



Appeal Decisions

Site visit made on 1 April 2025

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 May 2025

Appeal A Ref: APP/U2750/C/24/3346498

Appeal B Ref: APP/U2750/C/24/3346499

Appeal C Ref: APP/U2750/C/24/3346500

Brafferton Manor, Boroughbridge Road, Brafferton, York YO61 2PD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”).
- Appeal A is made by Mr Lloyd Faulkner, Appeal B is made by Mr Mark Faulkner and Appeal C is made by Mr Robert Faulkner against an enforcement notice issued by North Yorkshire Council.
- The notice was issued on 14 May 2024.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an extension to an existing outbuilding and the installation of timber panelling on the external elevations of the outbuilding.
- The requirements of the notice are:
 - a) Remove the timber panelling from the outbuilding and restore the elevations of the building to its previous condition
 - b) Remove the extension part of the building outlined in blue on the attached plan
 - c) Remove all resulting materials from the land.
- The period for compliance with the requirements is four months from when the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (f) and Appeals B and C are proceeding on the grounds set out in section 174(2)(c) 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.

Decisions

1. It is directed that the enforcement notice is varied by:

In section 6. WHAT YOU ARE REQUIRED TO DO step b), delete the word “building” and substitute the word “outbuilding”.

2. Subject to the variation, Appeal A is allowed, 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 carried out, namely the erection of an extension to an existing outbuilding and the installation of timber panelling on the external elevations of the outbuilding at Brafferton Manor, Boroughbridge Road, Brafferton, York YO61 2PD as shown on the plan attached to the notice.
3. Appeals B and C are dismissed.

Preliminary Matters

4. The allegation and step 6.a) of “what you are required to do” state that the unauthorised development comprises works to an “outbuilding”. For consistency, where step 6.b) refers to a “building” I shall vary this to “outbuilding”.

5. While the enforcement notice (“the notice”) refers to the development affecting the living conditions of “7 Birchwood Gardens”, the occupier of that property identifies their home as “1 Birchwood Gardens”. The occupier seems best placed to know their address and I will therefore refer to the adjacent property as “No 1”.
6. The occupier of No 1 provided detailed photographs of the extension to the existing outbuilding at various stages of its construction taken from within their home. Furthermore, I was able to view the relationship between the extension and No 1 from the appellants’ paddock. As I have seen all I need to, it was not necessary for me to visit the neighbouring property to view the development.
7. Photographs provided by the occupier of No 1 show the height of the extension in September 2023, when its height was the same as the existing outbuilding. They also show it at its current, lowered height, but no date is given. Paragraph 5.2 of the Council’s Officer Report says that at their visit on 6 February 2024 the height of the extension had been reduced to 2.5 m.

Appeals A, B and C on ground (c)

8. An appeal on this ground is that the matter alleged does not constitute a breach of planning control. It is for the appellant to show that the extension of the outbuilding and installation of timber panelling on its external elevations either does not amount to development or the works benefitted from deemed planning permission granted by Article 3 and Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) order 2015 (as amended) (“the GPDO”).
9. It is the appellant’s contention that the extension to the outbuilding falls within the conditions and limitations of Class E, Part 1 of the GPDO and the installation of timber panelling does not amount to development having regard to s55(2)(a)(i) of the 1990 Act. The Council however contend that the extension to the outbuilding falls outside the curtilage of the dwellinghouse and that the timber cladding is development having regard s55(2)(a)(i) of the 1990 Act.
10. There is no evidence before me to show whether the installation of the timber panelling and the extension were carried out as two separate building operations. The walls of the extension are timber panelled and match that installed on the existing outbuilding. Further, the photograph on page 40 of the appellant’s statement of case shows the timber panelling to be continuous across the external elevation of the extended outbuilding. It also shows what appears to be an extractor fan spanning the junction of the old and new elements of the outbuilding. The extension and timber panelling were, therefore, more likely than not, carried out contiguously.
11. In the absence of evidence to the contrary, I therefore find the extension and timber panelling were carried out as a single building operation. I shall proceed on this basis.

