
Appeal Decisions

Site visit made on 9 May 2017

by **S J Papworth DipArch(Glos) RIBA**

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

Decision date: 18th May 2017

Appeal A: APP/Z3825/W/16/3166492

Appeal B: APP/Z3825/Y/16/3166325

Appeal C: APP/Z3825/W/16/3166496

Appeal D: APP/Z3825/Y/16/3166494

Springlands Barn, Frylands Lane, Wineham BN5 9BP

- The appeals are made by Mr Jerry Teague against the decisions of Horsham District Council.
 - **Appeals A and C** are made under section 78 of the Town and Country Planning Act 1990 against refusals to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission, Ref DC/15/2511 dated 19 September 2016, was granted for conversion of barn to single residential dwelling, and the addition of a retaining wall and steps, alterations to driveway, and log store to rear of stables.
 - **Appeals B and D** are made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to vary or discharge conditions of a listed building consent, Ref DC/15/2510, dated 19 September 2016, for conversion of barn to single residential dwelling, and the addition of a retaining wall and steps, alterations to driveway, and log store to rear of stables.
 - The applications were all dated 14 November 2016, and were refused by notices dated 22 December 2016.
 - **Appeal A** application Ref DC/16/2599 concerned planning permission condition 4
 - **Appeal B** application Ref DC/16/2598 concerned listed building consent condition 4
 - **Appeal C** application Ref DC/16/2601 concerned planning permission condition 5
 - **Appeal D** application Ref DC/16/2600 concerned listed building consent condition 5
 - Condition 4 states that: 'Within 2 months of the date of this permission the rooflights in the southern elevation shall be removed and replaced with steel or case metal framed rooflights within a central mullion, fitted flush with the adjoining roof surface, and shall not project above the plane of the roof, and shall thereafter be retained as such.' The reason given is 'To safeguard the historic fabric and the architectural character and appearance of the Listed Building in accordance with policy 34 of the Horsham District Planning Framework (2015).'
 - Condition 5 states 'Within 2 months of the date of this permission, details of the mullions and glazing to be installed within the lower windows of the western elevation, to include sections to show the interface with the window frame, shall be submitted to and approved in writing by the Local Planning Authority. The works shall be implemented in strict accordance with, and within 1 month of the approved details, and thereafter be retained as such.' The reason given is 'To enable the Local Planning Authority to control the development in detail in the interests of amenity by endeavouring to achieve a building of visual quality in accordance with Policy 33 of the Horsham District Planning Framework (2015).'
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Decision Appeals A and C

1. I allow the appeals and grant planning permission for conversion of barn to single residential dwelling, and the addition of a retaining wall and steps, alterations to driveway, and log store to rear of stables at Springlands Barn, Frylands Lane, Wineham BN5 9BP in accordance with the applications Ref DC/16/2599 and 2601 dated 14 November 2016 subject to conditions 1) to 3) on the attached schedule.

Decision Appeals B and D

2. I allow the appeals and grant listed building consent for conversion of barn to single residential dwelling, and the addition of a retaining wall and steps, alterations to driveway, and log store to rear of stables at Springlands Barn, Frylands Lane, Wineham BN5 9BP in accordance with the applications Ref DC/16/2598 and 2600 dated 14 November 2016 subject to conditions 1) to 3) on the attached schedule.

Main Issue

3. The building is listed Grade II and the main issue in each case is the effect of removing or varying the conditions on the architectural or historic significance of the listed building, having in mind the six tests for conditions in the National Planning Policy Framework.

