
Appeal Decision

Site visit made on 16 April 2024

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 June 2024

Appeal Ref: APP/J3720/W/23/3320698

Pinecroft, Church Road, Newbold Pacey, Warwickshire CV35 9DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mrs Kamille Liddar against the decision of Stratford-on-Avon District Council.
 - The application Ref is 22/01593/FUL.
 - The development proposed is described as, Demolition of existing dwelling with attached garage; Erection of replacement dwelling with detached garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published on 19 December 2023, after the Council made its decision. 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. I have had regard to the revised Framework in my determination of the appeal.
3. Following the refusal of the appeal proposal, the Council granted planning permission for 'Demolition of existing dwelling with attached garage. Erection of replacement dwelling' at the appeal site (the site)¹. The appellant submitted details of the granted scheme to the Planning Inspectorate outwith the appeal timetable. Also included with the submission were drawings illustrating the appeal proposal overlayed by the granted scheme. In line with advice set out in the Procedural Guide: Planning appeals – England² (the Procedural Guide), the details of this 'relevant decision' were accepted by the Inspectorate. In the interests of fairness, the Council was given an opportunity to comment on this late submission. No reply was received. I have determined the appeal having regard to the granted scheme and the additional overlays.
4. As part of their Statement of Case, the appellant has submitted an Appeal Design Statement by Yiangou and Appeal Heritage Statement by Built Heritage Consultancy³, which they assert provide expert evidence to address the Council's reasons for refusal. As these documents were not considered and/or consulted upon as part of the application process, the Council submit that I should not have regard to them.

¹ Application Ref: 23/01900/FUL. Decision date 20 September 2023.

² Para 9.4.8.3 Dated 24 May 2024.

³ Both Dated March 2023.

5. On this matter, I agree with the appellant in part, and accept the sections of the documents which provide additional justification for the proposal that the Council determined the application on. However, I note that in the Appeal Heritage Statement and the appellant's Statement of Grounds of Appeal, there is the suggestion that the detached garage proposed as part of the appeal scheme could be removed as it is 'no longer required', and that this could be controlled by a suitably worded planning condition.
6. The Procedural Guide sets out that the appeal process should not be used to evolve a scheme⁴. It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Local Planning Authority (the LPA) and by interested parties at the application stage. In deciding whether to, exceptionally, accept the proposed amendment, as per the judgement in *Holborn Studios Ltd v The Council of the London Borough of Hackney* (2018), which refined the 'Wheatcroft principles' set out in *Bernard Wheatcroft v Secretary of State for the Environment* (1982), consideration must be given to the following two tests which must be assessed separately: 1) substantive test; and 2) procedural test.
7. The substantive test is whether the proposed amendment involves a 'substantial difference' or a 'fundamental change' to the application that would ultimately result in a 'different application.' A 'substantial difference' or a 'fundamental change' could also be as a result of a series of small, incremental changes to a scheme. If it is concluded that the amendment would result in a 'different application', then it is unlikely that it could be considered as part of the appeal. The procedural test is whether, if accepted, the proposed amendment would cause unlawful procedural unfairness to anyone involved in the appeal and, if so, whether such unfairness could be cured, for example by re-consultation.
8. In my judgement, the removal of the garage is a 'fundamental change' to the proposal that would ultimately result in a 'different application'. As such, the suggested amendment does not pass the substantive test and I do not accept it. Given this conclusion, I have not considered whether the suggested amendment passes the procedural test. Consequently, for the avoidance of doubt, I have determined the appeal on the proposal and plans that the Council determined the application on⁵.
9. Also within the appellant's evidence is reference to two Lawful Development Certificates (LDCs) that have been issued by the Council for a swimming pool/gym building⁶ and a home office building⁷ at the site. The appellant submits that the baseline against which the appeal proposal is assessed should include the existing house and approved outbuildings, on the basis that the approved outbuildings would not be constructed should the appeal be successful. Although the appellant stated an intention to submit a Unilateral Undertaking to prevent the approved outbuildings from being constructed, none was submitted, and they confirmed in their final comments that they would accept a condition removing the right to extend the replacement dwelling under permitted development rights. I have considered this matter as a 'fallback position' under 'Other Matters' below.

