



Appeal Decisions

Hearing Held on 21 February 2018

Site visit made on 21 February 2018

by Mr K L Williams BA, MA, MRTPI

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

Decision date: 12 April 2018

Appeal A: APP/J1535/C/16/3163912

Land at Old House, Old House Lane, Roydon, Essex, CM19 5DJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr S Merrino of X.P.L. Limited against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice, ref: ENF/172/14, was issued on 20 October 2016.
- The breach of planning control as alleged in the notice is the use of the Barn, a Grade II Listed Building, situated on the Land (the Barn) for the purpose of 3 self-contained residential units.
- The requirements of the notice are to cease the use of the Barn for residential purposes.
- The period for compliance with the requirements is 12 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be determined.

Summary of Decision: The appeal is dismissed. The enforcement notice is corrected and upheld.

Appeal B: APP/J1535/F/16/3163911

The Barn at Old House, Old House Lane, Roydon, Essex, CM19 5DJ

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr S Merrino of X.P.L. Limited, against a listed building enforcement notice issued by Epping Forest District Council.
- The enforcement notice, ref: ENF/172/14, was issued on 20 October 2016.
- The contravention of listed building control alleged in the notice is the alteration, extension and conversion of the Barn to three separate residential units by:
 1. The installation of fixtures and fittings to create 3 separate units;
 2. The installation of 1 new doorway and the installation of 3 porch canopies over each doorway;
 3. The installation of 3 roof lights;
 4. The erection of 3 satellite dishes to the roof;
 5. The installation of external grilles;
 6. The erection of a single storey extension on the eastern end of the Barn;
 7. The reconstruction of the brick plinth;
 8. The creation of a garden area to service the 3 residential units.
- The requirements of the notice are to:
 1. Remove the fixtures and fittings which created and facilitate the use of the Barn as 3 separate units by:
 - The removal of all separating walls and internal stud walls;
 - The removal of all kitchen fittings and fixtures;
 - The removal of all bathroom fittings and fixtures;

- The removal of all floor coverings;
- The removal of all staircases.

These works must not cause damage to any of the historic timber in particular the historic timber must not be cut, removed or coated with any substance.

2. Remove the 3 tiled porch canopies over the 3 doorways and make good the external wall of the barn with timber weatherboarding to match the existing.
 3. Remove the 3 roof lights and reinstate the roof with tiles to match the existing.
 4. Remove the satellite dishes from the building.
 5. Remove the external grilles and reinstate the external wall of the barn with timber weatherboarding to match the existing.
 6. Remove the single storey extension to the eastern end of the barn and reinstate the external wall of the barn with timber weatherboarding to match the existing.
 7. Remove the brick plinth and reconstruct in either a Flemish or English bond with lime mortar.
 8. Remove the garden area created to serve the barn.
 9. All resulting building rubble and debris as a result of complying with steps 1 to 8 above to be removed from the land.
- The period for compliance with the requirements is 12 months.
 - The appeal is made on the grounds set out in section 39(1) (e) and (g) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Summary of Decision: The appeal is dismissed. The listed building enforcement notice is varied and upheld.

Preliminary Matters

1. During the Hearing, Mr Cavill confirmed that the appellant was not pursuing Appeal B in respect of the 3 door canopies and the 3 satellite dishes. He also confirmed that in Appeal B the appellant's case on ground (g) was limited to the external grilles, the single storey extension and the brick plinth. I have determined the appeals on that basis.

The Enforcement Notices

2. For accuracy, the alleged act of development in the planning enforcement notice should refer to the material change of use of the barn to use as 3 self-contained residential units. The notice's requirement should match that description. This matter was discussed at the Hearing and I am satisfied that the notice can be corrected as set out in the Formal Decision to address it without prejudice to the main parties.
3. A listed building enforcement notice allegation should be confined to works to a listed building. The creation of a garden area is a change of use of land rather than works to the building. There are 4 roof lights rather than 3 as specified in the notice. This was known to the appellant when the works were carried out and is apparent in the photographs which form part of the Council's evidence. These matters were discussed at the Hearing and I am satisfied that the notice can be varied as set out in the Formal Decision to address them without prejudice to the main parties.
4. Prior to the unauthorised works there were no fixtures and fittings in the building relating to its use as 3 residential units. Moreover, the appellant is well placed to know what fixtures and fittings were installed. On that basis I do not find the requirement to remove all such fixtures and fittings to be vague or ambiguous as the appellant suggests.

