



Appeal Decisions

Site visit made on 10 September 2024

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2024

Appeal A Ref: APP/J1860/W/24/3344089

Hill Court Farm, Roberts End Lane, Forthampton, Worcester GL19 4QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Daryl Dickson against the decision of Malvern Hills District Council.
 - The application Ref is M/23/00867/HP.
 - The development proposed is the construction of a single-storey porch to the side elevation of the cider house; a single-storey porch to the rear elevation of the main dwellinghouse; a low boundary wall; the installation of an external flue to the cider house and; the reconstruction of the end gable wall of the cider house.
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Appeal B Ref: APP/J1860/Y/24/3344093

Hill Court Farm, Roberts End Lane, Forthampton, Worcester GL19 4QH

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
 - The appeal is made by Mr Daryl Dickson against the decision of Malvern Hills District Council.
 - The application Ref is M/23/00770/LB.
 - The works proposed are the construction of a porch to the side elevation of the Cider House, construction of a courtyard wall attached to the listed building and the replacement of sections of timber framing on the external walls of the listed building.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

Description

3. The descriptions of the proposals above are taken from the Council's refusal notices as they more helpfully describe the development and works than the limited descriptions used on the application forms, which merely say to regularise the existing consents and list the application references. On their appeal forms the appellant has also used the Council's descriptions, although on the listed building consent appeal form the appellant has reproduced the Council's planning description instead of referring to the listed building consent description. I have omitted reference to 'retrospective' as this is not a definition of development.

Site address

4. In the address above I refer to Roberts End Lane, which the appellant has used on their application forms and which the Council has used on the refusal notices. However, the statutory address of the listed building refers to Robertsend Lane and I saw that the road sign at the junction of the road also referred to Robertsend Lane. However, it is clear that it is the same lane.

Amended plans

5. The appellant has asked me to consider amended plans¹ that shows a reduced height flue on the roof of the Cider House and which have been submitted to address the second refusal reason on both appeals. They were not plans on which the Council made its decisions. The 'Procedural Guide: Planning Appeals – England²' advises that if an appeal is made, the appeal process should not be used to evolve a scheme. It is therefore for me to decide whether to accept the amended plans, based on two tests – substantive and procedural – that came out of the case of *Holburn Studios*³ that refined the previous Wheatcroft principles⁴.
6. The first test is whether the proposed amendment(s) involve a "substantial difference" or a "fundamental change" to the application. The proposed reduced height flue would be in a similar location on the west roof slope of the Cider House to the flue that has been installed. The description of development already includes an "external flue to the Cider House" and this would not change, nor would the overall scope of the development and works in both appeals. Hence there would be no fundamental change to the applications.
7. The procedural test is whether the proposed amendment(s) would cause unlawful procedural unfairness to anyone involved in the appeal and, if so, whether such unfairness could be cured, for example by re-consultation. The Council and interested parties have had the opportunity to comment on the amended plans as part of the appeal process. As a result, I am satisfied that my consideration of the amended flue plans would not cause unlawful procedural unfairness to any party.
8. For the reasons above, the amended plans pass the two *Holburn Studios* tests. I am therefore prepared to accept the amended plans showing a reduced height flue on the roof of the Cider House. The flue will be discussed again later.

Retrospective scheme

9. Planning and listed building consent⁵ (hereafter the 'previous approvals') have already been granted for "Conversion of existing single dwelling into two dwellings including demolition of existing lean-to and alterations to windows and fenestration". However, the proposals have not been carried out in full accordance with the previous approvals and additional works have been undertaken, which are now the subject of these appeals. Hence the applications are retrospective and seek to regularise the development and

¹ Drawing no. S3220-3 Proposed Amended Reduced Flue Height Plans (drawn by Midland Survey Ltd)

² Updated September 2024

³ *Holburn Studios³ Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

⁴ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37].

