

# Appeal Decision

Site visit made on 20 August 2024

**by K Stephens BSc (Hons) MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 October 2024**

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**Appeal Ref: APP/C1625/Y/24/3342754**

**3 Orchard Street, Wotton-under-Edge, Gloucestershire GL12 7EZ**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
  - The appeal is made by Mr & Mrs Sennitt against the decision of Stroud District Council.
  - The application Ref is S.23/1550/LBC.
  - The works proposed are Replacement of existing single storey rear extensions with larger single storey rear extension linked to new 1½ storey structure in garden, internal alterations, reconstruction of one existing chimney and reroofing of whole property.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. During the course of the appeal a revised National Planning Policy Framework (the Framework) was published in December 2023. However, as any policies in the Framework that are material to this decision have not fundamentally changed, I am satisfied that neither party would be prejudiced by my consideration of the revised Framework in reaching my decision.
3. I see from the submitted evidence that a planning application was also determined by the Council, but an appeal was not lodged. For the avoidance of doubt, my considerations and conclusions relate solely to the application for listed building consent.
4. As the appeal relates solely to works to a listed building which is located within a conservation area, Sections 16(2) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) require me, as decision-maker, to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses, and to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area.
5. The first reason for refusal does not explicitly refer to the Wotton-under-Edge Conservation Area (the WCA). However the reason does refer to the setting of the wider terrace, which is located within the WCA) and in the submitted

Case Officer Review for the planning application the Council states that harm would arise to the setting of the WCA as a result of the proposal. The appellant is also fully aware of the building being within the WCA. Hence I am satisfied that both parties have considered the effect of the proposal on the WCA and are not prejudiced by my consideration of it in my decision.

### *Plans*

6. The lists submitted by the parties confirming the plans upon which the application was determined do not match<sup>1</sup>. The six plans cited by the Council relate more to the proposed ground floor changes for the proposed single storey and two storey extensions and include some casement window details. They do not include some of the proposed internal works to the host property as shown on the plans in Fig.3 of the appellants' Design and Access Statement (the DAS) or some of the plans submitted by the appellants as part of the appeal.
7. Should I have been minded to allow the appeal, the incompleteness and discrepancy of the plans are a deficiency and create uncertainty as to what works listed building consent is actually being sought for and what works were actually considered by the Council. Nonetheless, it is clear from the Case Officer's Review that the proposed internal works to the host property were assessed in the determination of the scheme. Therefore, for the avoidance of doubt, I have taken the plans as shown in the DAS into account in my determination of the appeal and I am satisfied no party's interests are prejudiced by this approach.
8. The appeal file also includes three plans which are stated to have been submitted after the Council determined the application (6345/19, 6345/20 and 6345/21 dated Dec 2023). The appellant refers to them as part of the progress of the application and pre-application advice, but the Council does not refer to them as part of the proposal. Therefore, it is not clear whether the appellants want them to be taken into consideration as part of the appeal. These plans show a scheme where the two storey extension is rotated through 90 degrees. This would evolve the scheme and, given that the proposed amendments would result in a different application to that which the Council consulted upon and determined, it would not pass either the substantive test or procedural test as set out in the judgement of *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). Therefore, for the avoidance of doubt, I have not assessed the scheme shown on these plans as part of this appeal.
9. The Council's concerns primarily lie with the two storey rear extension and the insertion of the three rooflights in the rear roof, rather than with the upper floor alterations themselves.

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<sup>1</sup> Appellants' Statement Paragraph 1.2 and Council Statement Paragraph 1.3.

## Main Issues

10. In light of the above, the main issues are:

- Whether the proposal would i) preserve the Grade II listed building, or its setting, or any features of special architectural or historic interest which it possesses; and ii) preserve or enhance the character or appearance of the Wotton-under-Edge Conservation Area (the WCA); and
- Whether sufficient information has been provided regarding the effect of the proposed works on bats as a protected species.