Reasons

4. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving the listed building or its setting or any special architectural or historic features it possesses. These duties are reflected in Policy 34 of the Horsham District Planning Framework which recognises that cultural and heritage assets are irreplaceable resources. The policy requires among other matters that proposals preserve and ensure clear legibility of locally distinctive vernacular building forms and their settings, features, fabric and materials. Policies 32 and 33 are also referred to and concern design quality and development principles.
5. The appellant has provided details of Policies 3, 5 and 10 of the Shermanbury Neighbourhood Plan which seek the protection of heritage assets, development that is in keeping with the prevailing character of the immediate surrounding area and the Plan permits sensitive conversion of redundant rural buildings in line with national guidance.
6. Of relevance to alterations to a listed building, paragraph 132 of the National Planning Policy Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. The courts have determined that considerable importance and weight should be given to harm found to the significance of listed buildings. More generally, paragraph 56 states that the Government attaches great importance to the design of the built environment; good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.

7. The barn as seen at the site inspection was in use as a residence and the ground floor windows referred to in each of the Conditions 5) were incorporated and in use in that part of the building. Three of the rooflights referred to in each of the conditions 4) were also incorporated and in use in that converted part, referred to as the outshot. The fourth rooflight was in an adjoining range which shares a common roof plane with the barn, and where building work was progressing, referred to as the hovel.
8. There is a planning history which it appears can be summarised as involving planning permission and listed building consent being granted for conversion in 1981, but the works were not carried out as approved and new applications were sought. That resulted in the permission and consent that contains the disputed conditions. Applications were made to have these removed, which resulted in the refusals which are now the subject of these appeals.
9. There are three stages to consideration of works to a listed building, and the first is to identify what contributes to the significance of the building, architecturally or historically, among other considerations. Whilst the whole building is listed, some parts may contribute less, or not at all, to the significance. Secondly there is a need to determine whether the proposed works affect that significance and to what extent there is harm. Thirdly, a balancing exercise is carried out to determine whether any effect is justified or otherwise acceptable. Paragraphs 133 and 134 of the Framework set out this balance according to whether the harm is 'substantial' or 'less than substantial'.
10. It is the case that a public right of way that ran close to the south and west boundaries of the red edged land and hence close to those elevations of the building, has been diverted to run further from the building within the blue edged land. This was permitted through the formal process for the diversion of a right of way. Although the result is that the public viewpoints are now that much further from the building, more in the case of the west elevation, and vegetation may well obscure the features more over time, listed buildings are to be protected and preserved for their intrinsic significance and that does not rely on a public view.
11. The former barn has been altered substantially to fit it for residential use and the planning history and previous decisions can be taken to mean that all of the works seen with the exception of the four rooflights on the south elevation and the four windows on the west elevation are considered acceptable to the Council. Those acceptable items include the three rooflights to the west elevation and the one to the courtyard elevation of the hovel, all of which are of the same pattern, albeit some to a different size and all to different settings. The upstairs windows to the west elevation are also acceptable and appear to supply the rationale for what is sought on the ground floor.
12. Notwithstanding the significant alterations carried out and now approved, the barn retains its agricultural shape and hence presence in a rural setting, and that is particularly true of the south and west elevations that apart from a domestic curtilage and additional openings, do not display changes to the degree evident on the north elevation and within the courtyard. The architectural and historic significance of the listed building is particularly evident in the south and west elevations, less so on the other elevations. The fact that they are still readily seen from the re-aligned footpath adds weight to this finding, tempered by the earlier comments about public views.

