



Appeal Decision

Hearing Held on 2 December 2020

Site visit made on 8 December 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2021

Appeal Ref: APP/L2250/C/18/3210829

Land at Horton Priory, Prior Lane, Monks Horton, Kent TN25 6DZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Erek Nuener of IMT Trust Services AG (Liechtenstein) against an enforcement notice issued by Folkestone and Hythe District Council.
- The enforcement notice, numbered Y18/0008/CM/KC, was issued on 27 July 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a barn shown outlined in blue on the attached plan.
- The requirements of the notice are:
 1. Remove the unauthorised barn and remove all resulting materials from the site.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. It is directed that the enforcement notice is varied by:
 - adding 'or' to the end of the first requirement and adding a second requirement: '2. Make the barn comply with the terms (including conditions and limitations) of planning permission reference Y19/1402/FH and remove all surplus materials from the site'.
 - Delete 'six' and replace with 'twelve' in the period for compliance with the requirements.
2. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. Planning permission¹ was granted for two barns and the creation of an access. A single larger L-shaped barn was built on a broadly similar footprint to the approved barns, and is the subject of the enforcement notice. The planning permission has now lapsed and a further application² for the same two barns to provide agricultural storage and the provision of a gravelled access road has subsequently been submitted and approved on 18 June 2020.

¹ Ref Y16/0008/SH

² Ref Y19/1402/FH

4. The reasons for issuing the Enforcement Notice do not refer to any development plan policies, but the Council's supporting information makes it clear which policies are relevant. The recipients of the notice had sufficient information to make the appeal.
5. Since the enforcement notice was served, the Folkestone and Hythe District Council Places and Policies Local Plan 2020 (PPLP) was adopted in September 2020. The cited policies of the Shepway District Local Plan Review 2006 have been superseded. The most relevant policies are therefore HB1 and HE1 of the PPLP, and Policies DSD and SS3 of the Shepway Core Strategy 2013 (CS). The Core Strategy is currently being reviewed and carries forward CS Policy SS3 in a slightly revised form in the Core Strategy Review Submission Draft February 2020 (CSRSD).

The appeal on ground (a) and the deemed application

6. The ground of appeal is that planning permission should be granted for the alleged breach of planning control. Having regard to the reasons for issuing the notice, the main issues are:
 - The effect of the development on the character and appearance of the area, and;
 - Whether the development preserves the setting of Horton Priory (grade I listed building).

Character and appearance

7. The site is within a rural estate associated with Horton Priory. It is in an area of gently undulating open countryside, characterised by farmland, parkland, woodland and scattered development. A public footpath runs to the west of the Priory and links to Moorstock Lane, across open fields. The lane has ribbon development along its south side, but is set some distance from the appeal site and is separated from it by hedges and trees. The principal building on the site is Horton Priory, a substantial and attractive dwelling which is prominent in views from the surrounding area, particularly from the south and west. From the north the site is less open, due to existing development associated with the Priory, as well as mature trees and garden planting. To the east the site is enclosed by Little Priory Wood.
8. The barn is situated on the site of a former tennis court. It is between the Priory and the woodland, an area of the gardens that contains a number of ancillary outbuildings and residential buildings. The barn has a large footprint and a steeply pitched roof resulting in a substantial built form. It has been designed to resemble a converted former agricultural building. Although barns are to be expected in rural locations such as this, due to the form, height and bulk of the building and its siting, it appears prominent and out of scale with Horton Priory and the other built development on the site. This is particularly apparent in views from the south, due to its position and form which present a large flank elevation. Views from public viewpoints are largely limited to glimpsed views from Moorstock Lane and the public footpath. However, due to its scale and prominence, the barn is a visual intrusion that detracts from the rural character of the area, even in these glimpsed views.
9. The barn is therefore harmful to the character and appearance of the area. It is thus in conflict with CS Policies SS3 and DSD, PPLP Policy HB1 and CSRSD

Policy SS3, which seek, amongst other things, to ensure that development makes a positive contribution to its location and surroundings. It is also in conflict with the guidance in the National Planning Policy Framework (NPPF).

