



Appeal Decision

Site visit made on 29 July 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 August 2024

Appeal Ref: APP/H1840/W/24/3339672

Windermere, Cheltenham Road, Kinsham, Worcestershire GL20 8HP

- 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 Mr Jeremy Reilly and Mrs Agi Duhig against the decision of Wychavon District Council.
 - The application Ref is W/23/00644/FUL.
 - The development proposed is for two single storey dwellings.
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Decision

1. The appeal is allowed, and planning permission is granted for two single storey dwellings at Windermere, Cheltenham Road, Kinsham, Worcestershire GL20 8HP in accordance with the terms of the application, Ref W/23/00644/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appellants have provided a signed Unilateral Undertaking (UU) dated 14 June 2024. This includes an obligation to provide a financial contribution of £25,594 (index linked) towards the provision of off-site affordable housing. I shall consider the UU later in this decision.
3. Refusal reason 2 on the Council's decision notice referred to the absence of arrangements to secure the provision of a contribution towards off-site affordable housing provision. The Council indicates that this matter has been satisfactorily addressed by the UU. As such, this is a matter that is no longer in dispute, and refusal reason 2 falls away.
4. Saunders Cottage is a Grade II listed building that lies to the south of the appeal site (list entry number 1117014) (the listed building). Both parties agree that it comprises 2-3 Saunders Cottage but not the adjoining no.1 Saunders Cottage. I have no basis to take a different view. Hence, references to the listed building pertain only to nos. 2-3 Saunders Cottage.

Main Issue

5. The main issue is the effect of the proposal on the character and appearance of the area having particular regard to the settings of the listed building and any non-designated heritage assets.

Reasons

Character and appearance and heritage assets

6. Saunders Cottage is a two-storey building that originates from the 17th century. The main body of the building has a simple form and is constructed in stone with a thatched roof. It exhibits few ornamental architectural features, but the fenestration includes mullion windows with drip moulds on the ground floor, casements and eyebrow dormers. The building is set at an angle to Cheltenham Road at the edge of Kinsham.
7. The special interest and significance of the listed building is chiefly derived from its value as an example of vernacular architecture of the period. Notwithstanding that there have been unsympathetic additions, it retains notable architectural and aesthetic value. Moreover, the surviving historic fabric embodied in the building is a tangible connection with the past and contains information about historic construction techniques and the use of traditional materials.
8. Limited additional value comes from what the building reveals about the likely social and economic status of previous occupants and their probable close relationship with the land and agriculture. In this respect the general rural character of the context contributes to that understanding. In particular, the proximity and spaciousness of fields to the east and the openness of land on the opposite side of Cheltenham Road form an important part of the surroundings of the listed building as one approaches Kinsham along Cheltenham Road from the southeast.
9. I am mindful of my statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to have special regard to the desirability of preserving listed buildings, their settings or any features of special architectural or historic interest which they possess.
10. Although not listed, 1 Saunders Cottage (no.1) is attached to the listed building but was subdivided from it a considerable time ago. It holds some historic and architectural value owing to its previous close association with the listed building and traditional form. As such, it is a heritage asset, albeit not a designated one.
11. No.1 and the listed building are sited within a broadly triangular enclave of built form at a peripheral part of the settlement, bounded by Cheltenham Road, a field to the east and a public right of way to the north. My observations, including from the public right of way, were that this grouping of residential properties is mainly notable owing to the assortment and variety reflected in their ages, architectural styles, siting, orientation and materials. I was not able to discern any obvious regularity in plot size or shape, nor a prevailing aesthetic style. Rather, the eclectic mix of buildings reflects how this part of the settlement has evolved over time, in part owing to infill development. Nevertheless, the loose and irregular grain of development, combined with spaces and gardens between the dwellings reinforces the generally pleasant rural character and appearance of Kinsham.
12. This grouping provides a backdrop to the listed building and no.1. It also contains Cleveland Cottage, which is identified as a non-designated heritage asset in Appendix 2 of the Bredon Parish Neighbourhood Plan 2016-2030, July

2017 (NP). Cleveland Cottage is constructed in painted brick and slate and probably dates from the mid-19th century. Although it has undergone subsequent alterations, it retains a small degree of architectural value owing to its form and surviving original materials.

