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## Appeal Decision

Hearing held and site visit made on 10 September 2014

**by Brendan Lyons BArch MA MRTPI IHBC**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 21 January 2015**

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**Appeal Ref: APP/W3005/A/14/2217951**

**Teversal Manor, Teversal Village, Sutton-in-Ashfield,  
Nottinghamshire NG17 3JN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr & Mrs John Marples against the decision of Ashfield District Council.
  - The application Ref V/2013/0624, dated 6 November 2013, was refused by notice dated 23 January 2014.
  - The development proposed is described as the creation of a single new earth-sheltered dwelling.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. At the Hearing an application for costs was made by the appellants against the Council. That application is the subject of a separate Decision.

### Main Issue

3. It was agreed at the Hearing that the main issue in the appeal is:

Whether the proposal would amount to a sustainable form of development in accordance with national and local policy, having particular regard to:

- the effect on listed buildings and their settings and the character and appearance of the conservation area;
- the appropriateness of development in the countryside context of the village;
- the sustainability of the location;
- the quality and nature of the proposed design.

### Reasons

4. Teversal Manor is a large house that stands at the centre of the small village of Teversal. The house, which is listed Grade II, contains fabric dating back to at least the seventeenth century, but owes much of its present appearance to alterations carried out in the late nineteenth century, when it was owned by

the Earls of Carnarvon. The main front of the house faces to the south, where a set of three walled terrace gardens, dating from the late seventeenth century and separately listed Grade II, step down the slope to the open countryside beyond.

5. The appeal site mainly comprises a further walled garden, formerly planted as an orchard, located to the west of the house. Permission is sought to erect a new house, designed as an 'earth-sheltered dwelling', within the walled space of some 0.45 hectares. The house, which is intended for occupation by the current owners of the Manor, would share use of the tree-lined drive to the main house and part of the entrance courtyard. The appeal proposal would include the reconstruction of the east wall of the garden, which had previously been lowered, to a height similar to that of the other walls enclosing the space. Listed building consent for this aspect has already been granted by the Council.<sup>1</sup>
6. Teversal Manor and the adjoining Grade I listed parish church form the centrepiece of the Teversal Conservation Area, which was first designated in 1970 to cover the built core of the village and was extended in 2012 to add surrounding spaces, including part of the terraces and open land to the south of the Manor.

### **Listed buildings and conservation area**

7. In considering proposed development affecting a listed building, Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty to have special regard to the desirability of preserving the listed building or its setting.
8. The recent judgment of the Court of Appeal in the case of *Barnwell Manor*<sup>2</sup> has re-affirmed the importance of this requirement and of the similarly worded duty under Section 72 of the Act to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. Application of the judgment to the circumstances of an individual proposal means that 'considerable and importance and weight' must be given to the desirability of preservation or enhancement in any assessment of the merits of the proposal. There would be a 'strong presumption' against the grant of planning permission for any development that would conflict with the objective of preserving the listed building or its setting or of preserving or enhancing the character or appearance of the conservation area.
9. National policy guidance set out in the National Planning Policy Framework ('NPPF') confirms the great weight in favour of the conservation of 'designated heritage assets', such as listed buildings and conservation areas. The particular significance of any element of the historic environment likely to be affected by a development proposal should be identified and assessed. Any harm should require clear and convincing justification.
10. Policy EV10(a) of the Ashfield Local Plan Review 2002 ('LP') states that permission will only be given for development in conservation areas that preserves or enhances the character or appearance of the area. This reflects the statutory priority for preservation and enhancement, but the absence of

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<sup>1</sup> Listed building consent Ref V/2013/0623

<sup>2</sup> *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council, English Heritage, National Trust, The Secretary of State for Communities and Local Government* [2014] EWCA Civ 137

allowance for harm to be outweighed by public benefits is not in full conformity with the NPPF.

