

COMMITTEE REPORT

Application No: 08/04769/LBA

Case Officer: Ian Lund

Details of location and proposal and Relevant History:

Charmydown Lodge, Access Road To Charmydown Farm, Swainswick, BA1 8AB,

REASON FOR REPORTING APPLICATION TO COMMITTEE

The Council has received a pre-action protocol letter from a firm of solicitors representing an objector. As planning permission has not yet been issued, the matter is being reported back to members for reconsideration in light of the issues raised in that letter.

DESCRIPTION OF SITE AND APPLICATION

The former Charmydown Farmhouse stands in open countryside to the north east of Swainswick village and is listed Grade II in recognition of its special architectural and historic interest. The associated barn and the dilapidated structures that previously formed a pair of semi detached cottages (known as Charmydown Lodge) have been previously considered to fall within the curtilage of the Farmhouse. The farmhouse which lies to the south west of the barn is in separate ownership and does not form part of this application.

THE STATUS OF THE BARN: The reports submitted in December and February worked on the basis that the barn fell within the curtilage of the listed farmhouse. As there was no special reason to do so the reports did not set out the reasoning. By the time of the June report representations received in respect of the planning application were beginning to query the status of the barn. It was pointed out to Members that there is no duty or requirement on the Council to determine which buildings are covered by the curtilage rules. Prosecutions may be sought by any party; not just the local planning authority. Whether a structure or object falls within the curtilage of a principal building is a matter of fact in each case and ultimately a matter for the Courts to determine. The local planning authority can only reach its opinion on the basis of facts of which it is aware and the Courts would only interfere if the Council acted irrationally or perversely. In the case of Charmydown it is important for the local planning authority to have an opinion as this may influence the decision on the applications, particularly the planning application. It is clear from the minutes of the meeting on 9 June 2010 that further information was provided in an update report and that on the available evidence the committee considered the barn was curtilage listed.

As the consideration of the planning application put some emphasis on the status of the barn it may be advisable to reconsider the matter and come to the best possible opinion on the standing of the barn. The matter is being reviewed in light of concerns raised in the pre-action letter.

RELEVANT LEGAL BACKGROUND: Charmydown Farmhouse is indubitably the principal listed building. However protection does not end there. Section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states "any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and had done so since before 1st July 1948, shall be treated as part of the (listed) building".

The age of the barn is clearly of some significance. In the report of December 2009 it was noted: "The stone barn is a linear structure with a threshing barn located to the north east, in a return position, forming a L shaped plan layout. The main barn, constructed of natural rubble stone, brought to course, framed within natural Bath stone quoin stones, was developed incrementally in three phases. Starting in the C18th with the development of the central section, which at first floor

level contains an early arched surround of an earlier date which could be as early as the C16th, relocated from elsewhere.

It is thought that the porch barn was then added to the north east during the early to mid C19th with the remainder of the long barn to the south west of a later build originating from the mid to later C19th. It is thought that the range of lean-to shelters and piggeries located further to the north east are also of a later C19th pedigree".

These comments were based on the advice of the then Senior Conservation Officer. Although the evolution of the barn is manifestly complex, based on a re-assessment of the architectural evidence, the original remarks can be said to be soundly based. An examination of the 1885 Ordnance Survey map has also confirmed that a set of buildings consistent with the above description existed on the same footprint. The Council can therefore be confident that the barn existed before the critical date in 1948.

As regards the meaning of "curtilage" in the case of a simple dwelling house the meaning may be fairly obvious and will often be the garden of the house. However, matters can soon become complicated in the case of larger house. For instance, an unlisted lodge building at the entrance to a long drive could find itself being considered as falling within the historic curtilage of a manor house despite geographic separation and a subsequent change of ownership. The term curtilage is thus a complex concept which has generated case law. In general terms it may be considered as meaning an area of land forming part and parcel of the listed building.

