
Appeal Decisions

Site visit made on 12 November 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 20 November 2019

Appeal A: APP/X1545/W/19/3234019 **25A Holloway Road, Heybridge CM9 4SG**

- 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 Shaun Papworth against the decision of Maldon District Council.
 - The application Ref FUL/MAL/18/01225, dated 9 October 2018, was refused by notice dated 28 February 2019.
 - The development proposed is to rebuild existing dilapidated/collapsed bakery as an annexe to the host dwelling, with flat roof link to existing garage that is to be converted to a lounge.
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Appeal B: APP/X1545/Y/19/3234023 **25A Holloway Road, Heybridge CM9 4SG**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr & Mrs Shaun Papworth against the decision of Maldon District Council.
 - The application Ref LBC/MAL/18/01226, dated 9 October 2018, was refused by notice dated 28 February 2019.
 - The works proposed are demolition of existing dilapidated/collapsed bakery and works to existing garage building to enable rebuilding as an annexe to the host dwelling, with flat roof link to existing garage that is to be converted to a lounge.
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Decisions

1. I dismiss both appeals.

Main Issues

2. The building 25A Holloway Road, *Villeins*, is listed Grade II and in both Appeal A and Appeal B there is a main issue of the effect of the proposal on the listed building and its setting.
3. In Appeal A only there are 2 further main issues of;
 - The risk from flooding.
 - The effect of the proposal on the living conditions of residential occupiers with particular regard to privacy and outlook.

Reasons

Preliminary Finding as to Annexe

4. The Officer's Report goes into considerable detail on the matter of whether this should be regarded as an annexe or not, with reference to the Supplementary Planning Document '*Maldon District Special Needs Housing*'. The Report concludes that the proposal is tantamount to a new dwelling and the Environment Agency's responses refer to this being an application for a separate dwelling.
5. It is unclear whether the only type of annexe that would be permitted is one that delivers 'Special Needs Housing' and hence whether the criteria need to be met in order to allow any annexe to a dwelling. Such a restriction would appear unlikely and would not recognise the use of an annexe by a family member or guests that do not require 'Special Needs Housing'. Certainly, if such a requirement was identified it seems reasonable that the criteria should be considered, but not otherwise.
6. There is a question over which of 25A *Villeins* and 25 *Holloway House* is the 'host dwelling', and whether they are indeed separate dwellings, being in the same family ownership. The Officer's Report sets out the submission made at the time of the application as to how the various family members would move between *Holloway House*, the annexe, and *Villeins*.
7. The proposal is promoted as being an annexe to number 25A *Villeins* and a condition, as suggested by the Council, could ensure that it remained only as an annexe to that dwelling. The red-line site area is tightly drawn and may well include parts of the land in use by the occupiers of number 25 *Holloway House*, but that likely stems from being in the same family ownership, and the listing description makes clear that the Grade II status applies to number 25A only and that number 25 *Holloway House* is not included in the listing.
8. From all of the above it is concluded that the proposal should be regarded as an annexe, a use that could be controlled by condition, and that the main issues should be judged in that light.

Listed Building

9. 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 building or its setting or any features of special architectural or historic interest which it possesses. Paragraph 193 of the 2019 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.
10. Policies D1 and D3 of the Maldon District Approved Local Development Plan set out requirements for design quality and the built environment, and the conservation of heritage assets.
11. Previous listed building consent Appeal Decision APP/X1545/E/04/1147669 dated 12 November 2004 considered, along with an accompanying planning appeal, a proposal for conversion of the bakery and garage to holiday-let accommodation. The Inspector permitted the consent finding that the works would help to preserve the buildings through renovating them, and would not

