The Planning Inspectorate

Appeal Decisions

Site Visit made on 13 October 2020

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th December 2020

Appeal A, APP/B3438/W/20/3253375
Hermitage Farm, Froghall Road, Ipstones Bank, Froghall, Stoke-on-Trent ST10 2HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Jeff Barlow against the decision of Staffordshire Moorlands District Council.
- The application Ref SMD/2019/0391, dated 27 June 2019, was refused by notice dated 13 December 2019.
- The application sought planning permission for *'Conversion of barn to holiday accommodation'* without complying with a condition attached to planning permission Ref 04/01361/FUL (SMD/2004/0970), dated 20 January 2005.
- The condition in dispute is No 1 which states that: *'The premises shall be used for short stay holiday accommodation not exceeding 4 weeks at any one time except during the period 1st October to 31st March when it may be used for class C3 (dwelling houses) of the Town and Country Planning Use Classes Order, 1987 as long as no occupancy exceeds 3 months of any 12 month period. A register of such occupants including details of duration of stay will be kept and made available for inspection by the Local Planning Authority, if requested.'*
- The reason given for the condition is: *'The occupation since the site lies within the open countryside outside settlement boundaries.'*

Appeal B, APP/B3438/W/20/3253390
Hermitage Farm, Froghall Road, Ipstones Bank, Froghall, Stoke-on-Trent ST10 2HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Jeff Barlow against the decision of Staffordshire Moorlands District Council.
- The application Ref SMD/2019/0394, dated 27 June 2019, was refused by notice dated 13 December 2019.
- The development proposed is Demolition of three agricultural (storage/cattle) sheds and creation of enclosed garden areas to serve the cottages in the adjacent stone barn conversion, together with creation of a 12-bay car park with access track, manoeuvring area and stone retaining walls.

Appeal C, APP/B3438/Y/20/3253392
Hermitage Farm, Froghall Road, Ipstones Bank, Froghall, Stoke-on-Trent ST10 2HQ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.

- The appeal is made by Mr Jeff Barlow against the decision of Staffordshire Moorlands District Council.
- The application Ref SMD/2019/0390, dated 27 June 2019, was refused by notice dated 13 December 2019.
- The works proposed are Insertion of six doorways on the rear (north) elevation, including reinstatement of three former (blocked up) openings; removal and/or re-positioning of internal partition walls on ground floor to create living rooms and WCs; removal of attached (unlisted) modern farm sheds to rear to allow creation of private gardens and 12 no. car parking bays; re-creation of stone retaining walls to access track on a new alignment.

Decision

1. Appeals A, B and C are dismissed.

Procedural Matters (All Appeals)

2. The Council has confirmed that the policies from their Core Strategy Development Plan Document (2014) (CS) referred to in the Officer Report and Decision Notice have been superseded by policies from the Staffordshire Moorlands Local Plan (Adopted 9 September 2020) (LP). Appeal decisions must be based on the policies from the development plan prevailing at the time of determination. In the case of these appeals, the main parties have suggested that Policies DC1, DC2, DC3, E4, H1, SS10 and SS11 of the LP are relevant to the determination of the appeal. The parties are aware of the policies in the LP and have had the opportunity to comment upon their relevance to the appeal.

3. Appeals B and C concern the same scheme under different, complementary legislation, I have therefore dealt with both appeals together in my reasoning.

Procedural Matters and Background (Appeal A)

4. I have taken the description of the development from the original planning permission[1], as the 2005 planning permission, which included the disputed 'restrictive occupancy condition', did not repeat that description.

5. The disputed condition currently restricts the use of the barn to short-stay holiday accommodation but the accommodation is permitted to be in residential use from 1st October to 31st March, for no longer than a period of three months. The appeal relates to an application to vary the disputed condition to enable the accommodation within the barn to be used as independent dwellings throughout the year, with no limitations on occupancy. The Council's reasons for refusing the application related to the location of the barn in the countryside, including access to shops and services, and the loss of tourist accommodation.

6. Given the nature of the proposal, during the course of the appeal the main parties were invited to consider whether the judgment handed down in the case of Finney v Welsh Ministers [2019] EWCA Civ 1868 (herein referred to as Finney), has any implications for Appeal A. That case concerned the limits of the power under s73 of the Town and Country Planning Act 1990 (the Act) to grant planning permission for development without complying with conditions subject to which a previous planning permission was granted.

