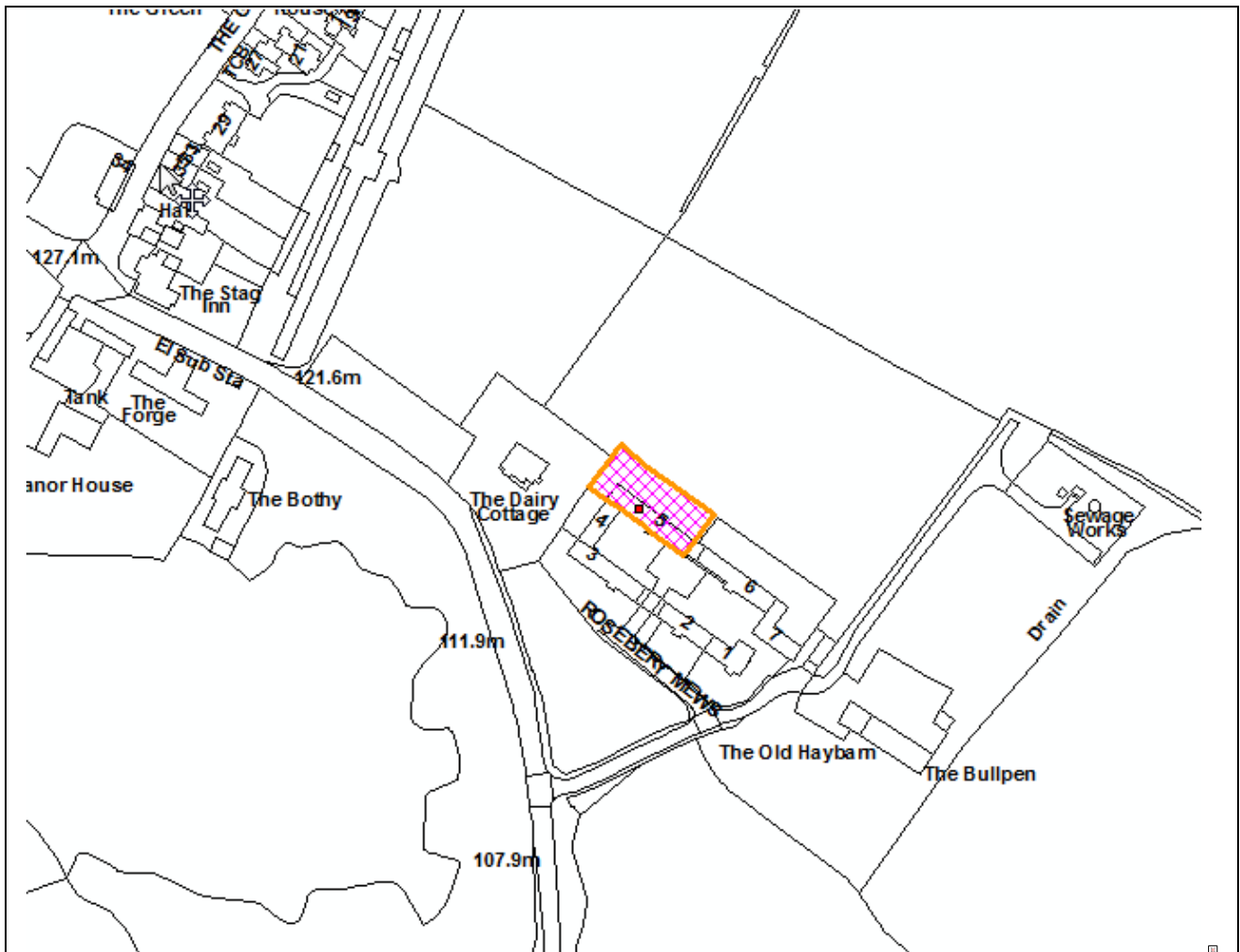


19/00528/APP



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REFERENCE NO	PARISH/WARD	DATE RECEIVED
19/00528/APP	MENTMORE The Local Member(s) for this area is/are: - Councillor P Cooper	11/02/19
<p>LANDSCAPING TO REPLACE STEEP CLAY BANK, STEPS TO ACCESS EXISTING SEATING AREA, RETAINING WALL TO SECURE OLD YEW TREE ROOTS, RAISED BEDS FOR PLANTING AND A SLOPING ROSE GARDEN WITH STEPS FOR ACCESS (RETROSPECTIVE)</p> <p>5 ROSEBERY MEWS BUCKINGHAMSHIRE LU7 0UE</p> <p>MRS SALLY SMITH</p> <p>STREET ATLAS PAGE NO.</p>		

