



Appeal Decision

Site visit made on 7 May 2025

by **AJ Steen BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 June 2025

Appeal Ref: APP/E2205/C/24/3352530

Elvey Cottage, Kingsland Lane, Westwell, Ashford TN25 4JP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Ms Rosemary Hearn against an enforcement notice issued by Ashford Borough Council.
- The notice was issued on 22 August 2024.
- The breach of planning control as alleged in the notice is without planning permission, operational development comprising the erection of a building ('the Building'); the carrying out of excavation works to materially alter the levels of the Land to accommodate the Building; the laying of an associated area of hardsurfacing; and the creation of an earth bund (shown located in the approximate positions on the attached Plan B).
- The requirements of the notice are to:
 - (i) Demolish and remove permanently from the Land the Building (including its foundations) (shown located in the approximate position on the attached Plan B).
 - (ii) Remove permanently from the Land all pipework and cabling (whether above or below ground level) connected to the Building (the Building being shown located in the approximate position on the attached Plan B).
 - (iii) Excavate and remove permanently from the Land the area of hardsurfacing located to the front of the building (shown located in the approximate position on the attached Plan B).
 - (iv) Excavate and remove permanently from the Land the earth bund located to the west of the Building (shown located in the approximate position on the attached Plan B).
 - (v) Following compliance with steps 5(i) to 5(iv) (above), restore the area of the Land which has been excavated beneath and around the Building (shown located in the approximate position on the attached Plan B) to the levels and contours that existed immediately prior to the carrying out the excavation and unauthorised development, that is to say to the natural slope and contours of the surrounding Land.
 - (vi) Remove permanently from the Land all materials, waste and debris resulting from compliance with steps 5(i) to 5(v) (above).
- The periods for compliance with the requirements are:
 - (i) 9 months
 - (ii) 10 months
 - (iii) 10 months
 - (iv) 10 months
 - (v) 11 months
 - (vi) 12 months
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. Elvey Cottage is listed grade II. The appellant suggests that it should not be a listed building and that it should be removed from the statutory list. However, only the Secretary of State may remove a building from the list under sections 1(1) and 41(6)(c) of the Planning (Listed Building and Conservation Areas) Act 1990 (as

amended) (LBCA). There is a ground of appeal in relation to listed building enforcement notices issued under section 38 of the LBCA that the building is not of special architectural or historic interest (section 39 of the LBCA). However, this enforcement notice was not issued, and the appeal has not been made, under that Act.

2. I note that an application for de-listing has been made and won't be considered whilst this appeal is outstanding. For these reasons, I do not have the ability to consider whether or not the building is of special architectural or historic interest or should be on the statutory list. Nevertheless, I will take into account the information submitted in support of that application in my reasoning.
3. The building is currently incomplete internally and without glazing in the windows. I need to consider the appeal based on what existed and the use of the building on the date the notice was issued.
4. In coming to my decision on ground (a), I have a duty to seek to further the purpose of conserving and enhancing the natural beauty of the Kent Downs National Landscape as required by section 85 of the Countryside and Rights of Way Act 2000 (as amended). In addition, under section 66(1) of the LBCA, I need to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest.

The Appeal on Ground (a) and the Deemed Planning Application

Main issues

5. The main issues are:
 - Whether the proposal would preserve the grade II listed building, Elvey Cottage, or its setting or any features of special architectural or historic interest which it possesses;
 - the effect of the building on the landscape and scenic beauty of the Kent Downs National Landscape.

Reasons

Listed building

6. Elvey Cottage was originally constructed in the 16th Century or earlier and is a timber framed two storey cottage. It is in a remote location, set back from the road, with fields surrounding. The building has been refaced on the ground floor with brick and is tile hung above, with the first floor oversailing. The roof is tiled and it has casement windows. There is a horizontal emphasis to the shape and many of the features of the building. I understand that there was substantial damage due to a fire such that the building was re-built prior to listing, with a large proportion of the materials in the building replaced, and that is the reason for seeking its de-listing. It has also been extended. The walls are now painted pink and that disguises remaining fire damage. The significance of the listed building is its modest vernacular cottage appearance in a remote location surrounded by fields.
7. The building subject of the enforcement notice is located to the front of the listed building, facing onto the access drive. The drive is straight from the road between fields but twists round once into the main garden area, in front of the building, to

provide parking in front of the cottage and a modest double garage building. Whilst off the line of the drive, the building is prominent in views toward the listed building from this direction. The building is substantial in size, taking the form and appearance of a barn with half hipped roof and small lean to at one side. There is a hay loft style feature to the front elevation, with a prominent gable end with a vertical emphasis. It is constructed of black stained timber, with clay tile roof.

