
Appeal Decisions

Site visit made on 20 June 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 26 July 2017

Appeals A and B Refs: APP/J1915/C/17/3167293 & 3167803 Land at Strattons Folly, Bucks Alley, Little Berkhamsted, SG13 8LR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr & Mrs David and Marion Cooper against an enforcement notice issued by East Hertfordshire District Council.
 - The enforcement notice was issued on 16 December 2016.
 - The breach of planning control as alleged in the notice is the unauthorised erection of a wooden building in the garden for use as a studio.
 - The requirements of the notice are to remove the unauthorised building.
 - The period for compliance with the requirements is four months.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/J1915/D/16/3161321 Strattons Folly, Bucks Alley, Little Berkhamsted, Hertfordshire SG13 8LR

- 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 David and Marion Cooper against the decision of East Hertfordshire District Council.
 - The application Ref 3/16/1177/HH, dated 20 May 2016, was refused by notice dated 27 July 2016.
 - The development proposed is described as a small wooden building in garden for use as a studio.
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Summary Decision: Appeals A and B are dismissed and the enforcement is upheld as corrected and varied. Appeal C is dismissed.

Procedural Matters

1. The address of the appeal site is stated in the enforcement notice and the Council's Decision Notice refusing planning permission as 'Strattons Folly'. The appellants also refer to the building as 'Strattons Folly' on the planning application form and on all appeal documentation. However, the address appears in some documents, including the List Entry Summary, as 'Stratton's Tower'. There is no dispute in terms of the site to which these appeals relate, and I will therefore adopt the address of 'Strattons Folly' in my Decision.
2. The enforcement notice is concerned with a breach of planning control rather than other areas of legislation. The breach of planning control alleged at paragraph 3 of the notice should therefore refer to the erection of a wooden building in the garden for use as a studio 'without planning permission' rather than as 'unauthorised' as stated in the notice.

3. The requirement at paragraph 5 of the notice is to remove the unauthorised building. It follows from the above that the word 'unauthorised' should be deleted from that requirement. Moreover, there is a slight mis-match between the breach of planning control as alleged in the notice and the requirements to comply with it, insofar as the former refers to a 'wooden building for use as a studio' and the latter simply to a 'building'. It is evident that the appellant has understood what is required of him to comply with the notice and the slight mis-match in the wording of the notice is therefore of no practical consequence.
4. Nevertheless, it is important that an enforcement notice is internally consistent. Furthermore, the term 'for use as a studio' is not only purely descriptive in this context, it is also subjective and open to interpretation. In the interest of consistency, I shall correct the breach of planning control alleged in the notice to simply refer to a 'wooden building'.
5. I am satisfied that no injustice would be caused by correcting the notice in these respects.

Appeals A and B: the appeal on ground (a), and Appeal C

6. The ground of appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
7. The appeal property is a Grade II* listed building situated within the Little Berkhamsted Conservation Area. The land is also within the Green Belt. The Council considers that the wooden building subject these appeals is a modest structure and does not disproportionately alter the size of the original dwelling house. The Council therefore considers that the wooden building is not inappropriate development in the Green Belt. Having regard to paragraph 89 of the National Planning Policy Framework (Framework), I see no reason to take a different view. In reaching that conclusion, I am mindful of the proximity of the wooden building to the main building. Consequently, although detached from it, it is reasonable to treat the wooden building as an extension to Strattons Folly for the purposes of paragraph 89 of the Framework.
8. The Council has stated one substantive reason for issuing the enforcement notice, from which the main issue raised is the effect of the wooden building on the setting of Strattons Folly, a Grade II* listed building. Appeal C raises the same main issue, and it is therefore convenient to consider all three appeals together in relation to this main issue.

Setting of the Grade II listed building*

9. The List Entry Summary describes this Grade II* listed building as an observatory tower dating to 1789, noting that it was traditionally built to view ships on the River Thames but more probably for astronomical observation. The List Entry Summary provides a detailed description of the building noting the octagonal lower stage and round upper stages, the type and origin of the materials from which it was constructed, the window openings and the architectural detailing.
10. The appellants point to a number of facts in the List Entry Summary which they consider to be incorrect. Nevertheless, the List Entry Summary is prepared by Historic England and, until such time as it is formally revised, I must take this

as the definitive record of the building. In any event, the alleged errors to which the appellants draw my attention are not significant in the overall context of the listing and do not challenge the principal architectural features identified in the List Entry Summary.