One of the key cases providing guidance on this issue was that of *The Attorney General, ex rel Sutcliffe v Calderdale BC* which established three factors that need to be taken into account:

- The physical layout of the building and the structure
- Their ownership, past and present
- Their use or function, past and present

PHYSICAL LAYOUT: Charmydown Farmhouse stands in open countryside to the north east of Swainswick village. It is unlikely that its curtilage could be said to extend to the edge of the farm holding, but it must exist somewhere. As might be expected there is some physical separation between the farmhouse and the working farmyard but the historic curtilage could well comprise the home farm buildings. The barn in question is about 50m away from the farmhouse but it shares the same main access track, probably an old droveway, from the A46 up to the site.

The approach to the farmstead is via a long private track from the west. On arriving at the farm the track splits into three. To the south there is a roughly made drive leading through a field to a large area of hardstanding. This seems to serve the occupants of Charmydown Farmhouse. The drive is edged by fresh concrete kerb stones and appears to be of very recent construction and certainly later than 1985. To the north a narrow track leads past the disused cottages before arriving at the barn. This track is of modest width and does not feature on old maps. It is likely this came into being after the farmhouse was sold away.

Between the new drive and the narrow track is a third route. This passes to the north side of the listed farmhouse and is understood to be part of the land now running with that property. Historically however this seems to have been the original primary route into the heart of the farm. The Council's Geographical information System shows a public footpath following this route.

A tree shelter belt protects the north side of the farmhouse and creates some visual separation between the domestic quarters and the farmyard. The trees seem to have been allowed to grow since the selling of the farmhouse over 25 years ago. The primary route has been blocked by the construction of a short, low stone wall, and a number of bushes and short rows of small conifer trees have recently been planted to reinforce the separation. Withies also appear to have been

planted along the boundary in recent years. A number of apparently self sown trees have also grown up particularly in the farmyard.

These changes have reduced and obscured intervisibility between the farmhouse, the primary access route, and the farmyard but do not necessarily change the fundamental relationship between the farmhouse and its farm buildings.

OWNERSHIP, PAST AND PRESENT: There is no dispute that Charmydown Farmhouse and its outbuildings were once in the same ownership, nor that they are presently in separate ownerships. The ownership arrangement at the time of listing however is likely to be of the greatest relevance. Case law has clarified that the primary focus of any enquiry should be at the time the building was listed. Subsequent changes in ownership or use would not bring about the de-listing of a building that was protected at the time of listing.

In the June report it was noted that English Heritage advised on 4th June that in its opinion, despite overlapping register entries, the listed building entry for Charmydown Farmhouse (under reference 32413) remains a valid record. The farmhouse thus became a listed building on 10th February 1884. The update report presented to the June meeting stated that on the 7th June the applicant's agent had supplied a copy of a conveyance dealing with the separation of Charmydown Farmhouse from the remainder of the farm. The conveyance is dated the 15th January 1985. It may be deduced that the farmhouse and the farm buildings were in the same ownership at the date of listing.

USE AND FUNCTION: A recent search of the archives has shown that the Bath City Council leased land here from the Mineral Water Hospital in 1909 prior to taking ownership in 1923. The Council sold Charmydown Farm in 1955. By 1985 the farm was in the ownership of the water authority. The records so far however shed no light on the method of farming taking place when the site was in the custodianship of our predecessor authority.

There is little doubt however that the farmhouse was the hub from which the agricultural business was conducted and in the absence of contrary evidence it must be assumed that the relationship between the barns and the farmhouse were typical of most farmsteads.

The pre-action protocol letter makes reference to the Egerton case of 2008. In that case, the issue was whether a barn was within the curtilage of a listed farmhouse. The local planning authority decided it was not and the Court upheld that decision. The Egerton case was a first instance decision and turns on its own facts. Therefore whilst it is relevant, it does not mean that the Council cannot conclude that the buildings in this case are curtilage protected - such issues are factual case by case judgements.

The more widely reported case of *Skerrits of Nottingham v Secretary of State for the Environment, Transport and the Regions* held that it was not an essential feature of a curtilage that it be small, and that the curtilage of a substantial building was likely to extend to what were, or had been, in terms of ownership and function, ancillary buildings. Other benchmark cases confirmed ancillarity as a sub-item for consideration.