13. The appeal site forms part of the rear garden areas to No.1 and Windermere, a detached property dating from the latter half of the twentieth century. The site's character and appearance are consistent with that of domestic gardens and contains paraphernalia and planting typically associated with such use. This includes grassed areas, shrubs, modest trees, boundary fencing and various outbuildings. As such, the greenery and spaciousness of the site adds to the general rural character and appearance of the triangular enclave of residential development.
14. The site is a considerable distance to the rear of the listed building and is physically subdivided from it. Hence, although extracts from historic OS maps¹ suggest the appeal site, together with no.1, once formed part of its curtilage, given the subsequent infill development and sub-division that has taken place, that is no longer clearly legible. Accordingly, the appeal site does not read as garden land to the listed building, nor is there any obvious remaining connection with it. Instead, it forms a small part of the wider setting to the listed building, indistinguishable from other domestic gardens within the triangular residential enclave.
15. Consequently, whilst the appeal site lies within its setting and provides part of the general rural context, it does not meaningfully contribute to the important qualities of the listed building. Therefore, it plays a neutral part in the way the building is experienced. I make a broadly similar finding in relation to the settings of no.1 and Cleveland Cottage. The significance of those properties does not depend upon the appeal site providing a domestic garden setting. Rather, it merely forms part of the generally rural context in which they can be appreciated.
16. The proposed development would further subdivide the appeal site. It would introduce two detached single storey dwellings, as well as create a further access onto Cheltenham Road. As such, it would involve an increase in built form and additional activity. Inevitably, by intensifying the amount of residential development within the triangular enclave described, there would be some reduction in overall spaciousness. There is no dispute that this would result in changes to the character and appearance of the land. However, the main parties disagree as to whether such changes would be harmful to the significance of the heritage assets outlined.
17. The following factors lead me to find that the proposed dwellings would preserve the general rural character and appearance of the locality. Firstly, the scale of development would be curtailed by the small number of additional dwellings. Secondly, their single storey nature would be lower than surrounding dwellings, giving them a low profile.
18. Thirdly, they would be set well back from Cheltenham Road. This would provide generous separation from the listed building and no.1. Accordingly, their presence would not be obvious from the road, and the fields and land

¹ Historic Environment Desk-Based Assessment, February 2023 prepared by Orion

important to the rural setting of the listed building when approaching the settlement would be preserved.

19. Furthermore, the siting of the dwellings would broadly continue a series of dwellings seen adjacent to the public right of way but with a reasonable amount of space left between Cleveland Cottage and the nearest proposed bungalow. Given the existing loose grain arrangement, the proposed dwellings would be comfortably assimilated into that context.
20. Moreover, the mixed architectural styles and materials evident in nearby dwellings leave some room for a range of suitable design approaches. In this instance, the gables, porches, gable style windows and chimneys would provide features with some interest but would avoid overwhelming the fundamental unassuming nature of the dwellings. Hence, the combination of inobtrusive siting, modest scale and architectural restraint would ensure that their presence would not distract attention from the heritage assets identified, or any important rural qualities of their setting.
21. It follows that the dwellings would read as part of the residential infill character of the triangular enclave of development. The rural and spacious character of this area is not so sensitive that it could not withstand a minor degree of additional development. Consequently, within such a mixed context I cannot agree that it is necessary to retain the appeal site as garden land to retain separation between older and modern forms of development.
22. To my mind the proposals would be consistent with the approach advocated in paragraph 128 of the National Planning Policy Framework (the Framework) whereby planning decisions should support development that makes efficient use of land, whilst taking into account the desirability of maintaining an area's prevailing character and setting.
23. For these reasons, the proposed development would retain the existing character and appearance to this part of the settings of the heritage assets. As such, it would continue to have a neutral effect on the way those assets are experienced. Therefore, I find the development would not cause harm to their significance.
24. Given that I have found the proposals would preserve the special interest and significance of the listed building, it follows that there would be no conflict with the expectations of the Act. Furthermore, there would be no harm to the significance of it as a designated heritage asset. As such, the proposals would align with historic environment protection policies within the Framework, and it is not necessary for the heritage balance set out in paragraph 208 to be undertaken.
25. I further find that the effect on the significance of Cleveland Cottage and no.1 as non-designated heritage assets would be neutral. Hence, in these circumstances a further balanced judgement having regard to the scale of any harm or loss as described in paragraph 209 of the Framework is rendered unnecessary.
26. Accordingly, I consider that the appeal scheme broadly aligns with the requirements in policies SWDP6, SWDP21 and SWDP24 of the South Worcestershire Development Plan, February 2016 (SWDP) and policies NP3 and NP9 of the NP. Amongst other things, when read together, these policies

