

The Planning Inspectorate

COMMENTS ON CASE (Online Version)

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Appeal Reference: APP/X1735/W/20/3260889

DETAILS OF THE CASE

Appeal Reference	APP/X1735/W/20/3260889
Appeal By	A H BROWN LTD
Site Address	Northney Farm St. Peters Road HAYLING ISLAND PO11 0RX

SENDER DETAILS

Name

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

ABOUT YOUR COMMENTS

In what capacity do you wish to make representations on this case?

- ☐ Appellant
- ☐ Agent
- ☒ Interested Party / Person
- ☐ Land Owner
- ☐ Rule 6 (6)

What kind of representation are you making?

- ☐ Final Comments
- ☐ Proof of Evidence
- ☐ Statement
- ☐ Statement of Common Ground
- ☒ Interested Party/Person Correspondence
- ☐ Other

COMMENT DOCUMENTS

The documents listed below were uploaded with this form:

Relates to Section: REPRESENTATION

Document Description: Your comments on the appeal.

File name: [REDACTED]

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Response to appeal APP/X1735/W/20/3260889 (4.9 metre high Silage Clamp)

INTRODUCTION

My name is [REDACTED]
of this appeal. North Farm House was listed Grade II in 1977.

This representation

- a. summarises and chronicles the progress of an unauthorised development through retrospective application, determination and post-determination
- b. comments on the appellant's statement
- c. comments on Havant Borough Council's (HBC) handling of the case

BACKGROUND

The applicant built the structure between 13 August 2019 and 20 September 2019 on the site of a smaller, 2 metre high silage clamp enclosure. The operating of the farm machinery was thereby brought closer to the listed building at the entrance to the clamp.

I alerted HBC to the unauthorised build on 14 August 2019. Following planning enforcement investigation, HBC advised the applicant that planning permission was required on 3 September but then only served notice requiring a retrospective application on 23 September, after the structure was complete. HBC planning records of previous developments on the site suggest the applicant was fully aware of the need for permission before erecting the structure.

I appointed Heritage expert Mr Jack Warshaw of Conservation Architecture & Planning on 13 January 2020 to inspect the site on 15 January 2020, consider whether the setting of the listed building was affected, report on and assist any further action. I believe the Inspector is provided with his report submitted to HBC on 23 January 2020. I have again retained him to submit evidence in connection with this appeal.

In registering the retrospective application on or about 28 November 2019, HBC failed to recognise the application's effect on the setting of the listed building. Following my further representation of 9 January 2020, a public notice was issued on 15 January 2020 under the 'Town and Country Planning Act 1990' stating;

'APP/19/01048

Affects setting Listed Building and of wider interest Northney Farm, St Peters Road, Hayling Island, PO11 0RX Retrospective application for agricultural maize silage clamp and 3 metre high walls with safety rail.'

HBC accepted application documentation of questionable quality identified in our objection statement of 8 January 2020. Deficiencies in the application were only partially addressed following our representations.

The retrospective planning application was refused by the Development Management Committee (DMC) on 16 July 2020. A corrected decision notice was posted on 20 July 2020.

EVENTS FOLLOWING APPLICATION REFUSAL

Notwithstanding the refusal notice issued, the applicant undertook painting, concreting and additional steelwork beginning 2 September 2020. Following our representations, HBC confirmed;

'the Council have not approved or given permission for additional works to the silage clamp since the refused planning application.'

The matter was referred to Planning Enforcement on 16 September 2020.

On 30 November 2020 Mr. Baldock (Planning Enforcement manager) advised;

'I have instructed two officers to investigate the situation and we are in the process of looking into the potential of formal enforcement action.'

It is important to note therefore that, as the structure 'as built' does not accord with the submitted details, the Inspector may wish to consider whether the application, the subject of this appeal, is valid.

THE DEVELOPMENT MANAGEMENT COMMITTEE MEETING

The applicant's grounds of appeal allege:

1. The Information available to the Committee was inadequate
2. Insufficient weight was given to professional officer and statutory consultee's reports
3. Objection to a recommended planning condition, should this appeal be allowed.

Comments

Information available to the Committee

The Development Management Committee is the democratic decision maker. It receives professional guidance, advice and representations from many sources however, they make the decision. Most importantly, decisions must be made in accordance with law, statutory policy and legitimate material considerations.

To aid and prepare for the DMC meeting, a pre-decision meeting was held to brief members of the DMC and allow them to understand the positions being taken by objectors and professional staff.

Whilst we do not agree with the conclusion of the officer's report, which was to grant the application, it did fairly represent all the deputations and representations from professional bodies and consultees as submitted.

The Committee chairperson did verify that all members had read their documentation and indeed, members referred to the documentation during the meeting.

The Committee report included the Heritage Team Leader's previously issued views verbatim. Further representations and reports which the DMC had to consider were:

1. My representations
2. Mr. Jack Warshaw – conservation architect

The applicant cites the 'poor information' related to answering questions and in particular the discussion about the safety rails. In answering councillor Lloyd's question concerning 'Safety Guards' Mr. Eaves said persons working at height could hold on to the rails and that the rails protected machinery working in the clamp. Whilst the discussion on safety was not relevant to the impact on the setting of our listed building, it was entirely relevant to the Health and Safety Executive's 'working at height' regulations. Many new build silage clamps do have handrails as standard to protect farmworkers and the applicant has confirmed that safety rails are required above 600 mm in the appeal documentation.

Regarding the clarity of Permitted Development rights, the DMC was convened to decide on the retrospective application for a new silage clamp and its impact on a listed building. It was not convened to debate the Permitted Development rights legislation.

Lastly, we disagree with the interpretation of the case officer who advised that a new 3 metre high structure would be permitted, as the HSE regulations would still apply. The setting of historic monuments or listed buildings must also be carefully considered in any new build development (regardless of height) including where any Permitted Development rights apply.

The weight given to professional officer and statutory consultees reports

The discussion focused on the case officer's report. The major topics were the height, appearance of the structure and conditions that might be applied to mitigate the impact the structure has on the setting of the listed building. I do not consider the content and presentation of the report helped the Committee to understand the concept of setting and its application. Whilst objectors or other consultees were not present, Mr. Fellows report and views were well represented and heard at the meeting. The case officer's recommendation to grant approval relied heavily on Mr. Fellows' report but also the statutory consultee reports submitted which were superficial in content.

In the discussions Mr. Fellows stated he had visited the application site on two occasions but crucially omitted to add that he never visited the site of North Farm House.

His "assessment" should be disregarded.

Whilst we trust the Planning Inspectorate will draw their own conclusions as to the depth and quality of comments of the statutory consultees, we firstly single out the two reports authored by the Heritage Team Leader for comment;

His first response of 8 January 2020 demonstrates the scant attention initially devoted to this case:

'The proposed maize silage and walls are located a sufficient distance from any listed or locally listed building to not cause any harm to their setting. In addition there is ample mature boundary screening to North Farm House which adequately screens the development. As such I have no objection to the proposals.'

Following our representations and the Council's acknowledgement that setting is affected, the Heritage Team Leader produced a second report in which he modified his conclusion to;

'no material harm to the architectural and historic interest of North Farm House and its setting.'

The Heritage team leader came to his positions without a single visit to North Farm House and its surroundings

We had expected a professional report following the standards advocated by Historic England's 'The Setting of Heritage Assets Good Practice Guide in Planning Note 3'. For example, it would reasonably be expected to see in his evidence, mapping, views from the listed building and its gardens, assessment of additional noise vibration and other nuisances and other relevant assessment criteria. His report offers no evidence by the way of photographs either 'from, towards, through across and including the asset'.