Ground (a) of Appeal A and Ground (e) of Appeal B

Background and Relevant Planning History

5. The barn which is the subject of both appeals is on the southern side of Old House Lane. It is a Grade II listed building. The barn is adjacent to Old House Farmhouse, which is also a Grade II listed building. A further building is attached to an extension which has been constructed on the barn's eastern elevation. That building is now in residential use. The site is in the Nazeing and South Roydon Conservation Area and in the Metropolitan Green Belt. The barn, the farmhouse and the Conservation Area are all designated heritage assets.
6. In September 2013 planning permission EPF/1414/13 was granted for the conversion of the barn into a single residential unit. Also in September 2013, listed building consent EPF/1418/13 LB was granted for that conversion. The permission and listed building consent were granted with reference to a number of plans, including drawing NWA-12-023-11 Rev B. It shows proposed elevations and floor plans. The permission and listed building consent were subject to a range of conditions.

Main Issues

7. Appeal A is the planning enforcement appeal. The deemed planning application is for the material change of use of the barn to use as 3 self-contained residential units. The main issues are:
 - i) The effect of the change of use of the barn to 3 dwellings on its special architectural and historic interest and on its significance;
 - ii) The effect on the setting of Old House Farmhouse; and
 - iii) Whether the development preserves or enhances the character or appearance of the Nazeing and South Roydon Conservation Area.
8. Appeal B is the listed building enforcement appeal. The main issue for ground (e) is the effect of the works on the special architectural and historic interest of the listed building and on its significance.

Appeals A and B: the effect on the special architectural and historic interest of the barn and on its significance

9. The significance of the barn derives from its architectural and its historic interest. The listed building description explains that it is of late 17th century origin, timber framed and weather boarded with a red pantile roof and a midstrey to the north, 7 bays long, originally divided and with a queen post roof. The building's design details and its evolution add to its interest and significance. A Heritage Statement was prepared in 2012 in support of planning application EPF/1414/13. It explains that the barn was originally comprised of 3 bays, with large double doors at front and back to allow carts to pass through the building. 2 further bays were later added at each end, probably between 1780 and 1870 and the prominent front porch was a Victorian addition. The barn's original use was for storing and threshing corn. When economic conditions changed the barn's function also changed and it was probably used to house cattle, to provide stables and later for storage. The spacious character of the interior was compromised to some extent in the 19th century. Nevertheless, photographs with the Heritage Statement suggest that a

- predominantly open interior was retained. They also show the structure of the walls and of the queen post roof, much of which was exposed to view. The Heritage Statement provides considerable detail of the distinctive roof structure and its evolution.
10. The conversion of the building to 3 dwellings has entailed extensive exterior and interior works to the barn. Those works have paid scant regard to the building's architectural and historic character. The satellite dishes, door canopies and grilles are incongruous and insensitive additions which do not respect the building's character. The survey drawing prepared for the 2013 planning application, drawing NWA-12-023-10 Rev A, does show a plinth. It is also seen in photographs in the Heritage Statement. However, the detailing of the plinth as built is not consistent with the listed building's character. It is in stretcher bond, which characterises modern cavity wall construction, rather than in English or Flemish Bond. The plinth is constructed with brick slips rather than whole bricks. This is apparent where edges can be seen. Nor does the weatherboarding project over the plinth to allow rainwater to run-off, as would be characteristic of historic buildings of this type.
 11. The alterations to the building have failed to provide the large rear door which characterised the original building. The single storey side extension on the east elevation replaces a lean-to extension which provided garaging. However, the shallow roof pitch of the extension appears incongruous alongside the steeper pitch of the main roof. Nor does the excessive width of the extension allow it to be contained within the gable end of the main building. This results in an awkward and jarring junction with the rear slope of the main roof. The door and windows which have been installed in the extension are unduly dominant elements in the east elevation.
 12. The works to the interior of the building have also severely compromised its historic character. Three staircases have been added and extensive internal sub-division has been required to provide the three dwellings and to facilitate separate rooms within each dwelling. The remaining open character of the interior space, which is apparent in the Heritage Statement photographs, has been entirely lost. Nor can the highly distinctive roof structure be appreciated. Virtually the whole of it is masked behind walls or panelling.
 13. The appellant's case rests in part on the existence of the 2013 planning permission and listed building consent. However, the unauthorised conversion is substantially different from the 2013 scheme. That scheme entailed use as only one dwelling and was designed with a full height central space and a gallery to one side of it. This would have allowed a good appreciation of the barn's internal space and of the original roof structure. A rear central opening would have been retained, more limited internal sub-division was required and only two staircases would have been provided. With regard to external features, the 2013 scheme did not include door canopies or satellite dishes. Drawing NWA-12-023-11 Rev B shows only two rooflights and a different pattern of fenestration from that now provided. The extension on the east elevation would have been more modest in extent. It would have had a simpler roof shape, a steeper pitch and no ground level door or windows in the east elevation.
 14. The 2013 planning permission had conditions attached to it imposing requirements to be met before development commenced. Condition no.3