8. The substantial size of the building and its location to the front of the cottage makes it prominent within the immediate setting of the listed building. It is prominent in views from the fields to either side of the access drive, including public footpaths, and glimpsed views through the hedges from the road. The topography of the land, along with design of the building, results it being the more prominent in views of the building and cottage.
9. The works of excavation and construction of the bund and hardsurfacing have altered the landscape to the front of the listed building. The bund has since been planted. That planting restricts views of the excavation and the building to a limited extent and disguises the bund. Nevertheless, they are unnatural features in close proximity to the listed building.
10. I note that planning permission was previously granted for a garage/home office under reference 17/00319/AS to include a residential annexe. That related to a building in the same location as this building but this has a higher ridge height and larger floor area. As such, it would have a different effect on the setting of the listed building.
11. A further application was made for the building subject of this appeal that was refused planning permission and dismissed at appeal, reference APP/E2205/W/21/3271485. I note that the Inspector considered that the scale of the development was harmful to the setting of the listed building.
12. The appellant suggests that the existing garage could be removed. However, this is a smaller and more discrete building. Whilst located closer to the listed building, its limited scale means that its removal would not outweigh the effect of the building on the setting of the listed building.
13. For these reasons, I conclude that the development harms the setting of the listed building. Whilst that harm is less than substantial, on a spectrum the harm arising from the building is medium, but the excavation, hardsurfacing and the bund is low.
14. The National Planning Policy Framework (the Framework) advises at Paragraph 212 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. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Accordingly, while less than the 'substantial harm' referred to in Paragraph 214 of the Framework, the harm to the listed building is nevertheless a matter of considerable importance in this case.
15. Paragraph 215 of the Framework establishes that, where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the

proposal, including securing its optimum viable use. Generation of electricity from the solar panels is a public benefit in reducing carbon emissions. My attention has been drawn to the personal circumstances of the appellant arising from her ability to move around her home, especially given the number of stairs. She now requires assistance to meet her day-to-day needs. She would be able to live in this building, with family in Elvey Cottage. Whilst these needs are essentially personal to the appellant, the provision of accommodation within this building could also be considered a public benefit in terms of providing a high standard of accommodation as required by planning policies such as Policy SP6 of the Ashford Local Plan (LP) and paragraph 135f) of the Framework. However, these benefits are modest and cannot outweigh the identified harm to the listed building.

16. For these reasons, I conclude that the building, hardsurfacing and bund harm the setting of the listed building and its significance as a heritage asset. There are no public benefits that would outweigh that harm. As a result, it is contrary to Policies SP1, SP6 and ENV5 of the LP and the Framework that seek to conserve and enhance designated heritage assets and their settings and to protect and, where possible, enhance local historic features that help distinguish the character of the local area.

National Landscape

17. The North Downs National Landscape comprises chalk hills that can be seen in the backdrop to the site from some directions, although the immediate surroundings comprise an undulating landscape of agricultural fields with cottages and farmsteads interspersed within it. Elvey Cottage forms one of those cottages, isolated down a long drive from the road. The isolated nature of the cottage contributes to the character of the surrounding landscape. There are footpaths through the surrounding fields from which Elvey Cottage and its garden form a prominent feature.
18. The building is located slightly higher on the slope of a hill than the cottage. It is a substantial, tall building that dominates its immediate surrounds and is clearly visible in views, whether glimpsed through gaps in the hedge along the road or more prominent in views from the surrounding public footpaths. Its design seeks to reflect that of a traditional style barn, although it is away from other agricultural buildings with limited relationship to surrounding agricultural land. In longer views it reflects the sporadic nature of development in the wider landscape. Nevertheless, it is more prominent than the cottage such that, in shorter views, it has a greater visual impact on the surroundings and appears incongruous in this prominent location.
19. In the previous appeal it was concluded that the building would be visually intrusive and not subservient to the main house. As such, it was concluded to be harmful to the character and appearance of the area.
20. For these reasons, I conclude that the building does not conserve or enhance the landscape and scenic beauty of the Kent Downs National Landscape. As such, it is contrary to Policies SP1, SP6, ENV3b, ENV5 and HOU9 of the LP that seek to conserve and enhance the natural beauty of the Kent Downs National Landscape including enhancing the special qualities and distinctive character of the landscape, particularly in relation to residential annexes.

Other matters

21. I note that the appellant seeks accommodation that is better able to meet her needs and this could be provided within this building. She also runs a property business, for which this building would provide an office. Within the gardens box plants are grown to provide topiary as part of a charity enterprise, although the relationship between that enterprise and this building is unclear. These matters don't outweigh the harm I have found to the setting, and significance, of the listed building or the effects on the landscape and scenic beauty of the National landscape.
22. The solar panels generate some electricity in a manner that leads to a reduction in carbon emissions. This is a benefit of the scheme. However, it would not be sufficient to outweigh the harms I have found to the setting of the listed building and landscape and scenic beauty of the Kent Downs National Landscape.
23. Reference is made in the enforcement notice to Policies ENV8 and ENV9 of the LP that relates to the connection of development to the sewerage system and sustainable drainage systems. However, it is unclear how the building would be connected to sewerage and drainage systems and whether there would be any problems associated with that. This does not affect my conclusions on the main issues.
24. Policy ENV15 of the LP relating to archaeology is also referred to in the notice. However, it is unclear what archaeological remains may have been affected by the development. For that reason, this does not affect my conclusions on the main issues.