His report relies on mature vegetation, distant views, intermittency and glimpses of the clamp; none of which he has experienced from our house. The main tree which partially screens the clamp in the summer is a horse chestnut which, when not in leaf, displays the starkness of the clamp at 40 to 50 metres from the house for much of the year. This view can easily be seen from the previously supplied photographs.

In coming to a professional opinion, we expect that a seasonal year-round, balanced and proportionate view be taken when examining the purely visual impact to the setting. The garden and its surrounds are to be enjoyed all year.

The house dating from the 17 century, pre-dates the previous clamp and the modern barn both which are slowly encroaching on our listed building. The modern barn appears to have been built in 1999 however, we have no sight of its planning permission and it surprisingly is missing from the planning history of the case officer's report.

In answer to a question from the chairperson of the DMC who was seeking clarity on the impact of setting to a listed building, Mr Fellows response is transcribed below;

'So, you know, its wider surrounds are always quite important to a listed building; now there's no, I'm afraid, no calculations to this or anything like that, it is something that has to be determined you know as I say, I'm a professional in this and I feel, from my point of view, that the setting isn't detrimentally harmed by this particular development but, it is a very much important consideration in terms of this application'

We disagree, there are guidelines and checklist of elements that should be considered when determining the impact of setting to a listed building. The Heritage Team Leader has provided no evidence to support his opinion and has not following a structured approach such as the

Historic England document which is endorsed by Association of Local Government Archaeological Officers, the Institute of Historic Building Conservation and many others.

The actual evidence supplied by other interested parties, does not support his conclusions.

By way of contrast, the conservation architect Mr. Jack Warshaw did visit North Farm House and determined that the harm inflicted by the structure was '*less than substantial*' and that there was '*no public benefit*' arising; the benefit was '*entirely private*.' His report is comprehensive and does follow a structured approach in assessing the impact to the setting of a listed building. It does identify other important setting issues of noise, vibration etc. which are absent from the Heritage Team Leaders's report.

Many farms locate silage clamps in fields out of plain sight where visual impact and other forms of pollution can be isolated and separated from residential developments. We believe that, given this was a new development and because of its increased size, a less intrusive location could and should be found for the silage clamp in the 262 acres of Northney Farm's estate.

Since the new silage capacity has been installed, we, the owners of North Farm House are confronted by this large and ugly structure in stark relief with its additional, increased overpowering noise and pollution due to the proximity of the telehandler and other machinery. Unless this appeal is dismissed, that harm will pass to subsequent owners of North Farm House *ad infinitum*.

Mr Eaves did raise the issue of noise and smell at the meeting during his introductory presentation to the DMC as it had been first raised in our objection of 8 January 2020 together with the residential amenity issue. The following is a transcript of his comments;

'In terms of noise and smell issues that have been raised the silage clamp does replace a previous clamp in the same position. It is larger than the previous clamp and particularly higher than the previous clamp but it is within a working dairy farmyard and farm and it is noted that no objection to the proposed silage clamp has been received from environmental health officers. I think it is fair to say that the operation of a farm will have some impact on surrounding residential properties the big question obviously is whether any additional impact from the operation of a larger silage clamp would be sufficient to result in an unacceptable impact on nearby neighbours.'

This issue was not debated further by the DMC however, to answer the big question, it does impact near neighbours at North Farm House. Exceedingly noisy machinery is now operating closer to our house at around 30 metres with extended operating hours due to its increased capacity.

To our knowledge, no assessment of the additional noise, smell or other pollution was made by Environmental Health officers and certainly, was not dealt with in the Council's conservation report.

The environmental health officer's observation of;

'No adverse comments from this office.'

The above shall not prejudice any comments that may be made by Mr J. Driver, Environment Control Officer.'

gives no indication what type of review was conducted or indeed, whether the site was visited. There was certainly no visit to North Farm House to understand whether noise was a problem or not when the new clamp was in operation.

The Planning Inspectorate is invited to any indoor or outdoor surrounding space in North Farm House, to witness the noise whilst the machinery is in operation. The question of noise and other pollution is real and remains unanswered.

We believe that the additional noise pollution is material grounds to refuse the application.

The affect that conditions might have on the setting of the listed building

This topic was debated at length at the meeting, and from the documentation available and as discussed, at the DMC, the applicant was not in agreement with conditions which had been proposed by the case officer.

No noise abatement conditions were proposed and, to our knowledge, no assessment was ever made.

The Committee were not agreed that proposed measures to mitigate the harm to the listed building were adequate.

Throughout the course of the meeting the committee members were reminded by the chair and the case officer that the application should be judged on its merits alone and 'as if' it was not built. There was a view expressed saying that if this were new application being brought for consideration, they would have concerns.

The height of the structure and its appearance, which one Councillor likened to a 'gasometer', was deemed harmful to the listed building and therefore the Committee refused the application as per the decision notice.

CONCLUSION

We ask the Planning Inspectorate to carefully consider all the documentation related to the case and in particular, the conservation reports.

In addition to harm caused to the setting of our listed building, other components of harm and in particular noise, have been brushed aside and not debated other than the case officer's presentation. The additional harm from noise arises from the extended size and operational hours of the new silage clamp with ever increasing larger machinery. The harm to residential amenity and the setting of a listed building were discussed by the DMC as an additional reason for refusal but were guided by the professional officers to be specific on the reasons for refusal as, they were deciding to overturn an officer's recommendation.

This new structure is simply another example of how Northney Farm has encroached on this 17th century building leaving the owners feeling that they are living in the middle of an industrial estate. On a personal note, this structure blights our house and garden. We cannot enjoy it anymore.

Given this silage clamp was a new build, we believe it could and should be relocated within Northney Farm's 262 acre estate.

We ask the Planning Inspectorate to uphold the decision of Havant Borough Council and add conditions that order removal of the silage clamp in its entirety. We would also ask that in the event, Northney Farm contemplates any further developments in or around our listed building, they are required to use the planning process and provide a heritage statement as required.

APENDICES

1. TIMELINE OF KEY EVENTS
2. BEFORE NEW SILAGE CLAMP
3. AFTER NEW SILAGE CLAMP
4. NEW FOUNDATION WORK STARTS AFTER REFUSAL NOTICE
5. VIEW 1 OF ADDED STEELWORK
6. VIEW 2 OF ADDED STEELWORK ADJACENT TO NORTH FARM HOUSE
7. VIEW 3 OF ADDED STEELWORK ADJACENT TO NORTH FARM HOUSE
8. MACHINERY OPERATING IN SILAGE CLAMP

APPENDIX 1 - TIMELINE OF KEY EVENTS

DATE	EVENT
13/8/19	Unauthorised build of large silage clamp on site of demolished smaller clamp started
14/8/19	HBC alerted by complaint email
21/8/19	Referred to planning enforcement reference 19/00199/CMP
20/9/19	Build of silage clamp complete - date from application document
23/9/19	HBC letter - formal planning was required in 28 Days. Delay apology - 'very high workloads'
25/11/19	Plans still being received. See time stamp on plan documentation.
28/11/19	HBC letter planning application received. Later that day advised issued by mistake.
11/12/19	New HBC letter - planning application received. Comments by 9/1/20. Mr Eaves case officer.
8/1/20	P Fellows Conservation report- <i>'The proposed maize silage and walls are located a sufficient distance from any listed or locally listed building to not cause any harm to their setting.'</i>
8/1/20	Formal objection sent to HBC planning
13/1/20	Mr Eaves letter to applicant - proposing mitigation measures on impact to setting impact prior to issuance of public notice.
15/1/20	LPA issues public notice stating 'affects listed building' Representations by 7/2/20
23/1/20	Representations made on behalf of North Farm House by conservation architect (Mr Warshaw)
7/2/20	Further comments from North Farm House lodged with HBC Planning
13/2/20	Environment agency - no objection to proposal - <i>'It's up to you to decide what planning and work is needed but you must: tell the Environment Agency at least 14 days before you begin construction'</i> They did not. It was already built.
21/2/20	Email from Mr Jenkins to Mr Warshaw - given the conservation report: <i>'The proposed maize silage and walls are located a sufficient distance from any listed or locally listed building to not cause any harm to their setting...It is not considered to be reasonable or necessary to require a Heritage Statement at this stage.'</i> Also, confirmation that the case is to be decided at future Development Management Committee meeting.

