
Appeal Decisions

Site visit made on 14 February 2023

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2023

Appeal A - Ref: APP/X1545/W/20/3266129

Bohuns Byre, Church Street, Tollesbury, Essex CM9 8QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mrs Katherine Brown against Maldon District Council.
 - The application Ref 20/00955/FUL, is dated 20 September 2020.
 - The development proposed is described as 'conversion, renovation and extension to historic barn to create 2-bedroom house'.
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Appeal B - Ref: APP/X1545/Y/20/3266130

Bohuns Byre, Church Street, Tollesbury, Essex CM9 8QL

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Mrs Katherine Brown against Maldon District Council.
 - The application Ref 20/00956/LBC, is dated 20 September.
 - The works proposed are described as 'conversion, renovation and extension to historic barn to create 2-bedroom house'.
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Decisions

1. The appeals are dismissed, and planning permission and listed building consent refused.

Preliminary Matters and Main Issues

2. I have considered the two appeals concurrently, but on their own merits, because there are common matters between them.
3. The Council failed to determine the applications within the prescribed periods and therefore the appellant exercised their right to submit these appeals. The Council has confirmed through putative reasons for refusal that, had it been able to do so, it would have refused the proposal due to concerns regarding the impact on the listed building and its setting, the character and appearance of the area and the operation of the adjoining agricultural enterprise. It is also necessary to consider the impact of the proposal on biodiversity, and I wrote to the Council and appellant seeking their views on this matter.
4. Accordingly, the main issues in these appeals are:
 - Whether the proposed works and development would preserve the special interest of Bohuns Byre and its setting, a Grade II listed building; and

- The effect of the proposed development on biodiversity, the operation of the adjoining business and the character and appearance of the area.

Whether the proposal would preserve the listed building and its setting

5. Bohuns Byre was listed in 1987 and is a timber framed building arranged over two floors. Recent analysis indicates that it was probably erected in the late 18th Century as a stable with hayloft above and may have comprised part of a model farm with other nearby structures. The listed threshing barn to the southwest is probably a contemporary and together these buildings formed part of a historic farmyard.
6. The timber frame of Bohuns Byre is reasonably complete with an interestingly constructed roof. The western wall has lost areas of original framing due to alterations to facilitate the use of an adjoining tractor shed. Other interesting details include the brick paviour floor, gullied drain and dove resting shelves. A later single storey brick-built workshop, re constructed in the 1990s, sits to the east and creates a characterful yard enclosed by low brick walls.
7. Accordingly, the building has architectural and evidential value as a repository of bygone construction techniques, lifestyles and agricultural practices. The building also has a rustic charm that affords it aesthetic value. The agricultural origins and appearance of the building are inherent to its significance.
8. The appeal building has been allowed to fall into a poor condition that has necessitated its inclusion on the 'at-risk' register for a long time. The weatherboarding has failed and contains holes and there are extensive areas of rot within the timber frame, especially in the western elevation. The result of this is that the first floor now leans significantly. In addition, the plinth is crumbling, and part of the workshop has collapsed. Several reports¹ have been prepared that confirm the need for significant remedial works to safeguard the listed structure. To this end, the appellant has proposed a residential conversion of the building to provide it with a long-term use.
9. A residential conversion would give the building and it's setting a more domestic character through the alterations necessary to create a home. This would include the insertion of windows, doors, partitions, insulation and roof lights and the provision of a garden area and parking. The proposal would also include an extension to the north that would disrupt much of the gable end and incorporate an awkward join with the workshop. The extension to the west would be over fenestrated and thus out of character with the solidity of a historic agricultural building. Therefore, the proposed residential conversion would inherently erode the building's significance by harming the ability to experience it as a simple and functional agricultural structure.
10. That said, some aspects of the proposal would benefit the building and/or be sensitive to its significance. In particular, the tarpaulin and makeshift boarding to the walls, and corrugated tin roof, would be replaced. Moreover, the building, including the timber frame, would be comprehensively repaired. The conversion would also retain large internal spaces and historic fabric would be kept, including the dove resting shelves. The brick paviments would be reused, albeit on a modern base, and the mezzanine would allow the roof to be experienced from close range. Externally, the southern elevation would retain

¹ Morton Partnership in June 2002 and MLM May 2006 and 2019

an agricultural charm with pinned back doors. The conversion would allow a building at risk to be safeguarded into the future.