1.0 The Key Issues in determining this application are:-

- a) Impact on appearance and character of the application site, Conservation Area, Area of Attractive Landscape and Grade II* Historic Park & Garden
- b) Impact on residential amenity
- c) Impact on trees

The recommendation is that permission be **GRANTED**

Conclusion and recommendation

- 1.1 The development is considered to be of a scale and form that, although domestic in appearance, is not overly prominent and so respects the setting of the adjacent Listed Building, Conservation Area, Registered Park & Garden and Area of Attractive Landscape. It would also not impinge on the amenity of neighbouring dwellings, while the impact to the Yew Tree has suitably been assessed.
- 1.2 It is therefore recommended that the application be **APPROVED**, unconditionally.

Informatives

- To all areas of exposed soil beneath the Yew Tree shown on unnumbered drawing (Existing Layout), unnumbered drawing (Proposed Plan) and unnumbered drawing (Proposed Elevation) (received by the Local Planning Authority on 12 February 2019), a 10 centimetre deep layer of rotted wood-chip shall be applied by no later than 27 October 2019. Once the rotted wood-chip is well rotted, it shall be re-applied to a 10 centimetre depth. The rotted wood-chip shall thereafter be re-applied in this manner in perpetuity. The rooted wood-chip shall be sourced from a disease free tree similar to the Yew Tree.
- The vitality of the tree shown on unnumbered drawing (Existing Layout), unnumbered

drawing (Proposed Plan) and unnumbered drawing (Proposed Elevation) (received by the Local Planning Authority on 12 February 2019) shall be monitored through measurement of branch extension growth and chlorophyll fluorescence testing of the foliage by no later than 27 October 2019. The vitality shall be tested again using the same measurements by no later than 27 May 2020. If there is a reduction in vitality between the first and second measurements, all areas of exposed soil beneath the tree shall be de-compacted and injected with Biochar amendment.

3. The applicant is advised that, if they wish to undertake any further works to the Yew Tree, they must first give the Local Planning Authority six weeks' notice. This is because the tree is located within a Conservation Area but is the subject of a Tree Preservation Order.

2.0 INTRODUCTION

- 2.1 The application needs to be determined by Committee as The Gardens Trust (a statutory consultee for application sites within Grade I and Grade II* Registered Park & Gardens) raised objections on the following grounds:
 - Feel that the development damages the setting of the Dairy Cottage (Grade II Listed Building) which they identify as architecturally significant;
 - Feel that the existing agricultural conversion and associated paraphernalia negatively affects the Grade II* Mentmore Towers Registered Park & Garden (RPG). The present development also adversely affects the historic character of the wider designed landscape of the walled garden, especially the glass balustrading.
 - Believe that a more sensitive solution could be found in the context of the Grade II Listed Building and RPG.
- 1.2 On the first matter, the case officer notes that the application site and the first floor/ roof of the Dairy Cottage can be viewed together from the rear garden of no.6. However, since the boundary fencing shared between the application property and the Dairy Cottage remains the same, the development would not further obscure views of the Grade II Listed Building. As such, its setting is not affected by this development.
- 1.3 On the second matter, in relation to the existing agricultural conversion at Rosebery Mews, it is not reasonable or relevant to assess the impact of this on the appearance of the Registered Park & Garden. This is because the development was approved under 87/01179/APP and again under 90/01755/APP. As such, the impact was previously accepted under delegated powers.
- 1.4 On the second and third matters, regarding the impact of the present development, this was fully assessed in the context of the setting of the Listed Building (as above) and the Grade II* Mentmore Towers RPG. It has been acknowledged that it is the pastoral landscape which characterises the setting of the village within the RPG.
- 1.5 However, since the works are limited to the residential curtilage of no.5, they will be viewed in this domestic context, rather than being an urban intrusion into the agricultural land. As the steep slope to the north-western side of the garden already existed, the landscaping does not represent a material change in appearance and so the relationship with the adjoining agricultural land would not be radically altered. As such, it is not considered that the development would damage the character of the RPG.
- 1.6 In terms of materials, it is acknowledged that the Gardens Trust requested amendments on these, particularly glass balustrading adjacent to the seating area. They were opposed to the hard landscaping and 'manmade' style which they considered out of keeping with the historical setting. However, the selected walling, paving and boundary treatments are predominantly of a colour and texture that suitably match or complement those to the