Setting of Horton Priory

10. Horton Priory was originally built as a Cluniac Priory during the C12, but most of the buildings were demolished during the Reformation. The remaining portion of the building was converted to a private residence during the early C20, with further alterations. It has high historic significance as an example of a monastic community, with remnants of the priory visible in the main house and in the grounds in the form of buried remains, standing remains and waterworks. Further historic interest is derived from its subsequent use as a farmhouse, with surviving agricultural buildings, and its development into a country estate in the early C20. The phases of development are evident within the building and surrounding grounds, and are indicated by the designation as a Scheduled Ancient Monument and its local listing as a historic park and garden. The original portion of the Priory has been added to in a sympathetic style, with the resulting building having a high aesthetic value.
11. Horton Priory sits within a quiet rural landscape. The high aesthetic value of the building can be particularly appreciated in views across the parkland and farmland, including from Moorstock Lane and a public footpath which runs close to the stream to the western side of the house and across the field to meet Moorstock Lane. The house is seen within its open parkland/pleasure ground setting to the south west and south, with farmland beyond, indicative of the key phases in its historic development.
12. To the north there are more restricted views of the Priory from the driveway and between existing trees and buildings. Smaller scale buildings are restricted to the lodge and former farm buildings to the north, and the domestic and former agricultural outbuildings and curtilage listed structures to the east, contained by Little Priory Wood. Important features of the setting that contribute to the significance of Horton Priory are therefore its rural parkland and farmland character, with the ancillary buildings and a more private and contained part of the garden to the east.
13. The parties agree that the appeal site is within the setting of Horton Priory. As previously noted, the barn is a substantial building, which has been designed to resemble a converted agricultural barn in the local vernacular style. The barn is set some distance away from the Priory, but it is clearly visible within the same wide view from the south, across the open arable field from Moorstock Lane. It is also apparent in views from the garden of the Priory, where it appears in the background, framed by the woodland to the rear.
14. I accept that it is plausible that a barn of this character and scale could be found within the setting of a building such as Horton Priory, and that a large barn was previously recorded to the north of the Priory. However, I find that due to its position, design and height, the barn is at odds with the more respectful and clearly ancillary scale of the other buildings in this part of the setting. The large expanse of roof and gable end are prominent, so that the building is a dominant feature when seen in views from the south.
15. While public views from Moorstock Lane and public rights of way are somewhat restricted by trees and hedges, the substantial scale of the building is evident,

taking into account that some views are kinetic. The existing ancillary buildings are recessive in these views for a number of reasons: they are sited in the background; they are small scale, with only the Coach House being two storey; their alignment such that the gable ends are visible rather than the bulk of the buildings; and the filtering effect of existing planting. As a result, the barn draws attention away from the Priory.

16. When seen from the garden area, the barn is a prominent feature in the background to the Priory due to its height and scale. In these views, the large area of glazing on the projecting element facing the Priory appears overtly domestic, and combined with the scale of the building it appears out of place in the context of the smaller scale ancillary buildings in this part of the setting.
17. Due to its height, bulk, form and design, the barn is a harmful intrusion that distracts from the contribution of the setting to the significance of the heritage asset. I have had regard to the examples of barns of similar proportions sited close to important listed buildings, but in this case for the reasons I have explained I have found that the barn detracts from the setting.
18. Paragraphs 195 and 196 of the NPPF require the harm to be quantified. In this case, I quantify the harm to be 'less than substantial' in view of its scale in the context of the heritage asset. Such harm is to be weighed against the public benefits, including securing its optimum viable use. The barn is a private building which brings private benefits but is not necessary to secure a viable use for the Priory. No public benefits have been identified by the appellant.
19. I therefore conclude that the development is harmful to the setting of the listed building, a matter to which I attach considerable importance and weight, in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. It is therefore in conflict with PPLP Policies HB1 and HE1, CS Policy SS3 and Policy SS3 of the CSRSD, insofar as they require that development respects and enhances key historic features. It is also in conflict with the guidance in the NPPF.