11. The appellants also question whether Strattons Folly is of architectural interest, referencing the limited coverage given to the building by Pevsner and the commentary in 'Follies: A National Trust Guide'. However, whilst the List Entry Summary does not specifically state whether the building was listed for its special architectural interest or its historic interest, on my reading the detailed account of the building's history and architectural features suggests that both were considerations in the building being designated for listing.
12. Moreover, although the commentary in 'Follies: A National Trust Guide' is not complimentary in terms of the architectural quality of the building, to my mind that does not equate to a lack of architectural interest. Consequently, whereas 'Follies: A National Trust Guide' likens the building to a "Soane scribble of four unequal parts" and describes the building as in some aspects "looking like early industrial architecture", that does not necessarily imply that the building is not of architectural interest. Indeed, in my opinion, these idiosyncrasies add to the interest of the building as an architectural composition.
13. I have a duty under section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special regard to the desirability of preserving the listed building or its setting. In assessing the effect, if any, of the wooden building on the setting of Strattons Folly, it is first necessary assess whether, how and to what degree the setting makes a contribution to the significance of the heritage asset. In this context, the setting of the listed building may be described as the surroundings in which that heritage asset is experienced.
14. In my judgment, the setting of Strattons Folly is in two parts. Because of its height, the upper parts of Strattons Folly are visible over a considerable distance from several vantage points. In these views, the setting of the listed building is the surrounding countryside, including the wider topography and tree cover. Because of its modest height and the presence of intervening tree cover, the wooden building clearly has no effect on the setting of the listed building in these longer views.
15. However, Strattons Folly also has a more immediate setting. This setting comprises a relatively small and enclosed parcel of land that forms the garden space for the dwelling. The ground level of the garden falls away to the south-east, and the base of Strattons Folly sits on a terrace at a higher ground level than some parts of the garden that surround it. The garden is largely enclosed by trees and vegetation, such that views of Strattons Folly from outside of the site are restricted to glimpsed views through vegetation. Moreover, in such views, typically only the lower parts of Strattons Folly are visible.
16. Within the site and the immediate setting of this heritage asset, it is possible to view the full height of Strattons Folly and appreciate all the architectural features that it exhibits. Nevertheless, in these closer views the focus of attention tends towards the base of the building and in particular the octagonal lower stage. In views from the lower part of the garden, the terrace on which Strattons Folly sits forms a significant component of its setting.

17. In my assessment, the immediate setting of Strattons Folly makes an important contribution to the significance of the heritage asset insofar as it facilitates an appreciation of the full architectural composition of the listed building and the likely purposes for which it was originally constructed. The importance of the immediate setting is exacerbated by the fact that the full height and architectural composition is not readily appreciated in longer views of the building due to the presence of intervening tree cover. It follows that the architectural and historic interest of the listed building may only be fully appreciated at close quarters, and that in closer views the setting of Strattons Folly makes an important contribution to the significance of this heritage asset.
18. The wooden building subject to these appeals stands on the terrace, adjacent to the octagonal lower stage of Strattons Folly and in close proximity to it. With a width of some 4.2 metres and a height of some 2.5 metres, the overall dimensions of the wooden building are modest in relation to Strattons Folly itself. In particular, the height of the wooden building is considerably less than that of Strattons Folly. The overall dimensions of the wooden building are also significantly less than the extension to the opposite side of the building.
19. Nevertheless, in closer views, by reason of its design, the materials from which it is constructed and its proximity to the heritage asset, the wooden building is a prominent structure that distracts attention away from the heritage asset as whole. In these views, for the same reasons, the wooden building competes with the octagonal base of Strattons Folly not least because, unlike the extension on the opposite side of the building, the angular shape of the wooden building contrasts with and visually jars against the octagonal shape of the lower stage to which it is close proximity.
20. For these reasons, the wooden building impinges into and detracts from closer views of the listed building. The corollary is that the wooden building detracts from the setting of Strattons Folly that in turn makes an important contribution to the significance of this heritage asset.
21. I conclude that the wooden building unacceptably harms the setting of Strattons Folly, a Grade II* listed building. The development is therefore contrary to Policy ENV1 of the East Herts Local Plan Second Review (Local Plan). This policy indicates, amongst other things, that all development will be expected to be of high standard of design that demonstrates compatibility with the host structure.
22. The reason for issuing the enforcement notice and the reason for refusing planning permission also cite the development as being contrary to policies ENV5 and ENV6 of the Local Plan. However, on my reading, these policies must be read together and relate only to the specific types of extension set out in Policy ENV6. The wooden building subject to these appeals does not fall into any of the specific types of extension set out in Policy ENV6. Consequently, in my view, these policies are not directly relevant to the matter before me and for that reason I afford them very little weight in the context of these appeals.
23. In terms of paragraph 134 of the Framework, the harm to the setting of this heritage asset can be described as "less than substantial" harm to the significance of the heritage asset. Nevertheless, given the statutory duty under section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990, that harm carries considerable importance and weight. In accordance with paragraph 134 of the Framework, it is necessary to consider whether