⁵ Local Planning Authority Refs: 19/01228/FUL and 19/01229/LBC granted 16 October 2019

authorise the associated works that have been undertaken and retain what has been done. It was apparent during my site visit that plans have been submitted that correspond with what has been undertaken, apart from the flue that has not been reduced in height. Therefore I have determined the appeals based on the submitted plans, including the aforementioned amended flue plans.

Scope of consideration

10. In its reasons for refusal the Council's concerns focus on the effects of certain elements of the development and/or works undertaken, namely the porch, flue, and removal of paint on the Cider House; the boundary wall, and the porch on the rear (east) elevation of the main dwelling.
11. The Council does not maintain objections to the reconstruction of the end gable wall of, or timber repairs to, the Cider House. From the evidence presented to me and my observations on site I have no reason to disagree and concur that these elements of the proposal preserve the special interest of the listed building and do not harm its significance. In these regards they comply with the relevant statutory presumptions of the Act, relevant provisions in the National Planning Policy Framework (the Framework) and Policies SWDP6, SWDP21 and SWDP24 of the South Worcestershire Development Plan 2016 (the SWDP) set out below.
12. Given the above, in determining the appeals I have focused my considerations on the porch, flue and removal of paint on the Cider House; the boundary wall; and the porch on the rear (east) elevation of the main dwelling.

Other

13. The proposal relates to development and works to a listed building. I have statutory duties under sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) with regards to the listed building and any planning functions.
14. As the two appeals effectively concern the same scheme, but under different, complementary legislation, I have dealt with both appeals together in my reasoning to avoid unnecessary duplication.

Main Issues

15. For **Appeals A and B** the main issues are whether the proposal preserves the Grade II listed building known as "Ciderhouse attached to rear of Hill Court, Robertsend Lane"⁶ (hereafter referred to as the Cider House), or its setting, or any features of special architectural or historic interest which it possesses.
16. For **Appeal A** an additional main issue is whether there is sufficient information to allow a full assessment of the effect of the porch on the rear (east) elevation of the main dwelling.

⁶ National Heritage List for England: list entry number 1238954

Reasons

Special interest and significance of the heritage asset

17. The Cider House was first listed in 1968, with most recent amendments made in 1984. The building is Grade II listed and dates from about the 17th century. It is timber-framed with square 6x3 panels on a blue lias stone base with plain tile roof, and a floor has been inserted. The listing makes clear that Hill Court, which is the attached farmhouse (referred to in my decision letter as the main dwelling) is no longer included on the list.
18. From the details presented to me, including the listing description, and what I observed on my site visit I consider that the special interest and significance of the Cider House are largely derived from its architectural and historic interests in illustrating a 17th century vernacular timber-framed agricultural outbuilding. The use of traditional construction techniques and materials, along with surviving historic fabric make important contributions in these regards. Special interest and significance also stem, in part, from the immediate and wider surroundings in which the Cider House is experienced. This 'setting' allows the asset's historic function within the former farmstead complex, as well as the wider farming area and agrarian landscape, to be appreciated and understood and thus contributes to its heritage merit.

Appeal proposals and effects

Side porch to Cider House

19. The Cider House joins the main dwelling at a right angle, but I saw there was no access into the Cider House from the main dwelling. Instead an entrance porch has been erected on the east side of the Cider House that provides a separate and dedicated access into it. A staircase leads from the entrance door up into an open-plan kitchen/dining/sitting area with wood burner. A bedroom and ensuite bathroom are downstairs from which a glazed timber door leads out into a small external landscaped yard that has been enclosed by the boundary wall (discussed later).
20. The east elevation of the porch has chunky upright timber posts with glazing in between, which reflect the design of the timber and glazing used on the extension across the front of the main dwelling. The timber posts are supported on a brick plinth of several courses of blue engineering bricks. These continue the blue brick band around the base of the front extension to the main dwelling. The red bricks used for the porch largely match the size and colour of those of the main dwelling and the infill panels of the Cider House. However, the brick bond used in the construction of the porch mirrors the main dwelling and not the Cider House. As a result of the above, whilst the porch is adjoined to and read against the Cider House, its materials and construction relate more to the main dwelling. These changes create a visual discordance and impart a manicured domestic character that undermines the modest form of this agrarian 'outbuilding'.
21. Furthermore, around the entrance door of the porch horizontal timber cladding has been used. Whilst timber cladding is sometimes used for agricultural buildings, the Cider House is timber-framed with brick infill panels and the main dwelling is brick built. Neither are timber clad. Whilst I saw some timber