⁴ Section 16, Paragraph 16.1.

⁵ As stated in the Council's Officer Report and Decision Notice.

⁶ LDC Ref: 23/00135/LDP. 16 Feb 2023. Erection of Detached Outbuilding to Provide Swimming Pool and Gym.

⁷ LDC Ref: 23/00136/LDP. 7 March 2023. Erection of Detached Outbuilding to Provide Home Office.

10. I note the appellant's assertion that there is no statutory obligation for Historic England (HE) to be involved in this case. However, under Regulation 5A(3) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended), the LPA must notify Historic England on development which they think would affect the setting of a Grade I or Grade II* listed building. I have had regard to HE's comments in my determination of the appeal.
11. The submitted evidence refers to the route adjacent to the site as both Church Road and Church Lane. I have used the reference Church Road, as stated in the application form and decision notice, in my reasoning.

Main Issues

12. The main issues are:

- the effect of the proposal on the landscape; and
- whether the proposal would i) preserve the settings of the nearby listed buildings and ii) preserve or enhance the character or appearance of the Newbold Pacey Conservation Area.

Reasons

Landscape

13. The site lies within the village of Newbold Pacey, a small loose knit settlement, which is located on an upland plateau in an open rural landscape. It is located on the eastern side of the village and is accessed from Church Road.
14. The site is a large, roughly rectangular plot, incorporating a well-established garden and mature trees, which is enclosed by a combination of post and rail fencing and vegetation. Within it lies Pinecroft, a large bungalow dating from the 1960s and extended in the 1970s, which is constructed of red brick and natural stone with a grey tiled roof. An outbuilding is under construction at the rear of the site⁸. Whilst there are some buildings and their curtilages to the north-west and east of the site, its predominant wider context is one of an open rolling landscape of agricultural fields and woodland.
15. Newbold Pacey is an 'All Other Settlement' as defined in the Stratford upon Avon District Core Strategy 2011-2031, adopted 2016 (the CS). Policies AS.10 and CS.20 of the CS are relevant. Policy AS.10 seeks all proposals to minimise impact on the character of the local landscape, communities and environmental features, with part (f) setting out that a replacement dwelling is acceptable in principle subject to its scale and design not causing inappropriate harm to the character of the area or to neighbouring properties. Policy CS.20 (C) states that where the existing dwelling is not considered suitable for retention, the replacement dwelling will be well sited in relation to the existing site and buildings, not visually intrusive, and not significantly larger than the dwelling it replaces.
16. It is common ground between the parties that Pinecroft is of minimal historic and/or architectural interest, and there is no objection from the Council or interested parties to its demolition and replacement. From the evidence before me, I have no reason to take a different view. The dispute relating to this main

⁸ LDC Ref: 21/03092/LDP. 12 November 2021. Erection of Domestic Outbuilding.

issue focuses on whether the replacement dwelling would be 'significantly larger' than the dwelling it replaces; and its effect on the landscape.

