



Appeal Decision

Site visit made on 14 January 2025

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 March 2025

Appeal Ref: APP/C3105/W/24/3346489

Land To Rear Of Wheelwright Cottage, Main Street, North Newington OX15 6AG

- 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 Kambiz Khabiri against the decision of Cherwell District Council.
 - The application Ref is 23/02071/F.
 - The development proposed is a new build dwelling.
-

Decision

1. The appeal is allowed and planning permission is granted for a new build dwelling at Land To Rear Of Wheelwright Cottage, Main Street, North Newington OX15 6AG in accordance with the terms of the application, Ref 23/02071/F, subject to the conditions in the attached schedule.

Preliminary Matters

2. For clarity on the site address above, the postcode is taken from the appellant's appeal form as one was not provided on the original planning application form.
3. A revised National Planning Policy Framework (Framework) was published on 12 December 2024. The main parties were given the opportunity to comment on the implications of this policy change in relation to the appeal. Any comments provided have been taken into account in this decision.
4. The Pound is a public right of way where it has been highlighted that it would be an offence under the Road Traffic Act 1998 to drive a mechanically propelled vehicle over the footpath without lawful authority to do so. The appellant has sought to confirm that the appeal scheme would have the benefit of a right of access for residential purposes. This is said to be supported by statutory declarations, albeit no robust evidence is before me in that regard.
5. I accept that in the absence of lawful authority to access the appeal scheme by motorised vehicle, the proposed parking spaces could not be lawfully accessed. Moreover, it appears reasonably likely that in the absence of lawful authority to access the appeal site by vehicles, the construction and delivery of the proposal as a whole would be at risk. Nevertheless, whether or not such a right of access exists is not for determination within this appeal. It would be for the appellant to decide when and how to implement any permission granted and to take any steps necessary to confirm, or otherwise, any rights of access. Therefore, only the planning considerations of the access are addressed in the reasons below.

Main Issues

6. The main issues are:

- the effect of the proposal on the character and appearance of the area, including the North Newington Conservation Area;
- whether the location of the proposal is acceptable having regard to the Council's development strategy;
- the effect of the proposal on the living conditions of neighbouring occupants, with particular regard to privacy and outlook;
- whether the proposal would provide adequate living conditions for its future occupants, with regard to living space; and
- whether the proposed access and parking arrangements are acceptable with regard to highway safety.

Reasons

Character and appearance

7. Due to the site's location in the North Newington Conservation Area (the CA), section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The CA has a varied topography due to steeply sloping roads on the valley sides. This creates the appearance of overlapping built form, with houses on one road visible behind houses on another. Insofar as it relates to this appeal, its significance is primarily derived from its range of stone buildings in a varied topography within a rural village.
8. The Pound has a rural character that is emphasised by its informal surface and absence of pavements. The appeal site boundary with The Pound comprises a mix of a gate, low boundary wall, trellis and vegetation. As such it has the appearance of a domestic garden. This existing boundary limits visibility through the site of the rear of the grade II listed Wheelwright Cottage and Gledston Cottage. The appeal scheme would be positioned at 90 degrees to The Pound and therefore perpendicular to the adjacent house, Hi Wynds. However, the layout of houses on The Pound appears relatively ad hoc. Hi Wynds fronts on to The Pound, whereas Pound Cottage is situated on a bend, without windows facing on to The Pound. At the entrance to The Pound the house known as Cornerways fronts on to it, but also has a presence on Main Street.
9. Consequently, the proposed layout would not appear out of place with the layout of buildings here. Moreover, given the proposed modest, single storey height, it would not be unduly prominent in the street scene or in views from the surrounding roads, even with its elevated position relative to Main Street. Furthermore, its position side on would focus the built form on one side of the site, affording some visibility through the site. The proposed use of stone, slate and timber framed windows would appear consistent with the predominant building materials in the locality. Although not specified on the application form, the application site contains a small number of trees. A condition requiring approval of details of retained trees and additional landscaping would ensure the proposal achieves a suitably landscaped scheme for its rural village setting.