24/02/20	Email from Environment Agency to owners of North Farm House saying; <i>'I have made some enquiries and I understand that the agricultural team will be working with the farmer at Northney Farm to ensure that once the clamp is emptied, it is either decommissioned or rebuilt to SSAFO standards. As it stands despite the clamp being non-compliant with the SSAFO regulations, the actual risk of pollution is low (as it is filled with maize).'</i>
22/02/20	email - Warshaw to Jenkins requiring Heritage Statement
13/3/20	New conservation report from Mr Fellows changes from previous position to - <i>'there would be no material harm to the architectural and historic interest of North Farm House and its setting'</i>
3/7/20	Notification of DMC meeting to be held 16/7/20. Deputations by 14/7/20
6/7/20	Email to Alan Mak MP seeking intervention
8/7/20	Private briefing by HBC professionals to DMC. Briefing note to DMC from North Farm House
9/7/20	Committee report posted - recommendation to grant permission
10/7/20	Alan Mak MP - Email providing advice
15/7/20	Site viewing working party minutes
16/7/20	DMC meeting - decision to refuse application
20/7/20	Corrected decision to reflect the reason for refusal
3/8/20	Email explains why planning permission was required for clamp (height above 3 m)
9/9/20	Despite application refusal painting works commenced 2/9/20 till 10/9/20. Mr Eaves alerted on 3-10 SEP. Planning Enforcement advised.
15/9/20	Email to Mr Jenkins - Despite refusal major steel and concreting works started on 14/9/20
16/9/20	Email from Mr Eaves matter referred to Mr Baldock Planning Enforcement
22/9/20	Letter from Mr Eaves - <i>'I can confirm that the Council have not approved or given permission for additional works to the silage clamp since the refused planning application.'</i>
12/10/20	Email to Mr Baldock - Outlining the transgressions against the planning process.
30/11/20	email from Mr Baldock - Two officers <i>'looking into the potential of formal enforcement action'</i>
18/12/20	Appeal against DMC decision initiated.

APPENDIX 2 – BEFORE NEW SILAGE CLAMP



APPENDIX 3 – AFTER NEW SILAGE CLAMP



APPENDIX 4 – NEW FOUNDATION WORK STARTS AFTER REFUSAL NOTICE



APPENDIX 5 – VIEW 1 ADDED STEELWORK ADDED AFTER REFUSAL NOTICE



APPENDIX 6 – VIEW 2 ADDED STEELWORK ADJACENT TO NFH GARDEN



1. APPENDIX 7 – VIEW 3 ADDED STEELWORKS ADJACENT TO NFH GARDEN



APPENDIX 8 – MACHINERY OPERATING IN SILAGE CLAMP



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Appeal By	A H BROWN LTD
Site Address	Northney Farm St. Peters Road HAYLING ISLAND PO11 0RX

SENDER DETAILS

Name

[REDACTED]

[REDACTED]

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[REDACTED]

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APPENDIX 9

Relevant email from Environment Agency 24 February,2020

[REDACTED],

As promised, I have made some enquiries and I understand that the agricultural team will be working with the farmer at Northney Farm to ensure that once the clamp is emptied, it is either decommissioned or rebuilt to SSAFO standards. As it stands despite the clamp being non-compliant with the SSAFO regulations, the actual risk of pollution is low (as it is filled with maize).

From a planning perspective, we do not have any objection to the proposal as stated in our response to the council. The SSAFO regulations is a separate matter to planning. The clamp will need to comply with the SSAFO regulations when and if it is rebuilt, and as previously stated, the agricultural team will be working with the farmer to ensure this happens. I am informed that the SSAFO regulations state that silage clamps should not be built within 10 metres of a watercourse. There is no requirement within the regulations for silage clamps to be built a minimum of 50 metres away from a groundwater abstraction.

As you know, I do not have a technical understanding of the SSAFO regulations. Therefore, if you have further queries about the requirements, please contact our local Customers & Engagement team who will be able to assist. You can contact them by emailing SSDEnquiries@environment-agency.gov.uk, or if you wish to speak to someone on the telephone please contact our National Customer Contact Centre on 03708 506 506 (Monday to Friday 8am to 6pm) and ask to be put through to someone in the Solent and South Downs (SSD) Customers & Engagement team.

Kind regards,
Anna

Anna Rabone
Sustainable Places Advisor | Solent and South Downs Area
Environment Agency | Chichester Office, Oving Road, Chichester, West
Sussex, PO20 2AG

Direct dial: 02077 140525

The Planning Inspectorate

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Appeal Reference APP/X1735/W/20/3260889

Appeal By A H BROWN LTD

Site Address Northney Farm St. Peters Road
HAYLING ISLAND
PO11 0RX

SENDER DETAILS

Name

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Company/Group/Organisation Name

[REDACTED]

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TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 78

Site: Northney Farm, St Peters Road, Hayling Island, P011 ORX

Proposed Development: Retrospective application for agricultural maize silage clamp and 3 metre high walls with safety rail.

Havant District Council Planning Application Number: APP/19/01048

Planning Inspectorate's Appeal Reference: APP/X1735/W/20/3260889

Evidence of:

Jack Warshaw B ARCH, DIP TP, AADIPCONS, RIBA(SCA), MRTPI, IHBC, RPUDG

Professional credentials

1. I am Jack Warshaw of Wey House, Standford Lane, Headley, Hampshire, GU35 8RH. I resided in London from 1965-1990. I hold the Degree of Bachelor of Architecture, Diplomas in Town Planning and Building Conservation. I am a Chartered Specialist Conservation Architect, Chartered Town Planner, Member, Institute of Historic Building Conservation, Recognised Practitioner and Trustee, Urban Design Group. The designation RIBA(SCA) is awarded only to candidates who pass a rigorous application process, demonstrating authoritative knowledge of conservation practice, principles and philosophy, and contributing to development of conservation standards. Fully endorsed by Historic England, Cadw, Welsh Historic Monuments, the Environment and Heritage Service for Northern Ireland, Historic Scotland, the National Heritage Training Group, the Heritage Lottery Fund, recognised throughout the UK and internationally.

Experience

2. Founding Director, Conservation Architecture & Planning (CAP), 1991-. London Local government, 1965-68 and 1970-91: architecture, planning and design. College Lecturer, 1968-70. Head, Conservation and Design, Wandsworth Council, 1983-91; co-ordination and direction of heritage and design, including conservation areas, historic buildings, design control, enhancement, grant aided projects, townscape, advert control, tree preservation, local plan policy development and implementation. Initiator and lead design advisor for internationally praised Battersea Square regeneration scheme. Promoter of environment and regeneration projects. Registered Parks and Gardens including Battersea Park.

4. Clients include: English Heritage, Department of National Heritage, Department of Environment, Ministry of Defence, London Planning Advisory Committee, Royal Town Planning Institute, UK and Irish local authorities and major companies.

