

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



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Introduction

1. This report is submitted on behalf of my clients, [REDACTED] North Farmhouse is Listed Grade 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

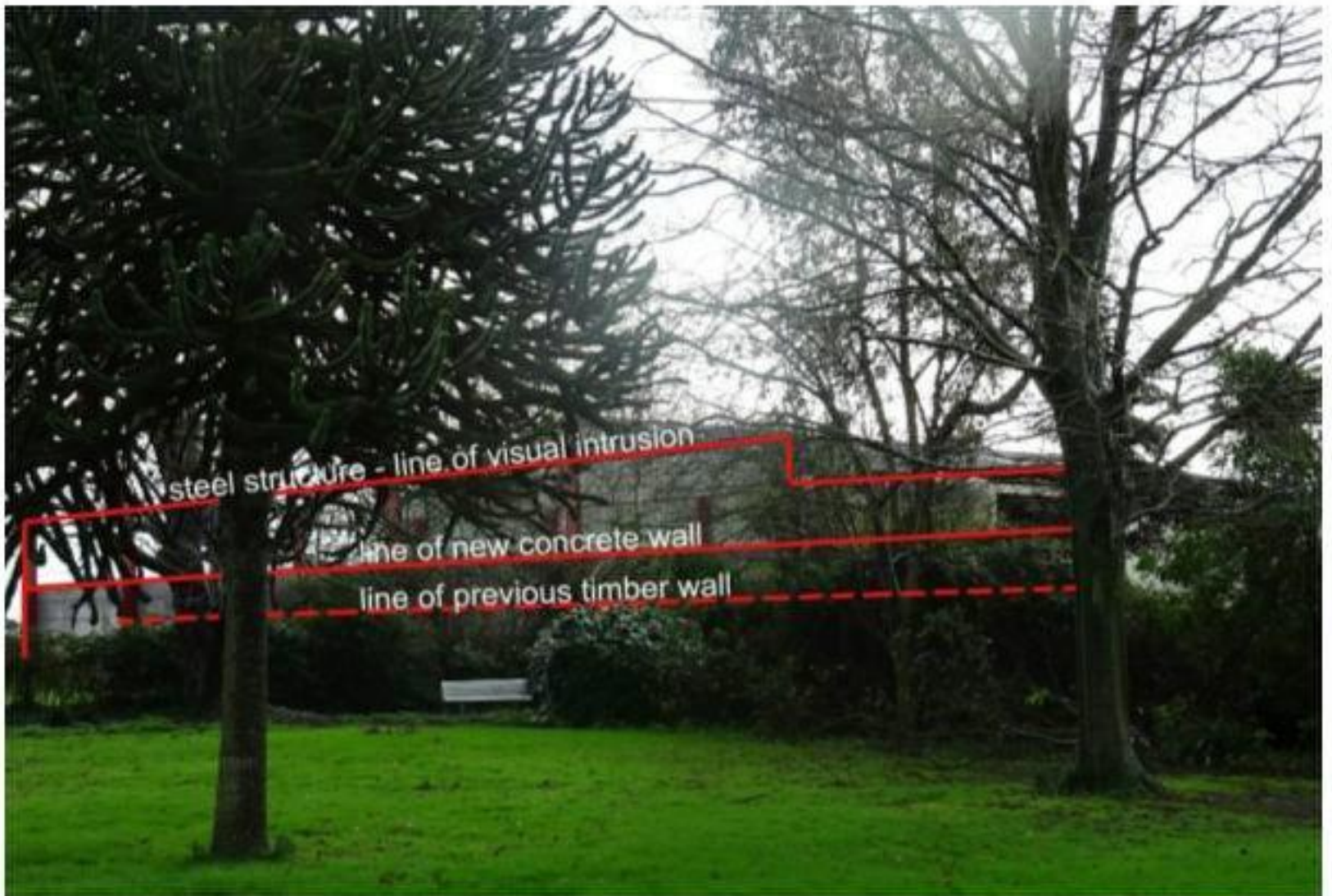
4. The development replaces a timber clad enclosure of approximately 2m height (the normally permitted height of domestic boundary fencing) with a concrete structure of approximately 3m height. This structure is supported by steel columns rising above the 3m wall to a total height of approximately 5m. 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

