



Appeal Decision

Site visit made on 22 April 2026

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th May 2026

Appeal Ref: APP/T2405/C/24/3347520

Cedar Cottage, Broad Street, Enderby LE19 4AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr James Demitriou against an enforcement notice issued by Blaby District Council.
 - The notice was issued on 31 May 2024.
 - The breach of planning control as alleged in the notice is:
 - i. The erection of a semi enclosed timber framed outbuilding (shown in blue in the approximate position on the attached plan).
 - ii. The erection of an enclosure, including timber fence, gates, fence posts and infill panels (shown in green in the approximate position on the attached plan).
 - The requirements of the notice are:
 - i. Remove in its entirety the semi enclosed timber framed building (shown in blue in the approximate position on the attached plan).
 - ii. Remove in their entirety the timber fence, gates, fence posts and infill panels (shown in green in the approximate position on the attached plan).
 - iii. Reinstate the ground that has been disturbed by the erection and subsequent removal of the semi enclosed timber framed building, fence, gates, fence posts and infill panels to its previous condition that existed prior to the breach occurring.
 - The period for compliance with the requirements is two months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (f) 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.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the erection of a semi enclosed timber framed outbuilding and the erection of an enclosure, including timber fence, gates, fence posts and infill panels at Cedar Cottage, Broad Street, Enderby LE19 4AA as shown on the plan attached to the notice.

Preliminary Matter

2. The issuing of the enforcement notice (notice) is predicated on the appeal property being a “*curtilage listed building*”¹. The notice goes on to claim the appeal property “*having once been a coach house that previously served the grade II listed property at The Cedars...*”. The Council are correct in their understanding that buildings within a listed building’s curtilage are listed by association. The list description confirms that The Cedars, comprising a house divided into two units, was listed on 20 December 1982. While the list description does not specifically

¹ Section 4. of the enforcement notice

refer to associated structures within The Cedars' curtilage, that does not necessarily mean there are none.

3. Curtilage is a legal definition pertaining to land associated with the use of a building. Precisely what constitutes curtilage may not always be clear. The courts have held that curtilage is ground used for the comfortable enjoyment of a building and thereby an integral part of the same. The ground does not need to be marked off or enclosed as it is enough that it serves a purpose of the building in some necessary or reasonable way. It has also been found that the curtilage of a building can change over time.
4. The Council has directed me to *HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL, a listed building case heard in the Court of Appeal, within which Stephenson LJ held that the three tests of (i) physical layout of the listed building and the structure, (ii) their ownership, past and present, and (iii) their use or function, past and present, need to be applied in the determination of whether a structure is listed by association. The courts have since held that section 54(9) of the Town and Country Planning Act 1971 (listed by association) applies only to structures ancillary to the listed building and not to another completely distinct building.
5. The Council has provided a comprehensive review of the available mapping of the area, its thoughts on the development of the site, and what they have found regarding ownership. They conclude Cedar Cottage and Cedar Barn were originally curtilage structures to The Cedars. The appellant however has provided detailed evidence relating to the ownership and association between Cedar Cottage and The Cedars in more recent times; the early 1940s onwards.
6. Historically, I do not doubt that the buildings and land now forming Cedar Cottage, Cedar Barn, and Broadstone Bungalow (to the west) were an integral part of The Cedars. Buildings and land have however been separated from The Cedars over time to form separate, distinct properties.
7. A statutory declaration provided by Andrew Hodsell tells of his grandmother's property being bombed in 1940 and her then becoming a tenant of 3a Broad Street. He goes on to state that his grandmother "*purchased Cedar House, its garage, Barns, wash house, 3a Broad Street and Cedar Cottage*" in 1963 and the tenant of Cedar Cottage moving out that year to build Broadstone Bungalow. He also provides details of all the buildings being inherited by him, his mother and his brother and the subsequent sale of the individual properties. From Mr Hodsell's declaration, Cedar Cottage has served no ancillary purpose to The Cedars since before 1963.
8. The appellant has also provided evidence in the form of an email received from an officer of the Council, dated 7 July 2021, which state "*I've run this past Ian. Whether or not the house is "curtilage listed" is a moot point, and one that would ultimately have to be established through appeals or the courts. He's relatively happy to accept that it is curtilage listed and to deal with the application(s) in that way (if only adopting the precautionary principle) and given we are approving the current application it is not considered we need to arrive at a final decision on this matter at this time.*"² This suggests that the Council were unsure of Cedar Cottage's status at that time.