17. In my assessment, whilst I note the appellant's comments on this matter, I have included the proposed detached garage, as it would be a normal domestic adjunct, ancillary to the replacement dwelling and is part of the description of the proposal. Furthermore, I have not included the outbuildings granted under the LDCs referred to above in any baseline assessment, rather I have considered this matter below as part of a permitted development fallback position.
18. There is no guidance in the CS as to what constitutes 'significantly larger'. From the figures provided by the appellant, the replacement building in comparison to the existing dwelling would have a reduced footprint of about 6m²; an increased volume of about 229m³ (approximately 23%) and an increased maximum height of about 0.4m.
19. Having regard to ordinary definitions, 'significantly larger' connotes an increase of considerable or relatively great size, extent or capacity, as to be worthy of attention. I note the reduced footprint and negligible increase in maximum height. However, I am mindful that the latter is due in part to the building being sunk into the site by 600mm; and that a measurement against the 'maximum height' conceals that the increased height of a large proportion of the proposed dwelling would be considerably greater than 0.4m⁹. Overall, I find that, by virtue of its proposed two storey and flat roof form resulting in a sizeable increase in volume, the proposal would constitute a 'significantly larger' dwelling than the existing bungalow.
20. In terms of the proposal's effect on the landscape, I acknowledge the negligible merit and poor condition of the existing building. I also note the appellant's efforts to mitigate the prominence of the proposed dwelling in the site and landscape. Nevertheless, the proposed building's Y-shaped form of considerable height, bulk and massing, combined with the high solid to void ratio of some elevations and expansive heavy flat roof incorporating solar PV, would cause it to be a dominant building within the site and a visually intrusive structure within the landscape.
21. These harmful effects would be readily apparent in short range views from Church Road and, given the gentle rise in the land from south to north, would also be conspicuous in medium/long range views from the nearby public footpath (SD117c) and Moreton Road. These effects would not be adequately mitigated by any intervening trees and/or hedging or any proposed planting and would be particularly apparent in autumn and winter months when leaf cover would be reduced.
22. Accordingly, I conclude that the proposal would have a harmful effect on the landscape. This would be contrary to Policies AS.10 and CS.20 of the CS referred to above. It would also not comply with Policies CS.5, CS.9 and CS.15 of the CS, which amongst other things, seek that development takes place in a manner which minimises and mitigates its impact on the character and quality of the District's landscape; be of a high quality which reflects the character and distinctiveness of the locality; and protects and enhances the character of the settlement involved and its setting.

⁹ Illustrated by Drawing Ref: 2630-1125 Rev E.

Listed Buildings and Conservation Area

Special interest and significance

23. The site lies in proximity to a number of listed buildings. The Council's reason for refusal focuses on the Church of St George (the Church)¹⁰ and the Vicarage and attached front garden walls (the Vicarage)¹¹. The site is also located within the Newbold Pacey Conservation Area (the NPCA). As required by sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (The Act), I have had special regard to the desirability of preserving the buildings or their settings or any features of special architectural or historic interest which they possess; and paid special attention to the desirability of preserving or enhancing the character or appearance of the NPCA.
24. The Church is a Grade II* listed building, a designated heritage asset of the highest significance. It is stated to date from the 11th century and was rebuilt after a fire in 1880-2 by J L Pearson. It is constructed of coursed limestone with ashlar dressings and steeply pitched red old tile roofs with ornamental cresting. It occupies an open location on the eastern edge of the village which, combined with its form, design and materials, causes it to be a prominent landmark structure within the landscape.
25. From the evidence before me, the Church's special interest and significance mainly stem from its archaeological, historic and architectural interests. Its surviving historic fabric arising from its phased evolution; traditional construction and materials; association with J L Pearson; and ongoing ecclesiastical use and symbolism of faith which link to the local community, are all important contributors in these regards.
26. Pertinent to the appeal, special interest and significance are also drawn, in part, from the Church's setting. Its immediate setting, comprising an enclosed graveyard, has historic, functional, physical and visual links with the asset. This contemplative space allows the Church and its status within the village to be experienced and contributes considerably to both its significance as an asset, as well as the ability to appreciate that significance.
27. Beyond this space is the route through the village to the Church, off which the site is located; and the surrounding rural land to the north, east and south. The formal route to the Church, combined with the building's generally open context, enables an understanding of its historic relationship with the nearby Vicarage, and its ongoing role within the Parish it serves, conveying its enduring functional and communal importance. These positive qualities of the Church's wider setting contribute in a meaningful way to its special interest and significance and reinforce its high status as a Grade II* listed building.
28. The Vicarage (known locally as Park House and no longer the vicarage to the Church) is a Grade II listed building. It is stated to date from the late 17th century with alterations and additions of 1720 and a 19th century wing. It is constructed of red brick on a stone plinth to sill level, with steeply pitched hipped and gabled slate roofs. To the west of the Vicarage are an associated detached coach house and stable building dating from the early 19th century and a modern tennis court. The Vicarage is positioned set back behind a

¹⁰ List Entry Number: 1381966.