5. CAP's work includes: advising government departments, local authorities, corporate and private clients, professionals and voluntary bodies. Historic and new build projects, academic work, service to professional bodies. Awards: European Architectural Heritage Year; Civic Trust Commendation; Wandsworth Design. Conservation schemes: 18th century house and landscape at Winkfield Place; Conservation Plans for Cowdray Park, Midhurst, Sussex (Grade I, SAM), and the Roundhouse, (Grade II*) Camden. Urban design and historic building restoration, Prospect Quay, Wandsworth. Lead practice; 6 conservation area audits for City of Westminster including Trafalgar Square, Whitehall, and Westminster Abbey World Heritage Site. MoD term commission historic estate conservation. Building, appraisal and other projects in historic environments. English Heritage Strategy for Southwest England, Conservation Area Appraisals: Milton Keynes; Hastings Town Centre; Kingston upon Thames and other authorities; 6 historic Irish towns; refurbishment of 1716 Grade II* building, Covent Garden; Church Centre for a Grade II* church in Berkshire, flats in conservation areas; important historic houses in England. Churches under care.

6. Expert witness commissions include heritage and design matters for local authorities, corporate, religious, professional, private and resident groups. Local appeal and call-in public inquiries, written representations and High Court proceedings. Evidence to House of Commons Select Committee on Urban Affairs, 2004.

Affiliations, academic and published work

7. Executive, Urban Design Group 1993-2012. Education and Technical Committees, IHBC. Learned societies. Chair, Applications Panel, Hampstead Conservation Area Advisory Committee, 1982-90. BSI Sub-Committee for BS 7913: Guide to The principles of the conservation of historic buildings. Lecturer, conservation and urban design. Publications include: Wandsworth householder conservation and riverside guides, Whitehall Conservation Guide for Government Departments, RTPI Conservation Guide, Ministry of Defence Conservation Manual, numerous others, learned journals. Contributions to written, spoken and visual media. External Examiner, MSc in Historic Conservation, Oxford Brookes University, 2004-8. Historic buildings Architecture and Planning panels, Irish Heritage Council. CABE/RTPI co-presenter, Design in the Planning System and Introduction to Design Appraisal. Member, RIBA Conservation Register Assessment Panel.

Introduction

8. This evidence is given in parallel with the owners of the adjoining site, North Farmhouse a Grade II listed building who contend the unauthorised development harms the setting of their building and detracts unacceptably from the amenity previously enjoyed. I inspected the site, viewed and considered the surroundings of North Farmhouse on 15 January 2000 in my report of January 2020, appended for convenience.

I give further attention to the relevance of Sec. 66 of the Planning (Listed Building and Conservation Areas Act 1990), relevant policy, guidance and case law in relation to the peremptory judgement of HDC's Heritage Team Leader that:

The proposed maize silage and walls are located a sufficient distance from any listed or locally listed building to not cause any harm to their setting. In addition, there is ample mature boundary screening to North Farm House which adequately screens the development. As such I have no objection to the proposals."

Relevant facts

9. The following facts are derived from official records, officers' statements and emails, appellant's statements and examination of acts or omissions during the progress of this application:

- The appeal is against refusal of the retrospective application described above.
- The appellant was advised by established professional engineers who also built the structure.
- The appellant was aware of HSE safety rail regulations which required the structure as built.
- Planning history confirms the appellant was aware of prior approval requirements, GPDO provisions and requirement for planning permission.
- The appellant declared a relationship between the appellant and a leading Member of the Council.
- The appellant's disregard of planning law and regulations was *prima facie* deliberate.
- The Council's enforcement officer's response that the as built structure was "permitted development" contravened regulations.
- The Council's Heritage Team Leader (HTL) has never inspected the site of North Farmhouse or its wider setting in connection with this appeal or at any time.
- No officer, Council member or the appellant has identified any public benefit attributable to the unauthorised structure.
- The appellant has submitted no evidence stating or implying the viability of the farm would in any way be affected by relocating the maize clamp.
- The Council accepts the structure affects the setting of the listed building, but failed to discharge its duty to require a heritage statement from the appellant.

- There is no policy or guidance which entitles an authority to rely on an internal or third party assessment in place of an applicant's heritage statement.
- My report of January 2020 is an evaluation of the application and its processing, not a heritage statement.
- Contrary to the HTL's opinion, the Council has found harm is caused.
- No public benefit is claimed in balance to or mitigation of that harm.
- The HTL's later defence of his position had no regard to NPPF 190, did not apply NPPF definition of setting, Historic England or any authoritative guidance in understanding the significance of the Heritage Asset, the contribution of its setting or the impact of the appeal scheme.
- The Council's Development Management Committee rejected his advice.

Basis in case law

10. Current legislation protects the setting of a listed building. Landmark court cases e.g., *Barnwell vs East Northamptonshire DC* 2014 confirm the presumption in favour of preservation of setting:

“The presumption is statutory. It is not rebuttable. In weighing all relevant considerations, a planning authority must be conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering.” [*R (Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895 (Admin), Lindblom J]

The Council's processing and determination

10. The Committee report's review of material considerations included reference to my report of January 2020, but omitted its illustrations and conclusions.

Paragraph 7.25 of the Committee report testifies the retrospective application failed to include a Heritage Statement, notwithstanding the requirements of NPPF 189 and Local Plan DM20. It omits reference to emerging Local Plan Policy E9 c. and paragraph 5.109. In validating a clearly non-compliant application, the Council appears to have relied on the HTL's pre-emptive note of 8 January, claiming the development did not affect the setting of North Farmhouse. However, as the Council, in apparent response to my report, then acknowledged the setting is in fact affected, the correct procedure would have been to invalidate the application and proceed to enforcement. It is my contention that the Council's validation amounts to maladministration.

Comments on appellants grounds of appeal

11. In appeal ground 1, the appellant claims the Covid-constrained committee process and presentation of evidence was unfair. They cite failure to explain the need and height of the “safety rail” as a HSE requirement. The inference is that, had it been fully explained the Committee would have given greater weight to the need for such a structure on this farm, and granted the application. However, they omit the fact that the HSE requirement applies to any structure of the type proposed of a height exceeding two meters, thereby excluding any GPDO benefit and bringing it within the ambit of Sec 66(1) of the 1990 Act.

The Council had available, during the progress of the retrospective application and before the Committee Meeting, considerable evidence on which to weigh their determination. This included:

- Photographic evidence
- Public representations, including owners of the affected North Farm house
- Report by myself,
- Officer Committee report

12. In this case the relevant comparison is between the pre-existing timber clad structure of 2 meters, i.e., equal height to a standard domestic fence, and its replacement by a structure of some 5 meters, accompanied by significant visual and audible increase in nuisance and noise from machinery without restriction at any time of day. Its visual impact on surroundings from several viewpoints could be likened to that of an under-developed country's prison security compound. It's also important to give full weight to Historic England guidance, “The Setting of Heritage Assets,” which sets out not only steps in making an assessment, but relevance of considerations, most of which have been neglected, for example:

The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting. This will vary over time and according to circumstance. Or,

When assessing any application for development which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change. They may also need to consider the fact that developments which materially detract from the asset's significance may also damage its economic viability now, or in the future, thereby threatening its on-going conservation ([PPG, paragraph: 013, reference ID: 18a-013-20140306](#)).

13. The presented planning history, with progressive aerial photographs below suggests the clamp, past and present, is for storage of livestock feed. The erection of a bigger clamp is, I surmise connected with a recent increase in livestock and erection of a further barn to house them. Even in a modern farm context, an

industrial-scaled structure of this kind, set within a rural community, alongside a modest residential site would be visually and environmentally alien whether or not an adjacent site happens to contain a listed house. This brings Policy CP16 into play.

