



The Planning Inspectorate

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Mrs A Harrison
N Yorks Moors N P Authority
The National Park Officer
The Old Vicarage
Bondgate
Helmsley
YORK YO6 5BP

Your Ref:

Our Ref: APP/

Date: 25 August 2000

Dear Madam

**PLANNING (LISTED BUILDING AND CONSERVATION AREAS) ACT 1990
APPEAL BY MR B C DIXON
SITE AT HIGH LEASE BARN, HAWSKER LANE, HAWSKER, WHITBY**

I enclose a copy of our Inspector's decision on the above appeal[s].

[The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.]

If you have any queries relating to the decision please send them to:

The Complaints Officer
The Planning Inspectorate
Room 14/04
Tollgate House
Houlton Street
Bristol
BS2 9DJ

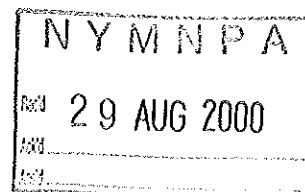
Phone No. 0117 987 8927

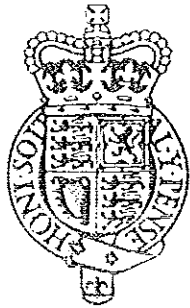
Fax No. 0117 987 6219

Yours faithfully,

P D. Coombs

PP
MR K CARPENTER
DL1





Appeal Decision

Site visit made on 8 August 2000

by **John H Martin** RIBA MRTPI

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

The Planning Inspectorate
Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ
☎ 0117 987 8927

Date

25 AUG 2000

Appeal 1 Ref: APP/W9500/F/00/1041041

High Lease Barn, Hawksker Lane, Hawksker, Whitby,

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas)(LB&CA) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr B C Dixon against a listed building enforcement notice issued by North York Moors National Park Authority (NPA).
- The Council's reference is ENF/97/456.
- The notice was issued on 28 March 2000.
- The contravention of listed building control alleged in the notice is the insertion of a number of internal partitions to sub-divide the ground and first floors of the property.
- The requirements of the notice are to remove all unauthorised partitions inserted in the barn to ensure the internal layout of the dwelling is carried out in accordance with the approved plans (Ref:NYM4/033/0198A/LB, Drg.No,69/95/2 received at the National Park Office on 30 August 1996).
- The period for compliance with the requirements is four months.
- The appeal is made on the grounds set out in section 39(1)(e) and (j) of the 1990 Act as amended.

Summary of Decision: The appeal is allowed, the listed building enforcement notice is quashed and listed building consent is granted in the terms specified in the Formal Decision below.

Appeal 2 Ref: APP/W9500/E/00/1039444

High Lease Barn, Hawksker Lane, Hawksker, Whitby

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas)(LB&CA) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mr & Mrs B C Dixon against the decision of North York Moors National Park Authority (NPA).
- The application (Ref:NYM4/033/0198/E/LB), dated 28 October 1999, was refused by the NPA by notice dated 23 December 1999.
- The works proposed are internal amendments to the permitted scheme including: closing front door and replacement with a dummy door; reversal of stairway to rise from the rear; reversal of gallery to front (south west) side of the building; enclosure of stair and boiler room with masonry walls to protect means of escape from first floor and provision of self closing fire doors to linking room.

Summary of Decision: The appeal is allowed and listed building consent is granted in the terms set out in the Formal Decision below.

Procedural Matters

1. At the site visit it seemed to me that, while the appellant may be aware of the extent of the amendments to the approved scheme, these have not been clearly set out on the notice as required by section 38(2) of the LB&CA Act 1990. As with planning enforcement notices, in my view, a listed building enforcement notice should, in the words of the judgement in

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the case of *Miller-Mead v. Minister of Housing and Local Government* [1963] 2 Q.B. 196 “tell (the person on whom it is served) fairly what he has done wrong and what he must do to remedy it”. In this case, the notice is vague in alleging the insertion of “a number” of internal partitions while the steps precisely require the appellant under section 38(2)(c) to bring the building to the state in which it would have been if the terms and conditions of listed building consent Ref: NYM4/033/0198/LB had been complied with. As the notice was issued after the receipt of the application for listed building consent covering those amendments, the allegation should have specifically referred to those amendments for which consent was sought. I shall therefore correct the allegation under the powers available under section 41(2)(a) of the LB&CA Act, which I am satisfied will cause no injustice to the appellant or the NPA.

