



Appeal Decision

Site visit made on 8 December 2008

By **Ken Barton** BArch DipTP Regd Architect

An Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
18 December 2008

Appeal Ref: APP/J3910/F/08/2073163

The Old Chequers, Market Place, Box, Corsham, Wiltshire SN13 8NZ

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ivor Bentley against a listed building enforcement notice issued by North Wiltshire District Council.
- The Council's reference is 08/00038/ENF.
- The notice was issued on 13 March 2008.
- The contravention of listed building control alleged in the notice is:- Without listed building consent, the unauthorised erection of a mezzanine floor to the former restaurant at the first floor north eastern end of the property.
- The requirements of the notice are:- 1. Remove the mezzanine floor. 2. Make good any damage caused to the fabric of the building with materials to match the adjoining wall. 3. Remove from "the Land" any debris that has resulted from requirements 1-2 above.
- The period for compliance with the requirements is six months from the date on which the notice takes effect.
- The appeals are proceeding on the grounds set out in section 39(1) (a), (b), (c), (e), (f), (h), (i) of the 1990 Act as amended.

Summary of Decision: The appeal is dismissed and the notice upheld.

Reasons

Background matters

1. The appeal property is a former inn which dates from the late C17th of early C18th and is listed in Grade II. It is located on sloping ground towards the centre of Box, within the village conservation area. The building is constructed of stone with a stone tiled roof and is one and a half storeys high, the upper floor being contained partly within the pitch of the roof. The premises are now in residential use, the Appellant having obtained a Certificate of Lawful Use changing the property from a public house to a dwelling house. The mezzanine floor which is the subject of the notice is located in a C19 part of the property in a room which had formerly been used as a restaurant. There have been a number of planning and listed building consent applications at the premises over the years, as well as previous enforcement action, but none which related directly to the mezzanine floor.

Appeal on Ground (a)

2. The Appellant contends that, whilst the building was of interest when it was a public house, now that the use has changed it should no longer be listed. I can see that there will have been a change in character and appearance at the property due to residential usage, but the structure and fabric of the building is mainly unaltered. I consider that the building is still of special architectural and historic interest. The appeal on ground (a) therefore does not succeed.

Appeal on Ground (b)

3. The property was reappraised for listing purposes and the description amended in 1985, but it has not been de-listed since the original listing in 1960 and there is nothing in the submitted material before me to indicate that the part of the premises where the mezzanine floor is located was not included in the original listing. Any work to the listed property since 1960, which would affect its character as a building of special architectural or historic interest, has therefore required prior consent. As discussed further below, installation of the mezzanine falls within that category. I consider that what is alleged in the notice has taken place as a matter of fact and the appeal on ground (b) fails.

Appeal on Ground (c)

4. The room in which the mezzanine floor is located is of substantial proportions and is approached by an open stair from a lower level within the premises, with a door in its end wall leading onto higher ground outside. There are windows on 3 sides and an open king post roof construction and the room contributes to the special architectural and historic interest of the listed building. The mezzanine floor extends the width of the room and across its frontage, in the space between its floor and the underside of the tie beam to a king post truss, there is a line of balusters. It affects the character of the room and I am in no doubt that consent for such works is needed. The appeal on ground (c) fails.

Appeal on Ground (e)

5. Access up to the mezzanine is via a steep open-tread stair and at the time of my visit the floor was being used to accommodate a double bed. The floor cuts across several window openings and is a very noticeable feature. It has disrupted the spatial qualities of the room and I consider that it materially detracts from the character and special architectural and historic interest of the building. It is unlikely that the existing stair would have been deemed suitable for use within the restaurant part of a public house and the mezzanine floor has the appearance of a recent construction. The Council maintain that it was not in existence when previous inspections were carried out prior to November 2007 and, although the Appellant argues otherwise, it is my view on the balance of probabilities that the Council's contention is credible. In any event, consent should have been sought before the mezzanine floor was built. Whilst it no doubt provides useful floor space, this is outweighed by the harmful effect on the listed building. The grant of consent would be contrary to national guidance as set out in Planning Policy Guidance Note 15 and to local policies, including North Wiltshire Local Plan policy HE4, which aim to safeguard listed buildings. My conclusion is that the appeal on ground (e) does not succeed.

Appeal on Ground (f)

6. The Council state that the notice was served by hand at the appeal premises on 14 March 2008. They also state that another copy was sent by recorded delivery, which was not collected from the Post Office, so that a further copy was served on 8 April 2008 at the registered office for Liquid Leisure Ltd. Whilst the Appellant states that he did not receive the notice until 18 April 2008, I consider that the requirements of s.38(4) were complied with. As to

the address, I note that the appeal premises are referred to on the listing description as The Chequers Inn, the notice refers to The Chequers and the Appellant's address on the appeal form is The Old Chequers. The map accompanying the notice clearly defines the premises and I consider that no unreasonable ambiguity or material disadvantage to the Appellant was caused. The appeal on ground (f) does not succeed.

Appeal on Ground (h)

7. The Appellant asked, if the notice were upheld, that he and his family be allowed 9 months to comply with the requirements. I agree with the Council, however, that 6 months as specified is reasonable. The appeal on ground (h) fails.