Northney Farm development from 2000



2000



2004



2007



2015



2020 This image shows the unauthorised development

14. In appeal ground 2 the appellant relies entirely on the HTL's initial denial of any harm caused to setting and his later expansion for Committee in which he recommends mitigation measures as cancelling any harm. The Council, in failing to require a Heritage Statement of the applicant, flies in the face of the NPPF and its own statutory policy.

15. Appeal ground 2 amounts to an assertion that the Inspector should uphold the appeal on the basis of the HTL's comments. That assertion is unsupported by any reasoning. It argues the HTL's "expert" status should carry substantially greater weight than that of the democratic decision makers, the objector or myself.

16. The HTL's contribution amounts to general description, recitation of cherry-picked policies, selection of limited views, distance and size of garden as the only considerations contributors to understanding significance or setting. He makes no reference to or application of Historic England's guidance "*The Setting of Heritage Assets*," or BS7913: 2013, the BSI Guide to the Conservation of Historic Buildings, or any other acceptable methodology dealing with setting is evident. Indeed, he appears to unaware of their relevance or even existence. He has never inspected the site of North Farmhouse or any other area of land forming part of the current or historic setting of the Farmhouse. I contend that omitting this manifestly indispensable step alone renders it impossible to infuse any claimed expert advice with credibility.

17. The HTL's relevant academic qualification was barely 2 years old when he dismissed the effect of the development on setting. He is not a member of the Institute of Historic Building Conservation, (IHBC) the recognised professional conservation body. IHBC Members must adhere to a Code of Conduct which embraces ethical and responsible behaviour. As a member of the IHBC's Disciplinary Panel I have dealt with a case in which a member is judged to have breached the Code in failing to visit a site on which he prepared a Heritage Statement. In the light of the above I consider this officer's advice falls well below any recognised standard of professional conduct which requires a duty of reasonable care towards a client, employer or the country's built heritage. As such it should carry little or no weight.

18. The NPPF Glossary definition of setting, an exact copy of the HE's in "*The Setting of Heritage Assets*," is a starting point for assessment of whether the development would affect North Farmhouse and cause harm. The HTL is patently unaware of either document.

19. For the HTL's comments to be in any way persuasive, painting and planting must be accepted as avoiding any harm. Even if that assertion were seen to mitigate the worst impacts, refusal is mandatory where any palpable harm remains, because there is no public benefit to outweigh it.

20. Appeal ground 3 simply seeks omission of the HTL's cladding recommendation, implying that deciduous planting similar to that shown in the appellant's photograph 3 is sufficient to remove any harm to setting.

21. The Inspector will note that the historic, open farmland setting, progressively eroded with large farm buildings to the W, has necessitated some planting on the North Farmhouse side in the past. While this may be thought to have softened the "bad neighbour" impact of the farm buildings nearest the listed farmhouse, it has also exacerbated the cumulative enclosure of the historic open field setting, a harm which the unauthorised development has increased. Further planting would simply add to the harm caused because:

- a- The trees in the photo are already some 16m high with considerable further potential.
- b- the narrow space alongside the boundary with North Farm House cannot accommodate forest trees or allow for their maintenance
- c- Further tree planting would further harm the historic setting in inward view from the SE, as well as the outward aspect from the North Farmhouse site itself, through increased enclosure.

Discussion

22. The case comes down to:

- a- whether the Council's exercise of democratic judgement, rejecting the HTL's advice and overturning the recommendation was soundly based, i.e., whether less than substantial harm is caused to setting by the development;
- b- whether, painted and clad as proposed by the HTL, the harm is eliminated and,
- c- whether, notwithstanding omission of loss of amenity in the Committee's decision, due consideration should have led to inclusion of failing CP16 as a reason for refusal.

23. In considering these questions, the HTL, in advising mitigation has clearly undergone a change of heart in acknowledging harm is caused, having earlier claimed there was no harm, in which case any need to mitigate would not have arisen. As it now stands therefore, the evidence of all parties, including the applicant agrees that harm is caused. Neither the applicant nor the HTL offers any evidence or reasoning which demonstrates either an understanding of setting, its contribution to the significance of the heritage asset or that the proposed or any other "mitigation" measures would cancel out harm.

24. His expanded assessment attempts to justify a seriously defective, offhand comment, made without actually looking at the impact from North Farmhouse. No

visit takes place before the expanded effort. He only considers views, and only from the farmhouse, the site of or views from which he has not seen himself. The word is used at least 8 times in 2 short paragraphs. He notes, pejoratively:

"Any glimpse (sic) views of the silage clamp would be seen in the context and with the background of the large modern agricultural barn."

25. A barn, which, he fails to comprehend, *has already harmed the setting of the farmhouse*, but was overlooked in relation to Sec 66(1) of the Act and PPG15 Sec 2.16 at the time when its application was considered.

Concluding, he then deploys the same barn in attempting to justify the further harm of the closer, alien structure:

"Given the limited scale of the development and the backdrop of buildings against which it would be viewed.

26. Section 7 of the Committee report repeats the same arguments, e.g., 7.12:

"...the structure would also be viewed with a backdrop of the existing taller modern agricultural building to the south of the clamp"

27. Policy CP16 is, incompletely, cited as relevant, then inexplicably forgotten in progressing the report towards a conclusion. This omission is likely to have misled the Committee into disregarding its relevance in voting down the "amenity" consideration as a reason for refusal. The vitally pertinent wording in full of that policy, coupled with NPPF 127 and 128 in relation to good design was simply ignored by officers, which in turn was summarily dismissed without meaningful comment or discussion in Committee. Nothing in these policies or anywhere else excuses farm buildings from being a good neighbour.

Conclusions

28. Had the peremptory careless, opinion of one relatively junior officer gone uncontested, it would have blocked any further opportunity to consider setting through public discourse, expert consultation, or decision making Members at Planning Committee.

29. Had the unauthorised development proceeded through either a pre-application consultation, prior notification and/or normal planning application, there would have doubtless been an opportunity to consider alternatives to the as built scheme which would have satisfactorily addressed the heritage issues. Instead, the process and the issues have been flouted, subjected to pitiable official attention and mishandled.

30. The Council's failure to expeditiously stop and enforce in respect of the unauthorised development amounts to maladministration.

31. The Committee's decision to refuse is mandated in accordance with Local Plan Policy DM20, and NPPF 196, also incorporated verbatim into Draft Local Plan Policy E9.

32. The size, appearance and environmental nuisance of the unauthorised development is by any reasonable measure a "bad neighbour" adjoining a domestic property. As such it fails Policy CP16, but was not fully or properly considered by officers, and consequently dismissed by Committee Members in their deliberations.

33. The unauthorised development's breaches of law and policy, absence of a Heritage Statement, convincing evidence or any other justification submitted by appellant, lack of professional rigour in HDC officers' advice, in addition to soundly based evidence and reasoned judgement on the part of objectors all weigh decisively in favour of dismissing this appeal.