2. However, the neither the listed building consent application nor the enforcement notice refer to the new floor which has been built over the remaining “void” above the dining room, nor to the new partition and door erected on the first floor in place of the gallery balustrade which together form a store room. At the site visit, the appellants were clearly aware that these works are unauthorised but they are not before me in these appeals. Nevertheless, if these works are retained, it will not be possible for the appellants to comply with the steps required by the listed building enforcement notice or with the terms of the application for listed building consent, regardless of the outcome of these appeals.

The appeal site and its surroundings

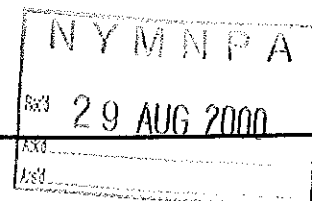
3. High Lease Barn lies in a rural location some 5 km south of Whitby close to the Scarborough Road. It is an early 19th century Grade II listed stone barn with a pantile roof together with a late 19th century horse engine house at the back which is built of brick piers with stone cappings under an octagonal pantile roof. Planning permission and listed building consent were granted in 1996 for the conversion of this derelict building into a single dwelling which is now nearing completion.

The policy background

4. There is no dispute between the parties that the external appearance of the barn is not affected by the appeal works and it therefore follows that they have no adverse effect on the natural beauty of the National Park, albeit that they may have some impact on its cultural heritage. However, Policies BC7 and BC12 of the adopted North York Moors Local Plan which relate to the alterations to listed buildings and the conversion of former agricultural buildings are relevant in this case and accord with the advice in Planning Policy Guidance Note No.15. In considering these appeals I shall have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses as required by section 16(2) of the LB&CA Act 1990.

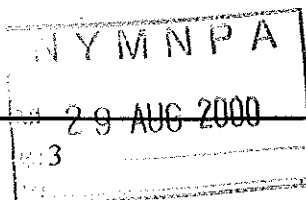
Main Issues

5. (i) The effect of the alterations carried out, in addition to those on which listed building consent was granted, on the special architectural or historic interest of the listed building and (ii) whether or not the steps required by the notice exceed what is necessary to alleviate the effect of the works executed to the building.



The appeal on ground (e) and the section 20 appeal

6. From the survey shown on Drg.No.69/95/1 and the submitted photographs, it is apparent that High Lease Barn had reached an advanced state of dereliction prior to its purchase by the appellants. By the grant of planning permission and listed building consent the NPA have recognised that the conversion to a dwelling was an appropriate means by which to rescue this interesting agricultural building sited as it is in a prominent rural location within the National Park. To date the works carried out have retained most of the remaining walls and the original horse engine supporting beams with a minimal number of additional openings. Although the roof structures have been largely rebuilt they have respected the form and materials of the original building which can be clearly seen.
7. Although the appellants claim that there was a threshing floor over the whole of the first floor of the original building this does not appear to be borne out by the evidence on the photographs or on the survey drawing. While the former show no obvious signs of floor joists at the exposed south eastern end, there is a brick pier on the line of that shown on the survey drawing which, with a pier in the opposite wall has presumed the existence of a beam between them. The survey also shows a cross wall between the barn and the byre and suggests that there was probably a hay door in the collapsed south east gable. Coupled with the form of the old roof trusses which would have prevented access between the centre portion of the barn and its ends, I am led to conclude that there may have been hay lofts at each end, where shorter joist spans were possible, but not over the central section of the barn. This appears to have been recognised by the appellants surveyor in leaving this area open to the roof structure on the approved scheme.
8. When comparing the amendments, as set out on Drgs.Nos.69/95/4 and 5, with the approved scheme, I can see no reason to object to the reversal of the staircase and gallery at first floor level. As these features were acceptable to the NPA they would have approved them had they been shown in their present position on the original application. The only difference between the main ground floor cross walls lies in the thickness of the wall between the new kitchen and the dining room which is of little consequence. I have no objection to the reallocation of space which has resulted in a bedroom and bathroom replacing the kitchen and utility room nor to the larger kitchen in their former position. Although the former rear lobby is now slightly wider as the entrance hall, the previous front entrance lobby has been lost. Finally, although not specifically referred to, I noted that the access doors into the lounge (horse engine house) have been moved from the dining room to the kitchen but, as they are the same size as those permitted and were not in an original opening this alteration is likewise immaterial.
9. It therefore seems to me that the only amendments to the approved alterations of any significance concern the erection of the second cross wall on the ground floor to form the new utility room and enclose the staircase and boiler flue, to meet the provision of the Building Regulations for means of escape and fire protection. While it is often possible for such requirements to be relaxed in the interests of preserving the character of a listed building, no such easement of the regulations appears to have been offered in this case. Nevertheless, the effect of the new wall has been to introduce a small store at the top of the stairs reducing the width of the first floor open area from about 6.7m to 4.25m or 37% which would have seriously intruded on the full height central area of the barn.



