



Appeal Decisions

Site visit made on 7 January 2020

by Roger Catchpole BSc (hons) PhD MCIEEM

an Inspector appointed by the Secretary of State

Decision date: 19 February 2020

Appeal A: APP/A4710/W/18/3209365

17 Towngate, Hipperholme, Halifax HX3 8JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs C Lynch against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 18/00286/HSE, dated 6 March 2018, was refused by notice dated 31 May 2018.
 - The development proposed is described as the 'demolition of out-house and WCs, construction of stone garage and construction of lower patio area and bi-fold door access from house'.
 - This decision supersedes the one issued on 17 June 2019. That decision was quashed by order of the High Court.
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Appeal B: APP/A4710/Y/18/3209369

17 Towngate, Hipperholme, Halifax HX3 8JB

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr and Mrs C Lynch against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 18/00287/LBC, dated 6 March 2018, was refused by notice dated 31 May 2018.
 - The works proposed are described as the 'demolition of out-house and WCs, construction of stone garage and construction of lower patio area and bi-fold door access from house'.
 - This decision supersedes the one issued on 17 June 2019. That decision was quashed by order of the High Court.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed and listed building consent is refused for the 'demolition of out-house and WCs, construction of stone garage and construction of lower patio area and bi-fold door access from house'.

Preliminary Matters

3. The appellants are seeking to demolish two outbuildings and construct a garage within the curtilage of a Grade II listed building and insert a large bi-folding

door in the rear elevation of the main building that would provide access to a sunken patio flanked by a glass and steel balustrade.

4. The Council did not object to the bi-folding door, sunken patio or glass balustrade in its reasons for refusal but nevertheless identified the harm that would result to the listed building in a case officer's report that was submitted in response to the appellants appeal.
5. The previous Inspector's decisions stated that the Council had no objection to the bi-folding door or the sunken patio and that there was no reason to disagree. The decisions also contained a minor transcription error for the date of one of the plans that was listed in the associated conditions.
6. The Council contended, among other things, that the decisions were factually incorrect and that the duty set out in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Act) had not been discharged.
7. The High Court found that the Inspector had erred by misrepresenting the Council's position and quashed the decisions on that basis whilst acknowledging that the minor transcription error would be resolved through the consequent re-determination of the appeals.
8. Following the successful High Court challenge, the appeals have been submitted back to the Planning Inspectorate for redetermination. I am required to determine them on a *de novo* basis as if the previous decisions had not been issued.
9. Consequently, I have considered the appeals on their individual merits and the evidence before me. This includes the evidence that accompanied the original applications as well as responses to a further round of consultation that was undertaken following the challenge.
10. As the proposal relates to a listed building and the setting of other listed buildings, I have had special regard to sections 16(2) and 66(1) of the Act.

Main Issues

11. The main issues are:

- whether the proposal would preserve a Grade II listed building, "16 and 17 Towngate" (Ref: 1184414), and any of the features of special architectural or historic interest that it possesses;
- whether the setting of three other Grade II listed buildings, "Archway in South Garden Wall of Numbers 18-20" (Ref:1133827) "18-20 Towngate" (Ref:1133788) and "Barn to West of Numbers 19 and 20" (Ref:1314089) would be preserved; and
- the effect of the proposal on the character and appearance of the local area.

Reasons

12. The appeal building is situated in a residential area and is one of two adjoining cottages that form part of a historic, agricultural enclave on the outskirts of Hipperholme. It was listed in 1983 and dates from the late 17th century with early to mid-18th century alterations. It comprises a three-bay, single-aisled

house with rendered and hammer-dressed stone and a stone tiled roof. The house has been divided into two separate dwellings. The rear elevation is set into rising ground and what remains of the cat-slide roof indicates that this elevation was historically only a single, aisled storey. Two modern dormer extensions have been inserted into the rear roof slope below the original ridge line. The one associated with the host property is substantial and extends to the rear corner of the western, side elevation.

