



Appeal Decisions

Site visit made on 7 November 2024

by **O S Woodward MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th December 2024

Appeal A - Ref: APP/J1535/Y/24/3345315

Marden Ash House, Stanford Rivers Road, Ongar, Essex, CM5 9BT

- 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 Prashant Patel against the decision of Epping Forest District Council.
- The application Ref is EPF/1969/23.
- The works are repointing to existing garden wall, forming new gate openings, rebuilding part of the garden wall, and a perimeter path at the base of the garden walls.

Appeal B - Ref: APP/J1535/Y/24/3350019

Marden Ash House, Stanford Rivers Road, Ongar, Essex, CM5 9BT

- 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 Prashant Patel against the decision of Epping Forest District Council.
- The application Ref is EPF/0614/24.
- The proposed works are the erection of a new domestic garage.

Decisions

1. Appeal A is allowed, and listed building consent is granted for repointing and repairs to existing garden wall, forming new gate openings, rebuilding part of the garden wall, and a perimeter path at the base of the garden walls, at Marden Ash House, Stanford Rivers Road, Ongar, Essex, CM5 9BT and in accordance with the terms of application Ref EPF/1969/23, dated 31 August 2023, subject to the following conditions:
 - 1) Upon completion of the works authorised by this consent, any damage caused to the walls in the course of carrying out the works shall be made good within 12 months in accordance with a scheme that shall first have been submitted to, and approved in writing by, the local planning authority.
 - 2) Within six months of the date of this consent, the recently used mortar shall be assessed. If it is found to not be lime based, it shall be removed and replaced in accordance with a method statement as set out in Condition 3.
 - 3) No development shall take place in relation to the repointing and repairs to the existing garden wall until a method statement, including a detailed assessment of the removal of mortar as set out in Condition 2, the mortar mix, mortar joint and other repair works, including confirmation that the mortar will be lime based, has been submitted to and approved in writing by the local planning authority. The development shall be

carried out in accordance with the approved details and a sample shall be provided to the local planning authority for review.

- 4) No development in relation to the footpath shall take place until details of the measures to be taken to secure the safety and stability of the walls have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) No development in relation to the footpath shall take place until full details of the proposed works, including the materials of the sub/base layer and top layer, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

2. Appeal B is dismissed.

Applications for Costs

3. An application for costs has been made by Mr Prashant Patel against Epping Forest District Council. This application is the subject of a separate Decision.

Preliminary Matters

4. Because the appeals relate to works to a Grade II* listed building, 'Marden Ash House'¹, including refusal to grant listed building consents, I have had special regard to Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
5. The areas around the listed property, including the walls, gardens and ancillary buildings, are all clearly discernible as being directly related to the use of the building as a home, and as being part of one ownership and associated use.
6. With regard to Appeal A, the walls that are the subject of the works are also attached to the listed building, and therefore form part of the building. The perimeter path at the base of the garden walls to the orchard is not a building or structure and therefore I do not consider it to be curtilage listed in its own right. However, it sits in the setting of the listed building.
7. With regard to Appeal B, the proposed garage would not be part of the listed building. However, it would directly abut an existing garden wall, which is curtilage listed as set out above. Any physical effect on that wall would, therefore, represent works to the listed building.
8. The works for Appeal A are set out on the 'Site plan showing application works'². They are in several parts. The first is for a gate in the garden wall that runs north east from the main house (Gate 1) and a further gate within the wall that separates the walled garden from the orchard (Gate 2). Both gates were inserted recently.
9. A map from the turn of the 19th and 20th centuries shows a wall roughly in the same location as the present wall that separates the walled garden from the orchard. This is except for the northernmost part which previously bent to the east, around a water reservoir. This is where the current wall now instead kinks west and where Gate 2 is now located. Historic mapping demonstrates the wall

¹ List entry number 1124047.

² Ref 2300-IDA-XX-XX-XX-A-0102

has been in its current alignment since at least the 1970s. This part of the wall, to the north of Gate 2, has recently been re-built and is part of the works. In addition, it is proposed to re-point the west side of the full length of this wall as part of the works.

