



Appeal Decisions

Site visit made on 3 August 2021

by **M Madge DipTP, MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15th OCTOBER 2021

Appeal A: APP/Y2003/C/21/3271615

Appeal B: APP/Y2003/C/21/3271616

The Old Methodist Chapel, Farrishes Lane, South Ferriby, Barton-Upon-Humber DN18 6HG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mrs Lisa Branford and Appeal B is made by Mr Colin Branford against an enforcement notice issued by North Lincolnshire Council.
- The enforcement notice, numbered EN189, was issued on 24 February 2021.
- The breach of planning control as alleged in the notice is;
 - (i) Without planning permission the demolition of the former tea rooms attached to the former chapel, and the erection of wooden cladding to the exterior of the building along with the insertion of a roller shutter door on to the highway
 - (ii) The change of use of the land to residential garden/garage space without consent
 - (iii) The rendering of the former chapel with consent.
- The requirements of the notice are:
 1. Return the building to its former state and height, complete with arched windows, tiled pitched roof and single door to the frontage.
 2. Remove from the site the timber cladding, roller shutter door and all other associated garden paraphernalia connected to the unauthorised use.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b) and (f) and Appeal B is proceeding on the grounds set out in section 174(2) (b) and (f) 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.

Summary of Decisions: Appeals A and B succeed in part on ground (c) following correction of the notice and Appeal A is allowed on ground (a), the enforcement notice is quashed, and planning permission is granted in the terms set out in the Formal Decision.

Preliminary matters

1. While the Council describe the Land affected as the 'Former South Ferriby Methodist Chapel', the appellants describe it as 'The Old Methodist Chapel'. I find the appellant's description is more concise and using the property's address to identify the land causes no injustice.
2. The appeals were brought on grounds (a), (b) and (f). The appellants' submissions in respect of ground (b) include that the works did not amount to development or were permitted development, which fall under ground (c). The Council has had an opportunity to comment on all the appellant's submissions. No injustice would arise from my introduction of ground (c), and I will proceed on this basis.

The notice

3. Paragraph 3 (i) refers to "*the erection of wooden cladding*", but it would be more accurately described as the "*attachment of wooden cladding*". Furthermore, the roller shutter door has been inserted into what remains of the front wall of the former tea rooms, rather than "*on to the highway*".
4. Paragraph 3. (ii) cites a change of use of the land to "*residential garden/garage space*". A change of use is not development unless it is material. Furthermore, a garage is a building used for the housing of motor vehicles. In this case, the structure is not a building as it has no roof, and it cannot therefore be described as a garage. Vehicle parking space is however provided, which is a common feature of a residential garden.
5. Paragraph 3. (iii) incorrectly refers to the rendering of the former chapel when it is the rendering of the dwelling's front elevation that has occurred.
6. Accordingly, having regard to all the material facts and evidence before me, I find that the notice incorrectly describes the breach. For greater precision, the notice should describe the alleged breach of planning control in the following way:

"Without planning permission:

(i) the demolition of the former tea rooms attached to the dwelling known as 'The Old Methodist Chapel' and the insertion of a roller shutter door in the front wall of the former tea rooms;

(ii) the material change of use of land to residential garden; and

(iii) the attachment of wooden cladding and rendering to parts of the dwelling known as The Old Methodist Chapel."

7. The substance of the allegation has not changed, and no injustice would arise from my correction of the notice. I will determine the appeals on the basis of the corrected notice as set out in DL6 above.

Appeals A and B on grounds (b) and (c)

8. To succeed on these grounds the appellant should show, on the balance of probability, that the matters identified in the corrected notice have not occurred, or if they have, that they do not constitute a breach of planning control.
9. There is no dispute that the roller shutter door has been installed or that a material change of use to residential garden has occurred. The appellant claims that the other matters were either not development or were permitted development.

Demolition of the tea rooms

10. The former tea rooms was a building comprising of 3 walls and a roof attached to The Old Methodist Chapel. S336 of the 1990 Act as amended confirms that a "*building*" includes any structure or erection, and any part of a building, as so defined. The appellants do not dispute that they removed the tea rooms' roof and reduced the 3 external walls to heights of approximately 2.59 m, 2.29 m and 2.2 m. While only part of the building has been taken down, having regard

to the definition in s336, the works undertaken amount to demolition of the former tea rooms.