require development to conserve the significance of heritage assets, including having regard to their setting and achieve a standard of design that is sympathetic to local character, that will integrate with its surroundings.

Other Matters

Planning obligations

27. Policy SWDP15 of the SWDP sets out the Council's approach to meeting affordable housing needs. Amongst other things, on sites of less than 5 dwellings it requires a financial contribution towards local affordable housing provision equivalent in value to 20% of the units as affordable housing on site.
28. The main parties agree that this equates to £25,594 and I have little basis to find otherwise. The planning obligation in the UU would secure this requirement to be paid prior to the commencement of the proposed development.
29. Therefore, I am satisfied that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related in scale and kind to the development. As such it fulfils the statutory tests in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended), and those in paragraph 57 of the Framework.

Other considerations

30. In coming to my findings, I have had regard to the representations received, including objections from Bredon and Westmancote Parish Council and Bredon and Bredon's Norton Parish Council. Whilst I have addressed most of the matters raised as part of the main issue, reference was also made to the effect on a scheduled monument known as 'Settlement site NE of Kinsham, scheduled monument 1005314'. This constitutes a designated heritage asset for the purposes of the Framework.
31. The significance of the scheduled monument is largely owing to its archaeological value as the remains of a prehistoric and Roman settlement. It also provides some information about how prehistoric and Roman people used the land. Nevertheless, it lies about 80-90 metres to the north of the appeal site, and there is little to connect the two. The Historic Environment Desk-Based Assessment provided indicates that the proposal would not have any meaningful impact on the significance of the scheduled monument, and I have seen no substantive evidence to suggest otherwise. In these circumstances, I am satisfied that planning conditions in relation to archaeological investigation would provide sufficient protection in the event notable archaeology is revealed as part of the development.
32. The information before me indicates that the Council cannot demonstrate a 5-year supply of deliverable housing sites, and that the shortfall is considerable. On that basis reference is made to the presumption in favour of sustainable development in paragraph 11 of the Framework. However, I have not found a conflict with policies in the development plan, and policy SWDP1B of the SWDP confirms that planning applications that accord with the policies in the SWDP and NP will be approved unless material considerations indicate otherwise. Hence, this is not a matter that would lead me to a different outcome and in this case, it is unnecessary to consider it further.

Conditions

33. The Council have suggested 16 conditions which I have assessed against the tests in paragraph 56 of the Framework, and advice in PPG that encourages keeping the number of conditions to a minimum, and the careful use of pre-commencement conditions.
34. For the sake of certainty conditions are imposed setting a period for commencement and requiring the development to comply with the submitted plans.
35. As already outlined, given the potential for archaeological remains to be at the site, a condition for written investigation is necessary. To be effective, the details need to be agreed prior to the commencement of works and consequent ground disturbance.
36. A condition to agree ecological mitigation and enhancement is necessary to conserve and enhance biodiversity. This also needs to be agreed prior to the commencement of works to ensure appropriate steps are taken to safeguard existing wildlife.
37. In the interests of highway safety, a condition is imposed to ensure adequate visibility splays are provided prior to the commencement of development and thereafter retained. For similar reasons, suitable surfacing of the access and provision of car parking is required. To promote more sustainable transport modes and methods the provision of cycle parking and electric vehicle charging points are necessary. I have summarised and amalgamated the wording of several suggested conditions in these respects.
38. As only generic references are made to the external materials to be used, a condition is imposed that the details should be agreed with the Council prior to their use in the interests of securing high design quality. Some details of landscaping and hedgerow retention are shown on the submitted plans. However, further details of proposed planting, hedgerow protection and maintenance would assist in softening the effect of new development. In the circumstances, I have simplified the requirements to make them more proportionate. In addition, I have amalgamated the need to specify boundary treatments as part of the details to be provided.
39. The development plan contains policies that promote careful water management, sustainable drainage and energy efficiency. On that basis conditions are imposed to ensure the development proceeds in accordance with the measures provided by the appellants in relation to those matters.
40. Given the proximity to other residences, in the interests of protecting the living conditions of nearby residents from unreasonable disturbance during construction, a condition is imposed to restrict the hours such activity can take place.
41. The Council also suggested a condition to restrict permitted development rights that are normally afforded to householders. Paragraph 54 of the Framework stipulates that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The reasons put forward are generic in nature referring to the visual amenities of the locality and the significance of heritage assets. The reasoning is insufficiently precise to amount to a clear justification, and so would not pass