dwelling. Furthermore, the case officer maintains that the transparency of the balustrading is beneficial to making the development less visually prominent to the adjoining neighbours and views from the countryside.

- 1.7 As such, The Gardens Trust objection does not raise planning considerations which are of such merit to warrant the refusal of this application.

3.0 SITE LOCATION AND DESCRIPTION

- 3.1 The application relates to the rear garden of no.5 Rosebery Mews, a large terraced dwelling that forms part of a courtyard of properties arising from a barn conversion (application ref: 90/01755/APP).
- 3.2 The garden is set on two separate land levels – the area immediately to the rear elevation of the dwelling is flat and grassed, while the area to the north-west comprises a steep bank that contains a large mature Yew tree (estimated to be around 200 years old). The latter area borders the rear garden of no.4 to the south-west (with dark stained close boarded wooden fencing) and the curtilage of the Dairy Cottage (a Grade II Listed Building) to the north-west, of which the first floor and roof are visible from the application site.
- 3.3 To the north-east, the site boundary is marked with brick walling, beyond which is open countryside. There are also views upslope to the north of the historical centre of Mentmore village.
- 3.4 In terms of the locality, the site is situated within Mentmore Conservation Area (apart from the outer north-eastern section of the rear garden), Mentmore Park Archaeological Notification Area, Quainton-Wing Hills Area of Attractive Landscape (AAL) and Mentmore Towers Grade II* Historic Park & Garden. As above, there is a Grade II Listed Building (the Dairy Cottage) to the north-west of the site.

4.0 PROPOSAL

- 4.1 As application 90/01755/APP removed permitted development rights normally permissible under Schedule 2, Part 1, Class E of the Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended), the present landscaping works are considered unlawful and so this application seeks to regularise them.
- 4.2 The landscaping includes steps from the lawn of the garden. This path splits in two directions. One branch of the fork leads to a rose bed towards the boundary shared with no.4. To the other branch, there are a greater number of steps which pass raised beds and culminate in a patio seating area. These steps comprise paving over 1.8 metre concrete lintel beams. Additionally, there are further paved steps to the south-west side which lead directly upslope to the rose bed.
- 4.3 Along the boundary shared with the Dairy Cottage, the original wooden fencing has been retained, with a section of reinforced glass balustrading proposed in front of the north-east end next to the patio.
- 4.4 With regard to the retaining wall to secure Yew roots, this is laid with heavy concrete blocks, forming a 0.44 metre deep wall. It has brick facing and paving slabs on top.

5.0 RELEVANT PLANNING HISTORY

- 5.1 87/01179/APP - Conversion of Barns to Five Dwellings and Installation of Klargestor S T P – Approved
- 5.2 90/01755/APP – Farmyard Conversion – 90/01755/APP
- 5.3 16/02048/ATC - T1 - Yew: Raise the tree canopy to approximately 0.5 metres above the boundary fence; prune to clear the neighbours shed by 1 metre and sever ivy at ground level. – Proceed after 6 weeks

6.0 PARISH/TOWN COUNCIL COMMENTS

6.1 Mentmore Parish Council:

- Raised no objections to the application;
- Concerned that there was no recognition of the Conservation Area or the restrictions placed on permitted development within the property. Feel that this could have been better communicated and followed up by the Council.

