

PLANNING (LISTED BUILDING AND CONSERVATION AREAS) ACT 1990

S.38 (2) APPEAL STATEMENT ON BEHALF OF Mr SAM WILSON

FOR

Retention of single storey rear element to Grade II Listed Building on the land

AT

ANTRIMS BARN ST. PETERS ROAD HAYLING ISLAND HAMPSHIRE
PO11 0RT

LPA ref - 19/00056/CMP/UNBW

ACHIEVE ref – SRL.015.23

**REBUTTAL OF LPA CASE AND FURTHER OBSERVATIONS ON
QUESTIONNAIRE DOCUMENTS**

A. Appeal questionnaire documentation and post-submission considerations

A.1 In response to a freedom of information request (22-653 – ACHIEVE **Document 8**) to the Council, it has confirmed the following –

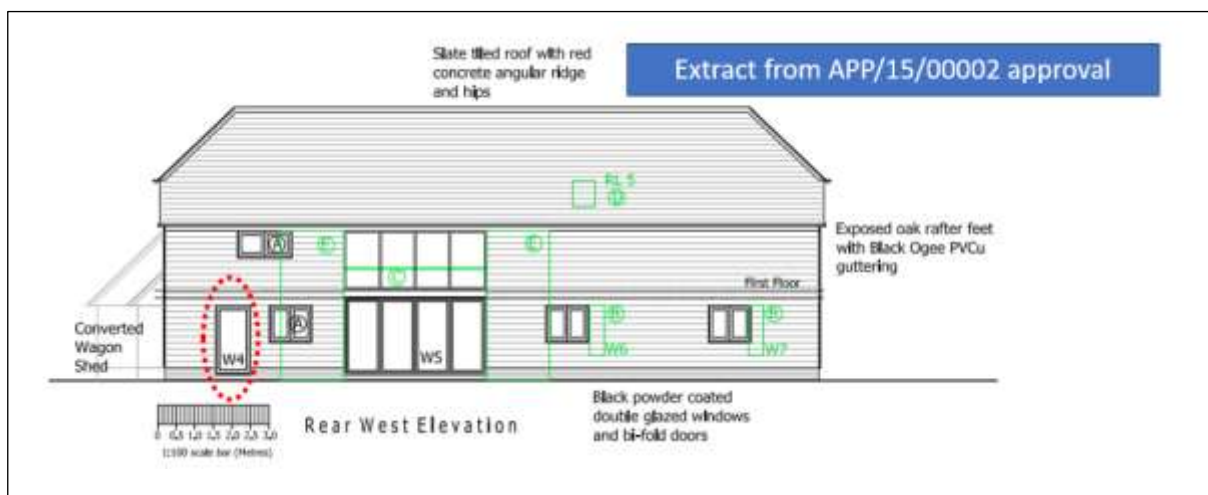
- the date when the original complaint was received?; *We opened the file in March 2019 as a result of a complaint.*
- outline the basic thrust of the complaint (without identifying the complainant), which had been Mr Wilson request essentially and the harm alleged by the complainant? *Extension to rear of the property being undertaken.*
- Can I please see pdf files of any site meeting notes made on 3 April 2019 by either Lesley Wells and/or Peter Fellows in respect of Antrims Barn. *Please see attached (ACHIEVE **Document 9**) for the correspondence from Lesley Wells/ Peter Fellows following the site visit.*
- Can I please see pdf files of any enforcement site visit notes made September 2022 by Ms Sophie Beebee in respect of Antrims Barn. *There were no site visit/notes made in September 2022*
- Can it be agreed that the rear element does not in fact lie within the St. Peters Conservation Area, but immediately abutting it, as the attached Council document would suggest? *Please see attached (ACHIEVE **Document 8**, pp.3-4) the email from the conservation officer*
- Can the Council please advise if it wrote to Mr Wilson inviting him/offering him the opportunity to make a retrospective Listed Building application to retain the single storey element at the rear of Antrims Barn, with a deadline given to do that by. *Please see the email (ACHIEVE **Document 10**, p.2, 3rd paragraph up) attached from Mr Tim Pointer.*

- Mr Wilson has been through his paperwork but has been unable to find correspondence of that nature. *As above.*

Further to your queries following our response to your recent information request, please see below further clarification from the Planning Enforcement team.

