

Listed Building Consent Delegated Report



Cherwell
DISTRICT COUNCIL
NORTH OXFORDSHIRE

A. Application Details

Application No.	24/00752/LB
Site Address	Willow Cottage, Main Street, Wendlebury, OX25 2PW
Proposal	Erection of a fence and gates marking the boundary between Willow Cottage and the neighbouring property of Brookside
Amended Plans	None received

B. How the Application is Assessed

Section 16(2) of The Planning (Listed Buildings and Conservation Areas) Act 1990 sets out the duty of Local Planning Authorities (when considering whether to grant listed building consent) to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

There is also a duty under the Wildlife and Countryside Act 1981 (as amended), the Natural Environment and Rural Communities Act 2006 and the Conservation of Habitats and Species Regulations 2017 for every public authority in exercising its functions, have regard ... to the purpose of conserving (including restoring / enhancing) biodiversity.

C. Relevant Planning Policy Documents and Considerations

Development Plan

- [Cherwell Local Plan 2011-2031 Part 1](#) (CLP 2015)
- [Cherwell Local Plan 1996](#) (CLP 1996)

Material Considerations



- [National Planning Policy Framework](#) (NPPF)
- [Planning Practice Guidance](#) (PPG)
- [Supplementary Planning Guidance and Documents](#)
- [Conservation Area Appraisal](#)
- [CDC Residential Design Guide 2018](#)
- [Managing Significance in Decision-Taking in the Historic Environment: Historic England Good Practice \(2015\)](#)
- [The Setting of Heritage Assets: Historic England Good Practice \(2015\)](#)
- Site Constraints
- Planning History
- Neighbour/Consultation Responses

D. Constraints and Relevant Planning History

Constraints	<ul style="list-style-type: none"> • Grade II Listed Building • Flood Zones 2 and 3 • Archaeological Alert Area
Site history	None relevant
Pre-application advice	None sought

E. Summary of Responses

Below is a summary of the responses received at the time of writing this report. Responses are available to view in full on the Council's website, via the online Planning Register.

Consultees	<p>Clerk to Wendlebury PC - no objections Conservation (CDC)</p> <p>I have looked at your site photos and confirm I have no objection to marking the boundary to define ownership, but a close boarded fence would not be suitable for the setting of a listed building. I would also be concerned about the boundary being too high at 1880 based on how close it lies to the building.</p> <p>A matching stone wall or a robust traditional woven willow fence would be less urban, or a hedge could be planted alongside, and the fence removed once the hedge is established. A good willow fence was constructed at a listed building in Horton cum Studley a few years back, the image on the following link shows a good quality of fence being constructed:</p>  <p>The gates should be hung on sturdy timber posts to avoid fixings to historic fabric, subject to appropriate details/finish.</p>  <p>I would be grateful if you could seek a more appropriate boundary treatment.</p>
Neighbours	<ul style="list-style-type: none"> • No letters received.

F. Appraisal of Application

In order to be acceptable the application needs to be assessed against the following criteria:

Impact on Listed Building and/or its Setting - Policies: C18, C21 (CLP96), ESD15 (CLP1);
NPPF

Understanding the Impact	
Development to or affecting the setting of a listed Building, needs to first meet the following tests regarding understanding the significance of the affected listed building(s) and/or their setting:	Y / N / NA
a) Has the application had special regard to the preservation of the listed building or its setting or historic interest which it possesses?	y
b) Has the application submission demonstrated the significance of the listed building/and or its setting?	y
c) If so, is the application sufficient so as to understand the potential impact of the proposal on the significance of the asset?	y
Comments (if any):	
Assessment of the Impact	
Proposals to alter or extend a listed building or development within its setting will be permitted where they meet the following tests :	Y / N / NA
a) The proposal contributes to the preservation of the building and is not detrimental to its significance and would not result in the loss of any historic fabric	y
b) The proposal is of an appropriate scale, form, massing and design and uses appropriate materials and methods of construction which are compatible with the character and construction of the listed building	y
c) The proposal has regard to the historic layout of the listed building and other internal features of significance	y
d) The proposal preserves the setting of the listed building	y
Assessment of Harm and any Benefits	
Having assessed the impact of the development above, assess below the level of harm being caused by the development	Y / N / NA
e) The proposed development would result in no harm to the listed building and/or its setting	y
f) The proposed development considered to result in less than substantial harm to the significance of the listed building and/or its setting?	n/a
g) The less than substantial harm identified (such as loss of historic fabric or modest extensions or to its setting) would be outweighed by the public benefits of the proposal	n/a
h) The proposed development is considered to result in substantial harm to the significance of the listed building and/or its setting?	n/a
i) If substantial harm would be caused, has it been demonstrated that this is necessary to achieve substantial public benefits that outweigh harm or loss , or that the tests and considerations in the NPPF have been met?	n/a
Comments (if any):	
<p>The house is set well back from the street, with a small garden area to the rear which is surrounded by a wall, close boarded fence, and an open area between the property and its neighbour, Brookside, marked by fence posts approx. 1.8 -2m high.</p> <p>It is proposed to re-instate approx. 1.8m high close boarded timber fences along the side boundary of the site, between Willow Cottage and Brookside, to the north. They would utilise the existing fence posts still extant as visual reminders of the earlier close boarded boundary fence removed by the neighbour when they owned both properties. Parts of the previous close boarded fence extend from one of these retained fence posts.</p> <p>The fence would not be attached to historic fabric, but only a fence post adjacent to the house.</p>	

The fence panels will need to be hinged to function as gates, (as the previous fences did – see Officer’s photos which demonstrate the hinges still in place on the fence posts) since the neighbour retains two rights of access over the land, one pedestrian and one vehicular.

