive development on such a small, closely surrounded, site. The proposal does not, therefore, represent more effective use of a significant under-use of land, and fails to comply with Policy H4 of the LP in this respect.

Living conditions

23. The proposed dwelling proposes rooflights in both rear and front roof slopes, facing southwest and northeast. This would be relatively close to the existing gardens and windows to the three surrounding cottages and, to a lesser degree, other dwellings slightly further away. However, the rooflights would only afford outlook at an oblique angle, looking upwards and away from the surrounding properties. At ground floor level, the proposed fenestration would look onto boundary walls and planting. These could be controlled by conditions to be of suitable height and depth to prevent harmful levels of overlooking of neighbouring properties and/or gardens.
24. The proposed dwelling would result in increased traffic movements, both from the future occupiers and servicing, deliveries and so on. However, only one small house is proposed and the amount of corresponding traffic movements would therefore be low. This would not give rise to unacceptable noise or other disturbance to neighbouring occupiers. Nor would moving the existing car parking spaces of Pear Tree Cottage to the rear, for the same reasons.
25. The proposal would not therefore unacceptably harm the living conditions of the occupiers of nearby properties with regard to overlooking or noise. Consequently, it complies with Policies GEN2 and GEN4 of the LP, which requires proposals to not have a materially adverse impact on the living conditions of neighbouring occupiers. It complies with Policy H4 of the LP, which requires that backland development not result in material overlooking of nearby properties or that access would cause disturbance to nearby properties. It also complies with Paragraph 135 of the National Planning Policy Framework (the Framework), which promotes health and well-being and a high standard of amenity for existing users.

Planning Balance

26. Paragraph 208 of the Framework states that, where a proposal would lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal including securing its optimum viable use.
27. A new home is proposed. This would be a public benefit by contributing to the housing supply of the District, albeit limited because only one dwelling is proposed. The proposal would also create economic benefits both from construction and by expenditure by the future occupants in the local area. This

factor also weighs in favour of the proposal as a public benefit, although it is limited because only one dwelling is proposed.

28. The appeal site lies within the development limits of Stebbing village. It is within walking distance of the shops and services of the village, although these are limited. Nevertheless, the Council has stated that the appeal site is a suitable location for a new dwelling in terms of its accessibility, and I agree. This is not, however, a public benefit on its own, but rather feeds into the weight to be applied to the public benefit related to the proposed new house.
29. The proposal would have meaningful public benefits, particularly from the creation of a new home in a District which is failing to provide enough housing. However, only one house is proposed which limits the weight I apply to this benefit. In accordance with Paragraph 205 of the Framework, I place great weight on the harm I have identified to the architectural and historic interest of all three relevant listed buildings. The proposal is therefore unacceptable in this regard and fails to satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Development Plan, and Paragraph 205 of the Framework.
30. It is common ground, and I have seen no substantiated evidence to the contrary, that the Council can only demonstrate a 3.52 years supply of housing land. Paragraph 11(d) of the Framework is therefore initially engaged. However, the harm to the listed buildings that I have identified above provides a clear reason for refusing the proposed development. Paragraph 11(d)(i) is therefore engaged and the tilted balance does not apply.

Conclusion

31. The proposal represents excessive development on a small, closely surrounded, site. It would harm the character and appearance of the area, the setting of three listed buildings, and would result in the loss of historic fabric and legibility to the Pear Tree Cottage Listed building. That there would be no harm to the living conditions of neighbouring occupiers weighs neutrally in the planning balance and does not overcome the harms I have identified. I therefore conclude that the appeals be dismissed.

O S Woodward
INSPECTOR