34. There are no other material considerations which suggest otherwise.



15 January 2021

APPENDIX 1 - REPORT SUBMITTED 23 JANUARY 2020

OBJECTION REPORT – HAVANT BOROUGH COUNCIL

APPLICATION NO. APP/19/01048 - Retrospective application for maize silage clamp and structural enclosure - Northney Farm, St Peter's Road Hayling Island PO11 0RX



Jack Warshaw B. Arch. Dip TP AADipCons RIBA (SCA) MRTPI IHBC RPUDG

January 2020



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Introduction

1. This report is submitted on behalf of my clients, [REDACTED] North Farmhouse is Listed Grade II.
- II. The list description is as follows:

SU 70 SW HAVANT NORTHNEY LANE Hayling Island 26.5.76 7/7 North Farmhouse II

House. C17 with C18 and C20 additions. Timber-framed building, clad later in brickwork, and with a tiled roof. South elevation of 2 storeys, 3 windows. Red brick walling in Flemish bond, eaves fascia, 1st floor band, cambered ground floor openings. C20 casements, French door, and large windows in a flat-roofed forward extension at the west side. The north elevation has 3 large C20 hipped roofed dormers, resting on the catslide roof, and there is a gabled staircase projection, with Flemish Garden Wall bond. Timber-framing exposed within. Modernised, with minor additions, in traditional style.

2. The house also forms a group with an historic granary, cottage and modern garage. The gardens extend around all sides of the house. I inspected the site on 15 January 2020 with particular attention to the setting of the listed farmhouse.
3. The objection is against the unauthorised erection of a replacement agricultural structure, intended to enclose a maize silage clamp. The primary ground of objection is the harmful effect of the development on the setting of the listed building. A second ground, the possible harm arising from effluent from the enlarged silage clamp is increased potentially hazardous effluent. As this is not within my area of expertise, it is noted here as recommended for reference to the Environment Agency.

Description of replacement development

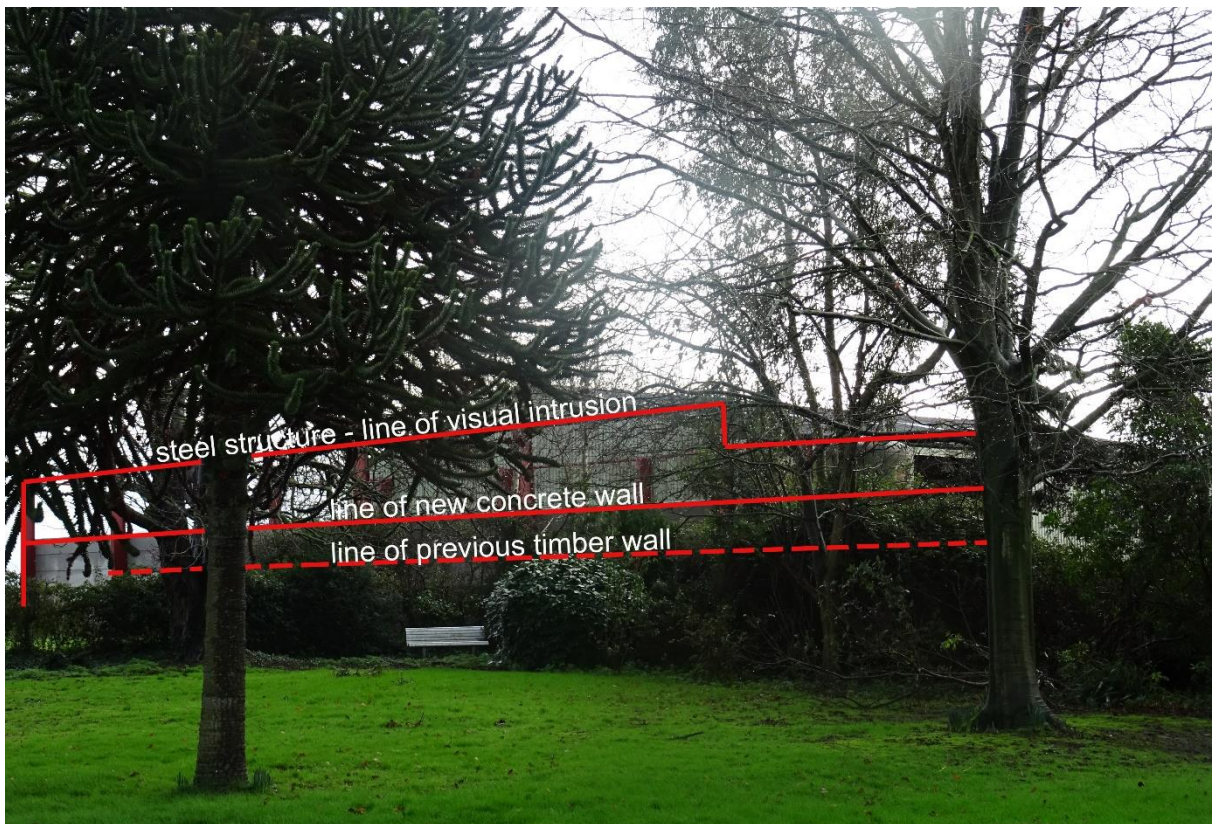
4. The development replaces a timber clad enclosure of approximately 2m height (the normally permitted height of domestic boundary fencing) with a concrete structure of approximately 3m height. This structure is supported by steel columns rising above the 3m wall to a total height of approximately 5m. The capacity of the as built development appears to be approximately double that of the previous existing enclosure. The effect on the setting of the farm house can be experienced from virtually any part of its rear garden as well as from rear windows on the ground and first floors. The effect is illustrated in the following photographs:

- 1- Previously existing
- 2- As built

Both photographs are marked with lines indicating heights and extent of previous and as built elements. Further photographs show the effect from other locations.



Pre-existing photograph with line of enclosure (approx. 2m) marked.



As built with positions of pre-existing and present structures identified



View of as built development from near North Farmhouse boundary. Approx. 2-1/2 times ht.



Close up view, from North Farmhouse boundary.

Aerial photographs (Google – dated 2019) also confirm the size and extent of the pre-existing size of the maize clamp enclosure from various positions:



View from N



View from W



View from SW



Overhead view

Timescale

5. My client alerted the Council on 14 August 2019 ***whilst the structure was being erected***. No action was taken to arrest the development. The Council appears to have allowed the development to proceed unhindered. The applicant states the development was completed on 20 September. The submission date of the retrospective application is unknown but appears to have been prompted by my client's alert. The application was validated/posted on the Council's website after 28 November 2019. My client received written notification of the application on 12 December 2019 and was therefore unaware of the website posting until then. The consultation end date was initially 20 January 2020.

6. The applicant has declared a close relationship to a member of the Council, understood to be the applicant's son and the portfolio holder for Planning.

7. My client submitted an objection to the retrospective application on 9 January 2020. The case officer did not visit the site until the week of 16 December 2020.

Processing compliance

8. Notwithstanding the proximity of the Grade II listed North Farmhouse to the application site, the Council appears to have:

- a- overlooked the fact and, in consequence,
- b- improperly validated the application.

The effect of the development on the setting of the listed building was evidently overlooked because the Council failed to publish the statutory public notice under the Town and Country Planning (Development Management Procedure) (England) Order 2010 until 15 January 2020, in consequence of which the Council has extended the statutory consultation period to 7 February 2020. It would appear my only client's objection letter of 9 January prompted Council officer to realise their error.

9. Responding to the NPPF, the Council requires all applications affecting the setting of a listed building to be accompanied by a Heritage Statement. As no such Statement has been submitted the current application should not have been validated.

10. The application also fails to comply with National requirements. The application documents do not include existing and proposed plans and elevations. Only a proposed, barely legible **proposed** floor and elevation plan is included. The application should therefore be declared invalid in its current form.

11. The Council has now acknowledged the development does affect the setting of the listed building. On 8 January however, the Conservation Officer responded to an internal consultation as follows:

"Please except (sic) my representation below in regards of the above application. The proposed maize silage and walls are located a sufficient distance from any listed or locally listed building to not cause any harm to their setting. In addition there is ample mature boundary screening to North Farm House which adequately screens the development. As such I have no objection to the proposals."