13. There are two outbuildings in close proximity to this elevation. The first is incorporated into the boundary wall and comprises a four-bay structure with a distinctive, overlapping, stone slab roof. The two bays nearest the house are lined with white, glazed Victorian bricks. The furthest two are unlined and have mid-height, cast iron, coal shuts on the external building wall bearing the inscription 'Smith and Co. Halifax'. The nearest two had previously functioned as WCs whilst the furthest two were coal storage areas for the bath house that is situated immediately behind this structure.
14. This outbuilding is constructed from coursed stone which matches the boundary wall into which the first outbuilding is incorporated. It has a pitched, stone slate roof, a chimney stack and ashlar lentils over a contemporary door and window frame. A recessed alcove faces the coal storage bays and the lower part of the internal walls are faced with white, glazed Victorian bricks. No water heating system or domestic wares remain apart from a shallow ceramic sink which appears to be of historic origin.
15. For the purposes of the Act, a listed building includes any structure that is within its curtilage which has existed since before 1st July 1948. As structures within the curtilage that have a principal and accessory relationship to the main building, the outbuildings are also consequently listed. Although they are not in the list description, listings are primarily for identification purposes and do not provide an exhaustive or complete description of the special interest.
16. Whilst utilitarian, the outbuildings nonetheless attest to the cultural history associated with the dwelling and its evolving pattern of use. As such, there is a clear evidential and historic value in the fabric and layout of these two structures. Consequently, I find that the special interest of the listed building, insofar as it relates to these appeals, to be primarily associated with the historical layering, architectural features and fabric of the host dwelling and its outbuildings.
17. The proposal would demolish the two outbuildings and construct a garage with an opening that would be set on the line of an existing boundary wall that fronts onto an unmade road providing access to nearby dwellings. The proposal would also enlarge an existing window opening and insert a large bi-folding door on the ground floor to the rear of the listed building. Part of the rear garden would also be excavated to create a sunken patio. A glass and stainless steel safety balustrade would be erected at existing ground level, along its western flank.
18. Although historic building material would be re-used, there would be a significant loss of historic fabric because listed buildings are more than just the sum of their parts. They embody information about the past and their preservation is inextricably linked to their authenticity and integrity as intact structures. This means that using historic material to create a different building, no matter how sympathetic the design, simply fails to preserve what

makes a building special. This loss of fabric would not only be related to the outbuildings but also part of the historic, rear elevation where the bi-folding door would be inserted.

19. The appellants have highlighted the unsympathetic changes that have occurred to the rear elevation and are of the opinion that the bi-folding door and patio would not affect the overall appearance of the building or lead to the loss of historic architectural features. However, I find that the creation of an excessively large opening onto a sunken patio would lead to a highly distracting and incongruent feature that would undermine the historic layout of the building and further erode the historic legibility of the rear elevation.
20. As the Council has pointed out, existing harm is not a justification for further harm and whilst this aspect of the proposal would not be visible from the public domain it is important to bear in mind that listed buildings are safeguarded for their inherent architectural and historic interest irrespective of whether or not public views of any proposed changes can be gained.
21. Turning to the effect of the proposal on the setting of other listed buildings and the wider streetscene, I observed that that current boundary wall provides a well-integrated feature which is contiguous with the historic boundary of 18-20 Towngate and a separately listed archway also associated with this building. Both date from the late 17th century and appear to have been constructed around the same time as the appeal property. The boundary of 18-20 also contains an outbuilding with two coal shuts of the same design and manufacture as the appeal property.
22. The common patina, materials and mortaring of the combined boundary have a high degree of consistency and are clearly intervisible with the main façade of 18-20 from multiple viewpoints along the adjacent road. Kinetic views are also gained of the more distant listed barn when moving west. As such, the boundary wall and views of the adjacent listed property afforded by the lower roof line of the first outbuilding make a significant contribution to the well preserved and harmonious setting of nearby listed buildings and the well characterised, historic streetscene.
23. The gable end of the proposed garage would be along the current boundary line which would disrupt views of 18-20 and lead to the introduction of a considerably more prominent, modern structure with an incongruent opening. Although the wash house also has a gable facing the same direction, this is not as prominent given the degree to which it is set back within the curtilage. I find what has been described as simply 'bringing the gable forward' would have a much greater visual impact than the plans otherwise suggest because they are drawn from a perspective that is parallel to the south elevation of the main building.
24. The appellants have suggested that the appearance of the garage door could be controlled by a suitable condition and it would not be out of character with the wider area. Whilst I note the presence of garage door openings at Thornhill House and No 15 Towngate, these are associated with an area to the east of the appeal property that has a transitional quality and includes modern buildings. I accept that a condition could secure more sympathetic materials but note that the size and function of the opening would nevertheless be read as a modern feature that neither a wooden door, the recycling of materials nor

