



Appeal Decisions

Site visit made on 17 June 2020

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 07 July 2020

Appeal Ref: APP/D0840/W/19/3238982

Wheal Friendly Ruins, Wheal Friendly Lane, St. Agnes, Cornwall TR5 0SR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr Paul Bent against the decision of Cornwall Council.
 - The application Ref PA18/10497, dated 3 October 2018, was refused by notice dated 5 April 2019.
 - The development proposed is described on the application form as 're-surfacing twentieth century Cornish tin mine features in need of attention due to weather erosion on mundic features requiring specialised waterproof plaster although the finish shall have the same appearance as the original Portland cement plaster used.'
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Decision

1. The appeal is dismissed.

Preliminary matters

The site

2. The appeal site is an irregular parcel of land amounting to some 0.38 acres. It contains historic mineworking structures next to footpath 318/1/1 winding down from Wheal Friendly Lane to Trevaunance Cove. The Council explain that the footpath is subject to a Modification Order which aims to align the definitive map record with the route on the ground, albeit that there is little difference between the two immediately by the appeal site.
3. The ruins fall near Grade II Listed 'Wheal Friendly Engine House', list entry No 1141461, which is on higher ground.¹ They are closer still to Grade II Listed 'Dry House immediately north west of Wheal Friendly Engine House', list entry No 1311891.² Both the Engine House and Dry House trace their origins to the mid-nineteenth century heyday of Cornish tin mining. In recognition of the wider area's industrial heritage the Cornwall and West Devon Mining Landscape was, in 2006, inscribed as a World Heritage Site (the 'WHS').
4. Formerly in all likelihood a mineworker's smallholding, I am told that in 1907 the appeal site was sold to the Wheal Friendly Mine Company.³ It was shortly thereafter put to use, via the creation of various structures, for processing tin ore mined at the Engine House. Mine workings were originally transferred to

¹ In respect of which planning permission and listed building consent was granted in 2018 for restoration and residential accommodation (Ref PA17/11043, PA17/11044).

² Now converted and named Roughwood Cottage.

³ As set out in the supporting Heritage Statement and Heritage Impact Assessment.

the appeal site by way of connecting gantry (which has since been lost, as has other associated equipment).

5. The appeal site contains the interconnected remains of a stone crusher stand, stamps and calciner. Those structures processed mine workings by way of crushing, pounding and roasting. Unsurprisingly, all are constructed of local rubblestone bonded with mining spoil cement strengthened with iron bars. The stone crusher has occasional small patches of a smooth screed layer.
6. Although initially profitable, I understand that the site and Wheal Friendly fell into disuse around the First World War on account of a decline in tin prices and labour supply. Notwithstanding some site clearance, the ruins and much of the site remain overgrown with ivy, blackthorn, gorse, other vegetation, and self-seeded trees.⁴
7. In line with the description of development given in the banner heading above, the appellant initially intended to undertake works to the stone crusher stand, stamps and calciner. He sought LEADER funding in that context,⁵ albeit that the opportunity to access such funds lapsed in January 2019. Therefore now only a more modest self-funded project related to the stone crusher stand alone is proposed. My assessment of the scheme therefore focusses on the proposal insofar as it relates to that structure.

Legislative and policy context

8. The site is now in separate ownership from the Engine House and Dry House. I understand that subdivision of ownership occurred around 2013. However ownership is not in itself determinative of whether a structure should be treated as listed by virtue of section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the '1990 Act'); the extent of a building's curtilage may change over time.
9. The ruins, Dry House and Engine House were originally part of the same mining complex, and evidently functionally interconnected historically. On that basis it is not disputed that the ruins should be treated as listed. Both the ruins and Dry House emerged by virtue of the locational requirements of the Engine House, rather than *vice versa*. As set out above, the ruins were also once connected by way of connecting gantry to the Engine House. With regard to section 1(5) of the 1990 Act, I have therefore treated the ruins as part of the Engine House (hereafter referred to simply as 'the Listed Building').
10. In that context, alongside application Ref PA18/10497 which is the subject of this appeal, the appellant applied unsuccessfully for listed building consent.⁶ However an appeal in respect of refusal of listed building consent was not made within six months of the Council's decision.⁷ Consequently I have approached the appeal in the context of section 66(1) of the 1990 Act, which applies equally to development that affects a listed building or its setting (the surroundings in which a heritage asset is experienced).

⁴ As set out in the accompanying Environmental Assessment Report.

⁵ Part of the European RDPE programme.

⁶ Ref PA18/10498.

⁷ The period prescribed in Regulation 8(1) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 as amended.