there are any public benefits arising from the development that are sufficient to outweigh that harm.

24. In this respect, the appellants point out that a wooden shed had previously stood on the site in broadly the same position as the wooden building now on the site, but directly against the wall of Strattons Folly. During the period when that wooden shed was in situ, the condition of the brickwork at the base of the tower deteriorated. This is not disputed by the Council. The new wooden building has been positioned some 0.8 metres from the base of the tower, such that repairs can now be undertaken to the damaged brickwork. The appellants consider that the repairs to this damaged section of brickwork will ensure the longevity of Strattons Folly, and is therefore a public benefit arising from the development.
25. The Planning Practice Guidance indicates that reducing risks to a heritage asset is capable of being a public benefit that can outweigh less than substantial harm to that heritage asset. I am also mindful that paragraph 132 of the Framework indicates that the conservation of a heritage asset should be afforded great weight. However, the deterioration of the brickwork at the base of the tower is very localised. I have been provided with no technical evidence or structural surveys to indicate that the heritage asset is actually at risk as a result of this deterioration of the brickwork in one part of the structure.
26. I recognise that the opportunity to repair the damaged brickwork and thereby reduce the risk to the listed building is a public benefit arising from the development. Nevertheless, on the evidence available to me I am not persuaded that it is a public benefit of sufficient weight to outweigh the harm to the setting of the listed building, even though in this case that harm may be regarded as being less than substantial in terms of paragraph 134 of the Framework. In my opinion, that harm is sufficient reason by itself to refuse planning permission.

Other Matters

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the wooden building fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
28. The appellants explain that Mr Cooper's health has deteriorated in recent years, and have provided evidence from his medical practitioners to support that. His bedroom was previously within Strattons Folly and was reached by ascending a total of 87 steps up a narrow spiral staircase within the tower itself. Following a fall down some 30 steps of this staircase a year or so ago, Mr Cooper has lost confidence in his ability to climb this staircase and is no longer able to reach his bedroom in the tower. Accordingly, Mr Cooper reverted to sleeping in the living room in the side extension at ground floor level. This was found not to be satisfactory but the wooden building now subject to these appeals has subsequently provided ideal sleeping accommodation for Mr Cooper. It has also been used more recently as a treatment room.