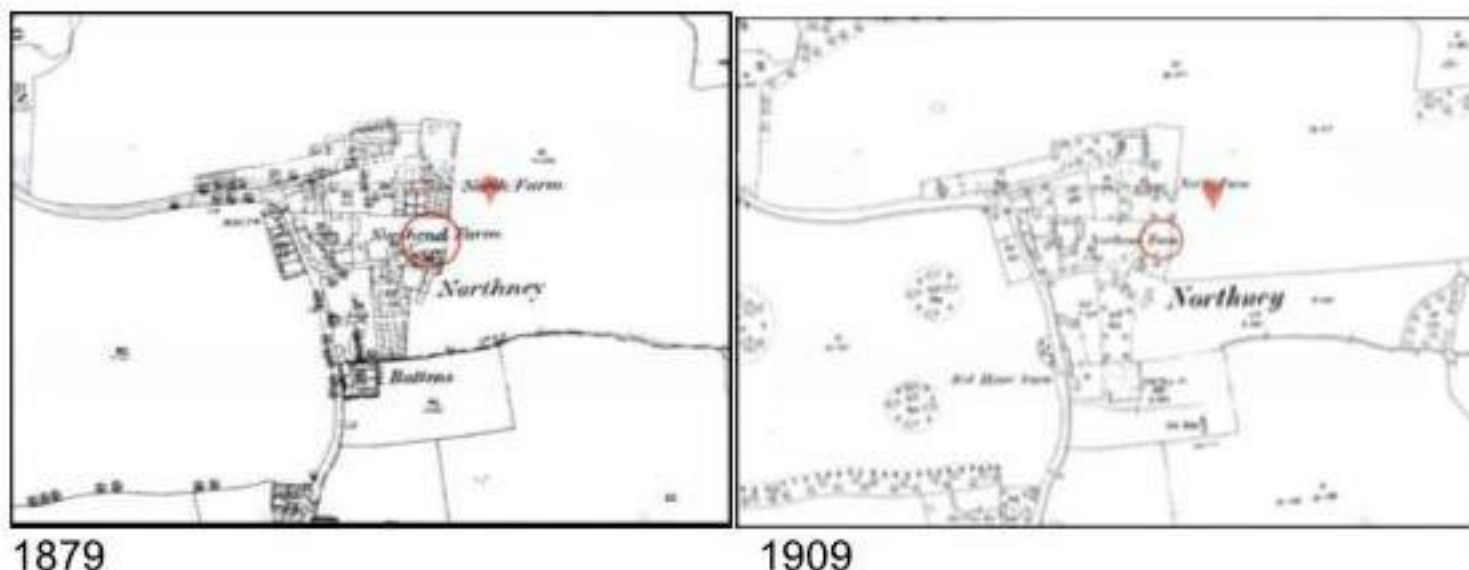
22. The NPPF requires applicants to justify their development proposals but also requires local authorities to assess both the justification and the development itself to reach a recommendation for determination.

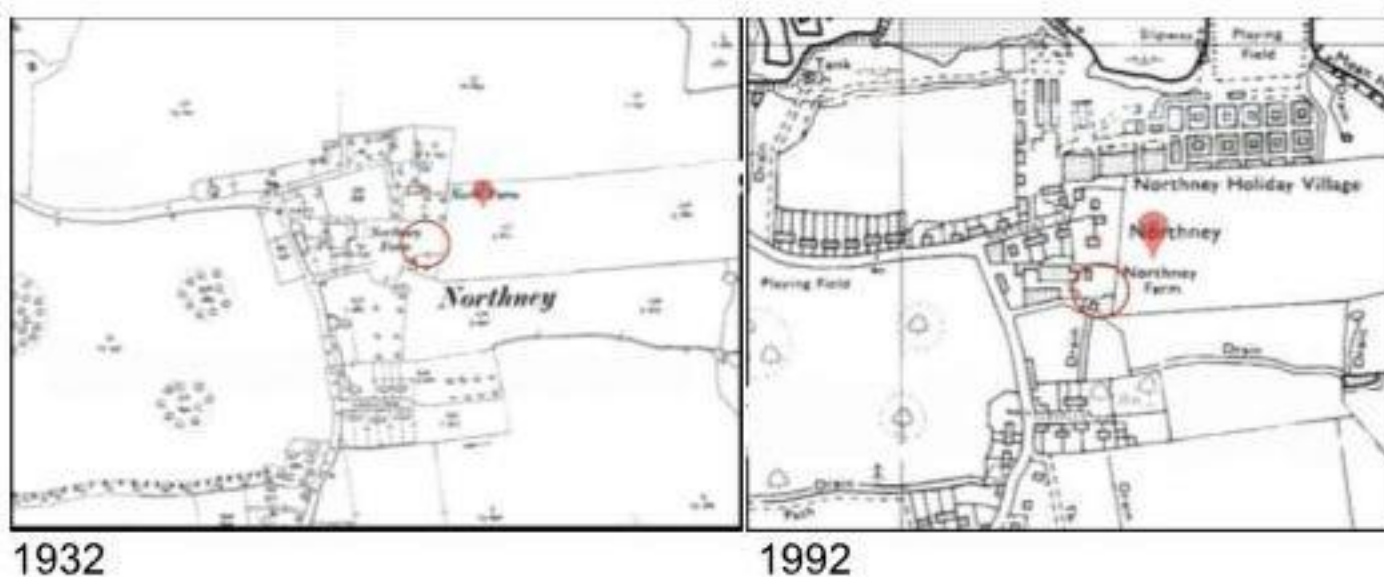
23. Any approach to the required assessment should at least address the following considerations in accordance with NPPF 194 and 196:

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