10. Accordingly, the proposal would not harm the character and appearance of the area, including with regard to the CA. Therefore it would accord with Policy ESD15 of the Cherwell Local Plan 2011-2031 (July 2015) (Local Plan) and saved Policies C28 and C30 of the Cherwell Local Plan (November 1996) (saved Local Plan). Together, these generally seek to ensure proposals are designed to achieve high quality design, having regard to the character of the surrounding built and historic environment.

Location of development

11. North Newington is classified as a category C village in the Local Plan. Although such villages are those with the least services and facilities, the policy allows for infilling where considered appropriate. The appeal site has an edge of village feel, being located on The Pound and opposite open countryside. However, it is on the same side of The Pound as Hi Wynds, which is adjacent on one side. Also, Pound Cottage is diagonally opposite and other houses are located to the rear of the site. Therefore, the appeal site has the appearance of being within the built up limits of North Newington.
12. Although not occupying a gap in a continuously built-up frontage, the proposal would be seen in the context of other houses in the immediate vicinity which are positioned relatively close to one another. As such, and given its location immediately adjacent to Hi Wynds, the proposal would appear to infill a small gap within a built-up area. Also, as a modest sized, single storey dwelling, the scale of the proposal would be limited. In addition, as reasoned above, its side-on orientation would retain views through the site and would accord with the character of its surroundings.
13. Accordingly, the location of the proposed development would be acceptable having regard to the Council's development strategy. It would thus accord with the approach to windfall development in Policy Villages 1 of the Local Plan. This requires that proposals in category C villages, such as North Newington, are considered having regard to their suitability for infilling and conversions.

Living conditions of neighbours

14. The proposal would be situated close to the boundary with Hi Wynds. However its elevation adjoining that boundary would have only a small bathroom window at ground floor level. Given the existing boundary fence and the potential for this window to be obscure glazed, it would not provide views into the house or garden at Hi Wynds. Moreover, no velux windows are proposed in that roof slope such that it would not result in overlooking at roof level. Also, the proposal contains no windows in its north elevation. As such, the opportunity for overlooking from the proposed house towards the house and garden at Gardeners Cottage or Wheelwright Cottage/Gledston Cottage would also be highly limited. In addition, the proposed modest sized windows would not give rise to an unacceptable degree of overlooking of Orchard Ways, taking into account its side-on orientation and intervening vegetation.
15. Views from the proposed front garden of the appeal site towards Gardeners Cottage, whilst on higher ground, would be oblique such that it would not unacceptably harm privacy for the occupants of Gardeners Cottage. The proposed stone wall between the appeal site and Wheelwright Cottage/Gledston Cottage would not prevent overlooking from the garden of the appeal site into their gardens.

Nonetheless, the change in levels between the two would lessen the intensity of any overlooking. Furthermore, a condition could reasonably be imposed to address the details of the boundary treatment to soften its appearance with planting and thus increase privacy.

16. Residents have raised concerns about the accuracy of the site levels on submitted plans. However, together with my site visit, I am satisfied that the plans are sufficiently accurate to provide a robust basis on which to determine the proposal. Furthermore, a condition to require approval of finished floor levels and external ground levels would ensure that a satisfactory relationship with surrounding land and buildings is achieved.
17. Therefore, the proposal would have an acceptable effect on the living conditions of neighbouring occupants, with particular regard to privacy. It would thus accord with Policy ESD15 of the Local Plan and saved Policies C30 and ENV1 of the saved Local Plan, which include requirements for developments to achieve acceptable standards of amenity for neighbours, including their privacy.

Living conditions for future occupants

18. The proposed dwelling is said to comprise a living space of 62 square metres (sqm). This is below the Nationally Described Space Standards of 70sqm with an additional 2sqm for storage for a home with a maximum occupancy of four people. However, I have not been made aware of a development plan policy that requires compliance with that standard. Whilst a useful benchmark, the proposed floor space would not be significantly below that standard. Moreover, based on the submitted floor plan I am satisfied that the proposal, whilst relatively compact, would provide sufficient space to meet the needs of its future occupants without being unduly cramped.
19. Accordingly, the proposal would provide adequate living conditions for its future occupants, with regard to living space. It would thus accord with Policy ESD15 of the Local Plan. Amongst other matters this requires that developments are designed to achieve healthy places to live.