Kind regards Pete

Peter Fellows Heritage Team Leader Tel: 02392 446424 (Wednesdays only)

12. The above representation, written by the Council's designated heritage expert prior to the case officer's visit and ***without any site inspection by the designated officer or any other expert*** flies in the face of Local Plan saved policy DM20 and national policy expressed as NPPF paragraph 190, by failing to visit the site and offering the distance between the development and the listed Farmhouse as the only consideration relevant to assessment of setting. It demonstrates both ignorance of even the most basic criteria for assessment and failure of the planning authority to perform its statutory duty.

Planning policy context

Legislation

13. Sec 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states:

General duty as respects listed buildings in exercise of planning functions.

In considering whether to grant planning permission for development which affects a listed building ***or its setting***, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Local Plan

Core Strategy

14. Havant Core Strategy Policy CS11 Protecting and Enhancing the Special Environment and Heritage of Havant Borough states:

Planning permission will be granted for development that:

4. Protects and where appropriate enhances the borough's statutory and non-statutory heritage designations by appropriately managing development in or adjacent to conservation areas, listed buildings, scheduled ancient monuments, historic parks and gardens, archaeological sites, buildings of local historic or architectural interest.

15. Policy CS16 High Quality Design states:

Planning permission will be granted for development that is designed to a high standard, which helps to create places where people want to live, work and relax. All development should demonstrate that its design:

1. Responds to, draws inspiration from and respects local context and:
 - a) Identifies and responds positively to existing features of natural, historic or local character within or close to the proposed development site;
 - e) The development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking.

Saved Policies

16. The Havant Borough Local Plan (Allocations) Adopted 2014 includes Saved Policy DM20 Historic Assets:

Planning permission will be granted for development that conserves and enhances the historic assets of Havant Borough. Applications that affect, or have the potential to affect, heritage assets are expected to provide a Heritage Statement that: 1. Describe the significance of the asset and its setting, using appropriate expertise and where necessary original survey, at a level of detail proportionate to its significance and sufficient to understand the potential impact of the proposal. 2. Sets out the impact of the development on the heritage assets and mitigation that is proportionate to the impact and the significance of the heritage asset, including where possible positive opportunities to conserve and enjoy heritage assets.

Draft Local Plan 2036

17. The pre-submission local plan, published for consultation from 4 February 2019 to 18 March 2019 contains a number of policies which closely reflect relevant legislation and the NPPF. They should therefore carry some weight as considerations.

Policy E9:

Historic Environment and Heritage Assets Development proposals will be permitted which:

- a. Protect, conserve and enhance the historic environment and the contribution it makes to local distinctiveness and sense of place; and
- b. Make sensitive use of historic assets through regeneration and re-use, particularly where redundant or underused buildings are brought into an appropriate use. Heritage Statements
- c. A proposal that affects or has the potential to affect a heritage asset is required to provide a Heritage Statement that:
 - i. Describes the significance of the asset and its setting, using appropriate expertise and where necessary a site specific survey, at a level of detail proportionate to the significance of the heritage asset and sufficient to understand the potential impact of the proposal; and
 - ii. Sets out the impact of the development on the heritage assets and mitigation that is proportionate to the impact and the significance of the heritage asset, including where possible positive opportunities to conserve and enjoy the heritage asset. Any identified necessary mitigation measures should be fully incorporated into the development proposals.

Proposals likely to cause 'substantial harm' to a heritage asset

d. Development proposals that are likely to cause 'substantial harm' to the significance of heritage assets or their setting will not be permitted unless either:

- i. They are necessary to achieve substantial public benefit that would outweigh the harm or loss; or
- ii. All of the following apply:
 - a) The nature of the heritage asset prevents all reasonable uses of the site
 - b) No viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation
 - c) Conservation by grant-funding or some form of charitable or public ownership is Draft Havant Borough Local Plan 2036 | January 2018 108 demonstrably not possible
 - d) The harm or loss is outweighed by the benefit of bringing the site back into use.

Proposals likely to cause 'less than substantial harm' to a heritage asset

e. Where a development proposal will lead to 'less than substantial harm' to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

5.109 Applications that affect or have the potential to affect heritage assets **and their setting**, including sites with archaeological potential, are expected to be supported by a Heritage Statement. The content of the Heritage Statement will vary depending on the significance of the heritage asset and the impact of development. It should include a consideration of the positive contribution of the development and the loss and harm caused by the development. In such cases it must include an appropriate mitigation of that loss and harm, including: design considerations; recording, where adverse impacts are unavoidable; and the promotion of knowledge such as interpretation and exhibitions. It should contain an appropriate level of information and detail to satisfy the requirements set out in paragraphs 128-141 (now 184-202) paragraphs of the NPPF.

National Planning Policy Framework (NPPF)

18. Key paragraphs:

189. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance...

190. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence

and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.

194. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification...

196. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Material considerations -

Authoritative guidance

19. Detailed guidance in assessing the effect of applications for development on the settings of listed buildings is set out in Historic England's 2017 publication **The Setting of Heritage Assets.**

The setting of a heritage asset is defined in the **Glossary of the National Planning Policy Framework.**:

All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not. The setting of a heritage asset and the asset's curtilage may not have the same extent.

The extent and importance of setting is often expressed by reference to the visual relationship between the asset and the proposed development and associated visual/physical considerations. Although views of or from an asset will play an important part in the assessment of impacts on setting, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust, smell and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.

The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights of way or an ability to otherwise access or experience that setting. The contribution may vary over time.

When assessing any application which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change. They may also need to consider the fact that developments which materially detract from the asset's significance may also damage its economic viability now, or in the future, thereby threatening its ongoing conservation.

BS 7913: 2013

20. The **Guide to the conservation of historic buildings**, also contains detailed guidance on how to define and assess a development's impact on setting as part of its significance.

21. The Northney and Tye Village Design Statement, adopted by the Council in 2007, includes taking due account of the following considerations:

- Scale and form of extensions to existing commercial buildings.
- The design and size of any proposed building in relation to the high visibility across the harbour on to north east Hayling
- The natural appearance and peace of the surrounding area.

Assessment

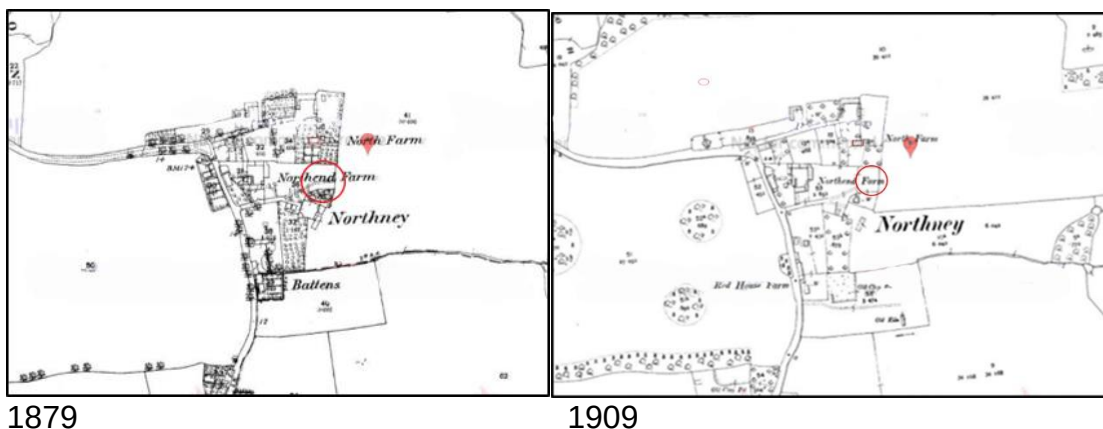
22. The NPPF requires applicants to justify their development proposals but also requires local authorities to assess both the justification and the development itself to reach a recommendation for determination.