required the preparation and submission of a land contamination investigation. This was a matter which was crucial to the suitability of the building for use as a dwelling. It went to the heart of the planning permission. Condition no.2 of the listed building consent required samples of the types and colours of external finishes to be submitted before works commenced. Condition no.3 required the submission before works commenced of details of how the first floor could be inserted and used without removal of historic frame members. These conditions covered matters crucial to the effect of the conversion on the special architectural and historic interest of the listed building. There was no compliance with any of these conditions before the change of use of the building was made and the unauthorised works carried out.

15. I find that the 2013 planning permission and listed building consent were not implemented and that, in any case, they concerned a very different scheme from what has been implemented. The Council does not dispute that use as a single dwelling could be acceptable in principle. Nevertheless, these matters do not assist the appellant's case to any material extent.
16. I conclude that the change of use to 3 dwellings and the related unauthorised works fail to preserve the special architectural and historic interest of the listed building. The development and the works conflict with criterion (ii) of policy HC13 of the Epping Forest District Local Plan (1998) and Alterations (2006) (LP). With regard to changes of use of listed buildings policy HC13 requires that any alterations respect and conserve the internal and external characteristics of the building and do not diminish its special architectural or historic interest. The conversion also conflicts with the great weight given to the conservation of designated heritage assets in paragraph 132 of the National Planning Policy Framework (The Framework).

Appeal A: The effect on the setting of Old House Farmhouse

17. Framework paragraph 132 explains that the significance of a designated heritage asset can be harmed through development in its setting. Old House Farmhouse is significant as a farm building of 17th century origin, incorporating remains of an early 16th century building and with later additions. It is timber framed and plastered, with a roof of red plain tiles. The barn is in very close proximity to the farmhouse and forms an important part of its setting. Historically the two buildings were intimately linked in functional terms as part of the farmstead. The setting of the farmhouse has been harmed by other nearby development, including housing and glasshouses. Nevertheless, the harm to the architectural and historic interest of the barn resulting from its unsympathetic conversion to three dwellings also results in harm to the setting of the farmhouse. This is not consistent with the great weight given to the conservation of designated heritage assets in the Framework. It also conflicts with LP policy HC12 which does not permit development adversely affecting the setting of a listed building. That policy is not fully consistent with the Framework's approach and I give moderate weight to this conflict.

Appeal A: The effect on the Conservation Area

18. The Nazeing and South Roydon Conservation Area extends over a large area. It is typified by well-preserved medieval settlements, open or common field systems and an intimate, rural character. Small farmsteads such as the Old House farmhouse and the related barn are also characteristic. The appeal site is close to the edge of the Conservation Area. Nevertheless, the unsympathetic

conversion of the barn to 3 dwellings has resulted in harm to the special interest of the barn as a listed building and to the setting of the farmhouse. As such, it also fails to preserve the character or the appearance of the Conservation Area. It conflicts with LP policy HC6 which does not permit development detrimental to the character or appearance of a Conservation Area.

Appeal A: Other matters

19. The appellant contends that, within the scope of the deemed planning application in Appeal A, consideration should be given to granting planning permission for conversion of the barn to a single dwelling. Section 177(1) of the Act as amended provides that planning permission may be granted for the whole or any part of the matters alleged in the notice. In this case, having regard to the notice as corrected, the allegation in the notice is the material change of use of the barn to 3 residential units. That amounts to a specific change of use, of which conversion to a single residential unit does not form part. Moreover, as I set out above, the 2013 scheme for conversion to a single dwelling was of a very different character to the conversion to 3 dwellings which has taken place. It is open to the appellant to submit a further planning application for converting the barn to a single dwelling. However, I have concluded that it is not open to me within the scope of this appeal to consider granting planning permission for such a conversion.
20. The harm to the significance of the designated heritage assets is considerable but does not amount to the substantial harm or total loss to which Framework paragraph 133 refers. It is consistent with Framework paragraph 134 that less than substantial harm should be weighed against any public benefits which arise. As a result of the harm to the special architectural and historic interest of the barn, the unauthorised conversion does not amount to an optimum viable use. It has provided 3 dwellings and met the needs of those occupying those dwellings. Nevertheless, the public benefits arising do not outweigh the harm to designated heritage assets.
21. The enforcement notice refers to LP Green Belt policies GB2A, GB7A and GB8A. However, the Council does not contend that the conversion to 3 dwellings was inappropriate development in the Green Belt. I share that view. The LP Green Belt policies are not consistent with the Framework's approach to development in the Green Belt. I give them little weight in this decision.