clad buildings in the adjacent residential barn complex to the south and which are visually separate, they do not provide an architectural reference for the cladding on the porch. As the width of the front of the porch is only a little wider than the entrance door, the small sections of cladding either side of the door create a visual fussiness that detracts from the authenticity of the listed building.

22. The porch has a mono-pitch roof that sits beneath the eaves of the roof on the Cider House that joins the mono-pitch roof of the front extension to the main dwelling. This results in an awkward alignment of roof valleys and guttering junctions that reduces the simplicity of the Cider House.
23. From looking at photographs in the appellant's Design and Access Statement, the previous 1970s front extension to the main dwelling and its mono-pitched roof did cut across part of the second vertical bay of timber-framing of the east elevation of the Cider House. As the lean-to led into the Cider House, there had likely already been some loss of historic fabric. Whilst the porch is relatively small in terms of footprint, its walls and roof nonetheless conceal almost three vertical bays of the timber-framed east elevation. Hence almost a third of the historic external timber-framed elevation is now concealed from view by a substantially solid structure, which I regard as significant. Inside the porch, some of the timber framing and brick infill panels have been left exposed to view, but the remaining wall has been plastered. There are no substantive details to show what has been done to the historic fabric on this elevation to install the porch and whether the timber-framing/brick infill has been lost or covered over. The lack of details means it is difficult for me to meaningfully assess the impact of the porch in this respect.
24. Overall I find the porch has diminished the legibility and authenticity of the Cider House. It fails to preserve the asset's special architectural and historic interest and harms its significance.
25. I appreciate the appellant has submitted a statutory declaration recounting a conversation on site with the Council's Senior Conservation Officer. The Council refers to different recollections. Whatever may have been said, the Council as local planning authority has refused the planning and listed building applications for the porch. It is now for me, as decision-maker, to determine whether the various development and works are acceptable.

Flue on Cider House

26. On the previous applications a 1100mm tall flue was approved that would be located close to the roof ridge of the Cider House and extend beyond the ridge line. However, a taller flue has been installed much further down the western roof slope, supported by two black metal supports that extend back towards the roof slope. It was apparently made this height to comply with building regulations.
27. This is a prominent roof slope fronting Robertsend Lane, together with an adjacent range of converted farm buildings that line the lane. The existing flue is positioned roughly in the middle of the roof slope away from other features. This, together with the flue's excessive height and the metal supporting struts disrupt the simple profile of the building. The flue is also unduly tall and out of scale with the modest size of the Cider House and its roof, such that it is

visually intrusive. It also introduces a significant domestic feature to what is essentially a simple agricultural-related building.

28. The appellant accepts that the flue is too tall and that a smaller flue would be more sympathetic. Hence, they have submitted amended plans showing an alternative smaller flue, similar in height to the flue approved in the previous approvals, and which I have discussed earlier. It would extend in height about half way up the height of the roof from its current exit point on the roof slope and there would be no need for the supporting struts. The Council considers the amended flue would be a visual improvement compared to what has been installed. In light of the fact that a similar sized flue has already been granted on the Cider House, I concur.
29. However, the appellant confirms the amended flue would not fully comply with building regulations but offers no further explanation as to what would be required to make the amended flue compliant. Whilst building regulations do not fall under my remit, they are of some relevance in this instance. I see little practical benefit of agreeing to the installation of an amended flue that would be a visual improvement, but which would not meet building regulations and would no doubt have to be redesigned in any event. If I was minded to allow the appeals, a condition could be imposed requiring the removal of the existing flue and its supports within a certain timescale and the submission of details of an amended shorter flue (and which would work and meet building regulations).