## Reasons

### *Heritage assets*

#### Special interest and significance of the heritage assets

11. The host property (No.3) is a terraced dwelling which forms part of a Grade II listed building. The official list entry<sup>2</sup> refers to it being listed as a pair of cottages in a terrace as "3 and 4 Orchard Street". It is described as a three storey brick townhouse with slate roof (but it currently has an artificial slate roof) swept down at the rear. It is said to date from the mid-19<sup>th</sup> century, although the appellant's Historical Appraisal indicates it could be older than the listing suggests and date from the first half of the 19<sup>th</sup> century. The listing goes on to describe that the building reduces to 2 storeys at the rear under a swept<sup>3</sup> roof.
12. The property has a larger garden area than some as it extends around the rear of the adjacent terraced property 2 Orchard Street (No.2), and is tiered on a number of levels. The property has also been extended in the past with a single storey, mono-pitched roof extension that forms a garden room off the kitchen. There is also a small mono-pitched outbuilding beyond the garden room but detached from it, currently used as a study. Fitted in the space between the back of the study outbuilding and the rear garden boundary wall is a simple open-fronted store with flat timber roof. The appellants' map regression evidence would seem to suggest there was some form of small, detached outbuilding at the rear at some stage.
13. I find that the special interest and significance of the listed building, insofar as it relates to this appeal, are largely derived from its architectural and historic interests in illustrating late Georgian domestic terraced architecture. The building's age, use of traditional materials and construction, surviving historic fabric, including its distinctive rear roof form and design, make important contributions in these regards. The building also has group value with other dwellings in the terrace as part of the streetscene and townscape and in particular with No.4 which were built as a pair.
14. Pertinent to the appeal, the special interest and significance of the asset are also derived in part from its setting. The size of the rear garden coupled with the various structures and the terraced nature of the garden creates an enclosed and confined rear amenity area. This space is one of the main

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<sup>2</sup> National Heritage List for England: list entry number 1187071

<sup>3</sup> Which the parties also refer to as a catslide roof

areas from which the asset is experienced and its heritage merit appreciated. Hence the rear garden provides an immediate setting that positively contributes to the special interest and significance of the listed building.

15. The building is also located within the WCA, which is centred on the older parts of the market town, which the Council's Conservation Area Statement<sup>4</sup> describes in more detail. The town has Roman and Saxon origins and is mentioned in the Domesday Book. However, the town's rise from a small hamlet to a borough in the 13<sup>th</sup> century and later expansion is in part due to the economic prosperity that came with the wool trade. The town expanded beyond the old town to a more grid-like pattern of streets based on the High Street, with smaller roads of town houses off it, such as Orchard Street. The home of Sir Issac Pitman, who in 1834 invented Pitman shorthand, stands opposite the terrace containing the host property.
16. From the evidence before me and what I saw during my site visit, I consider the character and appearance of the WCA, and thus its special interest and significance, are in part derived from the architectural richness and variety of its surviving historic buildings and street pattern which reflect the economic and social development and growth of Wotton-under-Edge over time. The listed building is a part of the street scene and an important component of the townscape within the WCA. Its heritage merit as well as its aesthetic charm means that the listed building positively contributes to the character and appearance of the WCA as a whole and thereby to its significance as a designated heritage asset.

#### Appeal proposal and effects

17. The rear single storey and two storey extensions would involve demolishing the existing garden room and nearest two outbuilding structures (the study and store). In their place a single storey garden room extension would be erected off the back wall of the kitchen with a lantern light in the roof. This would extend out further than the existing garden room and link with a two storey, pitched roof building with large gabled dormer window in the roof that would accommodate a ground floor study and WC, with stairs leading to a bedroom with ensuite on the first floor.
18. The single storey extension would be attached to the existing rear wall of the property and kitchen and the Council has no objection to this. That said, the appellants' Heritage Assessment identifies the rear kitchen wall as being the historic rear wall of the pair of semis. This wall appears to have been altered over time and more recently for the existing garden room. However, further alterations would be made to effectively widen the opening between the kitchen and the new garden room. Whilst some wall to the right of the opening (when standing in the kitchen) would appear to have been altered and blocked-up over time, the widening of the central opening would see some loss of historic fabric and further erode the legibility of the historic rear wall of the property. No details or sections have been provided to show how the extension would connect to the rear of the listed building or how the new beams above the opening would be installed and the effects these works

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<sup>4</sup> Conservation Area Statement – Conservation Area No.1 Wotton under Edge – adopted November 1999

would have on existing fabric of the building. I have considered whether I could impose conditions controlling these details. However, in my view the omitted information is vital to understanding the proposed works and any effects they may have on the special interest and significance of the listed building. Therefore, it would not be acceptable to leave such matters to condition.