13. On the use of conditions paragraph 206 of the Framework states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The web-based Planning Practice Guidance expands on this at Reference ID: 21a-004-20140306 stating that all 6 tests are to be met.
14. With regard to Conditions 4) and the rooflights, there was a need to seek clarification from the Council as to the wording of the conditions since it was not clear what was meant by 'case-metal' as an alternative to steel construction. Their explanation was that the reference was to a casement opening arrangement hinged at the top, although it is noted that the three acceptable rooflights on the west elevation hinge in the middle as a pivot arrangement to allow cleaning of the outside pane. The appellant's interpretation of 'case-metal' was of a material 'encased in metal', as the rooflights presently in position, hence his view that those in place accord with the condition. Given the alternative 'or' in the wording, the appellant's interpretation appears the more accurate grammatically and architecturally.
15. As written the condition fails the test of precision, as to how the opening arrangement can be an alternative to a steel construction, and is not reasonable in requiring works without clarity on the part of the appellant as to what would be considered satisfactory; a scheme should have been sought. Nevertheless, the applications are before the Secretary of State as if made to him in the first instance, and the statutory requirements of the 1990 Act are to be applied. The necessity for the condition will be tested against these requirements afresh.
16. The three rooflights to the west elevation, which the Council accept, are narrow, said to be determined by a need to fit within the rafter spacing, and are placed on a large expanse of roof, so that the overall effect of their design and flashing arrangement is acceptable. The gap between the rooflight and the tiles to accommodate a side-gutter as opposed to the use of soakers or over-flashings is not readily apparent and in any event appears a minor feature in the roof as a whole. These rooflights are not a traditional form for an agricultural building which would have tended to be simple and narrow cast-metal or steel frames glazed with small sheets, but in the context of the alterations that have occurred on this elevation, their small size and the expanse of roof left unadorned, the view of the Council as to their acceptability is concurred with.
17. The four rooflights on the south facing elevation are larger, closer together and display a squarer format, not reflecting the vertical emphasis of the west facing ones and therefore not harking back to the narrow structural frame widths of the original structural timberwork. They are too wide and their grouping on the roof allows too little of the original roof to be seen to offset the design of the rooflights. The effect is of a crowded arrangement that detracts from the appearance of this part of the listed building, and represents the introduction of an overly-domestic and modern feature in a readily seen part of the building that still relates strongly with its agricultural setting.
18. As shown on the west elevation, the frame type, the relationship of the glazing to the tiles, the use of a side gutter and the pivot hinge arrangement would not adversely affect the significance of the converted former barn, provided the

shortcomings identified in the combination of their width and proximity to each other, as a result of their number, could be overcome. As installed the rooflights erode the architectural and historic significance of the listed building, contrary to the requirements of Policies 32, 33 and 34 of the Horsham District Planning Framework, paragraph 132 of the Framework and sections 16(2) and 66(1) of the Act.

19. The level of harm is 'less than substantial', a differentiation required between paragraphs 133 and 134 of the Framework. In this case the latter applies and this states that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The appellant points to the risk of undoing the works within the tiled area, although the mitigation of this risk by not addressing the shortcoming is not a sufficient public benefit to justify leaving the rooflights as they are.
20. It is concluded that there is a need to reconfigure the rooflights on the south elevation in order to preserve the significance of the listed building and hence a necessity for a condition to achieve this. The fact that an open ceiling in the hovel is shared by an identical rooflight facing the courtyard does not vary this finding, since it has been concluded previously that the significance of the courtyard elevation of the building is less, and hence that area is less sensitive to alterations.
21. In view of the risks to tiles, and the doubts that remain over the wording and intentions of the conditions, it is appropriate to seek a scheme for the Council's approval, to bring about the reconfiguration of the rooflights in order to address the cumulative failings of them being too wide and too close together with insufficient unadorned roof-slope remaining. Such an amended condition would satisfy the 6 tests in the Framework.
22. Turning to the Conditions 5), the windows on the upper floor are narrow and tall with dividing glazed mullions, and hence have a vertical emphasis that sits well with the form of the building and the layout of the cart-door fenestration, that too having a distinct and attractive vertical emphasis. The lower windows, being a single pane across the width, lack this feature and for that reason appear out of proportion and unattractive, eroding the architectural significance of the listed building. To retain these windows as they are would continue the harm that has been caused to the significance of the listed building contrary to the policies and statute referred to previously.
23. The level of harm caused by leaving the windows as they are is 'less than substantial' and paragraph 134 of the Framework applies as before. There would be some loss of redundant material in their replacement, as an applied glazing bar would not be acceptable, but a mullion could be worked into the existing frame and new glazing put in. In the balance, the loss of material and the apparent lack of sustainability involved, as asserted by the appellant, does not outweigh the harm caused by leaving things as they are.
24. In view of the options for achieving the desired outcome of properly glazed mullions on these windows, and the preference expressed in the preceding paragraph to avoid waste, it is appropriate to request a scheme for approval within a set timescale, and to then set requirements for the carrying out of the alterations. As a result, Condition 5) will be varied and a new permission and

consent issued. Again such an amended condition would satisfy the tests for conditions in the Framework.