² Email from Michelle Hill, Planning Officer Blaby District Council

9. Historic maps provided by the Council show that some form of boundary treatment had been erected to separate the land directly behind The Cedars from the courtyard, Cedar Cottage and the buildings which became Cedar Barn as early as 1957. This goes some way to corroborate Mr Hodsell's evidence.
10. In the absence of any evidence to the contrary, I have no reason to doubt Mr Hodsell's declaration. It is therefore evident that Cedar Cottage was occupied as an independent dwellinghouse since before 1963. It would therefore be reasonable to conclude that Cedar Cottage was not ancillary to, nor did it serve any necessary or reasonable function of, The Cedars at the time it became a listed building in 1982.
11. For these reasons, I find Cedar Cottage is a completely distinct building. It is not a structure within the curtilage of The Cedars, and it is not therefore listed by association. I shall proceed on this basis.

The Ground (d) Appeal

12. An appeal on this ground is that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. It is for the appellant to show therefore that, on the balance of probabilities, the semi enclosed timber framed outbuilding (the outbuilding) and the timber fence, gates and fence posts (the means of enclosure) have subsisted for four or more years before the notice was issued. The material date therefore being 31 May 2019.
13. It is the Council's contention that aerial imagery shows the outbuilding and means of enclosure did not exist in 2020, and that the Coronavirus Pandemic would have prevented materials being purchased to build them and workers being employed to build them. I find the aerial image, dated "4/21/2020"³, to be unhelpful in respect of the outbuilding as its position is cast in shadow preventing an accurate conclusion to be drawn. The image does however show some form of separation feature between the courtyard parking area and the garden to Cedar Cottage. Again, it is not possible to clearly discern what this feature is due to the image's lack of clarity and the fact that it is an aerial image.
14. The appellant has provided photographic evidence of the refurbishment of Cedar Cottage. This shows close boarded fencing in what appears to be the same position as the fencing that may be discernible in the Council's aerial image. While the appellant claims their photographs are dated 11 August 2018, the date displayed in the top left corner of each image states "Aug 11th 2019". Furthermore, the photographs do not show any gates, therefore the means of enclosure is not complete.
15. The appellant's statutory declaration confirms, *"2019-2020 Gates installed, fences to the left of the property installed and seating area started. There were some obvious delays due to the Covid Lockdown"* and *"2021 Purchased garden from Mr A Hodsell of 3a Broad Street & fences erected to separate our gardens...I also replaced the concrete fences...separating my garden from the car park..."* Even if I take the 'seating area' to be the outbuilding referred to in the notice, the appellant's own recollections do not show, with any degree of certainty, when the outbuilding

³ Appendix 5 of the Council's Statement of Case

and means of enclosure were erected, but at least part of the fence was erected in 2021.

16. The evidence provided to demonstrate that the outbuilding and means of enclosure were erected four or more years ago is imprecise and ambiguous. The appellant has therefore failed to demonstrate, on the balance of probabilities, that the outbuilding and means of enclosure were immune from enforcement action at the date the notice was issued.
17. For these reasons the appeal on ground (d) fails.

The Ground (a) Appeal

18. The appeal property is within the Enderby City Conservation Area and the setting of The Cedars and The Red House, both are grade II listed buildings. I am aware of my statutory duty arising from sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
19. An appeal on ground (a) is that planning permission should be granted for the matters stated in the notice. The appellant is therefore seeking planning permission for the outbuilding and the means of enclosure to be granted. The **main issues** are the development's effect on the character and appearance of designated heritage assets.
20. The reasons for issuing the notice refer to policies CS2 and CS20 of the Blaby District Local Plan (Core Strategy) Development Plan Document (2013) (CS), and policies DM1 and DM12 of the Local Plan (Delivery) Development Plan Document (2019) (DLP). Policies CS2 and CS20 promote strategic objectives relating to the design of new development in relation to the historic environment. They require development to be appropriate to its context, to have taken account of local development patterns and to be sympathetic to their surroundings, amongst other things. Policy DM1 sets out the criteria that new development proposal will be expected to meet, while policy DM12 seeks to avoid harm to the district's heritage assets and confirms development that conserves or enhances the historic environment will be supported.
21. The National Planning Policy Framework (Framework) requires that when considering a development's impact on the significance of a designated heritage asset, great weight should be given to its conservation, irrespective of the level of harm. Furthermore, any harm to the significance of a designated heritage asset from development within its setting would require clear and convincing justification.
22. The Council have identified several listed buildings within the area surrounding the appeal site. They conclude however that only The Cedars and The Red House may be affected by the development and I find no reason to disagree. The Cedars and The Red House are listed for their historic and architectural value. The Cedars formerly being a high status dwelling, now divided into a mix of commercial offices and dwellings. Located in a frontage position, it is visually prominent in Broad Street. While The Red House is also a high status dwelling, it is set back behind high walls and mature tree planting, thereby it has a limited presence in the street scene.
23. Enderby Conservation Area (CA) was designated in 2002, and Broad Street lies within its southern half. Broad Street is identified as a road of contrasting

character; several properties are set back from the road within landscaped grounds giving a perception of spaciousness, while the presence of tall boundary walls, buildings and terraces provide a strong sense of containment. The appeal site occupies a position within the contained element of the road.