- the incorporation of the historic coal shut covers would mitigate. Indeed the latter would lead to an inauthentic pastiche of the former structure.
25. Given the above, I find that the proposal would fail to preserve the special interest of the listed building as well as the setting of other, nearby listed buildings, contrary to the expectations of the Act. Consequently, I give these harms considerable importance and weight in the planning balance of these appeals. For the same reasons, I also find that it would fail to respect the established character and appearance of the immediate area.
 26. Paragraph 193 of the National Planning Policy Framework 2019 (the Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 194 advises that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
 27. Given the extent of the alterations to the main building and the fact that only part of the shared boundary would be affected, I find the harm to the host property and the setting of nearby listed buildings to be less than substantial in this instance but nevertheless of considerable importance and weight. Under such circumstances, paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
 28. The appellants are of the opinion that the proposal would be beneficial because it would reduce a 'severe' on-street parking issue at a point where the adjacent road narrows. I also note the observation that 'parking is certainly an issue' from an interested party. Whilst only a snapshot, I observed that parking spaces were nevertheless available at the time of my visit and that it was possible to pass parked vehicles on the road in front of and to the west of the appeal property. Even if this were not the case, the proposal would only remove one vehicle and there is nothing to stop another vehicle parking in that space.
 29. The appellants stated in their application that the first outbuilding, forming part of the boundary wall, was in danger of collapse. I observed that a small number of bricks were missing from some of the supporting structure but that there were no obvious signs of instability or movement to suggest imminent collapse. In the absence of a structural engineering survey by an appropriately accredited individual, I do not find that this risk and the consequent public benefit that would arise from its mitigation has been sufficiently substantiated.

Overall balance

30. I have found that the proposal would cause harm to the host property and the setting of nearby listed buildings. Any such harm must be given considerable importance and weight. This gives rise to a strong presumption against the granting of planning permission and listed building consent. I find little weight in the stated public benefits nor a clear and convincing justification for the harm that would be caused.
31. I also note that the continued viable use of the appeal property as a residential dwelling is not dependent on the proposal as the building has an ongoing residential use that would not cease in its absence. As a result, I do not find that the public benefits outweigh the harm that would be caused. Additional

harm to the character and appearance of the immediate area would also accrue from the insertion of a visually incongruent, detached garage.

32. Given the above, I conclude that the proposal would fail to preserve the special historic interest of the listed building, the setting of nearby listed buildings and the character and appearance of the immediate area. This would fail to satisfy the requirements of the Act, paragraph 193 of the Framework and conflict with policies BE1, BE14 and BE15 of the *Replacement Calderdale Unitary Development Plan 2009* that seek, among other things, to ensure that adverse effects on designated heritage assets and their settings are avoided and established character is respected. As a result, the proposal would not be in accordance with the development plan.

Other Matter

33. The appellants have drawn my attention to a lapsed listed building consent for alterations to the wash house to form a garage and the demolition of the outbuilding nearest the road in 2004 as well as the refusal of a scheme involving the partial demolition of the outbuildings and boundary wall to create a vehicular access and parking area in 2015. However, these are not the same in all respects when compared to the current proposal not least because of the differing policy and legislative context.
34. Firstly, planning law¹ requires applications for planning permission to be determined in accordance with the development plan, unless material considerations indicate otherwise. Consequently, policy N31 of the superseded *Calderdale Unitary Development Plan 1997* carries no weight even if the underlying justification remains unchanged and leads to the development of similar policies.
35. Secondly, the caselaw context has changed and it has since been established that any harm to a listed building or its setting must attract considerable importance and weight, as set out in the Council's *Statement of Facts and Grounds* to the successful High Court challenge. It is not for decision-makers to attribute whatever weight they see fit. This clarifies the fact that preserving a listed building under the terms of the Act means doing no harm.
36. Thirdly, even in the absence of the differing policy and legislative contexts, the 2004 proposal was not the same in all respects because part of the wash house would have been retained and there were no alterations to the main building. Moreover, I have no evidence before me to suggest that the justification for the consented works at that time was the same as the current proposal. Consequently, the lack of an objection from the historic environment services and the subsequent granting of consent by the Council only carries limited weight.

Conclusion

37. For the above reasons and having regard to all other matters raised I conclude that the appeals should be dismissed.

Roger Catchpole

INSPECTOR

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (as amended)