*Significance of heritage assets*

11. Teversal Manor is clearly a building of considerable historic interest. The submitted Heritage Statement provides a useful summary of the evolution of the Manor and its ownership since the first occupation of the site in the medieval period. The links with the Carnarvon family and literary figures including DH Lawrence add to its special interest. But the building also derives considerable significance from the character of its grounds, in particular of the stepped terraces that once accommodated 'hanging gardens' and are considered of sufficient quality to be listed in their own right.
12. The walled enclosure that defines the appeal site forms another distinctive component of the grounds. There is clear evidence of the space's use as an orchard in the late Victorian period, whose layout is confirmed by the surviving curtailed rows of pear trees. These continue to contribute to the structure of the garden, whose design is otherwise a recent creation of the current owners.
13. The original date and purpose of the walled enclosure are less clear. Pictorial evidence in the submitted Heritage Statement suggests that the walls were in place at least in the late eighteenth century. The Garden History Society consider it likely that the walls are integral with the terraces as part of the seventeenth century garden scheme. The location of the house's original western gateway, flanked by ornamental niches, tends to support this analysis.
14. There is sufficient evidence to conclude that the walled space is an important component of the historic ensemble of external spaces that help to define the character and use of the traditional 'manor house'. The complex has undergone remarkably little change since its high point of investment and use in the late nineteenth century. As a curtilage structure, the walled enclosure is included in the listing and contributes to its special interest. The space within the walls is an important part of 'the surroundings in which the heritage asset is experienced'<sup>3</sup>, and makes a positive contribution to the Manor's significance as a heritage asset. National guidance advises that the value of such a contribution does not depend on public rights of access.<sup>4</sup> The preservation of this contribution is highly desirable.
15. The ownership of the Manor has been a critical influence in the history and evolution of the village. This is particularly evident in the grouping of buildings and spaces at the village core. The Manor and the spaces around it are central to the character and appearance of the conservation area. The undeveloped walled garden contributes to the spacious pattern of the village's development, and can be appreciated from outside the site, where the north wall forms a prominent element in the street scene along Buttery Lane. The appeal site makes a positive contribution to the significance of the conservation area as a heritage asset.

*Effects of appeal proposal*

16. The proposed transformation of the appeal site to a separate planning unit accommodating a self-contained dwelling would be a significant change. As a

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<sup>3</sup> NPPF Annex 2, Glossary: Setting of a heritage asset

<sup>4</sup> PPS5 Planning for the Historic Environment: Historic Environment Planning Guide, para 117

result, the character of the walled garden would change from being one part of the wider set of spaces surrounding the Manor to become the immediate residential curtilage of the new house. This alteration would be of a different order from previous changes of use and layout of the space over its life, so that the appeal proposal would not merely represent a twenty-first century step in a pattern of continuous evolution, as presented by the appellants. It would also be of a different scale and level of significance from the current separate occupation and small private gardens of The Gatehouse and the north wing of the Manor.

17. The severance of the appeal site from the remainder of the grounds would mean that there would no longer be a single controlling vision for the entire asset, something from which it has clearly benefitted under the current owners' stewardship. The appellants refer to the proposed shared use of the existing drive and some parking in the entrance courtyard, but that limited element of shared use would not maintain a strong physical connection between spaces and would not ensure the continuation of a common approach to the conservation of the site. The appellants have also referred to their potential future involvement in the management of the grounds, with the Manor under new ownership, but even if such an arrangement came to pass, it could not be guaranteed in the long term.
18. The appeal proposal would also have implications for the physical character of the site. The proposed house would be built along the east side of the walled garden, with an extensive footprint. Although cut into the ground by 1m, it would have a considerable presence above ground. While the intention of the design would seek to minimise impact, the character of the walled garden would be affected. The house's location immediately inside the proposed entrance gates, and its form as a tall continuous mound, would interrupt the transition between the forecourt of the Manor and the walled space. The experience of moving through the grounds of the Manor would be adversely affected.
19. The house would be screened from view from the forecourt of the Manor by the reinstated garden wall, although the submitted plans show that both the planted mound and the masonry around the entrance door would be visible above the proposed gates. There seems little reason to doubt that the fourth wall of the garden was once similar in height to the walls around the other sides. I note the concern of the Garden History Society about the absence of documented evidence for the reason the wall was lowered. But I agree with the Council that reinstatement of the wall, subject to specification and detailing, would not harm the significance of the heritage asset.
20. I conclude that the severance of the appeal site to form a separate, self-contained plot would disrupt the established historic relationship of the Manor with its surroundings. The integrity of the heritage asset as an ensemble of country house, service buildings, and gardens, would be compromised. The setting of the listed building would not be preserved. However, the harm to its significance, in the terms of the NPPF, would be less than substantial.
21. Because of the importance of the pattern of space surrounding the Manor, the adverse effect of the appeal proposal would also be intrinsically harmful to the character of the conservation area. There would be limited harm in terms of direct visual impact. The house would largely be screened by the surrounding