24. Relying on the ability to experience the appeal site and a heritage asset within the same view is a reasonable factor to apply in determining whether the heritage asset is affected. While other, non-visual ways of experiencing heritage assets exist, the context of this development is such that its visual effect on the significance of heritage assets is key.
25. Cedar Cottage occupies a backland position, behind Cedar Barn and The Cedars. Its rear elevation sits on the rear boundary of the property. Its garden/curtilage is located between the dwelling's front elevation and the adjacent properties' courtyard parking area. The adjacent Cedar Barns has a brick finish with slate roof, while The Cedars is part colour washed, with a whitewashed rendered front.
26. Only medium distance views of Cedar Cottage are available from Broad Street, looking along Broadstone Bungalow's driveway and across the courtyard parking area serving Cedar Barn and The Cedars. I did not perceive Cedar Cottage to occupy an elevated position, and even if it does so, I do not find this to increase its visual dominance within the setting of The Cedars.
27. Cedar Cottage has white painted walls, timber windows, timber external shutters and window boxes with a painted green finish. The entrance door has a pitched roof porch with painted green timber detailing. While the outbuilding's fascia and the top of the supporting roof beams are visible above the bamboo fence panels, neither it nor the panels detract from the host dwelling's architectural characteristics. Furthermore, the semi-translucent nature of the bamboo fence panels and the open aspect of the timber five bar gate do little to obscure the pleasing and characterful appearance of the host dwelling and the open nature of the courtyard parking area.
28. The Council refers to a further enforcement investigation taking place in relation to the shutters, window boxes and other architectural features I mention above. However, even if those features did not exist, my view of the development's effect on the character and appearance of the host dwelling and courtyard parking area would not change.
29. The outbuilding is between the front extension of the host property and its boundary with Cedar Barn, following the established pattern of development. The adjacent elevation of Cedar Barn is blank. The outbuilding therefore has no detrimental effects on that property due to loss of privacy, outlook, disturbance. The juxtaposition of the outbuilding is such that the amenity of no other property could be affected by its presence. I am satisfied it has a satisfactory relationship with adjacent properties and uses.
30. The outbuilding provides a covered seating area serving the host property. I find the materials used in its construction to be appropriate for a domestic garden structure used for purposes incidental and ancillary to the residential use of the host dwelling. The outbuilding occupies a small area of the host dwelling's garden that might otherwise provide little amenity value given its location to the north of Cedar Barn. The remainder of the garden area, except for the parking area,

provides landscaped grounds with planted beds and paved walkways. Taking the above factors together, I find the development accords with policy DM1.

31. I saw no views within which the outbuilding or means of enclosure and The Red House can be experienced. As such, the development causes no harm to the significance of The Red House. It is possible to see the development and The Cedars in the same view taken from Broad Street across the vehicular entrance over the courtyard parking area. However, The Cedars dominates this view with the development located in the distance. While it is therefore possible to experience them together, in my view, the development is of such a minor nature that it causes no harm to the significance of the heritage asset.
32. When viewed from Broad Street, the courtyard retains a sense of the open aspect that would have existed when The Cedars and its associated outbuildings were erected. While the close-boarded fencing forming The Cedars boundary with the courtyard parking area severs the visual connection between all the buildings, it is hidden behind an outbuilding. The height and semi-translucent nature of the means of enclosure at Cedar Cottage provide for the courtyard's open aspect to continue to be perceived and appreciated. The visual relationship with The Cedars and the CA is therefore preserved and I find the development has no adverse effects on the significance of these designated heritage assets.
33. For these reasons, the development does not conflict with policies CS2 and CS20 of the CS or DM12 of the DLP or paragraphs 208, 210, 212, 213 and 215 of the Framework.

Conclusion

34. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The enforcement notice will be quashed.
35. In these circumstances the appeal on ground (f) does not fall to be considered.

M Madge

INSPECTOR