
Appeal Decisions

Site visit made on 24 June 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th July 2020

Appeal A Ref: APP/H0520/W/19/3244337

9 High Street, Fenstanton PE28 9LQ

- 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 Ms Jessica Barnett against the decision of Huntingdonshire District Council.
 - The application Ref 19/00822/FUL, dated 17 April 2019, was refused by notice dated 2 July 2020.
 - The development proposed is replace open store shed with new, same footprint, previous shed collapsed in gales.
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Appeal B Ref: APP/H0520/Y/19/3244335

9 High Street, Fenstanton PE28 9LQ

- 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 Ms Jessica Barnett against the decision of Huntingdonshire District Council.
 - The application Ref 19/0944/LBC, dated 8 May 2019, was refused by notice dated 2 July 2020.
 - The works proposed are replace open store shed with new, same footprint, previous shed collapsed in gales.
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Decision

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Procedural Matters

3. The two appeals concern the same scheme under different, complementary legislation. I have dealt with both appeals together in my reasoning.
4. Despite the descriptions of development set out above, I consider the descriptions found on the Appeal Forms better reflect the scheme that is before me and that which the Council considered. However, I have omitted superfluous information that does not form part of the description of the development works. Appeal A is therefore to '*replace shed which collapsed in gales. Footprint equal to that of original building*' and Appeal B is therefore to '*replace shed which collapsed in gales. Footprint of proposed building equal to*

that of the original buildings that sat on the site. I have therefore dealt with the appeals on this basis.

5. The Application Forms state that works started in March 2019 and the applications sought permission for the development/works being undertaken. At the time of my site visit, the new building was nearing completion. Accordingly, the Council has an open enforcement case¹ and no action has been taken pending the outcome of these appeals.
6. The Council has raised new matters in their Statement of Case, not considered in their Officer Reports. However, in doing so, they find no harm in respect of biodiversity and living conditions, subject to planning conditions; and parking and vehicle movement. I have therefore not considered these matters in my determination of these appeals.
7. The appellant has referred to discussion with the Council in respect of amended plans, which would result in alterations to the materials of construction and the design of the new building. However, with cognisance of the 'Wheatcroft Principles', the appeal process should not be used to evolve a scheme and it is important that I determine these appeals on the basis of the development / works considered by the Council, and on which interested parties' views were sought.

Main Issues

8. The main issues are: -
 - whether the outbuilding that has been replaced would have been situated within the curtilage of the Grade II listed building, The George Public House (9 High Street)², and thereby should be considered as part of the listed building; and
 - if the outbuilding was within the curtilage of the listed building, whether a clear or convincing justification has been advanced for its loss; and whether the new building preserves the listed building and any of the features of special architectural or historic interest that it possesses and the extent to which it has preserved or enhanced the character or appearance of the Foxton Conservation Area.

Reasons

Curtilage of the listed building

9. The appeal concerns an outbuilding, situated to southeast of the listed building known as 'The George Public House (9 High Street)', which has been demolished and replaced by a new building. The appellant disputes that the outbuilding should be considered as part of the listed building.
10. Section 1(5)(b) of the Planning (Listed Building and Conservation Areas) Act 1990 (the Act) states that any object or structure within the curtilage of the listed building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948 shall be treated as part of the listed building.

¹ Planning Reference: 19/00074/ENBCOM.

² The listed building is now known as The Duchess.

11. Although the outbuilding was not expressly identified in the list description, this factor is not determinative as to whether it is listed; whether the building is 'curtilage listed' as per Section 1(5)(b) of the Act is a matter of fact and degree based on the evidence before me. Case law has established a number of tests which should be taken into account by a decision taker in defining the extent of curtilage. These comprise the physical layout of the listed building and the building in question, their ownership past and present, and their use or function past and present specifically whether the building was ancillary (i.e. subordinate to and dependent on) the purposes of the listed building at the date of listing. These tests are also set out in Historic England Advice Note 10³, which I was provided as part of the appeals.
12. Despite being altered and reduced in size, the outbuilding clearly pre-dated 1948, as confirmed by the conveyancing paperwork for the public house (dated 1920) and an aerial photograph (dated 1937). These documents also show that the outbuilding previously occupied a longer footprint and was attached to stables and a coal shed to the north, which were in turn attached to the listed building. Together, these formed a range of buildings associated with the public house. The outbuilding was also recorded on ordnance surveys of 1973 and 1977 and the designation map for the Fenstanton Conservation Area (1974) but, by this point, it was no longer physically connected to the other buildings.
13. The outbuilding faced towards the rear of the public house and was in close proximity of it. All of the ordnance survey plans before me indicate that the area between the public house and the outbuilding was open. There does not therefore appear to have been any clear distinction between the public house and its curtilage, including the outbuilding, at the time of the listing. Furthermore, there is nothing to suggest that the public house and its outbuildings were not under joint ownership at the time of listing and this remains the case today.
14. There has been some debate as to whether the function of the outbuilding was related to the public house, with the most likely recent use being for storage purposes. However, due to the configuration, proximity and scale and nature of the public house, it is highly likely that the public house and outbuilding would have been functioning and operating together at the time of the listing and, as such, the outbuilding was clearly ancillary to the public house.
15. Overall, in the light of the evidence before me, the ownership, physical layout and the use and function of the public house is as such that the outbuilding was within the curtilage of the listed building. I therefore conclude that the outbuilding should be considered as part of the listed building as set out in the Act.