the tests of necessity or reasonableness. Therefore, even though the appellants have indicated they would agree to such a condition, I have not imposed it.

Conclusion

42. For the reasons given above the appeal should be allowed.

Helen O'Connor

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Floor Plans & Elevations, drawing no. 21121 03G; Proposed Floor Plans & Elevations, drawing no. 21121 04F & Proposed Floor Plans & Elevations, drawing no. 21121 05G.
- 3) (A) No development shall take place until a programme of archaeological work, including, a Written Scheme of Investigation, has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:
 - 1) The programme and methodology of site investigation and recording.
 - 2) The programme for post investigation assessment.
 - 3) Provision to be made for analysis of the site investigation and recording.
 - 4) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
 - 5) Provision to be made for archive deposition of the analysis and records of the site investigation.
 - 6) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.(B) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under part (A) of this condition and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 4) Before the commencement of development hereby permitted, an ecological mitigation and enhancement scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include precautionary measures for site preparation and the construction period, as well as details of one bat and one bird nesting feature on each dwelling hereby approved and an implementation timetable. The works shall thereafter be carried out in accordance with the approved details and timetable and retained.
- 5) Development shall not begin until visibility splays are provided from a point 0.6m above carriageway level at the centre of the access to the

application site and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 43 metres in each direction measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6m from the edge of the carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.

- 6) The materials used in the construction of the external surfaces of the dwellings hereby approved shall accord with details previously agreed in writing with the local planning authority.
- 7) The development shall proceed in accordance with a landscaping scheme previously agreed in writing with the local planning authority that details measures of all existing trees and hedgerows to be retained and measures for their protection during the construction process. In addition, the scheme shall include a schedule of proposed planting, a schedule of maintenance, details of boundary treatments and a timetable for implementation. The development shall proceed in accordance with those approved details.
- 8) Prior to the first occupation of the dwellings hereby permitted the details set out in the submitted Water Management Statement prepared by EP Architecture, dated February 2023 shall be implemented and retained thereafter.
- 9) The development shall be carried out in accordance with the submitted Energy Statement and associated information prepared by SAP Easy dated 17 March 2023, and the measures incorporated thereafter retained.
- 10) The development hereby approved shall not be occupied until:
 - (a) the first 5 metres of the access into the development, measured from the edge of the carriageway, has been surfaced in a bound material.
 - (b) The parking areas for four cars shown on drawing 21121 04F has been laid out.
 - (c) The timber sheds for bike storage shown on drawing 21121 04F are provided.
 - (d) Each dwelling is fitted with an electric vehicle charging point compliant with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 and the Worcestershire County Council Streetscape Design Guide.

These measures shall thereafter be retained, with vehicle and cycle parking facilities used only for those purposes. Any replacement electric vehicle charging point shall be of an equal or higher performance specification.
- 11) Demolition, clearance or construction work and associated deliveries to and from the site in connection with the development hereby approved shall only take place between the hours of 08.00 and 18.00 Monday to Friday and 08.00 and 13.00 on a Saturday, with none on Sundays or Bank Holidays.