- with respect to answer (b), can the Council state if the complainant set out in writing what harm the alleged unauthorised work was causing in planning/heritage terms, or did they merely state that - " Extension to rear of the property being undertaken "? *We can confirm that a member of the public was 'concerned about the appearance of the extension to the rear of the property being undertaken'.*
- regarding whether the structure to the rear of Antrims Barn is within the ST.Peters Conservation Area has not been answered.
Is the answer 'No'? The relevant email merely opines that the structure to the rear of Antrims Barn is within the curtilage of the Listed Building, which is a different matter to the question that was asked. *The Heritage Officer has stated that looking at the GIS, the unauthorised extension falls just outside the boundary of the conservation area, but the rest of the listed building is within the boundary.*

A.2 Whilst it is for the Council as local planning authority to identify the land to which the Listed Building Enforcement Notice (LBEN) related (which in this case appears to have been land in Mr Sam Wilson's ownership), Mr Wilson was confused. This was because the Council web interactive map identified a curtilage for the Listed Building (Antrims Barn), which did not include the footprint of the structure that has been positioned rear of Antrims Barn. As such, he queried and still queries Mrs Wells statement that "*the single storey rear extension has been erected within the curtilage of the Listed Building*" in her 16 April 2019 letter, as that seemed to be the local planning authority's reasoning that Listed Building Consent was required. In any event, the harm does not appear to have been considered substantial, as it then took the Council nearly 4 years to serve the Notice.



- A.3 As to Mr Fellow's 13 April 2019 assertion that the structure rear of Antrims Barn "*would adversely affect the simplicity of the barn*", this is not accepted. Conversion to a dwelling has intimately already affected its simplicity and arguments have already been made about the structure's subordinate scale, in relation to the overall barn silhouette. It is not accepted that the structure is harmful to the barn and a 3rd party neighbour has written to the Inspector stating that view.
- A.4 The "...door from the extension to the host dwelling" in Mrs Wells email 18 July 2019 (and paragraph 6.5 of the Council's case), is also misleading. A door already existed in the barn west elevation proximate to the new structure, which the Council had approved under its reference APP/15/00002 (shown circled with a broken red line above), which in any case was a minor visual feature of the west elevation.
- A.5 Mr Wilson quite rightly queried the PCN's that had been served for the reasons set out in his 7 October 2020 email to Sean Baldock. Residing in Havant Borough Council's administrative area, Mr Wilson was bemused to see East Hampshire District Council as part of the PCN and assumed there had been an error by that Council. He further explained why he was taking an invasion to his privacy under his Human Rights so seriously, given the very scary burglary of his property, set out in his 10 October 2020 email.
- A.6 That no site visit notes were written up in September 2022 is poor practice.
- A.7 Given Mr Wilson's 9 March 2023 email querying the LBEN, Mr Wilson would like to add a ground of Appeal to this case. This centres around the Council's inclusion of an adjacent (new) barn as part of Appendix A to the LBEN. Mr Sam Wilson has drawn this error to the Council's attention on at least 4 occasions. This new barn has nothing to do with the structure rear of Antrims Barn. Whilst the Council has subsequently agreed to redact that photograph, it still distracts from the matter at hand and has confused a number of Mr Wilson's neighbours, who thought this photograph suggested it was the new barn which had to be removed. The labelling of the structure rear of Antrims Barn with an 'a' on the plan attached to the LBEN is almost illegible too and the map title bears no Council reference number, nor that it relates to a LBEN. A ground f) appeal is also now made, as Mr Wilson considers the LBEN to have been improperly served. If the Inspector is not prepared to allow an Appeal under ground f), the Appellant considers the Inspector has the ability to vary the LBEN by having an Appendix A that does not contain the offending photograph of a new barn that has nothing to do with this Appeal.
- A.8 Mr Wilson has incorporated a bat box on the west elevation of the structure rear of Antrims Barn. He says bats are using it.
- A.9 Policy DM20 is not specified in the Enforcement Notice and yet the Council has sought to introduce it into its evidence. Policy DM20 is not considered to be so contravened to justify the dismissal of Appeal ground e). No written justification to Policies CS11 and CS16 has been produced for the Inspector

to review, in terms of the Appeal questionnaire documentation sent by the Council.