Demolition of the outbuilding and the effect of the new building

16. The public house is a two-storey building, primarily arranged on an L-shape plan and positioned to the back edge of the High Street footpath. The public house dates from the early 18th Century and was Grade II Listed in November 1982. The roof is formed of two unsymmetrical gables that run parallel with High Street, with a roof valley between, and a further projecting rear gable. The front is white colour-washed brick and the side and rear elevations are

³ Listed Buildings and Curtilage (published in 2018).

rendered white. The roofs are of plain tiles and the principal gabled roof to the front has a parapet with kneelers, and chimney stacks to either end.

17. There are interlinked modern single-storey extensions to the rear which replaced buildings attached to the rear of the public house. The extension along the eastern boundary incorporates the kitchen and toilets and projects a short distance from the site of the outbuilding, it is constructed of red brick and red concrete interlocking pantiles. To the east of this, an extension of a wider footprint has been added, which incorporates a low hipped roof and parapets. This is separated from the rear façade of the public house by a small flat roof and incorporates white horizontal boarding to the west and south elevations.
18. As I have outlined above, the outbuilding was separated from buildings to the north, leaving a gap between those remaining. I am not aware of the circumstances surrounding the Council's decision to consent the demolition and replacement of these buildings⁴ but, together with the outbuilding these buildings would have provided evidence of the role and stature of the public house in the development of Fenstanton and High Street in the history of the town. Following the consent to construct that extension, the outbuilding was the last remaining remnant of the buildings that historically provided not just ancillary facilities for the public house but facilities also for traders, travelling through Cambridgeshire to other destinations.
19. There is evidence to suggest that the outbuilding was altered over time, including an aerial photograph dated 1960, which appears to show that the pitched roof of the building was removed and replaced with a mono-pitched or flat roof. The appellant also suggests that the building was reduced in size, at some point in the 1980s, to the footprint it occupied prior to its damage and subsequent demolition. A new wall was erected, at this point, to the western end of the building, which it is claimed, was not bonded to the rear wall.
20. Despite the alterations to the outbuilding and the modern additions to the listed building, based on the above, I find that the outbuilding would have been a contributor to the special interest of the principal building as a group in terms of their architectural and historic interest. This contribution was primarily associated with the historic position of the public house within the High Street and the appearance and ancillary use of buildings to its rear.
21. The Fenstanton Conservation Area (CA) covers an area encompassing around half of the settlement. The significance of the CA is derived from the varied character of the four geographic sub-areas within it, from residential development arranged around greens to the north and the clock tower to the west to densely arranged back-of-footpath development along the High Street. In particular, the High Street is comprised of a high proportion of Georgian listed buildings, which have common architectural features, including double hung sliding sash windows, plain tiled roofs and painted/rendered exteriors. The public house represents such an example and, as a historic commercial building on the High Street, it has been the focus for activity in the settlement. The public house therefore makes a positive contribution to the character and appearance of the CA. Although the CA was designated in 1974 and the character statement⁵ does not refer to the outbuilding, it was visible from High Street.

⁴ Planning References: 15/02223/FUL and 15/02224/LBC.

⁵ Fenstanton Conservation Area Character Statement (1996).

22. The appellant has indicated that in 2015 their structural engineer advised verbally that the outbuilding was dangerous to the public and could collapse. There is nothing before me that suggests that this was included in the evidence for the 2015 applications or as part of the applications to which these appeals relate, as the evidence provided by the structural engineer post-dated the determination of the later applications. It is unclear whether any remediation work was undertaken following this recommendation, other than the erection of protective enclosing fencing, but damage subsequently occurred to the outbuilding⁶. Nevertheless, there is no substantive evidence before me to suggest that the remainder of the outbuilding could not have been retained and repaired and reinstated. Apart from the east wall of the outbuilding, I understand that the remainder of the outbuilding has been demolished and replaced by the new building. There has therefore been almost a total loss of significance associated with the ancillary relationship of the outbuilding to the principal listed building.
23. Paragraph 194 of the Framework advises that significance can be harmed or lost through the alteration or destruction of those assets and that this should have a clear and convincing justification. However, in the case of these appeals, there is no evidence before me that the outbuilding was recorded prior to it being damaged or demolished. In light of this, I consider that no clear or convincing justification has been advanced for the loss of the built fabric of the outbuilding.
24. Clearly the outbuilding was much larger in the past, as evidenced by the documents provided as part of the appeal. In particular, the 1937 aerial photograph illustrates a building of one-and-a-half storeys. The new building appears to be to a similar footprint and the eaves height is similar to that of the outbuilding prior to its demolition. However, the new building has been constructed with a shallower roof pitch, which is in stark contrast to the steeply pitched roofs of the public house and the outbuilding shown in 1937. The roof pitch is also shallower than the recent kitchen extension adjacent.
25. The new building has been constructed using a metal frame, which supports the roof timbers. The eastern end of the building is enclosed to create a lockable bin store, with door openings to the north and south, but the remainder is open facing the public house. The metal frame is therefore very evident within the space between the public house and the outbuilding and from the access into this enclosed space from the car park. This is strikingly different to the outbuilding, which was previously constructed with a brick column marking the individual bays and supporting the roof of the outbuilding. The new building therefore has a semi-industrial appearance which stands out as being unrelated to the form of the listed building and the other buildings that have previously occupied positions within its grounds.
26. I am mindful of the appearance of the recent extensions to the listed building, but I am not convinced that the use of weatherboarding and red concrete interlocking pantiles in their construction should necessarily have been repeated in the construction of the new building. Moreover, those materials are not sympathetic to and jar with the traditional materials palette of the listed building and the buildings previously found within its grounds. The palette of