Access

20. The Pound is a narrow track comprised of an unmade surface. It rises up from Main Street and has a bend such that there is not clear visibility along its length. Furthermore, space constraints mean that there are no vehicle passing places between Main Street and the appeal site, or spaces for pedestrians to easily move out of the carriageway. Nonetheless, it provides vehicular access to two houses on The Pound, with two other houses fronting on to Main Street said to use The Pound for vehicular access. As such, it is already in use by both pedestrians and vehicles on a regular basis. Also, given the narrowness of The Pound, its topography, bend and unmade surface, vehicle users would be likely to exercise caution. Furthermore, no substantive evidence is before me to indicate that the safety of walkers on The Pound has so far been endangered by vehicular use despite longstanding use by a range of users.
21. As reasoned above, the proposal is for a modest sized house. Accordingly, the increase in vehicle trips resulting from the appeal scheme would be relatively limited. Moreover, the length of the public right of way affected by access to the appeal site would not be extensive. This would limit the frequency with which

vehicles and pedestrians would be likely to meet on The Pound, minimising inconvenience caused to an acceptable degree. Furthermore, a condition could reasonably be imposed to address the construction management process. This would be appropriate to manage construction such that the safety of users of the public right of way was maintained, including with regard to the use of suitable construction vehicles and managing any physical effects on the surface of the Lane.

22. As set out in the preliminary paragraphs, it would be the appellant's responsibility to ensure that implementation of the proposal would not conflict with other legislation with regard to the lawfulness of its access. However, the provision of two on plot parking spaces as proposed would provide an acceptable level of parking. As such, there is no reason to conclude otherwise than that the proposal would be acceptable with respect to parking provision and would not give rise to highway safety concerns from ad hoc parking on Main Street. Whilst the appeal decision for the allotments site was dismissed, I note that the matter of access on The Pound did not form a reason for that decision.
23. Therefore, the proposed access and parking arrangements are acceptable with regard to highway safety. It would thus accord with Policy ESD15 of the Local Plan. Amongst other matters, this seeks to ensure proposals achieve safe places to live.

Other Matters

24. The site's location at the rear of the garden of grade II listed 'Wheelwright Cottage and Cottage abutting to left, Main Street' (the Cottages). The listing relates to two adjoining buildings, Wheelwright Cottage/Gledston Cottage. Accordingly, the statutory duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that I pay special regard to the desirability of preserving the listed buildings or its setting or any features of special architectural or historic interest which it possesses. The Cottages are described as being early 17th and mid 18th century buildings with later additions, and are comprised of ironstone with pitched thatched roofs. Insofar as it relates to this appeal, their significance is primarily derived from their aesthetic value, visual prominence on Main Street and historic role as living accommodation and a workshop in a rural village setting.
25. There is a considerable change in levels between the lower level on which the Cottages are located and the higher level of the appeal site. This affords a sense of separation between the garden area that is immediately to the rear of the Cottages, and the appeal site. Moreover there is nothing to indicate that the appeal site at the rear of Wheelwright Cottage's garden has a particular historic resonance with the listed buildings, other than being a small part of their setting. Due to the difference in topography, the modest height of the proposal and its limited footprint confined to one side of the appeal site, the proposal would not detract from the setting of these listed buildings or the ability to appreciate their significance. Similarly, it would not harm the significance of other listed buildings in the locality that are more remote from the appeal site. I note that harm to the setting of listed buildings did not form part of the Council's reasons for refusal.
26. I have given careful consideration to concerns raised by third parties, including local residents and the Parish Council. My attention has been drawn to an appeal that was dismissed in the locality. That related to a proposed dwelling on the nearby allotment gardens where harm to the setting of listed buildings was a

reason for refusal. In that case the nature of the proposal was found to give rise to a considerable degree of harm. Whereas in this case I find that the modest proposal would not give rise to harm to listed building setting. Therefore, even if the appeal scheme is closer to listed buildings than would have been the case there, differences in the nature and scale of the proposals justify a different conclusion on this matter.

