



Appeal Decision

Site visit made on 7 July 2025

by **C Walker BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 July 2025

Appeal Ref: APP/D3505/W/25/3364325

Land adjacent to Oranges & Lemons Cafe, Rectory Hill, East Bergholt, Colchester CO7 6TL

- 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 & Mrs Kevin Brennan of Shiel Architecture Limited against the decision of Babergh District Council.
 - The application Ref is DC/24/04060.
 - The development proposed is erection of a single two-storey dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site is situated within close proximity to a number of listed buildings. In considering whether to grant planning permission, I have been mindful of my statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) which requires special regard to be given to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.
3. As the site is also located within the East Bergholt Conservation Area (CA), I have also had regard to the statutory duty set out in Section 72(1) of the Act that requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
4. The site lies within the Dedham Vale National Landscape (NL) and I am required to give great weight to conserving and enhancing the natural beauty of the NL. However, this is not a matter in dispute between the parties and from the evidence before me, I have no reason to disagree. As such I do not need to deal with this matter further.

Main Issues

5. The main issues are:
 - the effects of the proposed development on the setting of Grade II listed buildings, and on the character and appearance of the East Bergholt Conservation Area; and
 - whether the development would compromise the ability of the adjacent commercial unit to properly function for its approved use.

Reasons

Heritage

6. The appeal site lies on Rectory Hill within the settlement boundary and the heart of East Bergholt village, within its CA and the NL. Forming a parcel of flat lawn surrounded by hedgerows and trees at its rear, the site is located between two Grade II listed buildings; a range of residential cottages (The Old Town House at 1-3 Burnt Oak, list entry no.1033471) now two dwellings, and the former Kings Head Public House (the former PH) which has a list entry no. of 1351909. The former PH is now divided into two units comprising a dwelling known as Kings House and Oranges and Lemons Café (the café), immediately adjacent to the appeal site. Other Grade II listed buildings known as The Haywain (list entry no. 1033469), Oak Cottage (list entry no.1351948), Gable Cottage and Peach Cottage (list entry no. 1033470) lie on the opposite side of the road, which are all timber framed and rendered, with plain roof tiles. Together this cluster of listed buildings have group value and the relationship and gaps between them contributes to their significance as well as to the character and appearance of the CA.
7. The CA encompasses the historic core of the village dating from the mediaeval period. Towards the east it includes development that accumulated around the crossroads between Rectory Hill, Gandish Road and Flatford Road. The significance of this part of the CA is derived in part from the placement of historic buildings, their spacing and the verdant backdrop, all of which allows for an understanding of how the village has evolved over time.
8. The list description describes the former PH as a two storey, 3 bay building, probably 17th century with later alterations and additions including a stable range. It is timber framed, cased in painted brick with a red brick stack and a plain tile roof. Its significance is derived in part from its architectural and historic interest along with its origins and associations with influential, prominent families and its contribution to the social and economic life within the village.
9. The appeal site historically would have likely supported the stabling of horses at the former inn, and in more recent times formed part of the external space associated with the former PH, which evidence suggests was in use as its garden for very many years. Its close association with the former PH and its openness against the verdant backdrop allows views of the listed buildings when approaching the site from either direction giving a pleasant verdant setting and sense of spaciousness to both the adjacent listed buildings and the character and appearance of the CA.
10. The appeal site plays an important role in the sense of place and the character and appearance of this part of the village, as well as forming an important part of the setting of the former PH.
11. Whilst the proposed dwelling is of an appropriate design and scale, its placement between the listed buildings would erode the sense of spaciousness around them, would diminish the setting of the former PH and would interrupt views of the listed buildings on approach from both directions on Rectory Hill. This would cause harm to the listed buildings by adversely affecting the ability to appreciate their significance, particularly the former PH by failing to preserve its open setting. It would also adversely affect the setting of the cluster of six listed buildings by interrupting their group value, by placing a modern building amongst them. In my

judgement it would also fail to preserve the character and appearance of the CA for the same reasons.

12. My attention is drawn to a planning permission granted in 2014¹ for a part single and part two storey detached outbuilding providing guest accommodation. However, this does not appear to have been implemented and the permission is no longer extant having been granted under a different development plan regime. Therefore, it does not set a precedent, and I attach limited weight to it as an expired permission.
13. For the reasons I have set out, I therefore conclude that the proposed development would harm the significance of the CA and fail to preserve the setting of the adjacent listed buildings through adversely affecting their settings. The development would therefore conflict with Policies LP19 and SP09 of the Babergh and Mid Suffolk Joint Local Plan – Part 1 (2023) (Local Plan) and Policy EB2 of the East Bergholt Neighbourhood Plan 2015-2030 (2016) (the Neighbourhood Plan). Amongst other things, these policies require developments to conserve and enhance heritage assets, including their setting.