¹¹ List Entry Number: 1381971.

substantial brick boundary wall but maintains presence in the street scene along Church Road and is visible in long range views from Moreton Road.

29. From the evidence before me, the Vicarage's special interest and significance are largely derived from its historic and architectural interests. Important contributors in these regards are its surviving historic fabric; phased development; imposing architectural style; traditional construction and materials; and its historic relationship with the Church.
30. Pertinent to the appeal, the building's special interest and significance also stem, in part, from its setting. Its immediate setting, comprising a largely enclosed garden, has historic, functional, physical and visual links with the asset. This is the main space where the building is experienced and contributes considerably to both its significance as an asset, as well as the ability to appreciate that significance.
31. In the wider area, similar to the Church, the formal route through the village, off which the site is located, combined with the building's mostly open surroundings to the south and east, enables an understanding of its historic relationship with the nearby Church, and the status of the two buildings within the village. These aspects of the Vicarage's wider setting positively contribute to the asset's special interest and significance.
32. The submitted evidence states that the site on which Pinecroft is built was on 'land that historically went with the Vicarage.' It is accepted that this part of the Vicarage's, and thus the associated Church's, wider settings has evolved and changed. Whilst the separation and development of this land has diminished its functional and physical association with these listed buildings, its historic and visual relationships with the assets, nevertheless, remain. In this respect and notwithstanding its current appearance, the site, as part of the assets' wider settings, contributes positively to their special interest and significance.
33. The NPCA encapsulates the whole settlement, taking in its buildings and their curtilages, woodlands and pond. The Council's Conservation Area Review describes Newbold Pacey as 'essentially a manor house and home farm group with 'estate' cottages and church.'
34. The character and appearance and thus special interest and significance of the NPCA predominantly stem from the loose knit pattern of development; the richness and diversity of the historic buildings which it encompasses, including the key buildings of Newbold Pacey Hall, the Church and the Vicarage, all set in a well-wooded landscape in a wider arable context.
35. Relevant to the appeal in relation to built form within the NPCA, variety is evident, with it encompassing buildings of a range of sizes, styles and dates. Nonetheless, there are some unifying factors in terms of the pattern of development, predominantly detached properties in large verdant plots; orientation of buildings, mostly set back from and fronting, or perpendicular to, adjacent routes; roofscape, mostly steeply pitched roofs; and materials, primarily orange/buff brickwork and red/brown plain clay tiles.
36. As a large, detached bungalow in a substantial mature garden, set back from, but fronting Church Road, Pinecroft displays some of the characteristic qualities of the NPCA. Moreover, whilst of 20th century construction and negligible

architectural merit, its single storey height and unassuming form and design means that it does not perceptibly compete with, or detract from, the important heritage assets it lies near and within. Nonetheless, the poor condition of the building, combined with the general unkempt appearance of it and the site, mean that, at present, they make, at best, a neutral contribution to the character and appearance of the NPCA.

Effects

37. I recognise that, as development within their settings, the proposal would not affect the Church's and/or the Vicarage's physical fabric or their symbolism within the local community. Moreover, the immediate settings and most of the wider settings of these assets would remain undisturbed. As such, these aspects which contribute to their special interest and significance would be preserved and not harmed as a result of the proposal.
38. However, the proposal would give rise to the introduction of substantial built form into the site, that would be of a greater general height, volume, bulk and massing than the existing dwelling. Moreover, as referenced above, the proposed building's starkly contemporary form incorporating a high solid to void ratio in some elevations and an expansive heavy flat roof with solar PV, would cause it to be highly prominent in the site and the landscape.
39. As a consequence it would disrupt and detract from the primacy and importance within the village and landscape of the Church as a landmark structure and the Vicarage as a key building. In doing so, it would undermine the authenticity of how these assets are experienced and diminish the ability to appreciate their special interest and significance in relation to their status within Newbold Pacey.
40. I acknowledge that in short range views the site is, to a large degree, visually separated from the Church and Vicarage by other structures and mature vegetation. However, the absence of a strong visual connection is not a determinative factor, as it is the physical form of the proposal that would be harmful to their settings, diminishing the positive contribution the settings make to the assets' significance. Furthermore, these adverse effects would be manifest in long range views from the public routes to the south from which the buildings would be observed together.
41. These harmful effects would feed through to the character and appearance of the NPCA. Indeed, notwithstanding the variance of development within Newbold Pacey, the proposed building's Y-shaped form, off-set orientation, and expansive flat roof, would all be wholly out of keeping with the identified unifying elements and characteristics of the area. These effects would be keenly felt when observing the site and replacement dwelling directly from Church Road and in longer range views from the south.
42. Drawing all of the above together, I find that the proposal would not preserve the settings of the nearby listed buildings and would not preserve or enhance the character and appearance of the NPCA. On this basis, it would cause harm to the significance of these designated heritage assets.