Other considerations

20. I am mindful that although the original planning permission for the two barns has lapsed, a subsequent permission for them has now been granted. I consider that there is a greater than theoretical possibility that the development would take place if I uphold the notice, and this is a material consideration. However, the permitted barns would clearly be two separate buildings with a gap between them, and from the south would be substantially lower and present a less bulky and imposing elevation than the barn that has been built. The lower height and lack of glazing means that the barns would also appear less prominent and domestic when seen in closer views from the Priory. The harm caused by the appeal development would not occur in the permitted scheme, and the fact that it could go ahead as a fallback position does not indicate that the ground (a) appeal should succeed.
21. A number of options have been put forward by the appellant suggesting revisions to the building. I have considered for each option whether the end development could still be considered as a whole or part of the breach of planning control and if so, whether it would overcome the planning objections. I am satisfied that Options 1-3 would involve relatively minor revisions to the

barn such that the end result could still be considered as the development as built.

22. Option 4, 5 and 6 involve alterations to the roof. Options 4 and 5 propose the removal of one or both of the existing hipped roof ends to the taller part of the building, and their replacement with a catslide roof. This would have implications for the area of glazing in the north elevation. Option 6 proposes the lowering of the roof height of the larger part of the building, through reducing the pitch of the roof. Due to its design, the roof is a substantial part of the building as a whole. The options would involve a significant adjustment to the steel roof frame, with implications for the appearance of the building overall. Due to the extent of work involved I am not satisfied that resulting building could be considered under s177(1)(a) of the Act to be a whole or part of the matters specified in the notice and cannot therefore be considered under the ground (a) appeal.
23. As I have found that the height and bulk of the building are harmful, Options 1-3 inclusive would not overcome my concerns. In key views the building would still have a substantial bulk and prominence on the site, and therefore the suggested revisions would not be sufficient to overcome the harm I have identified.
24. None of the above considerations therefore overcome my concerns. Accordingly, I conclude that the appeal on ground (a) should not succeed and planning permission shall be refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (f)

25. The ground of appeal is that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or to remedy any injury to amenity which has been caused by any such breach. The starting point is to identify the purposes of the notice. As compliance with the notice would remove the building in its entirety, the purpose of the notice is to remedy the breach.
26. The appellant has put forward Options numbered 1-6 as possible lesser steps. However, I have already found that Options 1-3 would not be acceptable in planning terms, while Options 4-6 involve alternative developments rather than lesser steps.
27. Planning permission for two barns on a similar footprint has been approved. This represents an obvious alternative to the demolition of the building and the removal of all the materials from the site, at less cost and disruption to the appellant. I am satisfied that no injustice would be caused if I vary the notice so that the purpose of remedying the breach can be achieved by making the development comply with the terms (including conditions and limitations) of the planning permission for the two barns.
28. For the reasons given above, I conclude that there is an alternative to total demolition of the barn. To this limited extent, the appeal on ground (f) succeeds and I shall vary the notice accordingly.

Ground (g)

29. The ground of appeal is that the period for compliance with the requirements of the notice is too short. The period for compliance is six months and the appellant requests 24 months. The reason is to allow the appellant to find alternative storage for the equipment and other items currently being stored in the building, and to comply with the requirements of the notice as varied.
30. It seems to me that 12 months would be a reasonable period to look for alternative storage and carry out necessary works to comply with the requirements of the notice as varied. To this extent the appeal on ground (g) succeeds and I shall vary the notice accordingly.

N Thomas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Robert Walton QC

Jayne Wunderlich Bachelor of Town Planning MRTPI – Planning Consultant

Henry Ryde - Heritage Consultant

Ian Harvey – Horton Priory Estate Manager

FOR THE LOCAL PLANNING AUTHORITY:

Katy Claw – Planning Officer

David Campbell – Development Management Team Leader