10. A perimeter path exists around the west, north and east walls to the orchard, albeit heavily overgrown. Some of this footpath was recently repaired with a thin layer of concrete. It is also proposed to further repair this footpath, including further areas of concrete.
11. Appeal A therefore partly relates to the retention of the works already carried out and partly relates to a request for consent for those not yet carried out. I have amended the description of development to reflect this situation.
12. There is dispute regarding the extent of the works applied for in relation to the garden wall either side of Gate 1. I have based my Decisions on the submitted drawings, which is that Gate 1 and the associated brick piers are part of the works for Appeal A, but not any further works to that wall. Appeal B does not include any works to that wall or the gate, although access to the proposed garage would only be possible through Gate 1 as part of Appeal A. Any works to the wall beyond the brick piers is therefore beyond the scope of my Decision on either appeal.
13. In 2023, the Council opened an enforcement case³ relating to several alleged breaches of planning and listed building control. I do not directly deal with this in my Decisions, which I have based on the merits of the works as submitted. Any implications from my Decisions must be dealt with separately as part of the enforcement case.
14. The works related to Appeal B, and potentially some elements of Appeal A, would also require planning permission. However, there is no appeal before me in relation to an application for planning permission. I have not, therefore, considered this further, and nor have I considered non-listed building elements such as the location of the appeal site in the Green Belt. My Decisions solely relate to matters pertaining to the listed building consent refusals.
15. A revised National Planning Policy Framework was released in December 2024 (the Framework). The changes to the document are not material to the main issue for the appeals. I have therefore assessed the works against the revised Framework without needing to request comments from the main parties.

Main Issue

16. The main issue for both appeals is the effect of the works on the special architectural or historic interest of the Grade II* listed building, including with regard to its setting.

Reasons

Significance

17. Marden Ash House is a substantial detached property, from the 17th Century and with additions and alterations in the 18th and 19th centuries. It sits in extensive grounds. There is a relatively small, enclosed courtyard to the rear. There is a large drive area to the front providing access to the nearby road,

³ Ref ENF/0205/22

and which is a mixture of a gravel drive and landscaping including several trees.

18. There are also three large gardens, each distinct in character. To the south is an open garden, which primarily relates to the south elevation of the house and can be accessed directly from that elevation. There is no wall separating this garden from the driveway. To the north is the walled garden, which relates to the north elevation of the house and can be accessed directly from that elevation. There is a tall brick wall that runs from the house and along the side of the driveway. Inset in the wall is a small pedestrian gate and a larger vehicular gate, both timber. The vehicular gate is Gate 1.
19. To the north west is the orchard, which was formally the kitchen garden. This garden is entirely enclosed by brick walls. Of most relevance to the appeal proposal is the brick wall that separates it from the walled garden. Inset into this is a small pedestrian gate and a larger maintenance gate, both timber. The maintenance gate is Gate 2. The southernmost element of this wall meets the house and then also encloses the north west corner of the small courtyard. The wall is in a relatively poor state of repair. It appears to mostly be structurally sound, for now, but is more damaged in places, likely due to trees. The mortar has eroded. There are at least three different types of mortar as existing, of varying ages and types and colours. The top few courses of bricks appear to be more modern, however the majority of the wall appears to be historic and appears to be contemporary with the main house.
20. The re-alignment of the wall so that it does not include the water reservoir had already taken place as of the 1970s. Therefore, whilst the water reservoir may have had a direct relationship to the kitchen garden at some point, this relationship has long been lost. In any event, this relationship is unproven. Whether or not the water reservoir sits in the orchard or the walled garden is therefore only of limited significance to the architectural and historic interest of the listed building.
21. There is an existing perimeter path to the orchard, however it is heavily overgrown and largely cannot be seen. This path varies in construction, it is finished in shingle, in places having a concrete sub-strata and in others a mixture of materials providing a compacted base. It is a largely incidental feature within the orchard with limited visual intrusion. It therefore does not contribute to nor detract from the significance of the listed building.
22. The walled garden provides a tranquil, semi-formal garden area of domestic character and appearance that provides a private area of refuge for the occupants of the house. The orchard is a more functional space, formerly the kitchen garden, and only accessible from the main house via the walled garden. This also positively contributes to the significance of the listed building because it broadly reflects its nature as a kitchen garden when the house was built. A key component of the walls themselves is the use of traditional materials in their construction, which helps blend them in with the main house. The garden areas and the garden walls therefore positively contribute to the significance of the listed building.