[1] Planning Reference: SM99-0224 (now SMD/1999/0944).

7. The appellant queried whether the case should actually have been considered against Appeal C, however, the appeal forms are the documentation from which appeal references are taken and it is Appeal A which refers to the planning condition. I have therefore had regard to the responses received from the main parties in reaching my decision.

Main Issue – Appeal A

8. Given the content of the Finney judgment, the main issue in Appeal A is whether it is possible, in law, to alter the use of the appeal building by varying the 'restrictive occupancy condition', attached to the planning permission, in the way proposed.

Main Issues – Appeals B and C

9. The main issue in these appeals is whether the proposal would preserve a Grade II listed building, known as 'Barn Approximately 20 Metres North of The Hermitage' and any features of special historic interest that it possesses, including its setting.

Reasons

The restrictive occupancy condition

10. In Finney, the Court of Appeal refers to s73(2) of the Act, which indicates that, when considering applications under s73(1) for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted, the local planning authority must only consider the question of the conditions. It cannot, therefore, consider the description of the development to which the conditions are attached. The court finds that the 'natural inference from that imperative is that the planning authority cannot use section 73 to change the description of the development.'[2] Moreover, Finney confirms that there should not be a conflict between what was permitted in the original permission and what the new condition requires.

11. The appeal proposal before me seeks to vary the disputed condition to allow the four independent parts of the barn to be used as C3 dwelling houses. However, the description of development in the original planning permission refers to: 'conversion of barn to holiday accommodation'.

12. I accept that the disputed condition altered the permitted use in the appeal building, effectively to a mixed-use. However, there would still, on the face of it, be a clear conflict between the proposal and the description of the original permitted development and the mixed-use granted later. Given that Finney says the description cannot be altered via s73, such a condition, enabling the barn to be used as four independent dwellings, without a seasonal or other time limitation on the length of occupation, would alter the nature of the development and be unlawful. A new planning application, rather than a s73 application, would therefore be required for the proposal.

13. The appellant has cast some doubt as to whether the original planning permission is the correct permission for the appeal building and I am referred to decision notices for earlier planning and listed building consent applications[3].

[2] Paragraph 42.
[3] Planning References: SM97-0841 and SM98-0234.

As these are not the permissions relevant to the Council's decision, I have not referred to them in any further detail.

14. Therefore, based on relevant statute and the Finney judgment, even if the proposal in Appeal A were acceptable in other respects, such as the access to shops and services and the loss of tourist accommodation, the description of development cannot be altered so the proposal would not be consistent with them. It follows that the appeals cannot succeed.

15. The above factors lead me to conclude that, as a matter of law and on the facts of the appeal, it is not possible to alter the use of the appeal building by varying the 'restrictive occupancy condition', attached to the planning permission, in the way proposed. For this reason, I have not found against policies E4, H1, SS10 and SS11 of the LP.

Significance and setting (Appeals B and C)

16. The appeal site concerns a long-fronted rectangular barn, which is Grade II listed, and modern farm buildings attached to its rear façade. The barn is of early 18th Century origin, and previously incorporated a hay loft over cattle sheds. It is faced in coursed, dressed and squared red sandstone, with the largest stones at corners in alternating quoins and stones of irregular length across the coursings. Its roof is tiled on a chamfered eaves band and features a verge parapet to its eastern end.

17. The west, south and east facades of the building have been altered with modern joinery inserted into new and existing openings, including windows to the roof. All of the alterations emanate from the conversion of the barn to independent units of accommodation in the late 20th Century. The rear façade incorporates several partially or completely blocked openings on the lower level and the rear roof slope has one window. Internally, each unit has been subdivided with modern partitions and fitted with domestic accoutrements.

18. The list description suggests that the barn was listed for group value. Given its identification in the listing, this is presumably with 'The Hermitage, which is a late 17th or early 18th century farmhouse situated opposite from the barn. It is double fronted and more elaborate in its architectural composition than the listed barn, with a double gable and central valley, consistent coursings of red sandstone ashlar and stone mullions to the window openings.