19. The ground levels of the garden would be lowered to accommodate the extensions. Nonetheless, the resulting two storey building would be almost double the height of existing structures on their current ground levels. Whilst the eaves of the two storey extension would be a little lower than the eaves of the catslide roof, the roof ridge would extend to a height about half way up the height of the catslide roof. Furthermore, the resulting siting, size, form, design and appearance of the two storey extension would appear as a new dwelling in the small rear garden. Consequently, the two storey extension would not be a subservient addition to the listed building.
20. Furthermore, the close proximity of the two storey extension to the rear of the principal building and the linking of the extensions would create a large and congested built form coming off the back of the dwelling that would dominate the rear garden space and tower over adjacent structures. Such a tall, almost separate, extension would be at odds with the prevailing nature of low rise outbuildings in rear gardens in the surrounding area.
21. Moreover, the size, scale and form of the two storey extension would alter the authenticity of how the building is experienced and thus affect the ability to appreciate its heritage merit. This would notably lessen the positive contribution that the building's setting makes to its special interest and significance.
22. That said, the reconfigured roof of the new single storey extension with lantern light would allow a sash window to be reinstalled in the blocked-up opening to the bathroom. This would improve the legibility of the layout of the building and reinstate its symmetrical appearance.
23. The proposal would also involve the installation of three equal sized rooflights in the rear roof elevation. The central one would serve an ensuite bathroom that would be created in the roof void on the second floor accessed via a new door opening from the existing bedroom. The other two rooflights would be sited above the first floor landing and the first floor shower room that would be created.
24. There are no existing openings in this roof slope, whose long swept roof is specifically mentioned in the listing description as an architectural feature. The proposed rooflights would result in the loss of some historic fabric, as well as the loss of integrity of the striking uninterrupted long roof slope that is an intrinsically significant architectural feature of the listed building. This would further erode the historic interests of the property. New soil vent pipes are shown on the floor plans for both the first floor shower room and second floor ensuite, but no pipe is shown on the elevations. Therefore, there is some uncertainty about the full nature of the works to the roof.
25. The adjacent property No.2 has a very different roof configuration to the host property and does not have the long catslide roof. I saw it had a

number of randomly arranged rooflights of different sizes inserted into lower level roof extensions. Therefore the situation at No.2 is not comparable, even if it is a listed building. I also saw that the attached listed building (No.4) has two rooflights in its catslide roof, that forms part of the roof mentioned in the listing description. They are in the approximate alignment of the proposed rooflights. However, the symmetry of the rear roof slope to the listed building has already been disrupted and its integrity eroded. This reinforces my view that the surviving intact catslide roof on the host property should be retained.

26. Works to replace the top chimney with matching bricks, repointing the lower chimney and replacing with a slate roof would be responsible repairs and maintenance. Details of mortar mix, joints and brick and slate samples could be conditioned were I minded to allow the appeal. The Council raises no concerns with regard to these proposed works and I have no reason to find otherwise.
27. With regard to the proposed internal works to the first and second floors. On the first floor drawing 6345/06 Rev C (not in the Council's list of plans) shows the bathroom partition wall on the first floor would be removed to create a larger bedroom, and the blocked up sash window in the bathroom would be reinstated in the rear elevation. A shower room would then be created off the first floor landing. The creation of an enlarged bedroom and installation of the sash window would reinstate the historic floor plan to some extent. The new shower room would occupy an existing space to the side of the chimney breast. On the second floor an ensuite would be created in the roof void, as shown on drawing 6345/08 Rev B (not on the Council's list of plans). A new door opening would be formed in the wall between the bedroom and ensuite. The Council raise no concerns with regard these works, apart from the rooflights already discussed. From the submitted evidence and my observations I have no reason to take a different view.
28. Drawing all the above points together, for the reasons above, I find the extensions and installation of rooflights would fail to preserve the listed building, its setting or any features of special architectural or historic interest which it possesses. In doing so, these works would harm the significance of this designated heritage asset.
29. The host property is an integral and important element of the character and appearance of the WCA. It follows that the harmful effects I have identified to the heritage interests of the listed building, whether publicly visible or not, would diminish the contribution it makes to the WCA. As a result the proposal would also fail to preserve or enhance the character and appearance of the WCA as a whole and would result in some residual harm to its significance.

#### Public benefits and heritage balance

30. The Framework states at paragraph 195 that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 205 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.

