



Appeal Decision

Site visit made on 29 May 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2024

Appeal Ref: APP/D3505/C/22/3297538

The Old Dairy, 73 Ballingdon Street, Sudbury, Suffolk CO10 2DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Wayne Liskus against an enforcement notice issued by Babergh District Council.
 - The notice was issued on 25 March 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a detached cartlodge.
 - The requirements of the notice are to demolish the cartlodge in its entirety, and remove all resultant materials from the land.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (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.
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Preliminary Matter

1. A revised National Planning Policy Framework (the Framework) was issued during the course of this appeal. Changes to the Framework in relation to the matters referred to in this appeal are minimal. The Babergh and Mid Suffolk Joint Local Plan – Part 1 (JLP) was adopted during the course of the appeal. The appellant was given the opportunity to comment on relevant policies of the JLP. I have taken the revised Framework and JLP into account in coming to my decision.
2. Reference has been made to a planning application for the building as built and conversion to an annexe (planning application reference DC/21/04815). However, the appeal before me was made against the issue of an enforcement notice relating to the construction of a cartlodge. For clarity, I will be considering the cartlodge as built and subject of the enforcement notice.
3. The appellant suggests that the building was constructed in accordance with drawings submitted in relation to planning application reference DC/18/03992 approved on 31 October 2018. I understand that these were the only designs available on the Council's website at the time construction started. The approved drawings listed on that approval appear to relate to revised drawings of a building with a lower roof than that constructed and that have subsequently, I understand, been uploaded to the Council's website. No appeal has been made under ground (c) that the matters stated in the enforcement notice do not constitute a breach of planning control. From the evidence submitted, it appears that the parties accept that the building was not constructed in accordance with the approved drawings, albeit this may have been a misunderstanding on the part of the appellant.

4. The enforcement notice subject of this appeal was not dated. However, I note the appellant has provided the date of issue as 25 March 2022 on the appeal form. As that is more than 28 days before the date given on which the notice was due to take effect, I consider that it complies with section 172(3) of the Act.

The Appeal on Ground (a) and the Deemed Planning Application

Main issue

5. The main issues are:
 - the effect of the proposed development on the character or appearance of the conservation area and on the setting of nearby listed buildings and non-designated heritage assets; and
 - the effect of the cartlodge on the living conditions of neighbouring occupiers of neighbouring buildings on Ballingdon Street with particular regard to outlook.

Reasons

Heritage

6. The appeal site is located on Ballingdon Street within Sudbury Conservation Area. Ballingdon Street is a busy main road through Sudbury, with terraced housing to either side. Many of the houses in the terrace to the side of the street that includes The Old Dairy are listed.
7. In determining this appeal involving development located within a conservation area and that affects the setting of listed buildings, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (Listed Buildings Act).
8. Sudbury Conservation Area covers an extensive area. The main part covers the town centre, an extensive platform above the level of the River Stour to the opposite side of the river from the appeal site. It is arranged around Ballingdon Street that leads over the river and four other roads extending away from the town centre. The conservation area lies mainly within a medieval town boundary, with the old town likely to have been of Saxon origin although now contains buildings of a variety of ages and styles. Much of the town appears to be late Georgian and early Victorian, with a majority of buildings constructed in Suffolk white brick. Ballingdon Street links the old village of Ballingdon to the town centre. It is of a more domestic scale comprising predominantly terraced buildings within a more rural character with the Water Meadows to the rear and around the river. To the rear of the terraces are a number of other buildings that may have been small industrial buildings, including The Old Dairy. The significance of the conservation area, insofar as it relates to The Old Dairy, derives from its domestic and rural scale and character.
9. The Council suggest that the cartlodge is located within the settings of 74 Ballingdon Street and 68-70 Ballingdon Street. The Old Dairy is located within the curtilage of 74 Ballingdon Street that is listed grade II such that, in accordance with Section 1(5) of the Listed Buildings Act, the cartlodge is also within that curtilage.

10. 74 Ballingdon Street comprises a 19th century double fronted shop and house of two storeys with a cart entrance to The Old Dairy behind. It was included in the list for group value. As a result, its significance derives from its simple, attractive appearance in the group of buildings fronting Ballingdon Street.
11. 68-70 Ballingdon Street are two storey mid-Victorian terraced cottages with steep pegtiled roof. There are some indications that they contain an earlier timber-framed core. At one point it may have been a single property, possibly owned by a family of clothiers in the 17th century. It is on the local list, such that it is a non-designated heritage asset for the purposes of the Framework. Its significance derives from its attractive appearance that contributes to the group value of buildings on Ballingdon Street.
12. A number of other buildings in the terraces to the same side of Ballingdon Street are also listed, including Nos. 63, 64, 75-77 and 78. These are two storey terraced properties with tiled roofs and most with shop fronts, some with cart entrances, that have been listed for their group value along with other properties. Their significance, therefore, is derived from their attractive appearance and contribution to the group of historic buildings on Ballingdon Street. These listed buildings are located a short distance from The Old Dairy, such that the cartlodge is not within their settings
13. My attention has been drawn to other listed buildings further along Ballingdon Street that also have outbuildings to the rear. This indicates the importance of outbuildings, often used by industry or as dairies, and their contribution to the historic development of Ballingdon Street on the route into Sudbury.
14. The cartlodge is located to the rear of The Old Dairy, which is also located to the rear of the terrace of houses on Ballingdon Street, with access through the cart entrance in No. 74. It is a simple structure, open to the front with timber frame and cladding over a brick plinth and clay pantiles on the roof. The materials reflect those of surrounding development. I understand the steep roof pitch reflects that of the rear part of The Old Dairy and other buildings in the area. However, it results in a tall building dominated by its roof.
15. The location of the cartlodge to the rear of the buildings fronting Ballingdon Street means that it is not visible in views from the street. However, it is prominent in views from Sudbury Water Meadows to the rear and the development surrounding it. In these views the substantial roof and location to the rear of most other buildings means the building dominates views of the rear of buildings along Ballingdon Street, including the listed buildings. Therefore, the roof makes it prominent within the conservation area and setting of nearby buildings on the local and national lists.
16. Planning permission granted under reference DC/18/03992 related to a cartlodge of the same footprint, but with a lower roof. As the height of the roof would have been lower, it would have been less prominent with a different effect on the conservation area and setting of surrounding buildings.
17. For these reasons, the cartlodge does not preserve or enhance the character or appearance of Sudbury Conservation Area. It harms the setting of the listed building at 74 Ballingdon Street and non-designated heritage assets at 68-70 Ballingdon Street. That results in harm to the significance of these heritage assets. Whilst that harm is less than substantial it is, nonetheless, a matter of considerable importance and weight in this case.

