



Appeal Decision

Hearing Held on 13 August 2024

Site visit made on 17 July 2024

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 23rd August 2024

Appeal Ref: APP/X3540/X/22/3312787

Mill Green Farm, Mill Green, Parham, Suffolk IP13 9NL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr John Patrick against East Suffolk Council.
 - The application was made on 7 October 2022 under section 191(1)(b) of the Town and Country Planning Act 1990 (as amended) seeking to confirm that works have been undertaken pursuant to planning permission DC/21/2602/FUL.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether or not the Council's deemed refusal of the LDC was well-founded.

Reasons

3. On 1 November 2021, under reference DC/21/2602/FUL, the Council granted planning permission (the planning permission) at the appeal site for "*Alterations and additions to barn to facilitate conversion to 2 x No. short-term holiday lets*".
4. The barn (17th or 18th century in part) has been completely demolished, save for a relatively small element which I understand contains water tanks. New foundations have been laid and brick walls have been built which, around openings, extend several courses above damp proof course level. These works are comprised of entirely new materials. Timbers, pantiles and bricks from the demolition works are stored at various locations upon the appellant's land.
5. The appellant is seeking a certificate to confirm that the works as undertaken are pursuant to the planning permission, and were therefore lawful at the date of the LDC application. I must therefore interpret the planning permission to make that determination. The Council raises the cases of *Hibbitt*¹ and *Shimizu*², and I accept the points made by the appellant that their assistance is constrained by their own particular and statutory contexts. In any regard, I approach the task on the uncontroversial legal principles (common ground

¹ *Hibbitt and another v Secretary of State for Communities and Local Government* [2016 - EWHC 2853] (Admin)

² *Shimizu (UK) Ltd v Westminster City Council* [1997] WLR 168

between the parties) that the permission must be read as a whole (together with its incorporated documents and conditions) through the eyes of a reasonable reader applying common sense and with natural and ordinary meanings given to words.

6. Notwithstanding that a reasonable reader would I think place much weight on the description of development, which refers to alterations and additions to the barn, such a reader would also see that the incorporated documents³ refer to more extensive works. The Design and Access Statement (DAS) and the Planning Statement say that "The existing architectural features and structures will be retained or recreated to further preserve the barn's character", and that the "Existing architectural features will be retained or rebuilt"[my emphasis]. Therefore, reading the planning permission as a whole – including noting the reference to demolition in some of the conditions – it is reasonable to conclude that some parts of the barn could be demolished, rebuilt and recreated under the consent. However, the incorporated documents refer to features and structures also being retained (not just recreated and/or rebuilt) and the Planning Statement (at 5.5) is unambiguously explicit in stating that the red brick plinth would be repaired and retained. Condition 2 of the permission requires strict accordance in all respects with the Planning Statement.
7. As a matter of fact and degree, the red brick plinth has not been repaired and retained. It has been removed. New bricks are now present where it previously existed. The pre-development plan submitted with the planning application (Drawing No P-06a) shows the brick plinth visible above ground level. The new bricks which have been laid extend several courses above and below a new damp proof course ('DPC', designed for obvious reasons to be set into a wall above ground level) so I have no doubt that the new bricks have taken the place of those of the pre-existing red brick plinth. It was also confirmed at the Hearing by the appellant that was the case⁴. While I note the appellant's stated intention of using red bricks from the demolition as external facings onto what has been built, which it is argued would satisfy character and appearance issues, it does not get away from the fact that the removal of this part of the historic building fabric was not what was consented by the permission.
8. The appellant says that it was necessary to remove the red brick plinth in its entirety for structural reasons. However, while there is clear reference to underpinning or other remedial works to foundations, I see nothing explicit in the Structural Appraisal (18 June 2020) which adequately supports the appellant's claim. Further, as that document is dated before the Planning Statement – with its explicit reference to retention of the red brick plinth – it does not seem credible to me that the Structural Appraisal is now being retrospectively interpreted as supporting a case for removal of the red brick plinth when the opposite seems to have been the case when the Planning Statement was written. In any case, whatever the reason for removing the plinth, its removal was not what was consented by DC/21/2602/FUL.

³ Condition 2 expressly incorporates certain documents: *The development hereby permitted shall be completed in all respects strictly in accordance with the application form, planning, design and access and heritage statements (plans subsequently amended) and drawings P-01a, P-02b, P-03C, P-07C received 27 May 2021, ecology report (MHE Consulting, June 2021) received 25 June 2021 and drawings P-04C, P-05D received 23 August 2021.*

⁴ In that regard, I do not accept the point made on the appellant's behalf that the red brick plinth could be removed on the basis that the approved plans (Drawing Nos P-04C and P-05D) annotate that "Where materials are not coloured on the drawing, materials will be retained or replaced with materials that match the existing". Firstly, the red brick plinth is coloured (at least in places) on the drawings. Secondly, the Planning Statement is explicit that the red brick plinth will be retained – there is not an alternate option.

9. Accordingly, I find as a matter of fact and degree that the development which is the subject of this appeal has not been undertaken pursuant to planning permission DC/21/2602/FUL. A reasonable reader applying common sense would understand the purpose of the planning permission to be one facilitating the economic re-use of the non-designated heritage asset while retaining as much as possible of the building's historic fabric (to which the incorporated DAS refers at 5.2). The creation of new walls using new materials in place of the historic red brick plinth does not accord with that consent, as properly interpreted, when taking into account the specific reference to the latter's retention in the Planning Statement.
10. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Andrew Walker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Odette Chalaby (Barrister, No5 Barristers' Chambers)
Steven Bainbridge (Lone Wolf Planning)
Mr John Patrick (Appellant)

FOR THE LOCAL PLANNING AUTHORITY:

Jonathan Clay (Barrister, Cornerstone Barristers)
Grant Heal (Case Officer)
Marianna Hall (Principal Planner)

INTERESTED PERSONS: None

PHOTOGRAPHS accepted into evidence at the Hearing

- 1 Stored pantiles
- 2 Stored bricks