31. With reference to Framework paragraphs 207 and 208, in finding harm to the significance of a designated heritage asset, the magnitude of that harm should be assessed. In this case, given the nature and extent of the proposed works, I find the harm to the significance of the listed building and the WCA would be 'less than substantial'. Nonetheless, this harm carries considerable importance and weight. Under such circumstances, paragraph 208 requires the harm to be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
32. There would be some public benefits arising from jobs during the construction of the extension and the various works. The installation of a new slate roof, repairing/rebuilding the chimneys, reinstatement of a sash window that has been blocked up and installation of an upper floor panelled door would bring some betterment and allow greater appreciation of some aspects of the listed building. There would also be an improvement to the local housing stock as a result.
33. Public benefits can also include works that would help secure the future of a designated heritage asset. However, there is no substantive evidence before me that demonstrates that the proposal is necessary to secure the continued use of the building as a dwelling, or that the use of the building would be at risk if the appeal was to fail.
34. There would be some improvement to the living accommodation for the benefit of the appellants and their family. However, this is a personal preference and does not amount to a public benefit.
35. Overall, the weight I ascribe to the limited public benefits is not sufficient to outweigh the considerable importance and weight I attach to the harm that would be caused to the significance of the listed building and the WCA from the proposed works. Accordingly, the proposal would fail to preserve the Grade II listed building, its setting or any features of special architectural and historic interest which it possesses and would not preserve or enhance the character of the WCA. In these regards it would fail to satisfy the requirements of Sections 16(2) and 72(1) of the Act and conflict with the provisions of the Framework, which seek to conserve and enhance the historic environment.
36. A Section 20 appeal does not need to be determined in accordance with the development plan. However, in the decision notice the Council cite that the proposal would conflict with the Stroud District Local Plan 2015<sup>5</sup>, but no particular policy was specified. However, the Council has attached with the appeal Policy ES10 'Valuing our historic environment and assets' and lists this policy in the Case Officer Review. This seeks, amongst other things, to ensure that the district's historic environment is preserved, protected or enhanced.

#### *Biodiversity & protected species*

37. There is no express mention of protected species within the Act. However, following the UK's withdrawal from the European Union, the Government still has international obligations for the protection of protected species and their

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<sup>5</sup> Adopted November 2015

habitats. This means the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) continue to have effect as does any direct EU legislation, such as the Directives.

38. In this appeal the proposal includes works to roofs and outbuildings which have the potential for bats. It is an offence to, subject to exceptions, amongst other things, kill or disturb animals listed in Schedule 2 of the Regulations – this includes bats and even a single bat. Under the Regulations there is a duty upon the competent authority in the exercise of *any of their functions* [my emphasis] to have regard to the requirements of the Habitats Directive<sup>6</sup> insofar as they may be affected by the exercise of those functions. In my view, therefore, it is not unreasonable in this instance for the Regulations to be applied to applications for listed building consent, where appropriate.
39. In August 2023 the appellants submitted a Preliminary Roost Assessment<sup>7</sup> (the Assessment) with their planning and listed building consent applications. The Assessment was dated 6 May 2022 and therefore was already some 15 months old, as it had initially been carried out to accompany previous planning and listed building applications that had been refused.
40. The Assessment recommended additional dusk and dawn bat emergence surveys be carried out for both the house and the outbuildings as both structures had potential bat roosting features. The optimum time for undertaking the necessary bat emergence surveys is between May to August. However when the application, the subject of this appeal, was submitted in August 2023 the required additional bat emergence surveys had not been undertaken, nor had any safeguarding or mitigation measures been put forward.
41. The Council clarifies in its appeal statement that the appellants' Assessment submitted as part of this appeal is the same Assessment dated May 2022 that was submitted with the applications, but which had not been updated. The Council's Biodiversity Team provided additional comments as part of the appeal and advised that, in line with relevant guidance on the lifespan of ecological reports and surveys that pertain to mobile species such as bats, that an up-to-date report is necessary.
42. In the light of the lack of bat emergence surveys and an up-to-date report, there is insufficient information to demonstrate full compliance with relevant statutory protections or to demonstrate that appropriate mitigation or safeguarding measures can be put in place for the proposal. As a result, it has not been satisfactorily demonstrated that statutorily protected species would not be adversely affected by the proposed works. Accordingly, the proposal would be contrary to Policy ES6 of the Stroud District Local Plan that seeks to ensure, amongst other things, that proposals that will adversely affect a protected species will not be supported.

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<sup>6</sup> Directive 92/43/EEC on the conservation of natural habitats and wild fauna and flora (the Habitats Directive).

<sup>7</sup> Compiled by Five Valleys Ecology, Ref 22\_483, Issue 2.0 - dated 6 May 2022

## **Conclusion**

43. For the reasons given above, I conclude the appeal should be dismissed.

*K. Stephens*

INSPECTOR