Conclusion

25. I have concluded that the proposal would conflict with Policies SP1, SP6, ENV3b, ENV5 and HOU9 of the LP, such that I find conflict with the development plan as a whole. I have not found any material considerations, including the Framework, that indicate I should find other than in accordance with the development plan.

Alternative design solutions

26. The ground (a) appeal and deemed planning application is in respect of the matters stated in the enforcement notice as constituting the breach of planning control (Section 177(5) (s177(5)) of the Town and Country Planning Act 1990 as amended (the Act)). There is power when determining an appeal under s174 for the Inspector to grant planning permission in respect of the matters stated in the enforcement notice as constituting the breach of planning control, whether in relation to the whole or any part of those matters (s177(1)).
27. Under the ground (f) appeal, the appellant suggests that there was no issue with the footprint or ground floor element of the building. However, it is unclear how the building could be altered and would appear if those elements were to remain. As such, it would not be possible to consider these as an obvious alternative to the removal of the building in accordance with the enforcement notice.
28. The appellant suggests that the loading bay style door, which I referred to above as the hay loft style gable, and the solar panels could be removed to be replaced by extending the tiling across the whole roof. The double door to the proposed bedroom could have a door fixed to reduce the domestic character of the building. Sketch drawings have been provided to indicate the appearance and suggest that

the resulting building would appear to retain part of the existing building, such that this would constitute an obvious alternative that may overcome the planning difficulties with less cost and disruption. On that basis, I will take it into account.

29. The removal of the loading bay style door would remove a prominent element of the building, particularly in views down the drive and one of the adjacent fields through which a footpath runs. This would have some effect on the views of the building down the access drive and would reduce the prominence, to a limited extent, in front of the listed building. Nevertheless, I consider that it would not wholly overcome the effect of the building on the setting of the listed building.
30. The replacement of the solar panels with tiles would result in a more traditional appearance. Nevertheless, the solar panels do not materially alter the effect of the building on setting of the listed building. Similarly, the fixed door to the proposed bedroom would have limited effect on the appearance of the building, such that it wouldn't materially alter the effect on the setting of the listed building.
31. For these reasons, the resulting building would harm the significance of the listed building as a heritage asset. This harm would be less than substantial. Although slightly lower on the spectrum of such harm, it would remain at a medium level. Taking into account the personal circumstances of the appellant, as set out above, I consider that there are not public benefits that would outweigh that harm. That form of development would be contrary to Policies SP1, SP6 and ENV5 of the LP and the Framework.
32. In terms of the effect of the development on the landscape and scenic beauty, this would also be reduced slightly by that altered appearance. However, the harm I have found mainly arises from the scale and position of the building that would not be materially altered by the proposed changes. As a result, it would remain contrary to Policies SP1, SP6, ENV3b, ENV5 and HOU9 of the LP.
33. I have found that the alternative design solution would remain in conflict with Policies SP1, SP6, ENV3b, ENV5 and HOU9 of the LP and, as a result, in conflict with the development plan as a whole. Taking account of the material circumstances set out in other matters above along with the Framework, I consider that these would not outweigh that conflict in relation to the alternative design solution.

Overall conclusion

34. For the reasons set out above, I conclude that the appeal on ground (a) should fail.

The Appeal on Ground (f)

35. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek the demolition of the building, removal of hardstanding and removal of the earth bund before restoring the land to the natural levels and contours prior to the development taking place, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.

36. I have considered whether there are obvious alternatives to the development described in the breach of planning control that formed part of the development under the ground (a) appeal. In this case, I have concluded that no obvious alternatives exist that would overcome the reasons for issuing the notice with less cost and disruption. As a result, I have not identified any lesser steps that would remedy the breach of planning control.
37. For these reasons, I conclude that the appeal under ground (f) should fail.

The Appeal on Ground (g)

38. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed. The enforcement notice requires the demolition of the building within 9 months and for all materials, waste and debris resulting with the steps on the notice within 12 months.
39. The appellant suggests that the periods for compliance with the enforcement notice should be extended by 6 months to allow negotiations regarding an alternative scheme that they have presented to the Council. I have limited information as to where those negotiations are at present. Nevertheless, I consider that a period of at least 9 months would allow negotiations to take place and, should an alternative scheme not be agreed, for the building to be demolished and other works take place in accordance with the timescales provided by the notice.
40. For these reasons, I conclude that the appeal under ground (g) should fail.

Formal Decision

41. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

AJ Steen

INSPECTOR