- A.10 It is assumed that the Council's Conservation Area Appraisal (CAA) pre-dates the Listing of Antrims Barn, being it is not shown as a Listed Building on the CAA map. The Council attach no weight to the significant efforts made by Mr Sam Wilson to save this building and put it to its optimum viable use. No part of the CAA is cited by the Council in its reasoning for serving the LBEN, so the Appellant concludes that the structure rear of Antrims Barn is not harmful to the setting and significance of the CA.
- A.11 One might of expected the Enforcement Team to have written to the complainant to ask them exactly what they meant by '*...concerned about the appearance of the extension to the rear of the property being undertaken*', being as taking Enforcement Action, is a discretionary duty, measured against the harm being caused (in this case '*less than substantial*' in the Council's opinion), only where the public interest is warranted, not because some disgruntled neighbour complains about minor works, to which no other neighbour has come forward to complain about to The Planning Inspectorate. The Appellant does not consider the insertion of lead flashing, causing no damage to the Listed Building, has caused harm and certainly not sufficient to warrant taking formal enforcement action, which has taken almost 4 years to bring to formal action.
- A.12 Mr Wilson did offer to move the structure at the rear of Antrims Barn, but received no advice or help about this proposal from the Council.

B Specific rebuttal of the Council's written case (using its paragraph numbering in brackets)

- B.1 (2.1, 1st sub-paragraph) This confirms the last bullet point of A.1 above. The point made in A.9 above is reiterated.
- B.2 (2.1, 2nd sub-paragraph) Whilst planning permission may have been granted for a 3 bay garage, this has not yet been built out and does not physically exist on the site. A site visit by the case officer would have confirmed this and gives further cause for concern as to how the Council has administered this case.
- B.3 (3.0 – 8th bullet point) The Appellant accepts that their stated September 2022 date was in fact December 2022, set out by the Council.
- B.4 (3.0 – 8th and 9th bullet points) The appellant notes it took a full 3 months for the Council's Legal Services to action the Planning Service's instruction to prepare and serve the LBEN. This again indicates the general lack of urgency on the Council's part and the degree of harm perceived.
- B.5 (5.3) The Council appears to have reproduced the supporting text to Development Plan Policy DM20, without really underlining the text it

considers important. Indeed, some of the text is completely irrelevant to this Appeal - (e.g. reference to Policy DM21 in terms of shopfront and advertisements) - and such muddled thinking does not assist the Inspector to reach a decision. The Policy is also worded in the sense of making an application for Listed Building Consent, rather than covering the scenario of a LBEN Appeal. ACHIEVE considers it has prepared a sufficient and proportionate description of the site and its 'significance' as a heritage asset. The appellant does not consider the Council has done this, whether in Section 2 of its statement, nor in the comments by Peter Fellows as Conservation Officer, when advising the Council's Planning Enforcement Team.

- B.5 (5.3 – Paragraph 2, top of page 5 & paragraph 9.12) The Council has relied upon paragraphs 126-141 of the NPPF. These relate to making effective use of land, achieving well-designed places and partly covering the protection of Green Belt land. The Appeal site is not in a Green belt. Reference to an earlier iteration of the NPPF is assumed, but again this merely confuses matters for the Inspector and furthermore does not set out what the Council considers essential for the Inspector to understand about relevant NPPF paragraphs.
- B.6 (5.3 – Paragraph 9.11) Antrims Barn has not been 'lost' as a heritage asset and the structure placed to the rear still allows its simplicity of form to be understood in a non-intrusive way.
- B.7 (6.3) – The structure rear of Antrims Barn has indeed been fabricated on top of a metal framework, as is clearly seen in the Council's first photograph in its statement of Case Appendix 1. That the Council then goes on to say in paragraph 6.5 that it doubts a metal framework exists is contradictory and not tenable. This shows the structure under construction. It has no foundations – indeed one can see the gap between the framework and the ground in that photograph. The Council might have asked Mr Wilson to demonstrate this by excavating to the side of the structure. The Appellant's photographing evidence on pages 26 and 27 of its statement of case also show the structure has merely been placed against the side of Antrims Barn. In 2019 the Appellant offered to remove the lead flashing and move the structure with a tractor to demonstrate it was mobile – in a similar way that static caravans are often placed up on a brick plinth, yet still held to be mobile – but was told that would not be necessary by Mr Fellows.
- B.8 (6.4 – Court case referenced) In terms of size, the structure rear of Antrims Barn is small in comparison to the Barn's Western elevation and certainly of lesser projection than the cart shed element. In terms of permanence, the structure can be dragged away from the barn on its metal framework. In terms of attachment to the ground, there are no foundations as set out in B.7 above (acknowledged by the Council in its paragraph 6.5).