Public benefits and heritage balance

43. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great

weight should be given to the asset's conservation (and the more important the asset the greater the weight should be). Paragraph 206 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or from development within its setting and that this should have clear and convincing justification.

44. With reference to Paragraphs 207 and 208 of the Framework, in finding harm to the significance of a designated heritage asset, the magnitude of that harm should be assessed. Given the localised nature of the proposal, I find that the harm to the significance of the designated heritage assets assessed above would, individually and cumulatively, be 'less than substantial' but nevertheless, of considerable importance and weight. Paragraph 208 of the Framework requires this harm to be weighed against the public benefits of the proposal.
45. No perceived public benefits have been advanced by the appellant. Nonetheless, it is reasonable to conclude that economic and social benefits would flow from the construction of the replacement dwelling and improvement of the housing stock within the area. Additionally, environmental benefits would be generated by the installation of solar PV, an EV car charging point, a bat box and additional planting. These public benefits are in line with the objectives of the Framework and carry moderate weight in favour of the appeal.
46. In addition, having regard to Paragraph 212 of the Framework, I do not dispute that the replacement of the existing dwelling would have the potential to preserve, enhance and/or better reveal the significance of, the nearby listed buildings and the contribution of their settings; and the NPCA. However, for the above reasons, I am not satisfied that the proposal before me would achieve this.
47. In the above respects, clear and convincing justification for the harm to the assets' significance has not been provided. Overall, the moderate weight that I ascribe to the public benefits which would accrue from the proposal is not sufficient to outweigh the considerable importance and weight that I attach to the harm I have found.
48. Accordingly I conclude that the proposal would not preserve the settings of the nearby listed buildings and would not preserve or enhance the character and appearance of the NPCA. This would conflict with the statutory presumptions set out in sections 66(1) and 72(1) of the Act. It would also be contrary to Policy CS.8 of the CS in so far as it seeks to protect and enhance the District's historic environment; and the provisions within the Framework which seek to conserve or enhance the historic environment.

Other Matters

49. In coming to my conclusions I have had regard to the permitted development fallback position advanced by the appellant comprising the retention of the existing building and the construction of outbuildings granted as part of two LDCs issued by the Council¹²; and the proposition that, if the appeal was successful, the approved outbuildings would not be constructed.
50. The appellant submits that, in comparison to the proposed development by itself, if the existing building was retained and the outbuildings were

¹² Reference No. 23/00135/LDP. 16 February 2023 and Reference No. 23/00136/LDP.

constructed, the level of development implemented would be of a greater collective footprint and volume, of a greater spread across the site and located closer to the boundaries. This, they contend, would impart a more built up character which would be highly visible in views from public routes. As such, they assert that this fallback scheme would be 'markedly less preferable to the proposed new dwelling' on its own.