Assessment

Re-pointing (Appeal A)

23. I have been provided with conflicting evidence regarding the composition of the mortar that has already been applied to the wall. The appellant claims it is lime-based. The Council claims it is cement-based. It is not possible for me to come to a definitive conclusion on the nature of the mortar on the basis of the evidence before me. However, the wall has a mixture of mortar colours and ages as existing. It is also important to note that the most recently applied mortar might appear relatively stark and white at present, but it will weather over time and likely assimilate with the older mortar. The mortar already applied is therefore of acceptable visual appearance, even if its composition remains ambiguous.
24. However, if it is cement-based then it could cause structural issues and damage to the wall over time because of the possible effects on the bricks. If the recently applied mortar is cement-based, then it would therefore need to be carefully removed to avoid damage to the brickwork and replaced with lime-based mortar. This could be controlled by condition. It is also proposed to repoint and apply more mortar to the west side of the wall. The mortar on the wall is in poor condition and there is a need for re-pointing, in-principle. Subject to control by condition with a detailed method statement in place defining mortar mix and joint not only to ensure appearance but also prevent any damage to the face of the brickwork as a consequence, this would be acceptable. Subject to this, these elements of the works are acceptable.

Footpath (Appeal A)

25. The existing works to the path that are part of Appeal A have not created a stark and overly engineered appearance set against the aged appearance of the walls because they have become overgrown. The existing path is also partly shingle in material and appearance, which is a more muted tone and material palette that sits better when considered against the backdrop of the historic walls. By comparison, further use of concrete combined with cutting back the vegetation could create a harmful juxtaposition.
26. Nevertheless, some repair and other works are required to the path, which is heavily overgrown and in a poor state of repair. The submitted drawing simply highlights the area where the path would be and not its materials. It is therefore possible to control the detail and materials of the path by condition to ensure either a shingle or other sensitive and appropriate material is used. A further condition could be used to protect the adjacent walls from damage caused by construction, either by concrete or other material. Subject to these conditions, this element of the works is acceptable.

Gate 1 (Appeal A)

27. No substantiated evidence has been provided of a previous large gate, or a gate at all, in this location. The walled garden and this wall are in an area where its domestic and private character and appearance are important. However, the gate as constructed is timber and of traditional appearance. It is set at the far end of the wall, away from the house and is located directly facing the existing driveway, where a gate might be expected. It is not, as part of this appeal taken in isolation, for anything other than maintenance access. It

would not, therefore, materially harm the domestic and private nature of this part of the walled garden and is acceptable.

Gate 2 and re-alignment of dividing wall (Appeal A)

28. The northern part of the wall is on the same alignment as it has been in since at least the 1970s. I acknowledge that the original wall turned to the east and enclosed a water reservoir. However, the importance of the alignment of the garden walls to the significance of the listed building is that they separate the two garden areas of different characters. The water reservoir might have been associated with the former kitchen garden and potentially once served as water provision for the garden. However, it is now an orchard and the relationship has long since been lost. The contribution of this relationship to the significance of the listed building was limited in any event.
29. The wall has recently been re-constructed in this northern area, to the north side of Gate 2. There has been some harm from the loss of the existing wall which, although not original, could have been relatively historic. With regard to what has been constructed to replace the previous wall, it is of the same height and materials as the historic wall as it runs southwards. It currently appears relatively modern and clean cut against the historic wall, despite the partial use of re-claimed bricks, but this will weather over time. It is therefore of acceptable appearance.
30. Gate 2 is a relatively large, timber gate, sitting between brick piers within the wall. There is also an existing, much smaller, gate further to the south. There is, therefore, another access between the orchard and the walled garden. The principle of an access point within this wall is therefore acceptable. The gate is relatively large but this is required to provide access for maintenance vehicles. Because it is at the opposite end of the wall from the main house, it would have no meaningful effect on the architectural or historic interest of the house. In addition, the orchard area has likely always been a more functional part of the property, dating back to when it was a kitchen garden, and providing access for maintenance is consistent with this use.

Proposed garage (Appeal B)

31. The garage would be a relatively substantial structure. It would be sited in the south east corner of the walled garden, relatively distant from the main house. However, it would significantly alter the character of the walled garden by introducing a substantial structure with some out of keeping modern design elements, in particular the pyramid roof, roof lanterns and sliding/folding doors. It would also cause harm by creating vehicular activity in an area that is currently, and traditionally, a tranquil escape from the main house. It would only be partially visible from the street scene, but it would be readily visible from the house itself, and the harmful effects of the proposal would be clearly part of an important part of the setting to the listed building.
32. The garage would be set directly adjacent to the existing garden wall. It is stated that the load of the structure would be taken from free-standing columns and that it would not touch the existing garden wall. This could be controlled by condition and this element of the proposal is acceptable in isolation.