- B.9 (6.5) It is possible to move the structure and the Appellant offered to demonstrate that as early as 2019, but was told not to by Council Officers. There is no connecting guttering between the structure and the barn.
- B.10 (6.6) ACHIEVE is not aware that the Appellant has ever made a claim for the building being temporary: indeed, it was intended as a useful permanent addition to ensure that boots could be changed out of and not tread mud inside the dwelling, as useful additional secure storage and a place to bring in lambs rejected by their mothers.
- B.11 (6.9) There must be many examples of extensions to Listed Buildings in Havant Borough, given consent without passing the public benefit test. Most domestic extensions would otherwise fail such a test as the sole reason for such extensions is to improve the private amenity of the owners. Indeed Listed Building Consent APP/15/00002 at the Appeal site itself is a good example of this. Even if public benefits cannot be shown, there is still also the overall planning balance to be applied. Another example of this occurring – albeit in a coastal setting and when the July 2018 NPPF was in force) – is at 16 Langstone High Street. Here, the Inspector in allowing that Appeal (ACHIEVE **Document 11** to this statement) opined the following at paragraph 7 of their decision –

“7. None of the physical works or alterations would affect the original part of the building; no historic fabric would therefore be affected as a result of the proposals. Moreover the proposed extension would not alter or affect the historic layout of the original building and would not therefore detract from an understanding of the original plan form of the building.”

ACHIEVE see parallels of logic with this Appeal: no original part of Antrims Barn is affected by the new structure and no historic fabric has been altered, nor the APP/15/00002 approved layout. The structure rear of Antrims Barn does not detract from an understanding of the original plan form of the building. In the Langstone High Street decision, the Inspector does not refer to the public benefits test (para 196 of the 2018 NPPF), but instead relies on the more meaningful test of Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- B.12 (6.11) The first part of this paragraph contradicts the statement – *“Therefore its...appearance...crude and at odds with the remainder of the building’s exterior”*. This is simply not tenable and the Council has not evidenced its ‘crude’ assertion.
- B.13 (6.14/6.15) The removal of the structure is not a issue until this Appeal is determined. The timescale for compliance would obviously be that set out in the LBEN, including agreeing any method statement of removal in that same timeframe, should this Appeal be dismissed. Paragraph 5 (ii) of the LBEN does indeed require a method statement for ‘removal to be agreed’ , before removal is undertaken, but ACHIEVE is not aware of any duty under the Act to have submitted such a statement with the Appeal made. As inferred above, the Appellant would simply remove the lead flashing

and tow the structure away from Antrims Barn with a tractor, sliding it away on the structure's metal framework/base.

C Conclusions

C.1 The Appellant stands by its case as expanded upon in this rebuttal.

C.2 A Ground f) has been added to this Appeal via this rebuttal.

C.3 If Ground f) succeeds, it would not be necessary for the Inspector to consider the other grounds of Appeal made. If the Inspector dismisses on Ground f), they are respectfully requested to allow the other Grounds of Appeal.

LIST OF (ADDITIONAL) DOCUMENTS

8 – Recent Freedom of Information correspondence with the Council

9 – Correspondence between Council Officers/The Appellant related to Document 8

10 – 28/3/2023 email from Tim Pointer referred to in Document 8

11 – Appeal allowed at 16 Langstone High Street, making a point of principle as to tests of assessment

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