Removal of black & white paint from Cider House

30. The black paint on the timber frame and the white paint on the brick infill panels have been removed to reveal the bare timber and the red brick infill panels. There is no doubt in my mind that the black and white painted elevations were a distinctive feature of the building and removal of the black and white paint has changed the building's appearance.
31. However, it is unlikely that the building was originally painted black and white when it was constructed. Timbers were often left unpainted and weathered naturally and panels were more than likely painted with pigmented limewash. Considering the age of the Cider House, the infill panels would most probably historically been wattle and daub and then infilled with brick at a later date. Painting the beams black and the panels white was a more recent fashion, popularised by the Victorians.
32. There is some submitted evidence to suggest that in the past inappropriate and non-breathable paint had been applied to parts of the timber frame and brick infill panels. Its removal, therefore, sustains the historic fabric and thus the significance of the listed building.
33. Part of the significance of the Cider House is its timber-framed construction, mentioned in the listing description, and use of traditional materials and methods of construction. Removing the black and white paint has removed a layer in the building's history and life. However, removal of inappropriate paints from the historic fabric, most likely applied much later after construction, brings about a sympathetic and authentic elevation treatment and the traditional materials and methods of construction are still legible.

Boundary wall

34. As described in the listing the timber-framed Cider House rests on a stone base wall of blue lias stone. The west elevation of the Cider House and its stone plinth run along the back edge of Robertsend Lane and hence form an integral part of the rural streetscene. The existing wall is made of irregular shaped and sized pieces of rough faced stone, which exhibit variations in texture as well as colour from grey, buff and beige. As a result, the stone is laid in a fairly random manner with recessed pointing that gives the stone wall visual variety, texture and character.
35. A new curved boundary wall has been erected from the north west corner of the Cider House round to the vehicular entrance that leads into the frontage of the main dwelling. The new wall is about 900mm high but is lower than the height of the stone plinth to the Cider House and also steps out towards the road. This helps indicate the junction between the new and the old walls.
36. The new wall is constructed of blue lias stone. However, the stone used is generally uniform in colour and more of a dark blue/grey. This contrasts with the prevailing lighter stone used in the existing wall. The new wall is capped with red bricks, which also strongly contrast with the stone below. The pieces of stone in the new wall are fairly regular in size and shape such that the mortar joints are overly straight when compared to the more irregular joints in the existing stone plinth. This neatness and contrast are exacerbated by the use of light coloured mortar against the darker coloured stone which further draws attention to the more regular form of the new wall. Also the texture of stone is overly smooth and machined compared to the existing rougher faced stone wall.
37. As a result the new wall, although well built, is unduly domestic in its character and appearance and visually discordant adjacent to the more rustic stone plinth to the Cider House. This reduces the authenticity and agricultural legibility of the Cider House and its immediate setting and hence does not preserve its special architectural and historic interest and harms its significance.
38. Drawing together all the works and development undertaken to the Cider House, I find the porch, the flue and boundary wall fail to preserve the listed building, or its setting, or any features of special architectural or historic interest it possesses and hence harm its significance. The removal of the black and white paint does preserve the Cider House's features of special architectural and historic interest.

Public benefits and heritage balance

39. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Moreover, paragraph 206 is clear that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Framework paragraphs 207 and 208 set out that, in finding harm to the significance of a designated heritage asset, the magnitude of that harm should be assessed.
40. Given the nature and extent of the proposal I find the harm to the significance of the listed building is 'less than substantial'. The Council has reassessed its consideration of the levels of harm and now also concludes there would be

'less than substantial' harm. In such circumstances, paragraph 208 of the Framework requires the harm to be weighed against the public benefits of the proposal including, where appropriate, securing the asset's optimum viable use. A finding of less than substantial harm still carries considerable importance and weight.