7.0 CONSULTATION RESPONSES

7.1 Buckingham & River Ouzel Drainage Board – No comments to make.

7.2 AVDC Heritage Officer: Raised no objections on the following grounds, subject to the submission of alternative balustrading (as opposed to glass):

- Identified that there would be no impact to the setting of the listed building or the north-east/north-west boundary walling as a non-designated heritage asset;
- Although the hard landscaped development appears out-of-sync with the naturalistic character of the Conservation Area, it would be viewed in the context of the domestic dwelling curtilage by which the CA has already been impacted.
- Felt that the glass balustrading would be entirely out of keeping with the setting and this should be changed to an open plain metal, brick or timber barrier.
- Would cause no harm in NPPF terms and would accord with the 1990 Act.

Highlighted that the impact to the RPG would be commented on by Historic England and the Gardens Trust.

7.3 County Archaeology Officer: No comments to make.

7.4 Historic England: Do not wish to make any comments.

7.5 The Gardens Trust: Raised objections on the following grounds:

- Feel that the development damages the setting of the Dairy Cottage (Grade II LB) which they identify as architecturally significant;
- Feel that the existing agricultural conversion and associated paraphernalia negatively affects the RPG. The present development also adversely affects the historic character of the wider designed landscape of the walled garden, especially the glass balustrading.
- Believe that a more sensitive solution could be found in the context of the designated heritage assets.

7.6 AVDC Tree Officer: Superseding their original objection, the Tree Officer made the following comments on the submitted Arboricultural Assessment:

- Although the Yew tree has been negatively impacted by the development, it is generally in good health;
- Arboricultural Assessment demonstrates that there are amelioration measures to improve the remaining soil environment and that ongoing monitoring will allow these measure to be tailored to the tree, should its vitality decrease significantly.
- Proposed that the amelioration and monitoring measures should be secured by condition and supplied to the Council.
- Permission must be sought for any subsequent works.

7.0 REPRESENTATIONS

7.1 Members of the public commented to support the application on the following grounds:

- Enhances the views from the garden without altering the height of the garden and fences;

- Improved safety and easier maintenance within the garden;
- Improved support of the root system for the preserved tree;
- Attractive development that maintains the ambiance of Rosebery Mews.

9.0 EVALUATION

9.1 There is no neighbourhood plan relevant to the determination of this application.

a) *Impact on appearance and character of the application site, Conservation Area, Area of Attractive Landscape and Grade II* Historic Park & Garden*

- 9.2 NPPF paragraph 124 highlights that 'Achieving well designed places' is central to the purpose of the planning system and to achieving sustainable development. Policy GP35 of the AVDLP requires development to respect and complement the physical characteristics of the site and the surroundings, the building tradition, ordering, form and materials of the locality, the historic scale and context of the setting, the natural qualities and features of the area and the effect on important public views and skylines.
- 9.3 The NPPF recognises the effect of an application on the significance of a heritage asset is a material planning consideration. Paragraph 193 states that there should be great weight given to the conservation of designated heritage assets; the more important the asset, the greater the weight should be. With paragraph 194 stipulating that any harm to or loss of the significance of a designated heritage asset must be supported by a "clear and convincing justification".
- 9.4 In the case of heritage assets, permission for the substantial harm to or loss of the significance of these assets would only be granted in exceptional circumstances. On non-designated assets, in paragraph 197 of The Framework stipulates that the significance of the asset should be weighed up against the scale of any harm or loss to it.
- 9.5 In this instance, the relevant heritage assets are Mentmore Towers Conservation Area, Mentmore Towers Grade II* Historic Park & Garden, the setting of a Grade II Listed Building (the Dairy Cottage) and the north-west/ north-east boundary wall.
- 9.6 Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on local authorities to pay special regard to the desirability of preserving or enhancing the character or appearance of Listed Buildings and Conservation Areas respectively. Recent cases in the High Court of Appeal have placed emphasis on Local Planning Authorities ensuring that great weight is attached to these duties.
- 9.7 While there is no 'saved' Listed Building policy in the AVDLP, policy GP.53 on Conservation Areas carries some weight in planning decisions. To clarify, policy GP.53 is not entirely consistent with the 'language' of the NPPF in so far as it does not go on to comment on whether the proposal would result in substantial or less than substantial harm which would need to be outweighed by the public benefits of the scheme. In this respect, GP.53 cannot be given full weight but is still a material consideration.
- 9.8 As the site is also within Quainton-Wing Hills Area of Attractive Landscape (AAL), AVDLP policy RA.8 applies. This policy states that proposals should respect the special landscape character of the areas specified in the Local Plan Proposals Map.
- 9.9 The development undertaken is contained to the rear garden of the property and so only visible from the rear gardens of the immediately adjoining neighbours to the south-west