⁶ During the storms of March 2019 and the construction work at the garage to the east.

materials used in the construction of the new building has not therefore be justified in this case.

27. Although the hedge planting along the access to the public house car park reduces the visibility of the new building, it is still evident above the planting in the views of the listed building from High Street and from within the grounds of the listed building. Nevertheless, I am mindful that vegetation is subject to seasonal change and is, in any event, ephemeral.
28. The loss of the outbuilding is further compounded by the form and appearance of the new building, particularly its materials of construction, which are inharmonious with the traditional form and appearance of the listed building and the buildings that have previously occupied its grounds.
29. Unlike listed buildings, the significance of a conservation area is more widely experienced. Under such circumstances, proposals must be judged according to their effect on a conservation area as a whole and must therefore have a moderate degree of prominence. Although the new building is visible from High Street, these views are fleeting and the new building is of a modest height and set back some distance from the street. Accordingly, the new building is not prominent or detrimental to the CA and thus preserves its significance.
30. The statutory duties in Sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) are matters of considerable importance and weight. Paragraph 193 of the Framework also advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Furthermore, I have already noted the requirements of paragraph 194 above.
31. The works are harmful to the special historic interest of the Grade II listed building. This has had a negative effect on the significance of the designated heritage asset. In my view the harm that I have identified, including the loss of historic fabric, would equate to less than substantial harm to the significance of the designated heritage asset. In such circumstances, paragraph 196 of the Framework identifies that this harm should be weighed against the public benefits of proposals, which includes the securing of optimal viable use of listed buildings.
32. The appellant has suggested that the listed building suffered years of neglect prior to the works for renovation, alteration and extension being undertaken. However, it is likely that this evidence will have informed the Council's previous decisions. The more recent permissions and consents have already resulted in a lot of change and alteration to the external fabric of the listed building, to sustain the social and cultural contributions that the public house makes to Fenstanton.
33. The new building will provide storage for the public house, reinstating storage that was replaced by the recent extensions to the public house. The location of storage on-site will also help to maintain the viability and running of the business, particularly in respect of the cost and logistics associated with the use of, access to and replenishment of stock stored off-site. This would be equally beneficial to the appellant's business but also the local community.
34. Nevertheless, I am not persuaded that the evidence before me demonstrates that there would not be another appropriate solution to addressing the storage

requirements of the public house or that the harm that has been caused and would continue to be caused to the significance of the heritage asset would be justified though the continued presence of the new building.

35. Therefore, in accordance with paragraphs 194 and 196 of the Framework, considered together, I conclude that the public benefits I have outlined above do not outweigh the great weight to be given to the less than substantial harm that I have identified.
36. Despite the verbal support provided to the appellant, the absence of objections received from third parties and my findings in respect of the CA, given the above and in the absence of any substantiated public benefit, I conclude that, on balance, there has been no clear or convincing justification advanced for the loss of the built fabric of the outbuilding. Together with the erection of the new building, this fails to preserve the special interest of the Grade II listed building. Hence, the appeal proposal fails to satisfy the requirements of the Act, paragraphs 192, 193, 194 and 199 of the Framework and conflicts with Policy LP34 of Huntingdonshire's Local Plan to 2036 (May 2019) that seeks, amongst other things, to ensure that proposals respect the historic form, fabric and special interest that contributes to the significance of the affected heritage asset, which includes consideration of scale, design, materials, siting, layout, mass, use, and views both from and towards the asset.
37. The Decision Notices referred to paragraphs 185 and 187 of the National Planning Policy Framework 2019 (the Framework). I have not found against these, as they relate to the formulation of planning policies and the upkeep of the historic environment record. I have, however, had regard to paragraphs 184 and 190 as far as relevant to these appeals.

Other Matters

38. The appellant has referred to the conduct of the Council in the determination of the applications, particularly with regard to the approach to and consistency of its decision-making and the requirements for submission, including whether listed building consent was required. These are primarily not matters for me to consider as part of these appeals. I have considered the individual merits of the appeal proposal in relation to the Act, relevant planning policies and the evidence before me.

Conclusion

39. For the reasons given above, I conclude that the appeals should be dismissed.

Paul Thompson

INSPECTOR