



Appeal Decision

Site Visit made on 18 May 2021

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 June 2021

Appeal Ref: APP/W1525/W/20/3265766

Claydons Farm, Back Lane, East Hanningfield, Chelmsford, CM3 8AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Exors of K Benson against the decision of Chelmsford City Council.
 - The application Ref 20/00757/CUPAQ, dated 29 April 2020, was refused by notice dated 8 July 2020.
 - The development proposed is Determination as to whether the prior approval of the local planning authority is required for the proposed change of use from an agricultural Building to 5No. dwellings (use class C3).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development set out above is taken from Decision Notice and the Appeal Form, as the Application Form did not include a formal description of the development proposed. I have therefore dealt with the appeal on this basis.

Main Issues

3. The main issues are: -
 - whether the development would be permitted development under the provisions of Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). In particular, whether the appeal buildings would be within the curtilage of a listed building and thereby be excluded by Schedule 2, Part 3, Class Q.1(m); and,
 - if the appeal buildings are not listed, whether the proposed development would consist of building operations other than those listed in Schedule 2, Part 3, Paragraphs Q.1(i) of the GPDO.

Whether the appeal buildings are curtilage listed

4. The appeal concerns several agricultural buildings of varied design, scale, age, and states of repair. The buildings are located to the north of Claydons Manor. Dating from the 16th to 17th Century, but with a later cross wing, this is a one storey timber framed dwelling with attic rooms and was Grade II listed on the 19 June 1975.

5. Class Q of the GPDO permits development consisting of a change of use of a building and any land within its curtilage from use as an agricultural building to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order¹ and any building operations reasonably necessary to convert the building. However, under Class Q.1 (m) this is not applicable where a building is listed.
6. Section 1(5)(b) of the Planning (Listed Building and Conservation Areas) Act 1990 (PLBCAA) 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.
7. 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 included in Historic England Advice Note 10² (HEAN10).
8. The main parties agree that Buildings 4 and 6, which are of brick construction, predate 1948. There is no substantive evidence before me that would lead me to a different conclusion. Furthermore, given that the other buildings were built after 1948 they could not be treated as part of the listed building, even if they were within its curtilage.
9. There are various hypothetical examples included in HEAN10 to assist in understanding curtilages, including farms. It also refers to the Jews Farm Judgement³, in which Justice Sullivan found that barns at that farm were in use for the purposes of the general farming enterprise carried out at the farm and so were not in use for purposes that were ancillary to the use of the farmhouse as a dwelling house. Accordingly, in that instance, while the farmhouse was listed, the farm as a whole could not sensibly be regarded as being within its curtilage. As I understand it there were a number of significant factors in the judgement, that the farmyard was separately enclosed by a wall, visually separated from the farmhouse, the farming function formed a minor part of the farmhouse, the farmhouse was sold very shortly after it was listed and the farm operations continued from another dwelling.
10. In light of case law, HEAN10 advises that the facts in each case will always need to be carefully considered. Determining whether Buildings 4 and 6 are 'curtilage listed' as per Section 1(5)(b) of the PLBCAA is therefore a matter of fact and degree based on the site-specific circumstances involving the listed building, the evidence before me and from what I observed on site. Nevertheless, HEAN10 suggests that a closer physical relationship (such as around a courtyard) or a closer relationship in use may be a 'steading' and outbuildings of that type and in that arrangement may well fall within the curtilage of a farmhouse.

¹ The Town and Country Planning (Use Classes) Order 1987, as amended.

² Listed Buildings and Curtilage, published in February 2018.

³ R (on the application of Egerton) v Taunton Deane Borough Council [2008] EWHC 2752 (Admin).

11. The form of the group of farm buildings north of the listed building has changed significantly from the historic ordnance survey maps dating from 1924 and 1960, as Buildings 4 and 6 formed part of a larger 'U-shaped' building. The maps also show some demarcations of the land, including what appears to be a physical separation of a residential garden to the north and east of Claydons Manor. However, it also appears that the western half of the house was within the farmyard, thereby pointing toward a functional relationship between the two. The application drawings from October 1975 for Claydons Farm Bungalow⁴ also show the site, the buildings therein, and Claydons Manor all to be in the same ownership. At all three points in time, there does not appear to be any subdivision in place between Claydons Manor and the farm buildings and they were all accessed from the same track, that which serves the farm buildings today. There was therefore no clear distinction between Claydons Manor and its curtilage and the farmyard with its buildings at the time of listing.
12. I acknowledge that the listed building was designed as a house and has continually been in use as such since its construction. Buildings 4 and 6 were also purposely built and used for agriculture and, despite being subsumed by other modern buildings, they have continued to be used in that way. At some point in 1975, Claydons Manor was physically separated from the farmyard by walling and fencing and a new independent access taken from Back Lane and it was subsequently sold as a private dwelling. However, there is no substantive evidence before me that these actions were undertaken prior to the listing and the evidence points to Buildings 4 and 6 having a close physical and functional relationship through their associated use, access, proximity, and arrangement, which is typical of many farmsteads.
13. On the basis of the submitted evidence, there was a clear functional and spatial relationship between the farm buildings with Claydons Manor as a steading at the time of listing. The subsequent separation of the farm buildings from the listed building does not therefore alter their listed status. I do not therefore consider the Jews Farm Judgement to be directly comparable to the appeal before me, as in that case the barn was separated from the curtilage of the listed building by a walled enclosure prior to its listing, so it was not within its curtilage at that time.
14. Overall, in light of the evidence before me, the ownership, physical layout and the use and function of the buildings is as such that Buildings 4 and 6 fall within the curtilage of Claydons Manor. I therefore conclude that these buildings should be considered as part of the listed building as per section 1(5)(b) of the PLBCAA. Consequently, the appeal proposal is development for which an application for planning permission is required. Such an application would be a matter for the Council to consider in the first instance.

Building Operations

15. Based upon my findings above, it is not necessary for me to consider this further.

Conclusion

16. Overall, the proposal would not comply with the limitations and restrictions specified as being applicable to the proposed development under paragraph

⁴ Planning Reference: 75/1278.

Q.1(m) and it could not benefit from deemed permission under Class Q of Schedule 2, Part 3 of the GPDO 2015 (as amended). I therefore conclude that the appeal should not succeed.

Paul Thompson

INSPECTOR