SUBORDINATION AND INTERDEPENDENCE: In considering the degree of subordination and interdependence it is worth noting that a farmhouse has probably existed on this isolated site since the C17. The barn appears to have been added to support the expansion of the farm from the C18. Furthermore it is relevant to note that the address of the principal listed building provided by central government also describes it as Charmydown Farmhouse.

Farmsteads perform several basic functions. The farmhouse provides shelter for the farmer and his family and workers; the agricultural buildings provide for the housing and processing of crops, the storage of implements and fodder and accommodation of livestock. The barn is likely to have

been auxiliary to the livelihood of the occupants of the farmhouse and no evidence has been put forward to suggest otherwise.

Historically it is probable that crops and produce from the outlying fields would have been brought to the upper side of the barn where they would have been stored, chopped, threshed, etc. When required the harvest would have been passed down through the building for use in the farmhouse, with surpluses being fed to livestock or being exported from the site, under the supervision of the farmer, along the primary access route referred to above. The farmhouse and the home farm buildings would have formed a coherent, integrated ensemble in the generally open countryside.

OTHER FACTORS: The planning history of the site includes the grant of Listed Building Consent 02/00984/LBA for the conversion of the barn and cottages into two dwellings, granted in August 2002.

The current applicant on his own accord submitted the application for listed building consent. This is the strongest indication that the current owner of the barn believes it to be covered under the listed building legislation. Where an owner is concerned to avoid the risk of prosecution by a third party this is the only means at his disposal for obtaining certainty.

Although the objector has stated the Council failed to reach a conclusion previously a number of conditions agreed by the committee unequivocally stated the reason for imposing them on the consent for the barn was "In the interests of protecting the character of the listed building."

CONCLUSION ON THE STATUS OF THE BARN: On the balance of probabilities, the evidence in terms of age, ownership, geographic layout, functionality and ancillarity at the date of listing points to the barn falling within the curtilage of the listed farmhouse. Certainly, if the question was put the other way around, the local planning authority should be very guarded before advising that the barn could be demolished or altered without the need for listed building consent.

It follows that for the purposes of the related planning application the barn can be regarded as curtilage protected and its status is therefore a material consideration. It should also be noted that there is a further material consideration relating to the historic significance of the barn. In March 2010 PPS 5 'Planning for the Historic Environment' was published and the policies contained within should be applied directly to the planning and listed building decision making process.

PPS5 requires planning authorities to give proper consideration to the significance of heritage assets, whether designated or not. For the reasons outlined in the earlier reports, the barn can be considered a heritage asset of some significance in the meaning of Policies HE7, HE8 and Appendix 2 to the PPS.

In amplification, the barn complex consists of three different phases adding and adapting to changing needs. Essentially the building as we see it today is of the genre of building known as a combination barn. The main range is built into the slope of the land which is a characteristic of bank barns more frequently associated with the mountainous areas of northern England. Charmydown Farm shares some of the topographical circumstances. That is to say, it is below the flat plateau of the main Cotswold ridge, and yet it is above the low-lying land where conventional threshing barns are more commonplace. Without doubt the barn is a rare example in this part of the country, of a building form that was economical to operate. In terms of labour, fodder, etc could be lowered with a minimum of effort. Having regard to its age and rarity the barn is therefore, at the very least, close to meeting the criteria for listing in its own right when evaluated against the criteria published by English Heritage.

Thus even if it were held that the barn fell outside the terms of Section 1 to the Act there remains a duty on the committee to assess and give consideration under the planning application to the protection of this heritage asset.

Finally, the objector has argued that if the barn is not curtilage listed then the barn would not be part of the setting of the listed farmhouse and could not contribute to it. This is not agreed. The historic setting of the farmhouse is not determined by a legal definition. The setting of a building can be, and often is, very much wider than curtilage, and recent changes and impermanent landscape features that temporarily obscure important characteristics should not determine the significance of the setting.