33. The existing gazebo, whilst relatively tall, is a largely open structure and also a typical feature of a garden, and does not, therefore, dominate this space nor does it provide justification for the proposed garage. I acknowledge that the area to the south west of the house, where ancillary buildings like garages might normally be expected to be located, has since changed ownership and is now separate dwellings. However, this does not justify the imposition of a building that would be harmful to the setting of the listed building in other locations.

Conclusion

34. With regard to Appeal A, whilst the majority of the works are, or would be, acceptable, I conclude that the loss of the potentially historic, although not original, fabric to the northern part of the wall has failed to preserve the special architectural or historic interest of the Grade II* listed building. The works therefore fail to satisfy the requirements of the Act, Paragraph 210 of the Framework which highlights the desirability of sustaining and enhancing the significance of heritage assets, and Policy DM7 of the Epping Forest District Local Plan 2011-2033 (the LP), which reflects the Framework and the Act. I assess the level of harm to be less than substantial.
35. With regard to Appeal B, I conclude that, due to the design of the proposed garage and the change in character of the walled garden that would be occasioned by it, the proposed works would fail to preserve the special architectural or historic interest of the Grade II* listed building, with regard to its setting. The works therefore fail to satisfy the requirements of the Act, Paragraph 210 of the Framework, and Policy DM7 of the LP. Although greater than with Appeal A, I still assess the level of harm to be less than substantial.

Other Matters

36. With regard to Appeal A, a letter of objection has been submitted which states that the works are on land not owned by the appellant. However, the application form was accompanied by a Certificate A of land ownership. I have been provided with no substantiated evidence of alternative land ownership. Irrespective of ownership, the layout and use of the land is as described in my Decision above. I do not, therefore, consider this matter further.
37. The appellant has referred to several appeal decisions and planning applications. However, none of them were for comparable works. For example, one appeal decision⁴ related to a single storey extension to a different listed building, and one planning application approval was in relation to a garage at a house with a completely different garden layout and architecture. I therefore give these examples very limited weight and have determined the appeals on their own merits.

Heritage Balance

38. Paragraph 213 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.

⁴ Ref APP/J1535/D/21/3278103

39. With regard to Appeal A, the public benefits of the proposal include the ability to maintain the listed building and its substantial gardens by providing maintenance access through the gates, structural improvements to the east wall of the orchard thereby helping to ensure its long term survival, and improved access for maintenance to three of the walls surrounding the orchard from the footpath. The works therefore also result, or would result, in benefits to the heritage asset. Particularly for that reason, although I place considerable importance and weight on the limited harm to the heritage asset that I have identified, the public benefits outweigh this harm.
40. With regard to Appeal B, there would be harm to both the architectural and historic interest of the building, with regard to its setting. I place considerable importance and weight on the harm. The public benefits include that the garage would provide under-cover storage for the vehicles for the owner of the property. However, there is plenty of existing off-street open parking and storage areas within the substantial existing driveway. The creation of under-cover storage would, therefore, only be of limited benefit. Similarly, although the garage would provide for storage of other items, such as lawn mower, there is no reason why such items could not be stored in a much smaller structure, more appropriate for the walled garden. In addition, the works are not required to secure the continued viable use of the property as a home. The public benefits do not, therefore, outweigh the harm to the heritage asset.

Conditions

41. Gate 1, Gate 2 and the re-aligned wall have already been built. No conditions are therefore required with regard to those elements of the works. The re-pointing works, and the works to the footpath, have the potential to damage the walls. Conditions are therefore required to try to prevent any such damage and to ensure that, if any damage does occur, that it is repaired in a reasonable timeframe. For the reasons set out above, it is important that the mortar to the wall be lime based, both the recently applied and the proposed. Conditions are therefore required to secure such mortar. It is also important that a condition be applied to ensure that the materials of the footpath are appropriate and would not harm the setting of the listed building.

Conclusions

42. For the reasons above, Appeal A is allowed.
43. For the reasons above, Appeal B is dismissed.

O S Woodward
INSPECTOR