and south-east, namely no. 4 and no. 6 respectively. There are also no public Rights of Way to the open countryside to the north-east. As such, the development would not affect views from the highway or any other public views. Although the application site is directly adjacent to the countryside, the works are set into the slope of the garden and are enclosed by existing boundary treatment of approx. 1.8 metres in height. As such, it is considered that the work would not be especially noticeable from the open countryside and would not affect its intrinsic beauty, as recognised by the NPPF paragraph 170. Furthermore, the modern style and materials of the hard landscaping appear congruous with the application dwelling and similarly modern neighbouring dwellings.

- 9.10 To this part of the Conservation Area (CA), the CA appraisal document only highlights the significance of views to the Dairy (i.e. the Grade II Listed Building adjacent to the site) on the southern approach into the village, as well as the avenue of 'Wellingtonia' trees. From the highway, the application site is set well away and so the development is not considered to harm the significance of the village approach.
- 9.11 The Heritage Officer highlighted that the character of this section of the CA is derived partly from its relationship to the designed landscape of the Registered Park and Garden (RPG). The RPG takes in the entirety of Rosebery Mews and extends further to the north-east into open countryside, specifically agricultural land. Based on the Historic England entry, it is this agricultural land which characterises the setting of the village within the RPG. The landscaping is limited to the residential curtilage and so can only be viewed in this domestic context. By virtue of the positioning of the terracing, being screened by walling, it cannot be seen from the adjacent 'paddock' land, contrary to The Gardens Trust's revised comments. As such, it is not considered as an intrusion into open countryside. As the steep slope to the north-western side of the garden already existed, the landscaping would not represent a material change in appearance and so the relationship with the adjoining agricultural land would not be radically altered. As such, it is not considered that the development would damage the character of the RPG. In addition, the Heritage Officer also highlights that existing residential paraphernalia in the vicinity will have already impacted on the rural quality of the Conservation Area.
- 9.12 With respect to the setting of the Grade II Listed Building, the application site and the first floor/ roof of the Dairy Cottage can be viewed together from the rear garden of no.6 to the south-east. However, since the boundary fencing shared between the application property and the Dairy Cottage remains the same, the development would not further obscure views of the Grade II Listed Building. This is in agreement with the Heritage Officer's comments.
- 9.13 In terms of materials, the selected walling, paving and boundary treatments are predominantly of a colour and texture that suitably match or complement those to the dwelling. Regarding the glass balustrading, it is acknowledged that the Gardens Trust and Heritage Officer requested amendments on this due to its contemporary style which they considered out of keeping with the historical setting. The Gardens Trust stated that the development is visible from the kitchen garden which is now paddock land.
- 9.14 It is acknowledged that the balustrading is of a modern style. However, it is of a particularly restrained scale and is contained within a garden which is partly bound by domestic close boarded fencing. Furthermore, the balustrading would be easily removable, should this be necessary or desired. In the context of the RPG, given the positioning of the balustrading, it can only be viewed from the rear garden of the dwelling and the immediately adjoining neighbours. It is screened from the wider landscape by the existing fencing and Yew Tree. Moreover, the case officer maintains that the transparency of the balustrading is beneficial to making the development less visually prominent to the adjoining neighbours and views from the countryside. While glass can also be a reflective material, it draws less attention to the landscaping works than alternatives such as shrubs and fencing.