Curtilage

12. The extent of the curtilage of a building is a question of fact and degree, and it is therefore a matter for the decision maker, subject to normal principles of public law. The courts have held that land may be regarded as being within the curtilage of a building if it serves the purpose of the house or building in some necessary or

reasonably useful way. Factors to be considered also include: the physical layout of the building and land; their ownership, past and present; their function, past and present; the relative size of the building and its curtilage; whether the building or land would be ancillary to the main building; the degree to which the building and claimed curtilage fall within one enclosure. These factors are relevant considerations, but they are not determinative. The courts have also held that curtilage can change over time.

13. The Council has provided extracts of the 1909 and 1956 OS maps. These show a field boundary considerably closer to the rear elevation of the dwelling at Brafferton Manor. The 1909 extract shows the field devoid of buildings, whereas the 1956 extract shows development has taken place within the field; the Manor Drive cul-de-sac. Neither existing outbuilding nor the adjacent Birchwood Gardens development are shown in the extracts. These extracts demonstrate how land, buildings and curtilages can change over time.
14. The outbuilding is located to the rear of the dwelling at Brafferton Manor. It is accessed via the property's driveway, which wraps around the side of the dwelling and leads into a surfaced courtyard. This courtyard abuts the dwelling and garden area, which includes a pond, shrubbery and lawn. A post and rail fence, with a gate adjacent to the extended outbuilding, separate the courtyard and garden area from the paddock beyond. The land upon which the extension to the outbuilding sits is located within the garden area, outside of the paddock.
15. It is clear the position of the boundary to the rear of Brafferton Manor is not the same as shown in the OS extracts. This is not however determinative.
16. The appellant has provided a series of aerial photographs, the oldest of which are dated 1998 and early 2000, which show the land where the extension now sits to be part of a larger lawned area. The 2000 photograph shows a washing line with washing hanging on it immediately adjacent to where the extension is now. The images also show a substantial hedgerow extending from the corner of the walled garden along the boundary with Birchwood Gardens. The later satellite images may not be as clear as the older photographs, but they do not show the area where the extension is to have been used for anything other than lawn within the garden area.
17. While an additional fence line has been erected around the pond at some point, that of itself does not change the use or purpose of that part of the land or the part upon which the extension sits. The images that are particularly definitive in my judgement are the ones dated 1998, Early 2000 and 2023, which all show the land beyond the courtyard to be of the same character over what amounts to a significant period.
18. Elizabeth Faulkener's written submission confirms she lived at the property from 1986 to 2023. During that time, she tells how the land between the carport (the outbuilding) and the pond was used "*for her washing, a domestic purpose*". Her recollection of the land's use throughout her habitation is for domestic purposes, it having fallen outside of the paddock. While Elizabeth Faulkener's Statement of Truth is not witnessed, the Council has provided no evidence of its own to dispute what she has said.
19. The photographs and aerial images provide a snapshot in time. It would be unreasonable to expect a relatively small area of grass forming part of a much

more substantial garden to be in active use at all times. In fact, the images do not show the rest of the garden to be in active use either. I do not therefore find the poor quality of some images or the lack of activity on the land where the extension sits to be determinative.

20. Photographs provided by the occupier of No 1 include two images, dated June 2021, looking towards Brafferton Manor. The area where the extension sits now is shown as lawn. A later photograph showing the extension is annotated by the neighbour and identifies the land on the dwelling side of the paddock fence as being garden. This goes some way to corroborate Elizabeth Faulkener's evidence.
21. To the front of the dwelling are formal landscaped grounds, to the southern side is a walled garden with swimming pool and to the rear is the courtyard and a functional garden, where activities such as hanging out washing has occurred. There is no evidence to show that land at Brafferton Manor is not all in the same ownership. The land between the rear elevation of the original dwelling and the paddock fence is not excessive in size compared to the dwelling. It has, at least since 1998, been used for purposes incidental and ancillary to the residential occupation of the dwelling.
22. Taking all these factors together, I find the land upon which the extension sits to form an integral whole with the dwelling. It therefore forms, in truth, part and parcel of the dwelling. For these reasons, I find the extension to be within the curtilage of the dwelling.