Appeal on Ground (i)

8. Removal of the mezzanine floor with its accompanying stair and rectification of any damage caused to the fabric of the building, as required by the notice, would serve the purpose of restoring the building to its previous authorised state. The appeal on ground (i), therefore, also fails.

Conclusions

9. For the reasons given above and having regard to all other matters raised, I consider that the appeal should not succeed.

Formal Decision

10. In exercise of the powers transferred to me, I dismiss the appeal and uphold the listed building enforcement notice. I refuse listed building consent for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

K. Barton
INSPECTOR



The Planning Inspectorate

Room: 3/26
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Direct Line: 0117-372-6279
Switchboard: 0117-372-8000
Fax No: 0117-372-6153
GTN: 1371-6279

teame2@pins.gsi.gov.uk
<http://www.planning-inspectorate.gov.uk>

Mrs C A Garrett
North Wiltshire District Council
Planning Enforcement Services
Monkton Park
Chippenham
Wiltshire
SN15 1ER

Your Ref: AD3140
Our Ref: APP/J3910/F/08/2073163
Date: 18 December 2008

Dear Mrs Garrett

Planning (Listed Buildings and Conservation Areas) Act 1990
Appeal by Ivor Bentley
Site at The Old Chequers, Market Place, Box, Corsham, SN13 8NZ

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

Leaflets explaining the right of appeal to the High Court against the decision, our complaints procedures and how the documents can be inspected are on our website - www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm - and are also enclosed if you have chosen to communicate by post. If you would prefer hard copies of these leaflets, please contact our Customer Services team on 0117 3726372.

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

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone No. 0117 372 8252

Fax No. 0117 372 8139

E-mail: complaints@pins.gsi.gov.uk

Yours sincerely

pp Ben White

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You can now use the Internet to submit and view documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -

<http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>

You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button



The Planning Inspectorate

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An Executive Agency in the Department for Communities
& Local Government and the Welsh Assembly Government

Our Complaints Procedures

Introduction

We can:

- review your complaint and identify any areas where our service has not met the high standards we set ourselves.
- correct some minor slips and errors provided we are notified within the relevant High Court challenge period (see below).

We cannot:

- change the Inspector's decision.
- re-open the appeal once the decision has been issued.
- resolve any issues you may have with the local planning authority about the planning system or the implementation of a planning permission.; we can only deal with planning appeal decisions.

The **High Court** is the only authority that can ask for the Inspector's decision to be reconsidered. Applications to the High Court must be made within 6 weeks from the date of the decision letter for planning appeals, and in most instances 28 days for enforcement appeals.

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly-held.

The Quality Assurance Unit works independently of all of our casework teams. It ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear,

avoiding jargon and complicated legal terms.

We aim to give a full reply within three weeks wherever possible. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future.

Who checks our work?

The Government has said that 99% of our decisions should be free from error. An independent body called the Advisory Panel on Standards (APOS) monitors this and regularly examines the way we deal with complaints. We must satisfy it that our procedures are fair, thorough and prompt.

straightforward language



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Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"So what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds on all of the evidence whether these views justify refusing planning permission.

"What do the terms 'Allowed' and 'Dismissed' mean on the decision?" – 'Allowed' means that Planning Permission has been granted, 'Dismissed' means that it has not. In enforcement appeals (s.174), 'Upheld' means that the Inspector has rejected the grounds of appeal and the enforcement notice must be complied with; 'Quashed' means that the Inspector has agreed with the grounds of appeal and cancelled the enforcement notice.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have made on the appeal.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. You could contact the council as it has discretionary powers to take action if a condition is being ignored.

Further information

Each year we publish our Annual Report and Accounts, setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'Contacting us'). You can also obtain booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or at www.apos.gov.uk

Contacting us

Complaints & Queries in England

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8252

E-mail: complaints@pins.gsi.gov.uk

Website www.planning-inspectorate.gov.uk

Enquiries

Phone: 0117 372 6372

E-mail: enquiries@pins.gsi.gov.uk

Complaints & Queries in Wales

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ

Phone: 0292 082 3866

E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0845 0154033

Website: www.ombudsman.org.uk

E-mail: phso.enquiries@ombudsman.org.uk

Please see Wales leaflet for information on how to contact the Wales Public Services Ombudsman.



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& Local Government and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" – In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land – other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this – see Further Information).

"How much is it likely to cost me?" – An administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" – This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" – You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" – Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" – The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Contacting us

High Court Section
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8962

Website

www.planning-inspectorate.gov.uk

General Enquiries

Phone: 0117 372 6372

E-mail: enquiries@pins.gsi.gov.uk

Complaints

Phone: 0117 372 8252

E-mail: complaints@pins.gsi.gov.uk

Cardiff Office

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0845 0154033

Website: www.ombudsman.org.uk

Email: phso.enquiries@ombudsman.org.uk

Further information about challenging the decision

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: www.courtservice.gov.uk

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Administrative Justice & Tribunals Council

If you have any comments on appeal procedures you can contact the Administrative Justice & Tribunals Council, 81 Chancery Lane, London WC2A 1BQ. Telephone 0207 855 5200; website: <http://www.ajtc.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.



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