19. Despite the modern alterations internally and externally to the listed barn, its significance today is derived from its architectural and historic interest, as a noteworthy example of an 18th Century barn, closely associated with and designed in a clear hierarchy with the adjacent farmhouse, The Hermitage.

20. I am mindful of the definition of 'setting' in the National Planning Policy Framework (the Framework) as being the surroundings in which a heritage asset is experienced. To the rear of the listed building are several agricultural buildings erected at varying points in the late 20th and early 21st Century. Although the space between the barn and the farmhouse has a closer historical association with the farmstead, the other buildings behind the barn and the land that they occupy provide a rural context which forms an integral part of the historic setting of the barn within the farmstead, which contributes to the understanding and significance of the heritage asset.

The Proposal (Appeals B and C)

21. The appeal scheme is in two parts, the alterations to the barn and the buildings and land to its rear. Historic openings to the rear would be unblocked and three additional openings formed of similar proportions with matching stone lintels. At ground floor, the additional kitchen in the larger unit to the west and the en suites in all units would be removed to form larger living rooms and the hallways made smaller to enlarge other rooms and provide WCs.

22. To the rear, the open-fronted lean-to machinery shed, which is attached to the listed building, and the fully enclosed shed beyond, would both be removed, as would the partially open cattle shed further north. In their place separate private gardens would be formed, each consisting of lawn and patio areas enclosed by timber fences between and to the exterior.

23. The access to the east of the barn would be widened and new stone retaining walls erected to either side. Parking for twelve vehicles would be provided to the north of the garden areas and the remaining farm buildings would utilise an existing disused access further north.

Effect on the significance and setting of the listed building (Appeals B and C)

24. The original use and form of many farm buildings often dictated that the external northern façade was primarily solid to maintain heat within the building and protect it from weather. The rear of the listed building previously utilised several openings at ground floor but principally addressed the farmhouse opposite.

25. The use of previously blocked openings within the rear façade and the reconfiguration of modern partitions within the individual units would not be harmful to the historic built fabric of the listed building. However, by contrast, the additional openings would further perforate the rear façade, which would break up its predominantly solid external appearance and result in the loss of historic built fabric. Given that this is one of the foremost characteristics of the listed building, a greater number of openings would be harmful to the legibility of its original function. This would also tip the balance further in favour of the building taking on the appearance of a row of cottages, as opposed to a barn.

26. I appreciate that the new openings would only be visible from within the proposed garden areas, but the lack of visibility of the proposed openings would not be a determining factor in considering whether the proposal would preserve the special architectural or historic interest of the listed barn.

27. The existing agricultural buildings to the rear of the barn are of a utilitarian form, layout and appearance. While they help to illustrate the incremental development of the farmstead, particularly over modern times, they crowd and obscure the rear façade of the listed building, which makes a negative contribution to its setting. The removal of those buildings, in itself, would therefore improve the setting of the listed building, as more of the rear of the building would be evident from within the farmyard and surrounding areas.

28. It is not uncommon for traditional farmsteads to include buildings grouped with yards and pens for animals, but the proposed gardens and patios would be individually divided and enclosed by tall timber fences. Their physical presence, form and appearance would wholly contrast with the barn and maintain enclosure to its rear. This would add to my concerns for the suburbanisation of

the listed barn and undermine the case for the proposal as a means of preserving this important former farm building.

29. Beyond the gardens and patios, the hard-surfaced parking area and the changes to the access thereto would not be harmful to the setting of the listed building, as they would be modest alterations to existing hard-surfacing and access arrangements, which appear to be more modern in origin. Similarly, the relationship between the barn and the farmhouse would not alter, as clear visibility would remain between the buildings.

30. I have had regard to the approved development at Rockhouse Farm[4], but I note that the scheme did not affect a listed building or require many external alterations, so it would not be comparable with the appeal scheme before me.

31. Despite my findings in respect of the relationship between the listed barn and farmhouse and the proposed access and parking arrangements, the proposed openings within the rear façade would not preserve the legibility or appearance of the listed building and would result in loss of historic fabric. Furthermore, the modern appearance of the gardens and patios and their enclosures would introduce a discordant form of development that would have a significantly detrimental effect on the farmstead setting of the listed barn. The proposal would therefore be harmful to the understanding and significance of the listed barn, as a heritage asset.