THE APPLICATION PROPOSAL: Turning to the details of the proposal the scheme is for the conversion of the barn into a five bedroom single dwelling, the re-instatement of the semi detached cottages to form a single dwelling, the erection of a single storey garage and the re-instate the piggeries, adjacent to north east of the barn, to form an ancillary outbuilding.

The conversion of the barn will be undertaken utilising the existing openings with the three arched openings to the front elevation fitted with glazed screens.

The porch located on the east elevation of the threshing barn will be fitted with a glazed screen incorporating large timber doors fitted to the exterior as will the existing opening in the west elevation of this porch barn. It is proposed to insert three rooflights into the rear roof slope of the main linear run of the barn, two traditional ventilation cowls to the roof ridge and to create a link from the barn to the piggeries beyond by the construction of a grassed roofed room, making use of the existing levels and stone wall together with the introduction of a roof lantern.

The scheme aims to restore the external fabric of the barn, including the circular columned stone lean-to together with the removal of the unsightly C20th asbestos clad barns. A new single storey garage, designed on the basis of a traditional wagon shed, is proposed to be built in the upper yard to the rear, north side of the main barn; an adjoining stable building was originally proposed, but following negotiations this element has now been removed from the scheme.

The existing access and upper yard would become the driveway and parking area for the barn and the lower yard will be landscaped.

The former pair of cottages will be restored to form one dwelling incorporating a rear staircase turret. This approach has evolved through extensive negotiations as it was originally intended to build a substantial extension to the rear and introduce a series of dormer windows within the roof slopes.

Summary of Consultation/Representations:

ST CATHERINE'S PARISH COUNCIL support the conversion of the barns, but raise concerns regarding the linking with the dilapidated outbuildings and the new garage and stable buildings to the rear. With regard to the redevelopment of the cottage Green Belt policy is quoted and they state that the proposal for the cottage should be limited to the existing footprint and should be limited to two storeys without dormers.

SWAINSWICK PARISH COUNCIL has commented on the scheme. Whilst approving of the design of the main barn they oppose the redevelopment of the cottages.

THE BATH PRESERVATION TRUST also object to the redevelopment of the cottage, within the Green belt, whilst stating that the conversion of the barn itself is reasonably sensitive.

REPRESENTATIONS have been received raising issues relating to development within the Green Belt and the redevelopment of the cottage and these issues have been addressed in the planning application.

Policies/Legislation:

NATIONAL POLICY: From the point of view of the historic environment the primary consideration is the duty placed on the Council under S 16 of the Listed Buildings Act to 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.

Planning Policy Statement 5: Planning for the Historic Environment.

The principle building to which this application relates is listed Grade II and therefore the application does not require referral to Government Office of the South West.

LOCAL POLICY: Bath Local Plan policy BH2

OFFICER ASSESSMENT: Consent for the conversion of the barn and cottages to create two dwellings was granted following approval by the Planning Committee in August 2002.

It was at this time the owners were Wessex Water, who put the buildings on the open market and it was initially proposed to convert the barn into three separate units of accommodation, however this was considered to have a detrimental impact on the character and appearance of the listed building and following negotiations it was agreed that the barn could potentially be converted to a single unit of accommodation.

This scheme also involved the re-instatement of Charmydown Lodge to a single unit together with the addition of an attached garage.

It is considered that the proposals contained within the existing application are an improvement over that approved in 2002. In the previous scheme the front, south elevation, overlooking the valley beyond, was to be designed as the arrival point and entrance to the converted barn, however this has now been revised.

It is now proposed to use the existing rear upper 'service' yard as the arrival point and in addition it is now proposed to also provide garaging in this area in the form of an traditional agricultural open sided wagon shed.

As a consequence the modern domestic porch will be omitted from the front elevation of the barn together with the proposed integral garaging thereby minimising the impact of domestic change on the agricultural character, appearance and setting of the barn.

The proposals to reinstate Charmydown Lodge have been extensively negotiated and as a consequence the proposed extension has been omitted from the scheme. A lesser stair case turret is proposed for this elevation and in addition the dormer windows will not now form part of the proposals. The garage attached to the west gable end of the cottage has also been omitted from the scheme and the building will serve as a single unit of accommodation ancillary to the main barn.