18. Paragraph 208 of the Framework establishes that, where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The cartlodge provides some undercover parking and storage space for the occupiers of The Old Dairy that is a private rather than public benefit. In accordance with the Framework it cannot outweigh the identified harm to the conservation area and setting of the listed building.
19. Taking account of the above, the development conflicts with Policies LP19 and LP24 of the JLP and the Framework that seek to preserve, enhance or conserve designated and non-designated heritage assets and their significance, including any contribution made to that significance by their setting.

Living conditions

20. The Old Dairy is located behind the houses fronting Ballingdon Street. There is open space to the rear. The cartlodge is behind The Old Dairy. Ballingdon Street comprises terraces of houses with gardens to the rear leading to the open area behind.
21. The distance of the cartlodge from the rear of the neighbouring houses, combined with its height, means that it is prominent in views from those houses and their gardens. Nevertheless, it is not overly dominant to occupiers of those houses when within their homes or gardens. As a result, it is not overbearing on those occupiers.
22. For these reasons, I conclude that the cartlodge does not materially affect the living conditions of occupiers of neighbouring houses on Ballingdon Street by reason of outlook. As such, it does not conflict with Policy LP24 of the JLP and the Framework that seek development of a high-quality design that protects the amenity of neighbouring occupiers, including avoiding development that is overbearing.

Other matters

23. The Council indicate that planning permission reference DC/18/03992 may have been implemented, although it is unclear whether it was commenced in accordance with the conditions attached to that permission. In addition, I note that the building constructed is in the same position. Consequently, it is unclear whether construction of that building would be possible. It would be open to the appellant to apply for a Lawful Development Certificate under section 191 or 192 of the Act to determine whether it would be possible to complete the approved development.

Alternative design solutions

24. The ground (a) appeal and deemed planning application is in respect of the matters stated in the enforcement notice as constituting the breach of planning control (Section 177(5) (s177(5)) of the Act). There is power when determining an appeal under s174 of the Act for the Inspector to grant planning permission in respect of the matters stated in the enforcement notice as constituting the breach of planning control, whether in relation to the whole or any part of those matters (s177(1) of the Act).

25. The enforcement procedure is intended to be remedial rather than punitive. Where it appears there is an 'obvious alternative' which would overcome the planning difficulties with less cost and disruption, I need to consider it. The key question therefore is whether any submitted alternative scheme can be regarded as 'part' of the as-built development. I consider it is appropriate to introduce the suggested alternative design solutions put forward as part of the ground (f) appeal here.
26. The appellant suggests that the building could be amended to reflect the design of the building approved under planning permission reference DC/18/03992. In particular they suggest it may be possible to reduce the pitch of the roof to reflect that of the approved scheme.
27. There are a number of differences between that planning permission and the building constructed. In response to my query, the Council say the eaves of the building constructed are higher than they would have been if constructed as approved. In addition, they refer to other differences, including the orientation of the oak posts, different brick plinth, removal of a door and additional braces to the frame. For these reasons, differences between the two developments are substantial and more than just the form of the roof. The building would need substantial demolition prior to reconstruction to bring it into accordance with the approval. This alternative is not 'part' of the as-built development but would be a different building.
28. The drawings supplied with the appeal, including relating to the approved development, the development as built and as if converted to an annexe, do not show how the building would appear should the eaves height be maintained and the pitch of the roof be reduced. Given the differences between the drawings and what would result I cannot be certain what it would look like. Replacement of the roof with a lower pitch above the retained eaves would mean the building would be higher than it would if constructed as previously approved. As a result, although it may be 'part' of the as-built development, on the evidence submitted it would not be possible to assess its effect, particularly on the significance of the heritage assets. On that basis, it is not possible to conclude whether the alternative would overcome the harms I have identified.
29. For these reasons, I consider that there are no obvious alternatives that would overcome the conflicts I have found with the development plan.

Conclusion

30. For the reasons set out above, I conclude that the development does not accord with the development plan as a whole. I have considered whether there are any obvious alternatives to overcome the harms I have identified. However, on balance I conclude that the other material considerations do not outweigh the harm arising from the conflict with the development plan. The appeal on ground (a) therefore fails.

The Appeal on Ground (f)

31. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek the

cartlodge be demolished, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.

32. I have considered whether there are obvious alternatives to the development completed that formed part of the development under the ground (a) appeal. In this case, I have concluded that no obvious alternatives exist that would overcome the reasons for issuing the notice. As a result, such works would not remedy the breach of planning control.
33. I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).

Formal Decision

34. 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.

AJ Steen

INSPECTOR