Public benefits and conclusions on the second main issue (Appeals B and C)

32. The statutory duties in Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the PLBCA) are matters of considerable importance and weight. Paragraph 192 of the Framework states that the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation should be taken into account in determining applications. Meanwhile, paragraph 193 of the Framework also advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation.

33. The proposed works would be harmful to the special historic interest of the Grade II listed barn and its setting, which would have a negative effect on the significance of the designated heritage asset. In my view the harm that I have identified, including the harm to historic built fabric, would equate to less than substantial harm to the significance of the asset. In such circumstances, paragraph 196 of the Framework identifies that this harm should be weighed against the public benefits of proposals, which includes the securing of optimal viable use of listed buildings.

34. I note that, with the adoption of the LP, the Council can now demonstrate a five-year supply of deliverable housing sites, but the Framework supports the Government's objective to significantly boost the supply of homes and the Council's SHMA[5] identifies a need for 2-bedroom houses. The delivery of housing would therefore ordinarily amount to a public benefit in social terms. However, I am mindful of my findings in Appeal A and, notwithstanding the outcome of Appeals B and C, the appeal building would remain mixed-use accommodation with an occupancy restriction, not permanent unrestricted

[4] Planning Reference: SMD/2017/0764.
[5] Staffordshire Moorlands Strategic Housing Market Assessment (2017).

housing. Such benefits would therefore not materialise with the appeal scheme. Even if I had found that there could be a reduction in traffic from the site, or the appeal building would be close to, and its use for permanent housing would offer support to, facilities and services in local villages, these benefits would also not materialise for the same reason.

35. The more recent permissions and consents have already resulted in a lot of change and alteration to the internal and external fabric of the listed building. I have no reason to dispute that the appellant's holiday let business has experienced a downturn in its profitability and there could be a lack of demand for or oversupply of tourist accommodation. Be that as it may, there is no substantive evidence before me to suggest that the proposal is required to make the building habitable or sustain the heritage asset.

36. In my assessment of the proposal above, I referred to the removal of the modern farm buildings to the rear of the listed barn. While this could also be achieved in the absence of the appeal scheme, it would nevertheless make a positive contribution to the setting of the barn.

37. The aforementioned public benefits are balanced by the loss of built fabric, harm to the legibility and appearance of the listed building and to its setting.

38. Taking the above together, the public benefits I have outlined would not justify allowing works and development that would fail to preserve the special interest of the listed building. Therefore, in accordance with paragraphs 193 and 196 of the Framework, considered together, I conclude that the public benefits do not outweigh the great weight to be given to the less than substantial harm that I have identified.

39. In light of all of the above, I conclude that, on balance, the proposal would fail to preserve the special historic interest of the Grade II listed barn. Hence, the proposal would fail to satisfy the requirements of the PLBCA, paragraphs 192, 193 and 194 of the Framework and conflict with the heritage aims of Policies DC1 and DC2 of the LP.

40. I have been referred to Policy DC3 of the LP, but I have not found against this policy, as it relates to landscape and settlement setting and the main parties did not identify harm in respect of this matter

Other Matters (Appeals B and C)

41. The appeal building is opposite The Hermitage, which is designated as a Grade II listed building. I have therefore had regard to the statutory duty referred to in the PLBCA. However, given the physical relationship of the proposed works and development with this designated asset, its setting will be preserved and the proposal will not detract from it.

Planning Balance (Appeals B and C)

42. The Framework states that applications for planning permission should be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.

43. I have already identified the benefits of the proposal in Appeals B and C as part of the assessment of public benefits in undertaking the necessary balancing exercise in relation to the heritage asset in the second main issue. In terms of

harm, the proposed development and works would not comply with development plan policy in respect of the harm to the special historic interest of the Grade II listed barn, including its setting. This proposal would therefore not amount to sustainable development under the terms of the Framework and the adverse impacts are matters of significant and overriding weight against the grant of planning permission.

Conclusion - Appeal A

44. For the reasons given above, I conclude that Appeal A should be dismissed.

Conclusions - Appeals B and C

45. I have found harm in respect of Appeals B and C in relation to the Grade II listed building and there are no other considerations which would outweigh these findings. Accordingly, for the reasons given, I conclude that the appeals should be dismissed.

Paul Thompson

INSPECTOR