11. The positive aspects of the proposal would offset some of the harm and soften the impact of the conversion. However, there would still be residual net harm because of the inherent damage caused by a residential conversion of an agricultural structure. Overall, there would be a moderate net adverse impact on the significance and special interest of the listed building. This harm would be 'less than substantial' within the meaning of Policy D3 of the Local Development Plan² (LDP). Thus, the harm should be weighed against the public benefits of the proposal, which can include securing the optimal viable use.
12. An agricultural use of the building would be the optimal use for preserving its significance given this was its intended use when built. If an agricultural use is not viable then other uses would need to be considered to ensure the building did not deteriorate for want of a function. This could include commercial uses, which can sometimes be less intrusive than a residential conversion. However, the viability reports³ indicate that commercial uses are unlikely to be viable given the remote location, difficult access across a farmyard and the extent of works required. These reports are dated, but the conclusions are still valid given the site constraints.
13. Thus, it may be that a residential use ultimately becomes the only viable use, and therefore the optimal viable use. If this were the case, then the building and its setting would probably need to endure some harm through conversion to be safeguarded.
14. However, the evidence⁴ before me suggests there is interest in using the building for agricultural/equestrian purposes. In particular, the owner of Bohuns Hall has offered to purchase the building and restore it for use as stables, and the adjoining farmer has also offered to purchase the appeal building and use it for agriculture. The interest has been expressed publicly and in writing. The farmer even instructed an agent to make the offer, so it would seem genuine and considered rather than being aimed at frustrating the appellant's plans.
15. The offers do not appear to be detailed and it is unclear if those interested are aware of the considerable costs of any remedial works⁵, and the previous failure to raise funds through a farming stewardship grant. However, the conversion costs could be reflected in any sale price. It is also unclear if the building would be suitable for housing animals in accordance with modern standards and if the offers were predicated on the inclusion of the appellant's adjoining land. Nevertheless, there is no substantive evidence before me to indicate that the interest was robustly explored by the appellant. For example, it is unclear if the offers were responded to. Furthermore, no party has been afforded an opportunity to make a formal and costed proposal demonstrating how the building would be remediated. In this respect, stipulations could have been placed on any sale to require the completion of some works by a set date to ensure any interest is genuine and beneficial to the building.

² Maldon District Approved Local Development Plan 2014-2029

³ Viability Assessment 2020 & Strutt and Parker in 2004, Whirlledge and Nott in 2005 and Fenn Wrights in 2010

⁴ See comments from Melissa Curtis 19.09.21 and letter from G N Butt dated 15.02.21 and subsequent comments dated 15.09.21

⁵ Around 20 years ago a figure of £160,000 was estimated

16. Accordingly, I am not satisfied that the appellant has demonstrated that a residential conversion would be the optimal viable use. A short period of marketing may have assisted in this respect. Consequently, it would be premature to conclude that a residential conversion to a dwelling is the optimal viable use of the building and thus a benefit of the scheme.
17. Although it has not been demonstrated that a residential conversion would be the optimal viable use, the appeal scheme would nevertheless have other benefits. It would secure a use for the building and safeguard it into the future. Although without further justification it is possible that an agricultural use could also achieve this. The provision of a modest dwelling would also assist in addressing the significant shortfall in the housing land supply and enhance housing choice, but a single dwelling would be a limited benefit in this respect. There would also be some economic benefits from construction and subsequent occupation, but these would be time limited or modest in extent.
18. It is necessary to give considerable importance and weight to the special regard I must pay to preserving the listed building and its setting⁶. This is not an instruction to refuse a proposal that harms a designated heritage asset but provides a strong presumption in favour of preservation. In this context, the harm that would arise from the proposal would not be outweighed by its public benefits. The failure to demonstrate that a residential conversion would be the optimal viable use of the building is key in this regard. Accordingly, the harm would not have clear and convincing justification. The proposal would therefore be contrary to Policies D1, D3 and S8 of the LDP, which seek to secure proposals that preserve designated heritage assets and their setting unless any harm has clear and convincing justification.

The effect on biodiversity

19. The appeal site includes several features that could support bats, breeding birds and barn owls including mature trees, scrub, open sided buildings and hedges. Accordingly, there is a reasonable likelihood of protected species being present and affected by the development, particularly as the existing buildings would be renovated and the site partially cleared.
20. The appellant has provided a Phase 1 biodiversity report by Hiller Ecology, which presented the findings of a survey undertaken in December 2019. The conclusion in the report is that the site is of low biodiversity value. Nevertheless, the report confirms that the conclusions are only valid for 24 months from the date of the last survey. Accordingly, the findings became invalid in December 2021 and are therefore out of date by some way.
21. It therefore follows that the findings of the Phase 1 report cannot be relied upon. Accordingly, the appeals have been submitted without adequate evidence that the proposal would not harm biodiversity. It would be inappropriate to require further surveys by condition because Circular 06/2005⁷ states that ecological surveys should only be left to a planning condition in exceptional circumstances, which do not apply in this case.
22. It is necessary to identify the presence or otherwise of protected species before granting planning permission so that any impacts and potential mitigation can be identified and fully understood. The absence of an up to date and valid

⁶ See Sections 16(2) and 66(1) of The Planning (Listed Buildings and Conservation Areas) Act 1990

⁷ Biodiversity and Geological Conservation – see footnote 61 of the National Planning Policy Framework

assessment is therefore a significant omission. Without it, there is an unacceptable risk that the proposal could harm protected species. As such, it is unclear whether the development would protect biodiversity and thus adhere to Policy N2 of the LDP, which seeks to safeguard protected species.