51. Given my reasoning above, I am not entirely convinced that this fallback would be more harmful than the scheme before me. Even if I accept that it would be, I am mindful of the current poor condition of the existing property and the extant permission for its replacement¹³. This calls into question the real prospect of the existing building being retained should the appeal be dismissed. To my mind, there is a greater than theoretical possibility that the extant permission would be fully implemented if the appeal was not allowed.
52. Moreover, whilst the appellant states that should the appeal be allowed, the granted outbuildings would not be constructed, there is no mechanism before me that would secure this. Although the appellant is willing to accept a condition removing the right to extend the dwelling under permitted development rights, such a condition would only take effect once the permission is implemented. There is nothing before me, such as a Section 106 obligation, which would prevent existing permitted development rights being exercised prior to the permission for the appeal scheme being implemented, potentially enabling the construction of the proposed dwelling with detached garage and outbuildings on site.
53. Taking the above considerations together, I attach little weight to the permitted development fallback position, and it does not alter my conclusions on the main issues.
54. I have had regard to the scheme which has been granted planning permission. Whilst it may be of an extensive footprint and positioned closer to an adjacent boundary, it remains that the majority of the building would be of a lesser height than the scheme before me. Moreover, it is of an orientation, design and materials which the Council considered appropriate and acceptable having regard to the context of the site and its surroundings. There is a greater than theoretical possibility that it would be built if this appeal were to fail. Nevertheless, I find that it would be less harmful than the appeal proposal in relation to the landscape and the significance of the designated heritage assets referenced above. As such, my conclusions on the main issues remain unchanged.
55. The submitted evidence and representations reference the presence of other Grade II listed buildings within the vicinity of the site, namely, Vicarage Cottage (known as Timber Cottage) and Newbold Pacey Hall¹⁴. Mindful of the statutory duty set out in s66(1) of the Act, I have had special regard to the desirability of preserving the settings of these listed buildings.
56. From the evidence before me, the special interest and significance of these assets largely stem from their archaeological, historic and architectural interests, but are also derived, in part, from their respective domestic village and manor house settings. Given the location and orientation of these assets

¹³ Application Ref: 23/01900/FUL. Decision date 20 September 2023.

¹⁴ Vicarage Cottage: List Entry Number 1381972; and Newbold Pacey Hall List Entry Number: 1381973.

within the village and in the landscape in relation to the position of the proposed development, I consider that the settings of these designated heritage assets would be preserved and the contribution they make to the assets' significance would not be harmed. I note the Council raised no concerns in this regard either.

57. The appellant has drawn my attention to Elms Farm Cottage, considered to be a 'key building' within the settlement, and of 'individual local interest and local group value'¹⁵, which was redeveloped in 2012. I was able to view the building on my site visit.
58. I note the appellant's reference to the larger footprint, height and scale of the replacement development, which includes large expanses of glazing, causing it to be more apparent in views within the NPCA than that which it replaced. Nonetheless, I am not aware of the full details and circumstances which led to the grant of permission. I also note the adoption of the CS in 2016, and so cannot be certain that the local policy context against which that application was assessed is the same as that before me. As such, the grant of this scheme carries little weight in favour of the appeal.
59. The appellant asserts that there are examples of modern and contemporary new builds granted consent locally and provides visuals of 'modern new build houses approved in Stratford upon Avon in proximity to the 1* listed church' and of new build houses in Warwickshire¹⁶. No details have been provided on any of the examples to allow a meaningful comparison with the appeal proposal and so they carry little weight. In any event, each case must be judged on its own merits.

Conclusion

60. The proposed development would have a harmful effect on the landscape. It would also not preserve the settings of the nearby listed buildings, nor would it preserve or enhance the character and appearance of the NPCA.
61. On this basis there would be conflict with the relevant policies of the CS set out above. It would also conflict with the statutory presumptions set out in sections 66(1) and 72(1) of the Act; and would not accord with the provisions within the Framework regarding achieving well designed places and the conservation and enhancement of the historic environment. Conversely, as set out above, the proposal would generate some associated economic, social and environmental benefits, in line with the objectives of the Framework.
62. Overall, I afford considerable importance and weight to the harm I have identified and the conflict with the development plan when taken as a whole. Whilst I afford moderate weight to the benefits which would accrue from the proposed development, material considerations do not indicate that the decision should be taken other than in accordance with the development plan.
63. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

F Cullen INSPECTOR

¹⁵ Stated in Newbold Pacey Conservation Area Review in 1991.

¹⁶ Design and Access Statement dated 2022.