27. Adjacent to Hi Wynds, the roof of the proposed dwelling would slope back from that boundary. As such, evidence does not indicate that the single storey proposal would give rise to unacceptable shading or loss of light for the neighbouring occupants. Similarly, having regard to the size and orientation of the proposal relative to the Cottages and Gardeners Cottage, I am not persuaded that it would result in shading of their gardens to the extent that it would harm occupants' living conditions. Moreover, given its modest, single storey scale, simple form, and the proposed low stone boundary wall, it would not appear unduly prominent from the Cottages.
28. Noise impacts of the construction phase of the proposal would be temporary and do not justify withholding permission on that basis. No robust evidence is before me to indicate that noise from future occupants of the proposal would be likely to increase to such an intensity as to harm neighbours' living conditions, on what is already a residential garden.

Conditions

29. The Council suggested conditions in the event the appeal is successful. I have considered these and amended them as necessary, without altering their meaning, in light of the Framework and Planning Practice Guidance. Where the conditions are pre-commencement, the appellant has confirmed their agreement. In addition to the standard time limit condition (1), it is necessary to impose a condition (2) requiring compliance with the relevant plans for certainty.
30. A condition (3) relating to construction management processes is necessary to avoid unacceptable harm to the living conditions of local residents. I have amended the Council's suggested condition to remove requirements for deliveries to the site to be outside of local peak traffic periods as deliveries by third parties are not within the control of the appellant. Also, given the modest nature of the proposal, additional requirements for construction noise mitigation, details of road closures and wheel cleaning/washing are not necessary.
31. The condition includes a requirement for a public right of way management scheme to ensure the impacts of the proposal on the public right of way are suitably managed during the construction phase. This replaces the need for a series of conditions suggested by the Council relating to management of the effect of the proposal on the public right of way. This appeal proposal does not include matters such as changes to the public right of way direction, which would in any event be controlled by separate legislation. As such, the suggested conditions seeking to prevent changes to the public right of way are not necessary.
32. A pre-commencement condition relating to finished floor levels (4) is included to ensure the development achieves an acceptable relationship with surrounding land and buildings, taking into account the topography of the site and its surroundings. A pre-commencement condition (5) requiring approval of hard and soft landscaping details is necessary in the interests of achieving a suitably high quality design. This

will address the presence of existing trees. For efficiency, this condition includes a requirement for submission of details of boundary treatments rather than it being a separate condition. Conditions requiring submission of details relating to external walls (6), roof (7) and openings (8) are necessary in the interest of the character and appearance of the CA.

33. A cycle parking condition (9) is required to ensure the development provides for this sustainable transport mode. In order to ensure water efficiency it is necessary for the optional, tighter Building Regulations requirement in this respect to be applied. This condition (10) is for compliance as its implementation would be secured through Building Regulations. A condition (11) relating to unexpected contamination is necessary in the interests of protecting future occupants of the proposal. A condition (12) requiring obscure glazing of the bathroom window is necessary to protect the living conditions of neighbouring occupants. A condition (13) requiring that the car parking spaces are provided before first occupation is necessary in the interests of highway safety.
34. Under the Framework, planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. However, it is appropriate to impose a condition (14) to remove permitted development rights relating to Classes A (enlargement, improvement or other alterations), B (additions to the roof), C (other alterations to the roof) and E (buildings incidental to the enjoyment of the dwelling house). This is to ensure an acceptable relationship is maintained having regard to neighbours living conditions and the character of the area. However, a restriction on permitted development right Class D (porches), the effects of which would be very limited, is not justified.
35. A restriction (15) to prevent works under Schedule 2, Part 2, Class A (gates, fences, walls etc) and B (means of access to a highway) of Part 2, Schedule 2 is clearly justified here in the interests of the character or appearance of the CA and the development's proximity to the public right of way. In combination with the requirement for boundary treatments to be addressed with landscaping, this also removes the need for a separate condition requiring that any gates provided are set back from the public right of way or do not open outwards.
36. A condition (16) to prevent the installation of windows in the north and east elevation, other than those approved in this decision, is necessary in the interests of protecting the amenity of neighbouring residents. However a restriction that only the top of the bathroom window may be opened is not justified. The proposals do not include pedestrian access through to Main Street/Banbury Road, therefore a condition requiring that this is not provided is not necessary.