It is noted that the Parish Councils and various representations object to the reinstatement of the cottage on the grounds of overlooking the neighbouring buildings and development within the Green Belt. These considerations are addressed in the adjunct planning application 08/04768/FUL report as they do not form part of the listed building consent considerations.

Members will be aware from the report on the corresponding planning application for this development, Ref. no.08/04768/FUL that there is bat activity within the application site.

The Habitats Directive applies to listed building applications. A detailed analysis of the effect of the proposal on bats has been undertaken in connection with the parallel planning report which concludes that the inclusion of a bat access comprising of two entrances and plywood baffles to the western end of the roof space of the main barn range would meet the requirements of the Directive. Accordingly suitable conditions are recommended below to control the exact design of the baffles.

Officer Assessment:

The proposals are sympathetic to the character and appearance of the application buildings, and the setting of the adjacent principal listed building. They will introduce enhancement to this complex of heritage assets and it is recommended that consent is granted subject to conditions.

Recommendation:

CONSENT

1 The development hereby permitted shall be begun not later than the expiration of three years beginning with the date of this consent.

Reason: To comply with the requirements of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act, 1990.

2 Notwithstanding any details submitted, samples of the roofing materials and of the materials to be used in the construction of the external walls shall be approved by the Local Planning Authority before any work is commenced.

Reason: To enable the Local Planning Authority to be satisfied with the completed appearance of the dwelling(s)/building(s) in the interests of visual amenity.

3 Notwithstanding any details submitted, prior to the commencement of development, details of all new external joinery and glazing design shall be approved in writing by the Local Planning Authority. These details shall include depth of reveal, materials and full working drawings including both horizontal and vertical sections, to a scale of not less than 1:10. At no time shall the approved joinery be altered without the prior approval, in writing, of the Local Planning Authority.

Reason: To enable the Local Planning Authority to be satisfied with the completed appearance of the building.

4 At no time shall any flues, vents, meter boxes or other fixtures be attached to the exterior of the building other than those approved as part of this consent, without the prior approval in writing of the Local Planning Authority.

Reason: To enable the Local Planning Authority to be satisfied with the completed appearance of the building.

5 Full details of the treatment to be given to the eaves, soffits and verges shall be submitted to and approved by the Local Planning Authority prior to the commencement of the works. Such details shall include precise construction information and materials shall be implemented in strict accordance with these details.

Reason: In the interests of protecting the character of the Listed Building.

6 Full details of all chimneys, flues and vents shall be submitted to and approved by the Local Planning Authority prior to the commencement of the works. Such details shall include precise size, and where appropriate, samples and shall once agreed be strictly complied with.

Reason: In the interests of protecting the character of this Listed Building.

7 There shall be no external meter boxes whatsoever. The position of meter units internally shall be submitted to and approved by the Local Planning Authority and shall once agreed be implemented and maintained in strict accordance with these details unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of protecting the character of the Listed Building

8 Prior to the commencement of works, a sample panel of stonework measuring not less than one metre square, shall be made available on site for the approval of the Local Planning Authority. Work shall not commence until such approval has been given in writing. The stonework of the external walls shall be in accordance with the approved plans and shall match the approved sample in respect of type, colour, size and bedding of stone, type of pointing and mortar mix.

Reason: In the interests of visual amenity.

9 The precise mix of the pointing mortar shall be submitted to and approved by the Local Planning Authority prior to the commencement of any pointing on site. Such details shall include mix and finished colour and shall once agreed be strictly complied with.

Reason: In the interests of protecting the character of the Listed Building.

10 A full schedule of the details of the roof repairs and any structural repairs (or other such schedule as may be deemed to be appropriate) shall be submitted to and approved by the Local Planning Authority. Such schedule shall, once agreed be strictly complied with.

Reason: In the interests of protecting the character of the building.

11 The method and manner of the removal and replacement of the flagstone floors shall be agreed by the Local Planning Authority. Their removal and reinstatement shall be in strict accordance with these details.