11. S55(1A) of the 1990 Act as amended brings the demolition of buildings within the definition of building operations, except were excluded in a direction given by the secretary of state. The Town and Country Planning (Demolition - Description of Buildings) Direction 2014 (the 2014 Direction) provides that the demolition of "*any building, the cubic content of which, measured externally, does not exceed 50 cubic metres*" shall not be taken to be development. While the 2014 Direction was replaced in April 2021, it was in force at the time the works occurred and when the notice was issued, and it remains relevant in considering s55(2)(g). While no specific measurements have been provided of the tea rooms, the Council claim that the building exceeded 50 cubic metres. Given the extent of the remaining footprint and the former height of the building, which is discernible in photographs and confirmed as being approximately 3.88 m by the appellant, I see no reason to disagree with the Council's claim. The demolition of the former tea rooms is therefore development.
12. Part 11B, Schedule 2 of the GPDO¹ confirms that any building operation consisting of the demolition of a building is permitted development. Paragraph B.1 excludes such development where "*(a) the building has been rendered unsafe or otherwise uninhabitable by the action or inaction of any person having an interest in the land on which the building stands and it is impracticable to secure safety or health by works of repair or works for affording temporary support*". Works to the roof were undertaken by the appellants and they advise that the walls became unstable following those works. The building was therefore rendered unsafe by the action of the appellants. No evidence has been provided to show why it was not practicable to secure safety or health by works of repair or works for affording temporary support. The demolition of the former tea rooms therefore falls within the limitation found in B.1 and was excluded from being permitted development.
13. Even if I had found that the appellants actions had not rendered the building unsafe, conditions imposed by B.2(b) were not complied with and a breach of planning control would still have occurred.
14. The demolition of the tea rooms is therefore development requiring planning permission. As planning permission has not been granted for the demolition of the tea rooms, a breach of planning control has occurred.

Attachment of timber cladding and render

15. S55(2) of the 1990 Act confirms that "*the carrying out for the maintenance, improvement or other alteration of any building of works which - ... (ii) do not materially affect the external appearance of the building*" shall not be taken to be development. There can be no doubt that the attachment of the timber cladding and the render has affected the external appearance of the building and is therefore development.
16. The lawful use of The Old Methodist Chapel is as a dwellinghouse, which retains its householder permitted development rights. Class A, Schedule 2 of the GPDO confirms that "*the enlargement, improvement or other alteration of a*

¹ Town and Country Planning (General Permitted Development)(England) Order 2015 as amended

dwellinghouse" is permitted development, subject to limitations and conditions. The attachment of timber cladding and render would not be excluded as another alteration by the limitations found in Class A.1 and those found in A.2 do not apply as the appeal property is not on article 2(3) land. The attachment of timber cladding and render therefore benefits from planning permission granted under Article 3(1) of the GPDO. Article 3(5) would not apply as the dwellinghouse is not unlawful.

17. For the reasons given above, the works identified in 3(iii) of the corrected notice are not a breach of planning control. The appeal on ground (c) succeeds to this limited extent.

Appeal A on ground (a)

18. Section 174(2)(a) confirms that the corrected allegation will form the description of development for which planning permission is being sought. Due to the partial success of the ground (c) appeal, the development comprises the demolition of the former tea rooms, the insertion of a roller shutter door and the material change of use of land to residential garden.
19. The appeal site is not located within a Conservation Area and there are no listed buildings in or around the appeal site. As such, no designated heritage assets are affected by the development. The Council claims that the former chapel is of "*local historic interest*" and the unauthorised works have resulted in "*a high level of harm to the heritage significance of the chapel and the setting of the school room opposite*". No evidence has however been provided to show that the former chapel, former school room or former tea rooms are non-designated heritage assets.
20. Even if I were to find that the former tea rooms, former chapel or former school room were non-designated heritage assets, having regard to paragraph 203 of the revised Framework 2021, their significance is derived from the group's historic association with the Methodist religion. Both the chapel and the former school room have been converted to dwellinghouses and, in the case of the former school room, its curtilage has been subjected to change. The total loss of the former tea rooms could have caused further erosion of the historical significance of this group of buildings. However, its footprint and parts of its walls remain, providing an appreciation of its presence. Any harm to the group's significance is negligible.
21. The **main issue** is the effect of development on character and appearance of the property and the locality.
22. Nearby buildings are predominantly in residential use, with many located in close proximity to the carriageway edge. Where dwellings are set further back within their plots, along the western side of Farrishes Lane, boundary walls adjacent to the carriageway edge are a common feature. The surrounding road network is narrow and twisting, and on-street parking is prevalent.
23. The residential conversion of the chapel was granted planning permission notwithstanding the absence of outside amenity space or off-street parking facilities. The former tea rooms did not form part of the residential conversion and had not been used for any community purpose for some considerable time. I am not aware of any other alternative use of the former tea rooms having been granted planning permission.