Conclusion

37. There are no material considerations that indicate the proposal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

Rachel Hall

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: WG1050-001 Rev A; WG1050-003 Rev B; WG1050-004 Rev A; WG1050-005 Rev C.
- 3) No development shall take place, until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall include:
 - i. traffic management measures including measures to control the size of construction vehicles accessing the site via The Pound;
 - ii. a public right of way management scheme;
 - iii. the erection and maintenance of security hoarding;
 - iv. contact details of the Project Manager and Site Supervisor to be made available to the Council and interested parties, and measures to keep local residents informed throughout the construction phase;
 - v. the parking of vehicles of site operatives and visitors;
 - vi. storage of plant and materials used in constructing the development;
 - vii. a pre-commencement highway condition survey;
 - viii. construction working hours;
 - ix. measures to control the emission of dust and dirt during construction;
 - x. a scheme for recycling/ disposing of waste resulting from construction works.

The approved Construction Environmental Management Plan shall be adhered to throughout the construction period for the development.
- 4) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building and finished levels of the surrounding site, in relation to existing ground levels and the eaves and ridge height of surrounding properties have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 5) No development shall take place until details of hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i. existing trees and hedgerows to be retained as well as any to be felled, including existing and proposed soil levels at the base of each tree/hedgerow and the minimum distance between the base of the tree and the nearest edge of any excavation;
 - ii. proposed tree and shrub planting including their species, number, sizes and positions, together with grass seeded/turfed areas;

- iii. hard surfacing area and materials; and
- iv. boundary treatments.

The landscaping works shall be carried out in accordance with the approved details before the development is first occupied. The completed works shall be maintained as such thereafter.

- 6) No development above ground level shall take place until details and a sample stone panel of the natural stone to be used on the external wall of the dwelling hereby permitted (including how the stone shall be laid, dressed, coursed and pointed) 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 and retained as such thereafter.
- 7) No development above ground level shall take place until samples of the roof slate for the dwelling hereby permitted 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 and retained as such thereafter.
- 8) Prior to the installation of the windows, doors and rooflights hereby approved, full details of all windows, doors and rooflights at a scale of 1:20 including a cross section, sill, lintel and recess detail and colour/finish, shall be submitted to and approved in writing by the local planning authority. Thereafter the windows, doors and rooflights shall be installed within the building in accordance with the approved details and shall be retained as such thereafter.
- 9) The development hereby permitted shall not be occupied until covered cycle parking facilities have been provided in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Thereafter the cycle parking facilities shall be retained for the parking of cycles for the lifetime of the development.
- 10) The development hereby permitted shall not be occupied until the Building Regulations optional requirement under Part G has been complied with such that the development achieves a water efficiency limit of 110 litres/person/day and details of its compliance have been provided to the local planning authority.
- 11) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 12) The development hereby permitted shall not be occupied until the ground floor window in the east elevation shall have been fitted with obscured glazing that complies with the current British Standard. Once installed the obscured glazing shall be retained thereafter.

- 13) The development hereby permitted shall not be occupied until the car parking spaces shown on approved drawing number WG1050-003 Rev B shall have been constructed in accordance with those details. Thereafter, the parking spaces shall be kept permanently free of obstruction to such use.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A (enlargement, improvement or other alterations), B (additions to the roof), C (other alterations to the roof) or E (building incidental to the enjoyment of a dwelling house) of Part 1 of Schedule 2 to the Order shall be undertaken.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A (gates, fences, walls etc) and B (means of access to a highway) of Part 2, Schedule 2 to the Order shall be undertaken.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows other than those expressly authorised by this permission shall be constructed on the north and east elevation.