walls in views from the public realm. I note the Council's concern about possible use of the roof of the house but consider that this would not be likely to occur to a degree that would affect the character of the area. However, the loss of mature trees to allow construction of the house would be noted from outside the site.

22. I conclude that there would be an adverse effect on the character and appearance of the conservation area, which would not be preserved or enhanced. The harm to the significance of the heritage asset would be less than substantial.

### ***Countryside context***

23. Teversal Village is defined by the LP as part of the countryside. Development in the countryside is restricted by LP Policy EV2 to specified classes of 'appropriate' development. In the case of Teversal, this is defined by part (h) of the policy as development that would not have an adverse effect on the character of the village.
24. The supporting text to the policy suggests that Teversal could be suitable for small scale infill development where appropriate, but draws particular attention to the pattern of gardens, open spaces and open breaks between buildings that characterise the conservation area.
25. For the reasons already outlined above, the appeal proposal would have an adverse effect on the pattern of spaces surrounding the Manor, and hence on the character of the village. Accordingly, the proposal would not comply with LP Policy EV2(h).
26. The appeal site could not be classed as an infill plot in the terms of this policy, as it is considerably greater in size and significance than 'a small gap in existing development', and represents an important undeveloped area within the village envelope. I endorse the Council's interpretation that open public views are not required for a site to provide a break between buildings.
27. The appellants draw attention to the number of new dwellings granted planning permission in and around the village over a period of some years, in the same policy context as the current LP. The precise circumstances that led to the approval of each of these applications are not clear. Leaving aside those involving conversion, sub-division and substitution and the recent approval of four houses outside the village envelope, it appears that some of the schemes relate to plots that would fall within the definition of 'infill', in the part of the village where existing development is of more mixed character. Others are on sites with existing farm buildings, where there may have been a visual improvement. The number of units involved, especially those at Manor Farm<sup>5</sup> and Grange Farm<sup>6</sup>, suggest that the Council has found reasons to set aside the development plan restriction to infill only.
28. However, none of the sites appear to be of equivalent importance to the character of the village or the setting of the Manor as the appeal site. The group of houses at Manor Farm might well be physically closer to the Manor, but the site would not have had the same degree of historic connection with

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<sup>5</sup> Planning permission Ref 2005/0421

<sup>6</sup> Planning permission Ref V/2013/0036

the listed building. The earlier permissions do not provide a compelling precedent for approval of the appeal proposals.

### ***Sustainability of location***

29. The Council's argument that Teversal does not provide a sustainable location for new housing is based on the Greater Nottingham Accessible Settlements Study carried out in 2010 to inform local plan preparation. The Study scored Teversal by some way the least accessible settlement in the District, based on its access to a range of services including retail, employment, education, leisure and health.
30. This was disputed at the Hearing by some local residents, who referred to bus stops, public house and a local shop within a 10 minute walk. But the Council's evidence shows that the nearest primary school, doctor's surgery and supermarket are all close to or above 1 km from the site as the crow flies, and some way further by road. It was suggested that the nearest bus service only operates during daytime hours.
31. I agree with the appellants that there is an inherent tension in the Council's opposition to the proposed dwelling on this ground, when adopted policy would allow an individual house on an infill plot without restriction for reasons of sustainable access. This is underlined by the series of permissions granted for new housing in the village, as outlined above.
32. Some weight must also be given to the less easily quantifiable social dimensions of sustainability outlined by residents, such as the range of community activities and sports teams supported by the village.
33. Whilst the location clearly has some disadvantages in terms of sustainable access to services, the proposal could not be rejected on this ground alone.