Reason: In order to protect the character of the building.

12 Treatment of internal wall finishes must be agreed in advance by the Local Planning Authority and thereafter complied with. The favoured treatment would be limewash.

Reason: In the interests of protecting the character of the Listed Building.

13 Notwithstanding the details contained in the submitted plans full details of all joinery, including windows, doors, screens and internal railings, shall be submitted to and agreed by the Local Planning Authority prior to the commencement of the works. Such details shall include horizontal and vertical cross-sections at a scale of not less than 1:20 and shall be implemented and thereafter maintained in strict accordance with these agreed details unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of visual amenity and to protect the character of this Grade II Listed Building.

14 Notwithstanding the information contained in the submitted drawings, full details of all rainwater goods shall be submitted to and approved by the Local Planning Authority prior to the commencement of the works. Such details shall include profiles, materials and finished colours and shall be implemented in strict accordance with these details prior to the first occupation of the development hereby permitted.

Reason: In the interests of visual amenity and to protect the character of this Grade II Listed Building.

15 No external walling shall be taken down beyond that illustrated on the submitted drawings.

Reason: In the interests of visual amenity and to protect the character of this Grade II Listed Building.

16 Full details of the design and means of fixing of the proposed plywood baffles shall be submitted to and approved by the Local Planning Authority prior to the commencement of the works. The works shall be then implemented in strict accordance with the approved details.

Reason: In the interests of protecting the character of the Listed Building.

18 No works shall take place until full details of a Wildlife Protection and Enhancement Scheme have been submitted to and approved in writing by the local planning authority. These details shall include (but shall not be limited to):

- (i) a method statement for the retention of all bat roosts on the site including the maintenance of the bats' existing accesses or the provision of alternative new accesses and the proposed timing of all works affecting the bat roosts and details of a monitoring scheme
- (ii) details of any lighting scheme to prevent harm to bats and retention of dark areas and corridors for bats
- (iii) details of monitoring schemes, aftercare and/or management proposals as applicable for the above.

All the proposed methodologies shall be in accordance with current published best practice guidance.

Reason: to ensure that the conservation status of the various protected species present on the site is maintained and/or enhanced in accordance with national and European legislation and current policy.

19 The development shall not be occupied until all of the works detailed in the approved Wildlife Protection and Enhancement Scheme have been implemented on the land to the written satisfaction of the local planning authority.

Reason: to ensure that the conservation status of the various protected species present on the site is maintained and/or enhanced in accordance with national and European legislation and current policy.

20 Following implementation of the works detailed in the approved Wildlife Protection and Enhancement Scheme pursuant to condition 18 above, the development shall thereafter be managed, maintained and monitored in accordance with the provisions of the approved Wildlife Protection and Enhancement Scheme (or such variations of the same as may be approved in writing by the Council from time to time).

Reason: to ensure that the protected species present on the site are properly managed

21 The works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below.

Reason: To define the terms and extent of the permission.

PLANS LIST: Design and access statement, historical appraisal, photographs, structural inspection report, drawings 1743-SL 01, 1743-E-02, 1743-E-03, 1743-E-04 and 1743-E-05, 1743-P-03, 1743-P-04, 1743-P-20, 1743-P-022, 1743-21 date stamped 23rd December 2008, together with drawings 1743-P-02a, 1743-P-06a, 1743.10ab, 1743.11ab date stamped 23rd July 2009 and 1743-P-05b received 21 April 2010.

REASONS FOR GRANTING CONSENT:

The decision to grant consent subject to conditions has been made in accordance with Section 16 of the Planning (listed Buildings and Conservation Areas) Act to pay special attention to the preservation of the protected buildings and the setting of a nearby principal building. The decision is also generally consistent with Planning Policy Statement 5 : Planning for the Historic Environment, and has taken into account the views of third parties. Whilst the works have the potential to impact upon protected species, these impacts have been identified, assessed and a suitable mitigation scheme designed. The amended proposals are considered to meet the requirements of the E U Habitats Directive.