The Conservation Officer has objected to the fence/gates proposed, on the grounds that she considers that close boarded fences are not suitable for listed buildings and has asked that the applicant consider a wall or woven willow fence.

The applicant is strongly opposed to these suggestions, due to the cost of the wall, and the fact that it would not be able to function as a gate to allow access for his neighbour’s right of way, and due to the design of the woven fence, which is less opaque and therefore provides less privacy than a close boarded fence.

Moreover, he rightly points out that although a wall would be in keeping with part of the existing boundary, the other parts of the existing boundary are already made up of close boarded fences, and there are clear indications via fence posts and the existing close boarded fence, of where hinged close boarded fences existed previously in the place that he wishes to re-instate them.

It is considered that the wall proposed would be impractical, as much the fenced area needs to be able to swing, to provide access over the neighbour’s right of access, and the woven fence would look extremely incongruous beside the existing wall and close boarded fences, adding yet another boundary type to the site, which would appear incongruous detract from the setting of the listed building, particularly given the small size of the garden.

It is also considered that since the garden already has close boarded fences, and a close boarded gate, re-instating the close boarded fences to the boundaries they had been removed from cannot be argued to harm the character or setting of the listed building, but would merely sustain its setting and historic significance.

It is also extremely common to find close boarded timber fences to the rear of the listed buildings around garden areas, and very uncommon to find woven fencing, except occasionally in some isolated rural locations.

On balance, it is considered that it would be unreasonable to refuse the gates and fences which would not harm the significance or setting of the listed building.

Impact On Ecology¹ – Policies: ESD10, ESD13, ESD15 (CLP 2015), NPPF	
Whilst there is no express mention of protected species within Section 16 and 74(3) of the Planning (Listed Buildings and Conservation Areas) Act 1990, there is a duty of Local Planning Authorities to consider the impact on protected species when making decisions.	Y / N / NA
a) Does the site or proposed development possess/impact on any of the features where protected species are likely to be present (assessed against Natural England’s standing advice) and where species are likely to be found ?	n
b) If Y, has a protected species survey been submitted ?	n/a
c) If Y, Does the survey show a detailed consideration of ecological impacts , wildlife mitigation and the creation, restoration and enhancement of wildlife corridors to preserve and enhance biodiversity in accordance with the standing advice ?	n/a
<i>Comments (if any):</i> Having considered Natural England’s Standing Advice and taking account of the site constraints it is considered that the site has limited potential to contain protected species and their existence on the site is	

unlikely. As such no formal survey is required and the absence of which this does not result in a reason to withhold permission.

G. Conclusion

The proposals are considered to preserve the historic fabric, character, appearance and features of architectural and historic interest of this listed building and its setting. The proposal will not cause harm to, or loss of, the significance of the heritage asset or its setting and the proposal therefore complies with advice in the NPPF and the policies referred to above.

H. Recommendation

The application is recommended for **APPROVAL** subject to the conditions set out on the attached decision notice.

I. Authorisation

Case Officer:	CH	Date:	10/05/24
Authorising Officer:	Paul Ihringer	Date:	22/5/24

Notes	
1	<p>Section 40 of the Natural Environment and Rural Communities Act 2006 (NERC 2006) states that “every public authority must, in exercising its functions, have regard ... to the purpose of conserving (including restoring / enhancing) biodiversity”.</p> <p>Strict statutory provisions apply where European Protected Species (EPS) are affected, as prescribed in Conservation of Habitats and Species Regulations 2017. When determining a planning application that affects a EPS, local planning authorities must have regard to the requirements of the EC Habitats Directive which states that “a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions”.</p> <p>Under Regulation 43 of the Conservation Regulations 2017 it is a criminal offence to cause harm to a EPS and/or their habitats which includes damage or destruction of a breeding site or resting place. However, licenses from Natural England for certain purposes can be granted to allow otherwise unlawful activities to proceed when offences are likely to be committed, but only if 3 strict legal derogation tests are met which include:</p> <ol style="list-style-type: none"> 1) Is the development needed for public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature? 2) Is there any satisfactory alternative? 3) Is there adequate compensation being provided to maintain the favourable conservation status of the species? <p>In order for the local planning authority to discharge its legal duty under the Conservation Regulations 2017 when considering a planning application where EPS are likely or found to be present at the site or surrounding area, local planning authorities must firstly assess whether an offence under the Regulations is likely to be committed. If so, the local planning authority should then consider whether Natural England would be likely to grant a licence for the development. In so doing to authority has to consider itself the 3 derogation tests above.</p> <p>In respect of planning applications and the Council discharging of its legal duties, case law has shown that if it is clear/ very likely that Natural England will not grant a licence then the Council should refuse planning permission; if it is likely or unclear whether Natural England will grant the licence then the Council may grant planning permission.</p>