10. However, any residual character of the old farm building has long since been lost in the form of the new roof structure except, within the horse engine house. The original roof trusses shown on the photographs have not been retained and the approved design has permitted rooms within the roof space lined throughout with plasterboard and a decorative finish. Although the new purlins were to have been exposed these have now been concealed behind bulkheads or above the ceiling. The lack of positive evidence that there was no floor across the whole building, coupled with the extensive alterations necessary to restore the building and convert it into a dwelling, indicates that there is little remaining of the *original* plan form that the NPA claim has now been totally lost. While the retention of the wider gallery between the cross walls would have given an better illusion of the possible full height scale of the old barn, nothing of its open roof structure or agricultural character would have survived in the permitted dwelling. While I find the reduction of this galleried room regrettable, provided a reasonable full height space is retained, any residual hint of the former use of the building would still be preserved. The amended scheme would result in a gallery width of 4.25m which is about 30% of the internal length of the original barn which should be sufficient, in my opinion, to preserve this effect.

Conclusions

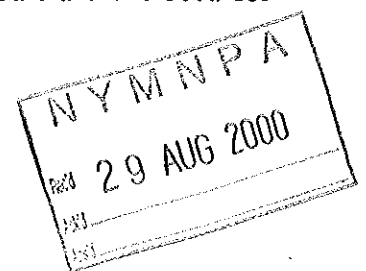
11. My overall conclusion is that while the approved scheme would have provided a more open full height interior which might have better reflected the possible original form of the listed barn, the permitted residential conversion has already resulted in an entirely domestic character which, even if carried out in accordance with the approved plans, would have done little to preserve the essential agricultural character of the building, except within the horse engine house. For this reason I conclude that, excluding the unauthorised first floor over the dining room void, the amendments carried out to the approved scheme have had a minimal effect on the architectural or historical interest of the listed building. The appeal on ground (e) therefore succeeds, the listed building enforcement notice will be quashed and listed building consent will be granted for the retention of those works and on the section 20 appeal. The appeal on ground (j) need not now be considered.

Other matters

12. I have taken all the other representations submitted into account, including the appeal decision notice (Ref: T/APP/W9500/E/1012782/P2) which was drawn to my attention, but none outweigh the factors that have led me to my conclusions.

Information

13. These decisions do not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than sections 7 and 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
14. Particulars of the right of appeal against this decision to the High Court are enclosed for those concerned.



Formal Decisions

Appeal 1 Ref: APP/W9500/F/00/1041041

15. In exercise of the powers transferred to me, direct that the listed building enforcement notice be corrected by deleting the allegation in the Second Schedule in its entirety and substituting therefor the following allegation:

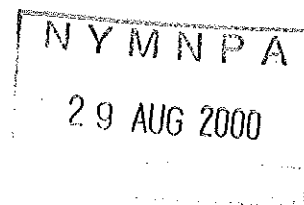
“Without listed building consent, carrying out the following additional works: closing the front door and replacement with a dummy door; reversal of stairway to rise from the rear; reversal of gallery to front (south west) side of the building; enclosure of stair and boiler room with masonry walls to protect the means of escape from first floor and provision of self closing fire doors to linking room.”

16. Subject thereto, I allow the appeal and direct that the listed building enforcement notice be quashed. I grant listed building consent for the retention of above the works alleged in the notice, as corrected.

Appeal 2 Ref: APP/W9500/E/00/1039444

17. In exercise of the powers transferred to me, I allow the appeal and grant listed building consent for the retention of the following additional works: closing the front door and replacement with a dummy door; reversal of stairway to rise from the rear; reversal of gallery to front (south west) side of the building; enclosure of stair and boiler room with masonry walls to protect the means of escape from first floor and provision of self closing fire doors to linking room, all at High Lease Barn, Hawsker Lane, Hawsker, Whitby in accordance with the terms of the application No.NYM4/033/0198E/LB dated 28 October 1999 and the plans submitted therewith.

John Martin



The Planning Inspectorate

An Executive Agency in the Department of the Environment, Transport and the Regions, and the Welsh Office

RIGHT TO CHALLENGE THE LISTED BUILDING OR CONSERVATION AREA ENFORCEMENT APPEAL DECISION

The attached appeal decision is final unless it is successfully challenged in the Courts on a point of law. If a challenge is successful the case will be returned to the Secretary of State by the Court for re-determination. However, if it is re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

Depending on the circumstances, an appeal may be made to the High Court under either or both sections 65 and 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. There are differences between the two sections, including different time limits, which may affect your choice of which to use. These are outlined below.