41. Public benefits, as described in the national Planning Policy Guidance (PPG), can be anything that delivers economic, social or environmental objectives. Benefits do not have to be visible or publicly accessible and can include works to a listed private dwelling, for example, which secure its future as a designated heritage asset. The Courts have also held that where a proposal contains a mixture of elements that would both harm and improve the heritage asset, then those that would be beneficial should be included in the planning balance where heritage is a consideration.
42. Heritage public benefits accrue from the timber repairs to the Cider House and removal of inappropriate black and white paint. These assist in the conservation of the listed building in a manner appropriate to its significance. Also some economic benefits would have been generated by the investment into the building during its refurbishment. These benefits are moderated by their extent, but still carry moderate weight in favour of the appeals.
43. However, although the porch may create a building regulations compliant entrance, and the flue and boundary wall facilitate the existing use of the asset, it is not been satisfactorily demonstrated that, as implemented, they are required to secure the asset's use or that the asset would be at risk should the appeals fail. Moreover, there is no substantive evidence before me which shows that in realising this use of the asset the identified harm has been minimised. In all of these respects, clear and convincing justification for the harm to the asset's significance has not been provided.
44. The public benefits identified above weigh in favour of the appeals. However, the weight I ascribe to them is not sufficient to outweigh the considerable importance and weight I attach to the harm that has occurred to the significance of the listed building.
45. The proposals would therefore fail to preserve the Grade II listed building known as the Cider House, its setting, or any features of special architectural or historic interest which it possesses. It would thus fail to satisfy the requirements of the Act and the relevant provisions of the Framework. It would also conflict with Policies SWDP6, SWDP21 and SWDP24 of the SWDP. Collectively these seek, amongst other things, to ensure that development conserves and enhances the significance of heritage assets, including their settings. New development should integrate effectively with, and complement, its surroundings and distinctive features or qualities that contribute to the visual and heritage interests of the area.

Whether there is sufficient information to assess porch on main dwelling

46. This porch on the rear (east) elevation is not attached to a listed building and does not require listed building consent. The previous approvals granted permission for a porch on this elevation of the main dwelling. It was to be a simple open-fronted structure with a dual-pitched tiled roof supported on two vertical timber posts at the far corners of the roof canopy.

47. However, a different design of porch has been installed. Whilst the floor plans omit the porch, they do show the door. The porch is also shown on the elevation plans, in a similar position to that approved in the previous approvals. The porch is not physically attached to a listed building, so there is no issue regarding historic fabric. The elevation plans therefore provide sufficient information to be able to assess the size and design of the porch as part of the context and appearance of the main dwelling.
48. Looking at the plans it would appear the porch is slightly taller and projects out a little more from the main dwelling than the previously approved porch. The porch sides are no longer fully open – instead the lower half of each side is now a brick wall which supports a series of vertical timber posts. This gives the porch greater bulk and massing. That said, the apex of the gable is open with vertical beams, rather than being clad in horizontal timber boarding. This helps off-set some of the bulk.
49. From the submitted elevation plans I find there is sufficient information upon which to assess the impact of the porch on the rear (east) elevation of the main dwelling, and my site visit observations reinforce this. I find the revised porch design is an acceptable addition to the non-listed main dwelling. It is also located to the rear, farthest from the road and the listed Cider House so as not to affect the setting and thus significance of the listed building. Nonetheless, my findings on this main issue and a lack of harm in this regard, is a neutral consideration and does not alter my conclusions on the other main issue.

Other Matters

50. Representations have been submitted by an interested party regarding the way the Cider House appears to be used. However, consideration of this matter is not within the scope of these appeals.

Conclusion

51. Appeal A: The proposals would conflict with the development plan when taken as a whole and there are no material considerations that outweigh this conflict. Therefore, for the reasons above the appeal should be dismissed.
52. Appeal B: For the reasons given, I conclude that the appeal should be dismissed.

K Stephens
INSPECTOR