- harm the setting of the principal listed building. Drawings for that scheme have been supplied and show that the bakery and the garage would be re-used largely within the original envelopes, with the exception of the linking piece. Under that arrangement the bakery would be kept at its original height, being low and subservient in height to the garage, and set on slightly lower ground.
12. The Council point out the differences and mention changes to policy in the meantime, although the statutory requirements of the 1990 Act have not changed. What has apparently changed is the condition of the bakery building, with the appellants' description of it as dilapidated and collapsed being an accurate one in relation to the remains seen at the site inspection; the only extant item of significance being the brick oven and chimney.
 13. That feature would be retained and incorporated within the proposed new structure, the works being described as 'demolition'. The garage would remain at its present height, but without the previously proposed upper floor and rooflights, while the bakery would be replaced with a two-storey building, the upper floor within a gambrel roof. Nevertheless, the ridge height would be higher than that of the re-used garage and the steep lower slope of the roof would add bulk to what is at present an unassuming low building.
 14. This higher ridgeline and greater bulk of building would appear over-assertive in relation to the garage and hence the principal listed building, changing the balance of built form and the visual emphasis towards the rear of the site and at the expense of the setting of the listed building and its immediate surroundings. The bulk and assertive design of the replacement building to the rear of the garage would cause harm to the setting of the listed building through vying for attention and detracting from the significance of the listed building as the focal point of the composition.
 15. The appellants have drawn attention to vegetation between the former bakery and the listed house, but limited weight attaches to such features which may die or be removed, and the high roof would be evident from other viewpoints, the preservation of listed buildings not relying on a public view.
 16. The level of harm would be 'less than substantial', a differentiation required between paragraphs 195 and 196 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.
 17. As an ancillary building or annexe, no benefit can be ascribed to the provision of an additional dwelling to assist the Government's aims of increasing the supply, and in any event the Council claim to be able to demonstrate a five-year supply. There would be some benefit in providing additional accommodation for the family and in allowing them to continue to care for the listed building, but that would be at the expense of the building's significance.
 18. The Inspector writing in 2004 attached weight in that Decision to the renovation of the bakery which appears to have been an interesting historic survivor, and a curtilage listed building. That retention and renovation is not proposed in the current scheme and the retention of the oven and chimney, whilst a benefit, would be outweighed by the harm caused to the principal listed building.

19. To conclude on this main issue, the proposal would cause harm to the listed building that is not outweighed or otherwise justified, and hence the proposal is contrary to Policies D1 and D3 as well as national policy in the Framework and would fail the statutory tests in the 1990 Act.

Flood Risk

20. The site is within Flood Zone 3a where there is a high and medium probability of flooding. Local Development Plan Policies S1, S5 and D5 concern sustainable development, flood risk and coastal management while Section 14 of the Framework details policies to meet the challenge of climate change, flooding and coastal change.
21. It would appear that the Environment Agency have addressed the proposal as being for a new dwelling, as their letter of 8 November 2019 still states '*the proposal is for the change of use to a dwelling, which is classified as a more vulnerable development, as defined in Table 2: Flood Risk Vulnerability Classification of the Planning Practice Guidance*'. Although the description of the development and works set out in the bullet points at the head of these Decision is a shortened version of that on the Application Forms, the original wording included '*an annexe to the host dwelling*'. The Council's suggested conditions include one to ensure that the building is used only as an annexe to the existing dwelling, and the reason given is that a separate dwelling would be unacceptable on flood risk grounds. On that basis, there is no need for a sequential test as the proposal is for an extension of the existing dwelling and the use could be sufficiently controlled by condition.
22. The submission of the Emergency Flood Plan dated October 2019 is not a matter for the Environment Agency's approval as they are not the authority responsible for evacuation during a flood, but it has allowed their holding objection to be removed. A condition is suggested requiring approval of a flood response plan, which now exists in the guise of the Emergency Flood Plan, and with that provision, the location of the proposal in Flood Zone 3a is not a reason to withhold permission.

Living Conditions

23. Local Development Plan Policy D1 seeks among other things, to protect the amenity of surrounding areas taking into account privacy, overlooking, outlook, noise, smell, light, visual impact, pollution, daylight and sunlight.
24. The proposal is to be an annexe to number 25A *Villeins* and the Reason for Refusal cites that property as being at risk of harm by reason of dominance, loss of outlook and visual impact due to the proximity of the development to this existing dwelling and its amenity space.
25. The first main issue has found harm through the bulk of the proposed rear building affecting the setting of number 25A as a listed building, but provided a condition is in place to ensure that the use remains as an annexe to that dwelling, there would be a family or guest relationship between those using the annexe and those in the main house. The effect on living conditions would be no different than that between windows, rooms or garden areas within the same dwelling, not a matter that Policy D1 seeks to control, being concerned with surrounding areas rather than the situation within a dwelling and its curtilage.

26. In conclusion on this main issue, with a condition controlling the occupation and use of the annexe, no harm to living conditions has been identified and the proposal complies with Policy D1.

Conclusions

27. The proposal is for an annexe and a condition could ensure that that is what is developed and that the use remains as such. On that basis, the proposal would be acceptable in terms of flood risk and the effect on living conditions, and were there to be an application to change that status in the future, those considerations would feature in any subsequent decision based on the situation at that time.
28. However, the fact that the building is to be used as an annexe and that the status can be conditioned, does not overcome the failings identified with regard to the effect on the listed building. The proposal does not accord with statute or local and national policies that seek the preservation of designated heritage assets, and for the reasons given above, it is concluded that both appeals should be dismissed.

S J Papworth

INSPECTOR