

## SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

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**REPORT TO:** Planning Committee  
**AUTHOR/S:** Corporate Manager – Planning & Sustainable Communities

1<sup>st</sup> April 2009

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### **APPEALS AGAINST PLANNING DECISIONS AND ENFORCEMENT ACTION: SUMMARIES OF DECISIONS OF INTEREST – FOR INFORMATION**

#### **Purpose**

1. To highlight recent Appeal decisions of interest. These form part of the more extensive Appeals report, which is now only available on the Council's website and in the Weekly Bulletin.

#### **Summaries**

##### **Mr H D'Abo – New country house, staff accommodation, barn, parkland and associated works – Mines Farm, Weston Green, Weston Colville – Appeal allowed.**

2. The main issue in this appeal was the impact of the proposals on the character and appearance of the area. A proposal for a country house on the site had previously been dismissed at appeal on the basis that it would be harmful its setting. The current proposal was for a strikingly modern dwelling, which had been chosen following the result of an architectural competition. Residential development in the countryside would normally be refused, although paragraph 11 of PPS7 states proposals may be very occasionally justified by the exceptionally quality and innovative nature of the design. Such a design should be truly outstanding and ground-breaking in its use of materials and construction and it should significantly enhance its immediate setting and be sensitive to the defining characteristics of the area.
3. The inspector confirmed that the proposal employed the innovative use of construction technology and materials. It was essentially a 21<sup>st</sup> century structure with a modern sculptural form. He did not share the Council's concern that the lack of an eaves overhang was significant. The building "would be of very considerable architectural interest on account of its outstanding design and its innovative use of materials and construction methods." The Council's concern that it would be prominent did not mean it would be visually harmful. It would make a positive contribution to the landscape. The use of estate-grown biofuel from coppiced woodland was appropriate in both a landscape and biodiversity context. The proposed water strategy and provision of a lake would also add to the variety and beauty of the landscape.
4. The two staff cottages were justified as part of the country house tradition. While the choice of materials (concrete walls) was unusual. It has been carefully thought out and the cottages would be screened by woodland within a few years. The appearance of the barn was also in keeping with its rural surroundings.

5. There had been some concern that development would also harm archaeological interests. This had been an issue at the previous appeal. The County archaeologist attended the hearing and gave evidence to this effect. However, the inspector was satisfied that a full investigation prior to the grant of planning permission was unnecessary and the standard condition requiring a staged programme of work could be applied.
6. Planning permission was therefore granted subject to various conditions. These included protection of existing trees, details of finished floor levels of the buildings, a restriction on parking rights, compliance with an agreed flood risk assessment, ecology measures, archaeological assessment, restrictions on external lighting and a restriction on the occupation of the two staff cottages in connection with the appeal site.
7. The inspector did not consider the need for the Council to control any aspects of landscape planting or management, or the finer constructional details of the buildings. He reasoned that the exceptional quality and specialised nature of the design meant this level of control could be obstructive to the successful implementation of the scheme. This conclusion potentially means that the landscaping aspects - which are integral to the scheme - might not be undertaken, completed or maintained in an appropriate manner. Nonetheless, the conclusion of officers is that because of the inspector's overall approach to the quality of the scheme, the decision is not one that lends itself to challenge.

**Mrs L R Maddison – Re-thatching of listed building – Lordship Cottage, Fardell's Lane – Elsworth – Listed Building Enforcement Notice quashed rendering determination of a listed building appeal unnecessary – Partial award of costs against the Council allowed**

8. The appellant had applied for retrospective listed building consent for new ridge details, to change dormer window details and to use water reed instead of straw in vulnerable areas of the roof. Listed building consent was refused in June 2007 and a listed building enforcement notice ("LBEN") was then issued in October 2007. This required the roof be thatched consistent with the traditional longstraw thatch of the roof, for the roof ridge and dormer ridge finishes to be more appropriately thatched and for water reed used in valley sections at the side of dormer windows to be replaced by longstraw. The Council's reasons for refusal and the issue of the LBEN were based on the belief that the changes to the roof required listed building consent and that they had harmed the character of the building.
9. Appeals against both the refusal of listed building consent and the LBEN were considered together and were to be determined by way of a public inquiry. Having instructed Counsel and then considered her advice, the Council subsequently withdrew parts of the LBEN, which related to the need to re-thatch the whole roof slope in longstraw. This was primarily on the basis that the changes to the main roof slope were largely now indiscernible to the slope on the other side of the roof. This left only the works to the main ridge and the dormer ridges to be determined. In the light of this, the parties agreed that a hearing was more appropriate.
10. The appellant's first ground of appeal against the LBEN was that the works to the roof did not require listed building consent. The evidence for this centred on numerous photographs of the building. While the building was listed in 1974, the nearest available photographs were taken in 1968 and 1985. On the balance of probability, the inspector concluded that the roof had a blockcut ridge at the time of listing. As

there had been no subsequent listed building consent for a change in the roof since then, this type of roof finish was the one that was authorised. Although the roof had most recently contained a flush ridge, the property now had a blockcut ridge. It's retention was therefore lawful. It followed that the design of the dormer ridges should be of the same style. Although the Council had concerns over the actual designs used, the inspector accepted the appellant's argument that thatching is an individual craft and different thatchers would be likely to adopt different styles.

11. The changes from one blockcut ridge to another did not amount to an alteration to the listed building. The inspector concluded they were essentially works of maintenance or repair. It followed that the character of the listed building had not been affected, and listed building consent was therefore not required. As a result, the LBEN was quashed and there was no need to consider the listed building appeal.
12. The appellant applied for a partial award of costs. This was on the basis that the original requirements of the LBEN to re-thatch the whole roof slope had caused the appellant considerable wasted expense, which was to prove abortive following the withdrawal of this part of the notice. The appellant contended that Listed building consent wasn't required in the first place and that the notice should have been withdrawn sooner. The Council had also refused the listed building application partly on the basis that the whole roof slope had been thatched, even though this had not been part of the application. The appellant had needed to employ specialist advice in defending her position on this aspect.
13. The Council accepted that its description of the application had not fully reflected what had been applied for. It was agreed this had caused the appellant unnecessary additional expense. Nonetheless, the Council had still been entitled to conclude that the roof had been recoated in a manner that was inappropriate. The re-thatching had led to a change in the appearance of the roof, which the Council saw as a fundamental change to the distinctive character of the building and the wider area. Withdrawal of parts the notice was not a concession that listed building consent was not required. Instead, the weathering down of the roof had proved more successful than first thought and to an extent that it was no longer expedient to maintain an objection. The Council also considered that the nature of the evidence provided had led the appellant to incur only a limited amount of additional work.
14. The inspector concluded that the Council had acted unreasonably in its late withdrawal of parts of the LBEN and the consequent late withdrawal of parts of the reasons for refusal. This had caused the appellant to incur unnecessary expense. He did not, however, find that the Council's basic approach to enforcement in this case or its belief that listed building consent was required, had been unreasonable.
15. In granting a partial award of costs, the inspector made it clear that it was not for him to decide the extent to which wasted costs had been incurred. It will be the appellant to demonstrate this when the details of costs are submitted.