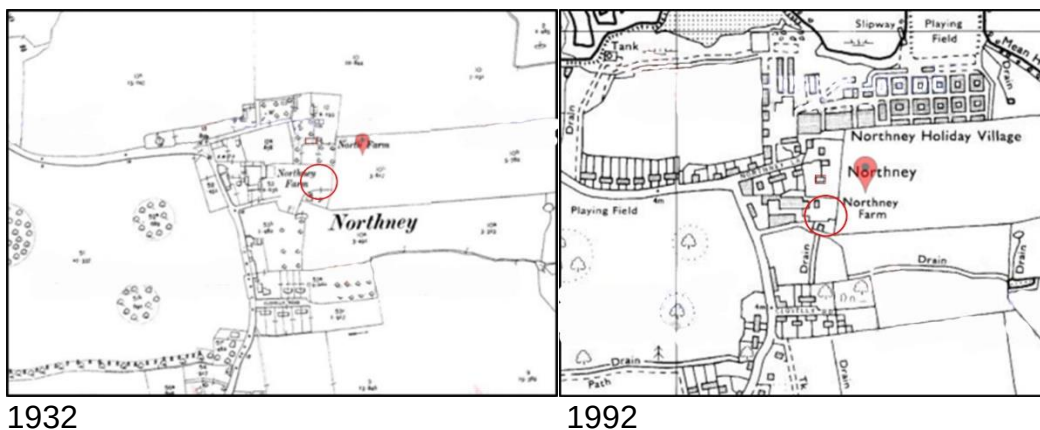
23. Any approach to the required assessment should at least address the following considerations in accordance with NPPF 194 and 196:

1. How does the existing setting contribute to the significance of the asset?
2. Does the development affect the setting of the asset?
3. Does the development harm the setting?
4. Is the harm substantial or less than substantial? (If substantial, the clear presumption is refusal)
5. If the latter is there any balancing public benefit to outweigh the harm?
6. Should the application be refused? Where there is no public benefit, or reasonable mitigation opportunity, the application should be refused.

Historic Maps

Showing location of listed farm house and application site





Responses

24. Responses to paragraph 23 above:

1. Historic maps show North Farm House as the farmhouse to North Farm, adjacent to Northney Farm. Historically the surroundings have to the SE have been open farmland. The large modern shed was not present in 1969 or 1975. The shed may have been erected after the farm house was listed in 1977. My client acquired the house in 2000. The existing farm shed and previously existing clamp enclosure were evident as lying within the setting at that time. They interrupted the otherwise open aspect to some degree, especially in winter, as well as conveying intermittent noise and smell.
2. The Council has acknowledged the setting is affected.
3. The development is significantly larger, taller and considerably more prominent than the pre-existing enclosure. The NPPF establishes setting as incapable of definitive, permanent description as a spatially bounded area or as lying within a set distance of a heritage asset. It is a dynamic experience, as one moves within the space surrounding an historic asset. Where, as in this case, significance is already harmed by the intrusion of pre-existing structures, further, cumulative harm arising from new development cannot be justified. The harm here is further increased by the greater scale, alien materials, sense of enclosure, noise and smell. It's also important to note how the eye focuses and adjusts to see intrusive objects in greater detail than a static camera position. The experience now perceived by anyone within the space between the farm house and the development or looking out from the south facing windows is palpably degraded.
4. I consider the harm to be less than substantial.
5. No, the benefit is entirely private.
6. The NPPF is clear where there is no public benefit or reasonable mitigation opportunity, the application should be refused.

Determination process

25. This application is normally likely to be determined under delegated powers, i.e. by officers alone, in accordance government policy where clear cut policies are applicable. In this application however, other material considerations weigh heavily against allowing normal processing to continue:

1. The application breaches the Town and Country Planning Act 1990, Planning (Listed Buildings and Conservation Areas) Act 1990, all relevant statutory and emergent policies and relevant NPPF paragraphs.
2. The applicant cannot have been unaware of the potential impact of the development on the setting of, including outlook from the neighbouring listed building (the farm house of Northney Farm is itself listed) but failed to consult her neighbouring listed building owner.
3. The applicant did not take up the Council's pre-application service.
4. The unauthorised development has prevented any opportunity for consideration of alternative locations for the maize clamp or acceptable mitigation measures.
5. The Conservation Officer's failed to discharge the duties set out in policy and guidance normally expected of any conservation expert. His improper, pre-emptive representation should disqualify him from further comment.
6. The applicant's relationship to a Council cabinet member should require the member concerned to make a personal public statement confirming whether he had any discussion with the applicant, any other council member or officer in connection with the application at any time.
7. The application should be declared invalid and held in abeyance pending submission of nationally and locally required further details.
8. An independent, suitably qualified conservation specialist should be engaged to properly assess the effect of the development on the setting of the farm house.
9. It would conflict with normal standards of propriety and ethics in planning to allow this application to be determined under delegated powers. Although not a major application, the evident mishandling and issues raised in this case strongly plead for fairness, with a full public report and hearing at Committee. Otherwise my client and the local public would lose the right to comment on the agenda report and address members before it is discussed and determined.

Conclusion

26. Sec 54A of the Planning and Compensation Act 1991 requires that determination of applications shall be made in accordance with the development plan unless material considerations indicate otherwise. The application fails the high test of Sec 66 of the 1990 Act, contravenes Core Strategy Policy CS11 and CS16, Local Plan DM20, Draft Local Plan E9, NPPF paragraphs 194 and 196. No public benefits have been claimed or are apparent. No other material considerations have been identified. Refusal of this application should therefore be considered as mandated. Enforcement action should then be commenced.

Jack Warshaw B. Arch. Dip TP AADipCons RIBA (SCA) MRTPI IHBC RPUDG



APPENDIX

PROFESSIONAL CREDENTIALS

Jack Warshaw B ARCH, DIP TP, AADIPCONS, RIBA(SCA), MRTPI, IHBC, RPUDG

Conservation Architecture & Planning. European Heritage Year, Civic Trust and Wandsworth Council Awards. Television, radio and journal features. SPAB and Architectural Association lectures and study visits. Heritage services to public, private and voluntary sector clients. Town Centre Plans, Conservation Plans, historic building and area appraisals, public realm, World Heritage sites, design guidance, historic building rescue and repair, new buildings, Buildings at Risk, Heritage, Design and Access Statements, nationally authoritative policy, guidance, public inquiries and appeals.

RIBA Accredited Chartered Specialist Conservation Architect, Chartered Town Planner,

Member, Institute of Historic Building Conservation, Education, Technical and Consultation Panels,

Recognised Practitioner, Urban Design Group

- Member, RIBA Conservation Accreditation Assessors Panel
- Member, ASCHB, ICOMOS and several national learned societies.
- Recognised diplomas in Architecture, Planning, and Building Conservation.
- Over 50 years professional experience, over 35 exclusively in historic conservation and design. Head of Conservation and Design (1984-91) Wandsworth Borough Council
- Founding (1991-) Director, Conservation Architecture and Planning.
- Author/co-author of nationally important publications and guides for government, local authorities and the RTPI.
- Represented IHBC on the BSI Conservation sub-committee responsible for BS 7913.
- Recognised expert witness. Evidence to many public inquiries, High Court and for RTPI to House of Commons Select Committee on Urban Affairs.
- Former External Examiner, Historic Conservation, Oxford Brookes University.
- Trustee, and former Executive member, Urban Design Group