
Appeal Decision

Site visit made on 19 January 2015

by Alan Woolnough BA(Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 February 2015

Appeal Ref: APP/L2250/X/14/2213354

The Dovecot Barn, Stowting Court Road, Stowting, Ashford, Kent TN25 6BB

- 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 refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Ms Hilary Barnes against the decision of Shepway District Council.
- The application ref no Y13/1242/SH, dated 3 December 2013, was refused by notice dated 31 January 2014.
- The application was made under section 192(1)(a) of the 1990 Act as amended.
- The proposed development for which a LDC is sought is described on the application form as follows: 'It is proposed to convert the Dovecot barn into a dwelling'.

Summary of Decision: The appeal is dismissed.

Procedural Matter

1. The Appellant supplied two floor plan drawings with the appeal submission. Drawing no 04-19-01 'C' presents the internal ground floor layout of the Dovecot Barn in its existing use as an office. Drawing no 04-19-01/02 shows an alternative ground floor layout for the building in its proposed use as a dwelling.
2. The Council contends that neither drawing formed part of the LDC application now the subject of this appeal. Indeed, on the evidence before me, both appear instead to have formed part of an earlier application, ref no Y13/0001/BGPD, which sought a determination by the Council of whether its prior approval would be required as to transport and highway impacts of the development and contamination risks on the site, pursuant to the condition in paragraph J.2 of Class J of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO).
3. Notwithstanding this, the precise extent of the building subject to the LDC application, and thus the appeal, is clear from the amended location plan before me (drawing no 0205/03/100 dated January 2014), the relevance of which is not disputed. This is sufficient for the purposes of my decision and I have determined the appeal accordingly.

The Site and the Proposal

4. The subject building is part of a complex generally referred to as Stowting Court. Two of the buildings within the complex, Stowting Court itself and Stowting Court Barn, have individual entries in the statutory list as Grade II

listed buildings and are occupied as dwellings. Each 'principal' listed building encompasses a smaller, additional residential unit (Stowting Court Cottage and Stowting Court Barn Annex respectively) within its structure.

5. Other buildings within the complex are covered by one or other listing by reason of their status as 'curtilage buildings'. By definition, a curtilage building is one which existed prior to 1 July 1948 and is detached from the principal listed building but fell within its curtilage at the time of listing (or at 1 January 1969 in the case of buildings listed prior to that date). The Council considers the Dovecot to be a curtilage building. The Dovecot Barn adjoins the Dovecot. It is a single storey building with storage space in the roof.
6. The LDC appeal seeks confirmation that the material change of use of the Dovecot Barn to a single dwellinghouse would have been lawful at the time of the LDC application. The Appellant's case in this regard is based solely on the provisions of Class J of Part 3 of Schedule 2 to the GPDO which, subject to certain limitations and a condition, categorises as 'permitted development'¹ the change of use of any building and any land within its curtilage to a use falling within Class C3 (dwellinghouses) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended (the UCO) from a use falling within Class B1(a) (offices).

Reasoning

7. Permitted development rights pursuant to Class J of Part 3 do not apply where, amongst other things, the building was not used lawfully for purposes within Class B1(a) of the Schedule to the UCO immediately before 30 May 2013 (or, if not in use at that time, last so used) or is a listed building. The Appellant asserts that the Dovecot Barn was used for Class B1(a) purposes at the relevant time, in accordance with a planning permission granted by the Council in 2011 (ref no Y11/0286/SH). Implementation of the 2011 planning permission by the above deadline is disputed by a neighbouring resident. However, I have seen no cogent evidence to the effect that the building was not used as an office at that time.
8. More pertinent for my purposes is the question of whether or not the Dovecot Barn is a listed building, a matter which is disputed between the Council and the Appellant. Both acknowledge that the building has not been 'delisted', an application to English Heritage to that effect not having been formally determined. The main parties also agree that it is not a curtilage building in its own right as it was only erected in 2000 to replace a pre-existing structure, well after either principal building was listed. However, they differ in their interpretation of the significance of its attachment to the Dovecot.
9. The Appellant's argument in this regard has two strands. Firstly, she contends that the Dovecot, although unquestionably a curtilage building at the time of listing, lost its listed status when it was substantially rebuilt following storm damage incurred in 1987. If this was the case, the Dovecot Barn could not be listed by reason of attachment to a recognised curtilage building. The Council, by contrast, asserts that the Dovecot remains a listed building and that, consequently, so is the Dovecot Barn.

¹ Development benefitting from deemed planning permission pursuant to Article 3 of the GPDO.