29. As part of my site visit, I was invited to climb the spiral staircase within Strattons Folly. In doing so, it was immediately apparent to me that the narrowness and steepness of the spiral staircase would present significant difficulty for someone not physically fit and lacking confidence in their mobility. I therefore have no difficulty in accepting that accessing his bedroom within the tower is no longer a realistic proposition for Mr Cooper.
30. I accept that the personal circumstances of the appellants, and Mr Cooper in particular, are a material consideration in determining these appeals. I am also sympathetic to the circumstances in which Mr Cooper now finds himself. However, in considering this matter, I must have regard to the accommodation provided by the site as whole and not just that provided by the wooden building. In this context, I note that a single storey extension has been constructed to the side of Strattons Folly, on the opposite side to the wooden building, pursuant to a planning permission granted in May 1998 (Council Ref: 3/98/0466/FP). The description of the development permitted refers to the purpose of providing additional living accommodation at ground floor level.
31. At the time of my site visit, the space provided by that extension was being used partly as a living/dining room and partly as a study/library. I acknowledge that Mr Cooper found setting up a bed in that space not be satisfactory. However, the space provided by the extension is at ground floor level and adjacent to the kitchen area in the base of the tower. I have not been provided with any detailed explanation as to why that space could not be adapted, on a temporary or permanent basis, to provide suitable sleeping and bathroom facilities that could be accessed without difficulty by Mr Cooper. In the absence of any such explanation, I must afford the personal circumstances of the appellants only limited weight.
32. The appellants explain that the space adjacent to the tower now occupied by the wooden building subject to these appeals was previously occupied by a wooden shed. I have been provided with photographs that show that wooden shed when in situ. Before that, I understand that the space may have been occupied by a structure constructed of breeze-blocks.
33. Neither of these buildings appears to have had the benefit of planning permission. Given that an outbuilding in this position would be within the curtilage of a listed building, normal permitted development rights for outbuildings do not apply in relation to this property. Planning permission would therefore have been required for any outbuilding in that position but was neither sought nor granted. It follows that neither of these outbuildings would have been lawful in planning terms.
34. Although I have seen photographs of the later outbuilding, I did not see that building when in situ. It would therefore not be appropriate for me to reach any definitive conclusion as to the effect, if any, that building had on the setting of Strattons Folly as a statutorily listed building. However, because neither of the two previous outbuildings appears to have had the benefit of planning permission, neither may be regarded as being lawful in planning terms. Consequently, irrespective of whether or not they caused harm to the setting of the listed building, they cannot act as any precedent for the wooden building now subject to these appeals. For that reason, I attach only limited weight to the presence of these previous structures.

35. Even though I have concluded that the opportunity to repair damaged brickwork at the base of the tower arising from the location of the wooden building is not a public benefit of sufficient weight to outweigh the harm to the setting of the listed building in terms of paragraph 134 of the Framework, it is nonetheless a material consideration to which I must attach weight in this balancing exercise under Section 38(6) of the 2004 Act. In accordance with paragraph 132 of the Framework, the conservation of the heritage asset is a matter to which I would ordinarily afford great weight but, in the absence of evidence that the listed building is actually at risk, in the particular circumstances of this case I am only able to afford it limited weight.
36. The appeal site is within the Little Berkhamsted Conservation Area. The Council has not raised any concerns about the effect of the wooden building on the character and appearance of this conservation area. Nevertheless, I have a duty under section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 to pay special attention to the desirability of at least preserving the character and appearance of the conservation area.
37. The Little Berkhamsted Conservation Area follows a linear form based upon the alignment of the principal roads that run through it. The character and appearance of the conservation area is based, in part, on the quality of the buildings within it. The latter includes a number of statutorily listed buildings, of which Strattons Folly is one, but also includes a number of non-listed buildings that make an important contribution to the character and appearance of the conservation area. Although the focus may be said to be the church and the War Memorial, high quality buildings are to be found in dispersed locations throughout the conservation area. The dispersion of high quality buildings throughout the conservation area is therefore one of the key components of its character and appearance.
38. Within this context, Strattons Folly plays an important role and the eastern end of the conservation area is dominated by the presence of the upper parts of the building in many views. In that respect, Strattons Folly makes a positive contribution to the character and appearance of the conservation area. However, this contribution is predicated on the upper sections of the building: the lower parts of the building are not widely visible from within the wider conservation area. The wooden building has no effect on the views of the upper parts of Strattons Folly from the wider conservation area. I am therefore satisfied that the wooden building preserves the character and appearance of the Little Berkhamsted Conservation Area.
39. The appellants make reference to the comments made by the Council's Conservation and Urban Design Team in relation to the wooden building. The initial consultation response, dated 9 June 2016, raised no objection to the wooden building. I understand, however, that this initial response was made on the mistaken belief that the buildings that were previously on the site carried weight as a material consideration in the planning application to retain the wooden building. Accordingly, as I understand it, the case officer for that planning application sought a second consultation response based on the correct position in relation to the status of the previous buildings on the site. On that occasion, the Conservation and Urban Design Team recommended that permission be refused.