The effect on the operation of the farmyard

23. Paragraph 187 of the National Planning Policy Framework states that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Furthermore, where the operation of an existing business could have a significant adverse effect on new development in its vicinity, the applicant (or 'agent of change') should be required to provide mitigation.
24. The proposed dwelling would be located on the edge of an existing farmyard. It would be closer to operations than Bohuns Hall, which is also screened by landscaping and sits in large grounds. The handful of other nearby dwellings apparently belong to members of the Farmer's family. As a result, the residents of the appeal scheme could have a different relationship to the farming enterprise than those of the existing nearby properties.
25. Residents of the proposal could be exposed to noise and activity from the workings of the farm, potentially at unsociable hours. Livestock is also kept at the farm, and this could result in smells. These potential impacts have not been explored in a substantive way by the appellant, who is the agent of change. In the absence of such evidence, the appeal has failed to demonstrate that a residential conversion would not place unreasonable restrictions on the operation of the farm. In reaching this view, I have considered the comments submitted by the Council's Environmental Protection team, but they do not address this point and are therefore not instructive in this instance.
26. In conclusion, the appellant has failed to demonstrate that a residential conversion would not adversely affect the operation of the adjoining farm. Accordingly, the appeal scheme would not optimise the use of the land when having regard to the location of the site and the impacts upon the amenities of neighbouring properties. The proposal would therefore be at odds with Policy H4 of the LDP.

Character and appearance

27. The appeal building is located on the edge of a farmyard which incorporates several buildings, some of which are dwellings. As a result, there is a built context that encompasses intrinsically rural buildings, such as barns, as well as domestic properties. This includes Bohuns Hall and its large residential curtilage to the immediate east of the appeal site. This imparts a built and more domestic context on the appeal site than is found elsewhere in the open landscape around Tollesbury.
28. The conversion of the appeal building to a dwelling would result in it having a more domestic character and appearance. For the reasons already set out this would harm how Bohuns Byre is experienced as a largely intact, albeit redundant, agricultural structure. This would harm its setting and significance as a designated heritage asset with an inherent agricultural character. However, when considering the wider rural character and appearance of the area, the scheme would not appear out of place in the countryside as

converted barns are a common place feature. Moreover, there are several dwellings and other buildings nearby such that the converted barn would not appear stark or out of place. Distant public views of the proposal from public rights of way, which would include features such as the garden and parking area, would be softened by walls and vegetation.

29. In conclusion, the proposal would preserve the character and appearance of the area. It therefore follows that a conflict with Policy D1 of the LDP would not occur. Similarly, there would be no conflict with Policy S8 of the LDP, which seeks to preserve the intrinsic character and beauty of the countryside.

Other Matters

30. Some of the defects with the building could be put down to sustained neglect. Simple maintenance has not been undertaken properly, including clearing vegetation that has grown through the walls, felling self-seeded sycamore trees⁸ that may be affecting the foundations, or making the building properly wind and watertight. The overgrown nature of the site is also indicative of an absence of adequate care. The lack of maintenance must be viewed in the context of the appellant's long-standing aspiration to develop the site. The deteriorating state of the building may assist their case in this regard. Indeed, it is unclear what steps have been taken since 2010 to protect the building.
31. The National Planning Policy Framework states that where there is evidence of deliberate neglect, the deteriorated state of the heritage asset should not be taken into account in any decision. The points outlined above indicate that there may have been deliberate neglect. However, given my findings above, especially in relation to the optimal viable use of the building, this is not a matter that needed to factor in my assessment.
32. Council Officers, including a Conservation Officer, recommended the proposal for approval, and I have carefully considered the reasons why. Nevertheless, given my findings above I have taken a different view for the reasons given.
33. The proposal would result in the site being tidied up and the listed building being more prominent as a result. However, it would also result in the erosion of the agricultural character of an historic farmyard. As a result, the proposal would not improve the setting of nearby listed buildings. However, given my findings on the main issues it is not necessary to ascertain whether there would be harm to the setting of nearby listed buildings.
34. I have carefully considered the previous appeal decisions⁹, but the findings were made in a different policy context and related to a alternative much larger scheme. As a result, there is no inconsistency. The appellant has raised questions about how and why the planning committee considered the applications, but these concerns should be directed to the Council.
35. The Council are unable to demonstrate a five-year housing land supply and therefore Paragraph 11 of the Framework is relevant. In this instance, the application of Policies in the Framework in Paragraphs 199, 200 and 202, which Policy D3 replicates, provide a clear reason for refusing the proposal. As a result, the tilted balance is not relevant.

⁸ There is no intention to fell the horse chestnut trees

⁹ APP/X1545/E/10/2132929 and 2135721

36. Given my overall conclusions, the appeal scheme would have no effect on any European Site/Special Protection Area and therefore I have not considered this matter further.

Conclusions

37. The proposal would fail to preserve the special interest of the listed building and its setting and there are no other considerations or public benefits that would outweigh this harm. In particular, it has not been demonstrated that a residential conversion would be the optimum viable use of the listed building. In addition, the proposal fails to demonstrate that there would be no harm to biodiversity or the operation of a neighbouring business. The proposal would not harm the character and appearance of the area but the absence of harm in this respect would not outweigh the harm and policy conflicts I have identified. Accordingly, for the reasons given, the appeals have failed.

Graham Chamberlain
INSPECTOR