25. The new permission and consent would sit alongside the September 2016 permission and consent and the web-based Planning Practice Guidance states that to assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In granting permission under section 73 new conditions may also be imposed, provided the conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.
26. The original permission and consent each had five identical conditions. Both included the standard condition 1) naming the drawings which is used pursuant to the provisions for greater flexibility in planning permissions to allow pre-commencement changes, but this does not apply to retrospective permissions. There is no provision for greater flexibility in listed building consents. Similarly there does not appear to have been a necessity for condition 2) on commencement in a retrospective permission and consent. Condition 3) will be repeated to ensure control as works appear to be continuing. As a result the new permission and consent will each contain three conditions, number 1) being the previous number 3) and numbers 2) and 3) being the previous 4) and 5) respectively, both varied as set out in this Decision.
27. In conclusion, the retention of the items as incorporated in the building would be unacceptable in their effect on the significance of the listed building and its rural setting and would be contrary to the Development Plan policies, national policy and the statutory tests in the 1990 Act. However, to ensure an acceptable scheme, the disputed conditions are to be varied to make them precise and reasonable. For the reasons given above it is concluded that the appeal should succeed and a new permission and consent is granted without the two disputed conditions but substituting two others, and retaining one of the non-disputed conditions from the previous permission.

S J Papworth

INSPECTOR

SCHEDULE OF CONDITIONS APPEALS A & C Planning Permission

- 1) The materials to be used in the development hereby permitted shall strictly accord with those shown on the approved details unless otherwise agreed in writing pursuant to conditions attached to this permission.
- 2) Within 2 months of the date of this Decision a scheme setting out the works to the rooflights on the south elevation shall be submitted to the Local Planning Authority for their written approval. The scheme shall include details of the style, layout and numbers of rooflights, a statement of the methodology for the works in order to preserve the structure and roof covering, along with a timetable for the works once approval has been given. The works shall be carried out in accordance with the approved scheme and timetable and shall thereafter be retained as approved.
- 3) Within 2 months of the date of this Decision a scheme setting out the works to the ground floor windows on the west elevation shall be submitted to the Local Planning Authority for their written approval. The scheme shall include details for the sub-division of the windows with mullions, a statement of the methodology for the works in order to preserve the existing frame if possible, along with a timetable for the works once approval has been given. The works shall be carried out in accordance with the approved scheme and timetable and shall thereafter be retained as approved.

SCHEDULE OF CONDITIONS APPEALS B & D Listed Building Consent

- 1) The materials to be used in the works hereby approved shall strictly accord with those shown on the approved details unless otherwise agreed in writing pursuant to conditions attached to this consent.
- 2) Within 2 months of the date of this Decision a scheme setting out the works to the rooflights on the south elevation shall be submitted to the Local Planning Authority for their written approval. The scheme shall include details of the style, layout and numbers of rooflights, a statement of the methodology for the works in order to preserve the structure and roof covering, along with a timetable for the works once approval has been given. The works shall be carried out in accordance with the approved scheme and timetable and shall thereafter be retained as approved.
- 3) Within 2 months of the date of this Decision a scheme setting out the works to the ground floor windows on the west elevation shall be submitted to the Local Planning Authority for their written approval. The scheme shall include details for the sub-division of the windows with mullions, a statement of the methodology for the works in order to preserve the existing frame if possible, along with a timetable for the works once approval has been given. The works shall be carried out in accordance with the approved scheme and timetable and shall thereafter be retained as approved.