Commercial effects

14. Policy LP10 of the Local Plan relates to changes from employment uses. I have not been guided to a definition of employment uses in the development plan, but note the overriding policy objective is to maintain economic opportunities, particularly in the countryside, to ensure the resilience and sustainability of local communities. This policy sets out that proposals will only be approved where they would not compromise ongoing employment uses. It says that full or partial loss of employment premises will be required to demonstrate that the possibility of re-using or redeveloping the land for other employment or community uses which should be explored by a period of sustained marketing.
15. Likewise, Policy EB16 of the Neighbourhood Plan provides that businesses that serve the community should be retained in employment, business or community uses, wherever possible. It also states that redevelopment for non-employment or community purposes would only be supported if their retention for an appropriate employment or community use has been fully explored or replaced by a similar or improved facility within the parish. Appropriate marketing is also expected.
16. From what I have read and seen, it is not the Council's case that the appeal site should be redeveloped for an alternative employment use. As such, despite the Council's reason for refusal, marketing would not be a necessary or appropriate step for this appeal scheme.
17. It is not my role, nor is it possible, to predict what planning applications may or may not come forward in the future. Therefore, I confine my considerations to whether the loss of the appeal site would prejudice the ability of the adjacent planning unit to meet its needs. The evidence before me indicates the former PH was granted planning permission² in 2017 for the change of use which included a combined café and shop, which is the approved use immediately adjacent to the appeal site. The dwelling also approved, has its garden and parking on the

¹ planning permission B/14/00961

² Planning permission B/17/00058 – Change of use from Class A4 (Public House) to Class A1 (Retail) and Class A3 (Café). Change of use of part of ground floor and first floor to self contained residential dwelling (Class C3) approved in March 2016.

western side of the building, away from the appeal site, so does not rely on it in any way.

18. The appeal site has been physically severed from its historical association with the former public house (PH) and it now forms a separate parcel of land defined by planting, as I was able to observe on site.
19. The Council point to a permission granted in 2020³ where the red line drawn on plan included the appeal site. It is not clear to me from the evidence provided, whether this permission has been implemented or not. However, whilst the parking provision for the café does not appear to comply with the drawing extract provided by the Council, the quantum of parking spaces on site appears to be the same as approved. Further, it is not the Council's case that there is insufficient parking provision for the café. Consequently, I am satisfied that the development would not lead to inadequate parking provision to meet its needs. As the café already operates without the use of the appeal site, and from what I have read in representations, successfully so, it appears to me that the loss of the land would have no adverse effect on the business operations at all.
20. Therefore, I find that the development would not compromise the ability of the adjacent commercial unit to properly function for its approved use. It follows that I do not find conflict with either Policy LP10 of the Local Plan or Policy EB16 of the Neighbourhood Plan in this regard, which as I have set out, seek to protect sites in commercial use from unjustified and harmful losses of important employment facilities.

Other Matters

21. Policies provided with the appeal suggest that the appeal site lies within the 13km Zone of Influence for the Stour and Orwell Estuaries Special Protection Area (SPA) and Ramsar site and the Deben Estuary SPA and Ramsar site. Natural England do not appear to have been consulted. Further, no evidence to show the effect of the development on these habitat designations is before me. Given my other serious concerns with the scheme and that this matter is not in dispute, I do not consider this further, and this attracts a neutral weighting in the planning balance. Had I been minded to allow the appeal, further representations would have been required on this matter.
22. I have had regard to the notes and comments from the appellant in relation to the pre-application advice received. However, the pre-application advice is non-binding, and I have determined the appeal on its planning merits.

Planning Balance and Conclusion

23. In the case of both the adjacent listed buildings and the CA, I find the heritage harm to be 'less than substantial' in terms of the Framework. Both Local Plan Policy LP19 and the Framework requires that any harm to the significance of a designated heritage asset, including from development within its setting, should require clear and convincing justification. Furthermore, they require that less than substantial harm to the significance of a designated heritage asset to be weighed against the public benefits.

³ Planning permission DC/20/02244 – Alterations, repositioning, extension and division of parking areas. Creation of extra 4 parking spaces, approved July 2020.

24. In this case the appeal proposal would provide for a dwelling within a village which, in principle, benefits from support from local plan policies, placing it in a sustainable location that that could readily access services and facilities. The development would also make a small but beneficial contribution to the choice of homes in the district and its supply of housing, as well as providing social and economic benefits during construction and after occupation, including contributions to the local economy through the purchase of goods, employment and community activity. Furthermore, the development could be built quickly to current Building Regulations using measures to reduce carbon emissions and energy use, incorporate renewable energy provision and fitting, electric charging points and provide biodiversity enhancements. These all weigh in favour of the appeal. However, the benefits associated with just one dwelling would be modest and attract modest weight.
25. Even less than substantial harm to a designated heritage asset, as an irreplaceable resource, carries considerable importance and weight. Therefore, taking the benefits into account, individually or in combination, the public benefits do not outweigh the less than substantial harm to the CA as a whole, or to the setting of the listed buildings that I have identified, and the great weight afforded to the conservation of heritage assets.
26. Although I have found that the development would not compromise the ability of the adjacent commercial unit to properly function for its approved use, I have found that the development would cause harm to heritage assets. In my view, this is the prevailing consideration, and the development should be regarded as being in conflict with the development plan, when read as a whole.
27. Material considerations, including the Framework, do not indicate that the development should be determined other than in accordance with the development plan. Having considered all other matters raised, I therefore conclude that appeal should be dismissed.

C Walker

INSPECTOR