### ***Quality of design***

34. The submitted Design and Access Statement outlines the philosophy of earth-sheltered design, and explains the anticipated attributes of the design and construction of the appeal proposal.
35. The Council raises no objection on design grounds and there is no dispute over the house's predicted very high environmental performance. The evidence presented to the Hearing was that the proposed house would perform even better in terms of energy use than previous earth-sheltered dwellings, which are already among the most energy-efficient buildings in the country.
36. It is clear that the proposal represents a considered approach to the problem of inserting a new dwelling into this very sensitive context, and would achieve some success in minimising impact on the verdant character of the garden. The proposal would also demonstrate innovation in the delivery of improved environmental performance. It is suggested that the results of this performance would be disseminated, but no firm provisions are made on how this would be achieved. It is stated that this would 'raise the profile' of the village, but it is not clear what particular benefit would derive from this.
37. These positive factors add weight in favour of the appeal proposal. However, I agree with the Council that it would not derive support from the final point of paragraph 55 of the NPPF, which would not apply in this instance. That

guidance is specifically directed at the case for isolated homes in the countryside, whereas the appellants acknowledge that 'the site is clearly within the built-up area of Teversal'<sup>7</sup> and the appeal proposal is put forward as infill development.

## **Conclusion**

38. The proposal would result in less than substantial harm to the significance of designated heritage assets. In those circumstances, paragraph 134 of the NPPF advises that the harm should be weighed against the public benefits of the proposal.
39. In the light of the acknowledged shortfall in the district's housing land supply, the addition of one new dwelling must be seen as a public benefit, albeit of very limited impact. The addition to the housing stock of a highly energy-efficient dwelling must also be regarded as a modest public benefit, together with any publication of the innovative techniques that contribute to its enhanced performance. The weight to be attached to publication is limited by the lack of any clear commitment to the process. For the same reason, very limited weight can be given to any benefit that might derive from occasional public opening of the site.
40. These public benefits attract no greater than moderate weight, and would not outweigh the harm to the listed building and its setting and to the character and appearance of the conservation area, which are matters of considerable importance and weight.
41. Because of that failing, the proposal cannot be regarded as a sustainable form of development in accordance with national and local policy. The presumption in favour of sustainable development set by paragraph 14 of the NPPF would not apply. I have taken account of all other considerations raised, including the appellants' personal circumstances and their history of good stewardship of the listed building, but have found none that would alter the balance in favour of the proposal. The appeal must therefore be dismissed.

*Brendan Lyons*

INSPECTOR

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<sup>7</sup> Appeal Statement of Case paragraph 5.42

## **APPEARANCES**

### **FOR THE APPELLANT:**

Jonathan Smith	Associate Director, RPS Planning & Development
John Selby	Conservation & Planning Consultant
Jeremy Harrall	SEArch Architects
John Marples	Appellants
Janet Marples	
Jane Devonshire	Appellants' daughter

### **FOR THE LOCAL PLANNING AUTHORITY:**

Sarah Johnson	Development Team Manager
Simon Britt	Conservation Officer
Debbie Broad	Planning Policy Officer
Melanie Wheelwright	Investments and Projects Officer
Councillor Anne Patrick	Member of Planning Committee

### **INTERESTED PERSONS:**

Rosi Jarvis	Association of Garden Trusts; Nottinghamshire Historic Gardens Trust
Richard Goad	Chairman, Friends of Teversal Village Community Association
Malcolm Frier	Teversal Heritage Group
Maureen Frier	Local resident
Anna Coop	Local resident
Peter Chambers	Local resident
Rachael Hodgkinson	On behalf of local residents

## **DOCUMENTS**

1. Teversal Conservation Area Appraisal and Management Plan 2012
2. Copy of Listed Building Consent Ref V/2013/0623 and approved plans
3. Details of planning permissions for residential development in Teversal 2001-2013
4. Ashfield District Council's Response to the Costs Application