11. Notwithstanding that an appeal has been made, the appellant contends that 'the repairs may not require planning permission', citing the provisions of the Town and Country Planning Act 1947 in that regard (the '1947 Act'). Part II, section 12(2)(a) of 1947 Act excluded from the definition of development the carrying out of 'maintenance works'.
12. However the 1947 Act is no longer extant. The phrasing set out above is also not mirrored in extant section 55(2) of the Town and Country Planning Act 1990 as amended. Section 55 instead sets out how maintenance works which 'do not materially affect the external appearance of the building' do not represent development in planning terms.⁸ In my view, as reasoned below, the development proposed would materially affect the external appearance of the stone crusher stand.
13. There is some noteworthy planning history to the site.⁹ Nevertheless each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. In this instance the development plan includes policies of the Cornwall Local Plan Strategic Policies 2010-2030 (adopted November 2016, the 'LP') and of the St Agnes Neighbourhood Development Plan (made 13 September 2019, the 'NDP').
14. I have also had regard to various other material considerations including the National Planning Policy Framework ('NPPF'), the Planning Practice Guidance ('PPG'), the Cornwall and Isles of Scilly Landscape Character Study (published in 2008, the 'LCS'), the Cornwall and West Devon Mining Landscape World Heritage Management Plan 2013-2018 (published 2013, the 'WHS Management Plan'), the World Heritage Site Supplementary Planning Document (adopted 31 May 2017, the 'SPD') and the St Agnes Parish Draft Local Landscape Character Assessment (dated 2018, the 'LCA').

Main issue

15. Against the background above, the main issue is the effect of the development proposed in respect of the Listed Building, any features of special architectural or historic interest which it possesses, and the character of the WHS.

Reasons

Special interest and significance

16. Cornish tin mining has a long history stretching far further back than the turn of the twentieth century. Nevertheless, the ruins, along with other remains of historic mineworking activity nearby, attest to the industrial evolution of the area in connection with Wheal Friendly; their scale and form clearly reflecting their original functional purposes. As noted in the supporting Heritage Statement and Heritage Impact Assessment, the structures on site trace their origins to a time when tin ore extraction was still a buoyant industry meriting significant investment.

⁸ With building including any 'structure or erection' under section 336 of the Town and Country Planning Act 1990 as amended.

⁹ Unsuccessful 2019 applications for the creation of a boardwalk (PA19/05427, PA19/05122), unsuccessful 2017 applications for certificates of lawfulness regarding improvement works to the private way through the site and works related to access and parking (PA17/11325, PA17/07904), and pre-application advice related to the current scheme PA18/02575/PREAPP.

17. The ruins are not only representative of the economic history to the landscape, but fundamentally intertwined with it. As set out in paragraph 5 of this decision, the ruins are authentic man-made interventions constructed of materials at hand. I accept that, the site having been largely left to its own devices for some time, the legibility of the structures has been reduced. Nevertheless, in my view, that does not detract from an appreciation of their significance. Instead it attests to the declining fortunes of tin mining, honestly reflecting the effects of the passage of time.
18. The stone crusher stand, on account of its substantial form reaching some 10 metres high, is aptly described in the supporting Structural Survey as the main feature at the appeal site. The stand is readily apparent from along footpath 318/1/1, albeit that visibility fades proceeding downwards to the north towards Eddie's Woodland and the Cove beyond. Although inevitably reflecting only a particular point in time, during my site visit I saw various individuals making use of the footpath, a 'Gold Route', i.e. a popular footpath promoted by the Council.
19. Consequently, insofar as it relates to this appeal, I find that the special interest of the ruins and the stone crusher stand is primarily the authenticity of their historic materials and construction, their value in representing the industrial evolution of the area, and the legibility of those features in conjunction with other evidence of mining heritage in the landscape.

Character of the WHS

20. The boundaries of the site can be traced to maps produced in connection with the Tithe Act 1842. Nevertheless visually the appeal site appears a somewhat arbitrary subdivision of mining remains associated with Wheal Friendly. The wider surrounding area also features various structures, walls and paths associated with mineworking activity. The landscape has evidently been much altered over several centuries, resulting in a complex and beguiling character. More recent development around Wheal Friendly Lane has had little appreciable effect on the immediate surroundings of the appeal site.
21. The appeal site falls within the St. Agnes Landscape Character Area as described in the LCS ('CA12'), wherein specific reference is made to the Engine House. CA12 is further described in the LCS as, in part, a 'derelict industrial landscape' characterised by remains of mineworking activity in 'deteriorating condition'. The LCA likewise echoes the characteristics set out above, noting specifically the significance of 'mining remnants' and 'mining relics' (including around the St Agnes valleys).
22. Similarly the WHS Management Plan sets out how the Outstanding Universal Value ('OUV') of the WHS derives from the extensive remains of mineworking activities, 'dating principally from 1700 to 1914, the period during which the most significant industrial and social impacts occurred'. Specifically the area around Trevaunance Cove is a 'distinctive landform... riddled with ancient mine workings.' The PPG sets out how effective management of World Heritage Sites involves conservation and enhancement of OUV, authenticity and integrity.¹⁰ In that context, by consequence of the site's character, authenticity and

¹⁰ Reference ID: 18a-026-20190723.

prominence, in my view it contributes significantly towards the character of the WHS.