40. It is unfortunate that the Council's Conservation and Urban Design Team were not made aware of the correct status of the previous buildings on the site at the time of the initial consultation, and I can understand the appellants' concerns in relation to the change in the advice received from the Conservation and Urban Design Team. Nevertheless, in my view, the second consultation response is more considered and is based on the correct assessment of the weight to be attached to the previous buildings on the site. I must therefore afford the second consultation response the appropriate weight. In this respect, I am also mindful that even in the initial consultation response dated 9 June 2016 the wooden building is described as being "not considered to be of merit". The Council's Conservation and Urban Design Team has therefore been consistent in its appraisal of the planning merits of the wooden building, and consequently it is apparent that it was only the initial incorrect assessment if the weight to be afforded to the previous structures that resulted in a recommendation for approval in the first instance.
41. The appellants have requested that, should I reject their appeal on its merits, I consider allowing the retention of the wooden building for the remainder of their lives, on the understanding that the building would be removed after they decease. I have given that request careful consideration. The appellants have not provided a planning obligation or other legal undertaking to secure the proposed arrangement, and consequently only means through which that arrangement could be secured is through the imposition of a condition. I have therefore approached this matter on that basis.
42. The Planning Practice Guidance indicates that a condition used to grant planning permission solely on the grounds of an individual's personal circumstances will scarcely ever be justified in the case of permission for the erection of a permanent building but might, for example, result from enforcement action which would otherwise cause individual hardship. In relation to this case, the question raised is therefore whether not imposing the condition suggested by the appellants would cause individual hardship to Mr Cooper.
43. Answering this question requires a delicate balancing exercise. I am mindful that not having the wooden building to provide, amongst other things, a treatment room and an accessible bedroom would cause hardship to Mr Cooper as an individual. That is a matter to which I attach considerable weight, not only as a material consideration in its own right, but also in relation to Mr Cooper's rights under the Human Rights Act. However, against that, I am mindful that the permanent ground floor extension provides a potential solution to meeting Mr Cooper's needs without incurring harm to the setting of the listed building.
44. In weighing that balance, I consider that the latter potentially provides a solution whereby no hardship would be caused to Mr Copper as an individual. At least, I have been provided with no evidence to indicate that this would not be viable solution. I am therefore not persuaded that the particular circumstances in this case meet the very stringent test set out in the Planning Practice Guidance. Similarly and for the same reason, I satisfied that any interference with Mr Cooper's rights under the Human Rights Act would be justified in the public interest in terms of the harm to the setting of the listed building. Consequently, I am unable to accede to the appellants request to allow the retention of the wooden building for the remainder of their lives.

45. Having regard to the above, I find that the wooden building is contrary to policies in the development plan and that there are no material considerations of sufficient weight to indicate that the deemed planning application should be determined otherwise than in accordance with it. I therefore conclude that planning permission ought not to be granted. Accordingly, the appeals on ground (a) fail and Appeal C will be dismissed.

Appeals A and B: the appeal on ground (g)

46. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is four months.
47. The essence of the appellants' appeal on this ground is that they should be afforded a sufficient period of time to seek an alternative solution. In that context, the appellants suggest that one probable result of the appeal being dismissed is that they will have to give up their home and find alternative accommodation. A period of 12 months is therefore sought.
48. As indicated above, it seems to me that one possible solution to providing the accommodation to meet the needs of Mr Cooper is to convert or utilise the space provided by the permanent ground floor extension to Strattons Folly. I am, however, mindful that this could require some internal alterations. This in turn may require various consents under the Planning Acts and the Building Regulations, potentially requiring discussions with the Council. I therefore accept that an appropriate period of time must be allowed for this potential solution to be explored and, should it be found to be a workable solution, implemented. Furthermore, provision must also be factored in for finding alternative accommodation should that solution not prove viable or possible.
49. Taking all these factors into account, I consider that the period of 12 months sought by the appellants is both necessary and proportionate. Accordingly, the appeals on ground (g) succeed to that extent.

Conclusion

50. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice as corrected and varied, and refuse to grant planning permission.

Formal Decisions

Appeals A and B

51. It is directed that the enforcement notice be corrected by:
- deleting the words 'The unauthorised' at paragraph 3 of the notice and replacing them with "Without planning permission, the' and
 - deleting the words 'for use as a studio' at paragraph 3 of the notice.
52. It is directed that the enforcement notice be varied by:
- deleting the word "unauthorised" and inserting the word "wooden" in front of the word "building" at paragraph 5 of the notice, and
 - deleting the words '4 months' at paragraph 6 of the notice and replacing them with the words '12 months'.

53. Subject to those corrections and variation, the appeals are dismissed and the enforcement notice is upheld, and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

54. The appeal is dismissed.

Paul Freer

INSPECTOR