24. The provision of garden and off-street parking facilities makes a positive contribution to The Old Methodist Chapel and the locality. Boundary walls in this location are not uncommon, however those that exist have a simple appearance consisting of brickwork with some form of coping detail. While the roller shutter may not be a traditional feature, it ensures that the development does not encroach into the adjacent highway. The built development is, however, visually conspicuous due to the retained remnants of the window frames, roughly boarded former window openings, and lack of coping detail to the walls.
25. While the appellant claims that works to the walls and former window openings are not complete, details of the further proposed works are not before me for consideration. However, I do not doubt that an acceptable scheme, which provides a cohesive appearance to the development and adjoining dwellinghouse, could be achieved. Such a scheme, its implementation and retention thereafter can be secured by suitably worded conditions. It is also necessary to impose a sanction to ensure that, if the conditions are not complied with, the former tea rooms is reinstated.

Other matters

26. The council has brought a number of saved planning policies to my attention. I find that policies CS1 and CS2 of the Core Strategy (June 2011) (the CS) and policy T19 of the North Lincolnshire Local Plan (May 2003) (the LP) are not directly relevant to the development due to its nature and scale. Furthermore, the Council has not advanced any argument as to why the development does not accord with policy HE9 of the LP, which relates to Archaeological Evaluation.
27. Visibility for drivers emerging from the access is restricted. Vehicle speeds adjacent to the access would be low due to the road configuration. Furthermore, there are several other access points with similarly restricted visibility in the locality and I am not aware that these have caused highway safety issues.
28. Loss of privacy resulting from windows within the converted chapel is not a matter before me for consideration.
29. It may not be possible to secure a photographic record of the former tea rooms by condition, however several photographs and other records pertaining to the chapel and tea rooms have been submitted in response to these appeals. These go some considerable way to providing a historical record of the building.

Conclusion on ground (a)

30. For the reasons given above, the development does not significantly affect the character and appearance of the property and locality, and accords with policies CS5 of the CS and policies DS1 and DS5 of the LP, which seek, amongst other things, to respect the character and appearance of the original building and its surroundings. The limited harm arising from conflict with policy CS6 of the CS, due to the partial loss of the tea rooms, is outweighed by the benefits arising from the provision of amenity facilities associated with the residential occupation of The Old Methodist Chapel.
31. The appeal on ground (a) succeeds.

Overall conclusion

32. On the balance of probability, the appeals on ground (c) succeed in respect of the attachment of timber cladding and render to parts of the dwelling, which following the correction of the matters alleged, are stated as constituting part of the breach of planning control. The enforcement notice will be corrected accordingly.
33. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the demolition of the former tea rooms, the insertion of a roller shutter door and the use of land as residential garden.
34. The appeals on ground (f) do not fall to be considered.

Formal Decisions

35. It is directed that the enforcement notice be corrected by:

The deletion of the words "the Former South Ferriby Methodist Chapel" and substitution of the words "The Old Methodist Chapel" in section 2: THE LAND AFFECTED; and by

The deletion of all the words in section 3: THE BREACH OF PLANNING CONTROLS ALLEGED and the substitution of the words:

"Without planning permission:

(i) the demolition of the former tea rooms attached to the dwelling known as 'The Old Methodist Chapel' and the insertion of a roller shutter door in the front wall of the former tea rooms.

(ii) the material change of use of land to residential garden; and

(iii) the attachment of wooden cladding and render to parts of the dwelling known as The Old Methodist Chapel."

Subject to these corrections, Appeals A and B are allowed on ground (c) in so far as they relate to the attachment of timber cladding and render to parts of the dwelling.

Subject to these corrections, Appeal A is allowed on ground (a), the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the demolition of the former tea rooms, the insertion of a roller shutter door and the use of land as residential garden at The Old Methodist Chapel, Farrishes Lane, South Ferriby DN18 6HG as shown on the plan attached to the notice and subject to the condition set out in the attached 'Schedule of Conditions'.

M Madge

INSPECTOR

SCHEDULE OF CONDITIONS

1. The use of the land hereby permitted shall cease, the roller shutter door shall be removed and the building shall be returned to its condition prior to the development taking place within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:
 - (i) Within 1 month of the date of this decision a scheme for the completion of the boundary walls, including details of how the former window openings are to be blocked up and what coping stones or other coping details are to be used, have been submitted for the written approval of the local planning authority. The scheme shall include a timetable for its implementation.
 - (ii) Within 4 months of the date of this decision, if the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.
 - (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - (iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable. The completed scheme shall thereafter be so retained.