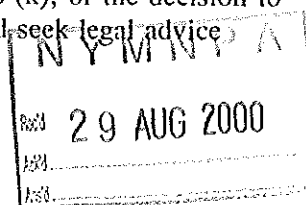
You may wish to consider taking legal advice before embarking on a challenge. The following notes are provided for guidance only.

CHALLENGES UNDER SECTION 65

Section 65 provides that the appellant, the local planning authority or any person having an interest¹ in the land to which the enforcement notice relates may appeal to the High Court against the decision on a point of law.

An appeal under section 65 may only proceed with the *leave* (permission) of the Court. An application for leave to appeal must be made to the Court within 28 days of the date of the appeal decision, unless the period is extended by the Court.

If you are not the appellant, the local planning authority or a person with an interest in the land but you want to challenge an enforcement appeal decision on grounds (a) to (d) or (f) to (k), or the decision to quash the notice, you may make an application for judicial review. You should seek legal advice promptly if you wish to use this non-statutory procedure.



CHALLENGES UNDER SECTION 63 OF THE 1990 ACT

Decisions on appeals made under section 20 (listed building consent) may be challenged under this section. Section 63 also relates to enforcement appeals, but only to decisions granting listed building or conservation area consent or discharging conditions. Success under section 63 alone would not alter any other aspect of an enforcement appeal decision. The enforcement notice would remain quashed unless successfully challenged under section 65 or by judicial review.

Section 63 provides that a person who is aggrieved by the decision to grant listed building or conservation area consent or discharge conditions (on an enforcement appeal) or by any decision on an associated appeal under s20 of the Act, may question the validity of that decision by an application to the High Court on the grounds that:-

- i) the decision is not within the powers of the Act; or
- ii) any of the 'relevant requirements' have not been complied with ('relevant requirements' means any requirements of the 1990 Act or of the Planning & Tribunals Act 1992, or of any order, regulation or rule made under either Act).

¹ To have an interest in the land means essentially to own, part own, lease and in some cases, occupy the site.

These two grounds mean in effect that a decision cannot be challenged merely because someone does not agree with an Inspector's judgement. Those challenging a decision have to be able to show that a serious mistake was made by that Inspector when reaching his or her decision; or, for instance, that the inquiry, hearing or site visit was not handled correctly, or that the appeal procedures were not carried out properly. If a mistake has been made the Court may decide not to quash the decision if the interests of the person making the challenge have not been prejudiced.

Please note that under section 63 an application to the High Court must be lodged with the Crown Office within 6 weeks of the date of the accompanying decision letter. This time limit cannot be extended. Leave of the High Court is not required for this type of challenge.

ADVICE

If you require further advice on making a High Court challenge you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL. Telephone: 0171 936 6000.

INSPECTION OF DOCUMENTS

In an inquiry case, any person who is entitled to be notified of the decision has a statutory right to view the listed documents, photographs and plans within 6 weeks of the date of the decision letter. Other requests to see appeal documents are not normally refused but please note that our appeal files are usually destroyed one year after the decision is issued. Please make your request to Room 11/00, Tollgate House, Houlton Street, Bristol, BS2 9DJ, quoting the Inspectorate's appeal reference and stating the day and time you wish to visit. Give at least 3 days' notice and include a daytime telephone number, if possible.

COMPLAINTS TO THE INSPECTORATE

You can make a written complaint about the decision letter, or about the way in which the Inspector has conducted the case, or any procedural aspect of the appeal to the Complaints Officer in Room 14/04, Tollgate House, Houlton Street, Bristol, BS2 9DJ quoting the Inspectorate's appeal reference. We aim to send you a full reply within 15 days of receipt of your letter. Please note that, once the decision has been issued, we cannot reconsider any appeal or the decision. This can be done only following a successful High Court challenge as explained in this leaflet.

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (THE OMBUDSMAN)

If you consider that you have been unfairly treated through maladministration on the part of the Inspectorate or the Inspector you can ask the Ombudsman to investigate. The Ombudsman cannot be approached directly; only an MP can pass on your request. In most cases, your local MP may be the easiest to contact (their name and address is listed at the local library) although you may approach another MP if you prefer. Although the Ombudsman can recommend various forms of redress he cannot alter the appeal decision in any way.

COUNCIL ON TRIBUNALS

If you feel there was something wrong with the basic procedure used for the appeal, you can make a complaint to the 'Council on Tribunals', 22 Kingsway, London, WC2B 6LE. The Council will take the matter up if they think it comes within their scope. They are not concerned with the merits of the appeal and cannot change the outcome of the appeal decision.