Whether the development benefitted from deemed planning permission

23. Part 1 of Schedule 2 of the GPDO sets out various types of domestic development that would, subject to conditions and limitations, benefit from deemed planning permission by virtue of Article 3 of the GPDO. Class A of Part 1 relates to the enlargement, improvement or other alteration of a dwellinghouse, while Class E relates to buildings etc incidental to the enjoyment of a dwellinghouse.
24. While the notice identifies the unauthorised building as an "*extension to an outbuilding*", the Council's assessment of whether the extension required planning permission is based upon it being Class A development, not Class E development as argued by the appellant.
25. There is no statutory definition of 'outbuilding', or 'extension' for that matter. Generally, in this context, '*outbuilding*' would be used to describe a building that is physically separate to a dwelling. While '*extension*' would be used to describe a building that is physically attached to the dwelling. Although, I am aware that the converse has been found to apply in some cases.
26. While there is no evidence to show the outbuilding's walls and roof are tied into the fabric of the original dwelling, it does butt up to the rear elevation of it. As a matter of fact and degree, the 'outbuilding' appears attached to the dwelling. The extension would therefore represent an enlargement of the dwellinghouse (Class A of the GPDO) in my judgement, as opposed to an incidental building (Class E of the GPDO).
27. The appeal site lies within Brafferton and Helperby Conservation Area. It is therefore on article 2(3) land. Class A.1(f)(i) confirms development projecting more than 4 metres from the rear elevation of the original dwellinghouse is not

permitted. The outbuilding is not part of the original dwellinghouse, and it extends out from the rear elevation by some considerable distance. The extension has been attached to the furthest most part of the outbuilding from the original dwelling. While I have not been provided with a measurement of how far out the outbuilding and extension project beyond the rear wall of the dwelling, there can be no doubt that both the existing and extended outbuilding exceeds the 4 metres limitation. The extension would not therefore benefit from permitted development rights set out in Class A.

28. Even if I had found the development to fall within Class E of Part 1, the appellant confirms at paragraph 4.23 that the height of the extension exceeded 2.5 metres when first erected. The Council also confirm at paragraph 5.2 of their Officer Report that the height of the extension had been reduced to 2.5 metres when they revisited the appeal site. These two statements confirm that as originally erected, the extension did not fall within the limitations set out in Class E.1(e). The extension as originally erected would not therefore benefit from permitted development rights set out in Class E.
29. Article 3(5) of the GPDO states that *“The permission granted by Schedule 2 does not apply if – (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful”*. The effect of this statement is that unlawful development, such as the extension as originally erected, cannot be altered to comply with the conditions and limitations set out in Part 1 of Schedule 2 of the GPDO retrospectively.
30. Regardless of whether the installation of timber panelling constitutes development, I have already found it formed part of the single building operation to erect the extension to the outbuilding. As already established, the erection of the extension to the existing outbuilding required planning permission.
31. The appellant has failed to show, on the balance of probabilities, that the necessary planning permission was granted. The erection of an extension to an existing outbuilding and installation of timber panelling on the external elevations of the outbuilding therefore constitutes a breach of planning control.

Conclusion on ground (c)

32. For the above reasons, the appeals on ground (c) fail.

Appeal A on ground (a)

33. An appeal on this ground is that planning permission should be granted for the matter alleged. The **main issues** are the effect of the development on the character and appearance of the host dwelling and the living conditions of neighbouring residents, with particular regard to those at 1 Birchwood Gardens.

Reasons

34. The notice was issued on 14 May 2024, after the height of the extension to the existing outbuilding had been lowered, I will therefore consider whether planning permission should be granted for the extension as it is now, with the lowered roof height.