10. It is evident from my own internal inspection of that building that some reconstruction has taken place in relatively recent times. Nonetheless, much of the original structure still remains and it has not been demonstrated to my satisfaction that it has been so altered that it is now, essentially, a new replacement building rather than a repaired original. I am also mindful that the onus of proof rests firmly with the Appellant to demonstrate her case on the balance of probabilities.
11. The latter requirement is subject to the caveat that if the Council has no evidence of its own, or from others, to contradict or otherwise make the Appellant's version of events less than probable, there is no good reason not to grant a LDC, provided the Appellant's evidence alone is sufficiently precise and unambiguous². However, in this regard I find her evidence of the changes made to the Dovecot to lack the necessary precision. I therefore find that the Dovecot retains its listed status.
12. The second strand of the Appellant's argument is that, even if the Dovecot is a curtilage building, listed status is not conveyed to the Dovecot Barn by means of attachment thereto as the Dovecot is not a *principal* listed building specifically identified in the statutory list. I have been referred by the Appellant to a raft of guidance which she considers pertinent in this regard, including extracts from the English Heritage website and the 2013 edition of *Development Control Practice* which themselves contain numerous case law citations. Nonetheless, I find none of this to directly address the central point of attachment to a curtilage building, with one exception.
13. This is an extract from a book written by the heritage law specialist Dr Charles Mynors³. This in itself has no force in law, being merely the expert opinion of a lawyer specialising in the field. Nonetheless, I have specifically considered Dr Mynors' conclusion that, amongst other things, '*... if an ancillary structure has been erected since 1948, it would now only be included in the listing if it was actually (directly or indirectly) 'fixed' to the principal building*'. However, on my reading, the reasoning contained in the text of the extract before me, whilst it clearly informs most of the conclusions drawn, does not set out a logical path that upholds the Appellant's interpretation of the particular point quoted above. I have therefore had recourse to the fundamental provisions of the relevant statute.
14. Section 1(5)(b) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended specifies that any object or structure within the curtilage of a building included in the statutory list which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948, shall be treated as part of the listed building. This being so, I am satisfied that the Dovecot is part of the listed building.
15. Additionally, section 1(5)(a) indicates that any object or structure fixed to the listed building shall be treated as part thereof. In the light of section 1(5)(b), this indicates that the Dovecot Barn, as it adjoins a structure that is 'part of the listed building', should also benefit from such status. I find nothing in the text by Dr Mynors, nor in the case law cited, that supports a distinction being drawn

² Made clear in the case of *Gabbitts v SSE & Newham LBC* [1985] JPL 630.

³ Published in the fourth edition of Dr Mynors' book 'Listed Buildings, Conservation Areas and Monuments' (Sweet & Maxwell May 2006) and reproduced in the Institute of Historic Building Conservation publication 'Context' (November 2006).

between principal and curtilage buildings for the purposes of applying section 1(5)(a).

16. I have considered whether, for the purposes of section 1(5), the Dovecot Barn might be regarded as a 'structure fixed to a (listed) building' that is not subordinate thereto and might therefore be excluded from the listing on those grounds. However, the Appellant has made no case to that effect and I am mindful that the burden of proof rests with her. In any event, although the Dovecot Barn has a larger footprint than the Dovecot, it is substantially lower in height and far less significant in visual and historic terms. That being so, I am satisfied that it is subordinate to both the Dovecot and the relevant principal listed building.
17. It follows that, in the absence of cogent evidence to the contrary, the Dovecot Barn should be regarded as being part of a listed building. This accords with the approach to the building which has been taken previously, in applying for and granting listed building consent for alterations in 2011 (ref no Y11/0768/SH) and by my fellow Inspector when determining an appeal in 2012 (ref no APP/L2250/A/12/2170523). Permitted development rights for the change of use of a building from Class B1(a) to Class C3 pursuant to Class J of Part 3 of Schedule 2 to the GPDO do not therefore apply in this case by reason of limitation J.1(f) of that Class.
18. Moreover, the Dovecot Barn was subject to an enforcement notice, issued by the Council on 6 April 2005 and subsequently upheld on appeal (ref no APP/L2250/C/05/2001542). Following correction as directed by the Inspector, the notice required the cessation of the use of the building for residential purposes. Section 191(2)(b) of the 1990 Act as amended defines a lawful use as one which does not constitute a contravention of any of the requirements of any enforcement notice then in force⁴. The Appellant contends that the 2005 notice is no longer in force, reasoning that the provisions of section 180 of the 1990 Act as amended apply.
19. Section 180 specifies that where planning permission is granted for any development carried out before that grant of permission, the notice shall cease to have effect so far as inconsistent with that permission. The granting of planning permission for Class B1(a) use of the building in 2006 and 2011, or the implementation of the latter, would not have had this effect. The Appellant thus relies primarily in this regard on her assertion that a deemed planning permission for Class C3 use of the Dovecot Barn existed at the time of the LDC application pursuant to Class J. However, for the reasons I have already explained, this was not so. The 2005 notice therefore continues to bite and effectively precludes the granting of a LDC for residential use in this case.

Conclusion

20. For the reasons given above I conclude that the Council's refusal to grant a LDC 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.

⁴ Although this limitation is contained in section 191(2) of the 1990 Act as amended rather than section 192, the wording of the former is such that it applies throughout the Act, so is equally relevant to determinations of lawfulness for both existing and proposed uses.

Formal decision

21. The appeal is dismissed.

Alan Woolnough

INSPECTOR

If you require an alternative accessible version of this document (for instance in audio, Braille or large print) please contact our Customer Services Department:

Telephone: 0370 333 0607

Fax: 01793 414926

Textphone: 0800 015 0516

E-mail: customers@HistoricEngland.org.uk