- 9.15 With special attention to the designated heritage assets, the case officer considers that the scheme results in less than substantial harm to the significance of the Mentmore Towers RPG and Mentmore Conservation Area. However, for the reasons detailed above, the case officer emphasizes that this harm would be at the lower end of the scale. As such, it is not considered that harm of such a minor degree could sustain a reason for refusal of the application.
- 9.16 In summary the development is considered to be of a scale and design that respects the character and appearance of the existing dwelling and does not overwhelm it. In addition, it is considered that the proposal would not appear overly prominent within the streetscene or the locality in general. The proposals are therefore considered to comply with RA.8, GP.53, GP9 & GP35 of the AVDLP and NPPF.
- 9.17 Special attention has been paid to the statutory test of preserving or enhancing the character or appearance of the conservation area under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 and to the statutory test of preserving the setting of the listed building under section 66 of the Planning (Listed Building and Conservation Areas) Act 1990, which are accepted is a higher duty. It has been concluded that the development would preserve the character and appearance of the conservation area and that the setting of the listed building would be preserved and so the proposal accords with section 66 & 72 of the Act. In addition, no harm would be caused to the significance of the heritage asset, and as such the proposal accords with guidance contained within the NPPF.

b) Impact on residential amenity

- 9.16 Policy GP8 of the AVDLP states that planning permission will not be granted where the proposed development would unreasonably harm any aspect of the amenity of nearby residents when considered against the benefits arising from the proposal. Where planning permission is granted, the Council will use conditions or planning obligations to ensure that any potential adverse impacts are eliminated or appropriately controlled.
- 9.17 The development builds on an existing steep bank that continues to the south-west into the rear garden of no.4. Additionally, none of the walling erected exceeds the height of the existing boundary fencing and walls. As such, it is not considered that the development gives rise to a material worsening in overshadowing or overbearing of the adjacent neighbours.
- 9.18 In terms of overlooking, as the new seating area (behind the glass balustrading) is situated to the north corner of the garden, it is situated approx. 42 metres and 15 metres from boundaries shared with the rear gardens at no.6 and no.4 respectively. As such, although it is in an elevated position, it allows very limited overlooking to these neighbouring properties. Additionally, Dairy Cottage to the north-west is screened from the seating area by the existing close boarded fencing of approx. 1.8 metres and so no overlooking would be caused to this neighbour.
- 9.19 In summary, given the positioning of the proposal and its relationship relative to the neighbouring properties in terms of scale and orientation, it is considered that the proposal would not have an unacceptable adverse impact upon the neighbouring amenity. Therefore the proposal accords with GP.8 of AVDLP and NPPF.

c) Impact on trees

- 9.20 NPPF paragraph 170 requires that planning decisions should contribute to and enhance the natural environment by protecting and enhancing sites of biodiversity value in a manner commensurate with their statutory status.
- 9.21 AVDLP policy GP.38 states that development schemes should conserve existing natural and other features of value as far as possible. Conditions will be attached to relevant planning permissions to require the implementation of the approved arrangements. For development affecting trees, AVDLP policy GP.39 stipulates that the Council will require a site and tree survey and will impose conditions to ensure that the retention of trees of amenity, landscape or wildlife importance. AVDLP policy GP.40 highlights that the Council will oppose the loss of trees.
- 9.22 On the application site, the key natural feature is the Yew tree to the landscaped slope which is of importance to the visual amenities of the locality, setting of the adjacent Listed Building, Conservation Area and Registered Park & Garden, as well as being of importance to biodiversity.
- 9.23 The Tree Officer originally raised substantial concerns on the impact of the landscaping on the Yew. They deemed it highly likely that harm to the tree had occurred, by virtue of the nature of the works and the materials used. Following this, the applicant submitted an Arboricultural Assessment. The Tree Officer was satisfied with the testing undertaken to assess tree health and the proposed amelioration and monitoring measures.
- 9.24 Overall, although there has been some impact to the tree, the proposed measures going forward will better safeguard the longevity and vitality of the tree going forward and so its value will be preserved. As such, the proposal is considered to accord with AVDLP policies GP.38 – 40 and the NPPF.

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