Character and appearance

35. Brafferton Manor is identified by the Council as a non-designated heritage asset ("NDHA") due to its age, and its aesthetic, townscape and group value. The group value arises from its proximity to Old Manor House and Old Manor Cottage. There is however no statutory protection for Brafferton Manor.
36. The dwelling at Brafferton Manor has been the subject of several extensions and alterations over the years. This development represents the latest chapter of extensions and alterations to the property. The development is of a much smaller scale than the dwelling.
37. The existing outbuilding is constructed of bricks that do not match those of the host dwelling and it incorporated up-and-over garage doors and an open sided carport. The design and appearance of the existing outbuilding was out of keeping with the character and appearance of the original dwelling.
38. The replacement of the garage doors and open sided car port with pedestrian scale doors and the installation of the timber panelling provides the extended outbuilding with a subservient and modest appearance. The extended outbuilding projects a significant distance from the rear elevation of the dwelling. However, the stepped roof line in conjunction with the timber panelling break up the structure's overall mass. Its materials, scale and mass do not therefore visually dominate the rear elevation of the dwelling or harm its historic character and appearance.
39. Proportionally, the development is of a high quality, further I find it preserves the aesthetic value of Brafferton Manor. The development is not visible in townscape views, nor can it be seen in views available of the group of properties identified. The development does not therefore detract from the reasons the property has been identified as a NDHA.
40. For these reasons, the development does not harm the character and appearance of Brafferton Manor and accords with policies E1, E5 and S7 of the Hambleton Local Plan (February 2022), which seek to deliver high quality development that respects local character and distinctiveness, and the significance of heritage assets.

Living Conditions

41. The Council advise that the extension projects approximately 7.5 m beyond the existing outbuilding. The development can be seen over the boundary fence between the two properties. It is therefore visible from No 1's garden space, living room and some bedrooms.
42. The development is single storey and sits below the height of No 1's bedroom windows. Views looking beyond the development remain available from No 1's bedroom windows. The development has therefore had no significant adverse impact in this regard.
43. At ground level, the adjacent residents' view over land at Brafferton Manor has been obstructed by the development, resulting in some loss of outlook. When sitting in the living room at No 1, views of the sky above the fence line have been all but lost. However, the occupiers of No 1 have no right to a view over someone else's land.

44. I saw that the boundary fence adjacent to the development is somewhat lower than what would generally be erected to provide privacy to a domestic garden. While the timber panelling visible above the fence may therefore seem substantial, this is amplified by the fence height being relatively low.
45. The current height of the extension meets the permitted development height limitation, which would generally be seen as being acceptable in this location. The photographs provided by the neighbouring occupier also show their garden to be stocked with shrubbery adjacent to the extension. The shrubbery screens the development to some extent and breaks up its overall mass.
46. There is a reasonable depth of garden between the living room and the boundary with Brafferton Manor. The development is located to the north of No 1 and therefore it does not cause overshadowing or loss of light. I do however recognise that there may be a perceived loss of daylight as views of the sky have been reduced.
47. Having regard to all these factors, the development does not, as a matter of fact and degree, significantly harm the living conditions of the neighbouring occupier at No 1. The development accords with policy E2 of the HLP, which seeks to deliver and maintain a high standard of amenity for users and neighbouring occupiers.

Other Matters

48. I saw during my site visit that the extended outbuilding is divided into 7 dog pens, which are accessible via two external doors facing into the courtyard, and a separate domestic storage area, which can be accessed from the yard and from the walled garden. There is no substantive evidence before me to show the extended outbuilding has been used for commercial dog breeding or other canine related commercial purposes.
49. Furthermore, the notice does not allege a material change of use of the land from residential (Use Class C3) to some other use has occurred. Should the extended outbuilding be used for any commercial purpose, it is for the Council to investigate and take appropriate action.
50. Barking dogs may have caused harm to the living conditions of neighbouring occupiers, and those in the wider locality. However, in the absence of evidence to substantiate the claimed commercial activity, the imposition of a condition preventing a commercial use that would, in any event, require the benefit of planning permission would not meet the relevant tests set out in paragraph 57 of the National Planning Policy Framework.
51. Enforcement action is remedial, not punitive and the 1990 Act provides for retrospective planning permission to be granted. The fact that this development was carried out without the benefit of planning permission is not a reason of itself for planning permission to be refused.
52. The appeal site is within the designated Brafferton and Helperby Conservation Area ("the CA"). Due to the position of the extended outbuilding, it is not possible to see it from the public realm. The development therefore causes no harm to the character and appearance of the CA. I have therefore discharged my duty arising from s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Conclusion on ground (a)

53. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice.

Overall Conclusions

54. The appeals on ground (c) fail for the reasons given above. The appeals on ground (f) do not fall to be considered due to the success of Appeal A on ground (a).

M Madge

INSPECTOR