Conclusions on Ground (a) of Appeal A and Ground (e) of Appeal B

22. For the reasons set out above I conclude that the Appeal A should not succeed on ground (a). Appeal B should not succeed on ground (e).

Appeal A: Ground (f)

23. Section 173(4) sets out the purposes of an enforcement notice. In this case, the notice as corrected alleges a material change of use to 3 residential units and requires that use to cease. Its purpose is to remedy the breach of planning control and the requirement goes no further than is necessary to achieve that purpose.
24. The appellant contends that the notice should instead require the reversion of the barn to a single residential unit in accordance with the terms of the 2013 planning permission. I have addressed whether planning permission could be

granted for conversion to a single residential unit within the scope of ground (a). That is not a matter for ground (f). Moreover, there has not been any use of the barn as a single residential unit, so that reversion to such a use cannot take place. Nor is there any precise evidence of the alterations to the building that would now be required for use of the building as a single dwelling. I conclude that Appeal A should not succeed on ground (f).

Appeal B: Ground (g)

25. On this ground the appellant contends that the listed building enforcement notice requirements in respect of the external grilles, the single storey extension and the brick plinth exceed what is necessary to restore the building to its condition before the unauthorised works were carried out.
26. There is no evidence of any external grilles on the building before the works were carried out. To require their removal is not excessive. The notice requires the removal of the single storey extension at the eastern end of the barn and reinstatement of the external wall of the barn with weatherboarding. The extension as built was not in place before the unauthorised works were carried out. While there was previously an extension on the east elevation, it is not contended that the appellant would seek to re-build that extension. To do so would require listed building consent. The appellant also alludes to the extension which formed part of the 2013 consent. However, it was not part of the building's former state. A requirement to re-instate the external wall is essential to ensure the building's integrity. I find that the requirements in respect of the extension are not excessive.
27. The notice requires removal of the brick plinth and its reconstruction in Flemish or English bond with lime mortar. I have addressed under ground (e) the effect of the plinth as built. While there was previously a brick plinth, there is no precise evidence of its construction. The Council's evidence is that a plinth on this type of building is likely to have been in Flemish or English bond. The use of lime mortar is appropriate on this type of historic building. The notice's requirement in respect of the plinth is not excessive. I conclude that Appeal B should not succeed on ground (g).

Overall Conclusions

28. Having regard to the above and to all other matters raised Appeal A and Appeal B should both fail. The planning enforcement notice should be corrected and upheld. The listed building enforcement notice should be varied and upheld.

Formal Decisions

Appeal A: APP/J1535/C/16/3163912

29. It is directed that the enforcement notice be corrected as follows:
 - i) By the replacement of the words in paragraph 3 with the words "Without planning permission the material change of use of the Barn to use as 3 self-contained residential units."
 - ii) By the replacement of the words in paragraph 5 with the words "Cease the use of the Barn as 3 self-contained residential units."

30. The appeal is dismissed and the enforcement notice is upheld subject to the above corrections. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/J1535/F/16/3163911

31. It is directed that the listed building enforcement notice be varied as follows:

- i) In the Second and Third Schedules by the replacement of the words "3 roof lights" with the words "4 roof lights".
- ii) In the Second Schedule by the removal of the words "8. The creation of a garden area to service the 3 new residential units".
- iii) In the Third Schedule by the removal of the words "8. Remove the garden area created to serve the Barn".

32. The appeal is dismissed and the listed building enforcement notice is upheld subject to the above variations.

K Williams

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr P Cavill Hertford Planning Service

FOR THE LOCAL PLANNING AUTHORITY:

Ms C Munday Senior Enforcement Officer, Epping Forest District Council.

Ms M Kitts Senior Conservation Officer, Epping Forest District Council.

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of drawing NWA-12-023-11 Rev B.
2. Listed building description for Old House Farmhouse.
3. Map of Nazeing and South Roydon Conservation Area.
4. Map of the appeal site in the Conservation Area.
5. Copy of Old House Farm Heritage Statement, January 2012.