23. The appellant has referenced Guidance produced by the International Council on Monuments and Sites in the Statement of Significance. With reference to the table in that document for gauging the importance of an asset,¹¹ the Heritage Impact Assessment indicates that the ruins should be accorded a 'low' value. However given my reasoning above regarding the special interest of the ruins and stone crusher stand specifically, as a matter of judgement I disagree. Moreover within that reproduced table, Grade II Listed Buildings (of which the ruins should be treated as part) are automatically ascribed greater importance.

The development proposed

24. Simply, as annotated on plan No 4 and detailed in the associated Schedule of Works, the proposal is to remove vegetation climbing up, and some of the frail surface to, the stone crusher stand in order to enable its resurfacing. The stand is formed of mine spoil, which given the geology of the area contains pyrite and other impurities. Pyrite reacts over time with water and aggregates to undermine structural integrity, commonly referred to as mundic. There is, however, very little information before me as to the precise methodology intended for remedial work. The Schedule of Works indicates that two potential approaches could be employed, the 'Koster System' or 'Newton System 803'. Both appear to be externally applied waterproof coatings or membranes, overlaid with a cement-based finish.

The effect of the proposal

25. Time and exposure to the elements have clearly affected the stone crusher stand; I have noted above how there is some evidence of a screed layer which is now largely absent. The proposal is therefore evidently intended to benefit the long-term soundness of part of the Listed Building.
26. However I have set out above how the ruins at the appeal site are not only representative of the economic history to the landscape, but fundamentally intertwined with it in terms of construction from local materials. The stand is an honest structure in harmony with local character. Externally applied coatings or membranes represent modern standardised interventions without any connection to local materials or context. There is, moreover, little indication as to the texture or colour that would result, or how the proposal would weather over time.
27. In addition to the absence of a precise methodology, the supporting plans are inaccurate and insufficient to determine the extent of the visual change that would result. They show only a simplified representation of the stone crusher stand at 1/200 scale, failing to reflect the complexity of its current form or any quirks resulting from weathering. The plan of the proposal appears simply a copy of the stand as it is shown on the existing plan.
28. Moreover, I have set out above how the landscape here is characterised by a complex historic evolution reflected in a dense concentration of mineworking remains within and outside of the site. Therefore deterioration over time is, in

¹¹ Which appears to differ from that in Appendix 3A 'Example guide for assessing value of heritage Assets' of ICOMOS Guidance on Heritage Impact Assessment for Cultural World Heritage Properties (January 2011).

itself, an important facet of local character.¹² Notwithstanding shortcomings in respect of the detail of the proposal, resurfacing the stone crusher stand would inherently be anachronistic and serve to set it apart visually from its surroundings.

29. As a result the proposal would result in an inauthentic intervention and a discordant, prominent feature in the landscape. The proposal would adversely affect the present harmony of the stone crusher stand with ruins nearby, the Engine House and Dry House. In so doing the scheme would undermine an understanding or appreciation of the historic integrity of the site and Listed Building, along with their connection with the area.

Consideration

30. For the above reasons, the development proposed would fail to preserve the special interest and significance of the Listed Building and would result in clear harm to the character of the WHS. That would be contrary to the expectations of LP policies 12 and 24, NDP policies 10 and 11, section 66(1) of the 1990 Act and NPPF paragraphs 184 and 193. In summary, and amongst other things, those policies and provisions set out how great weight should be given to the conservation of designated heritage assets, that they should be conserved in a manner appropriate to their significance, and that development should integrate appropriately with the character of its surroundings. NPPF paragraph 194 further sets out how any harm to the significance of a designated heritage asset, not just that which is substantial, should require 'clear and convincing justification'. I now turn to whether or not that is the case here.

The planning balance

31. It is for the decision taker, having identified harm to a designated heritage asset, in this case to designated heritage assets, to consider the magnitude of that harm. The appellant's Statement of Significance references Design Manual for Roads and Bridges (originally introduced in 1992, 'DMRB'). DMRB contained a table via which the relative significance of a proposal in that regard may be calculated. That is notwithstanding that a new version of DMRB has since been issued, which relates to the specific context of planning for highways. Nevertheless on that basis the appellant contends that, as the ruins would not be 'noticeably changed', the proposal would result in a 'minor' effect. However I have set out above that, by contrast, the proposal would result in a significant and discordant alteration to part of the Listed Building, fundamentally changing its character and thereby undermining its historic integrity and integration with its surroundings.
32. Nonetheless the PPG sets out that 'substantial harm', within the terms of the NPPF, is a 'high test, so it may not arise in many cases'.¹³ Although an imposing feature, the stone crusher stand is one of many mining remnants in this area, including those associated with the former Wheal Friendly mine complex, all of which attest to the layered mining history to Cornwall. The proposal is essentially for a superficial treatment, rather than for structural alterations, or for works that would necessitate the loss of a significant amount of original fabric. In that context, the level of harm arising may fairly be

¹² Table 7.1 of the SPD specifically notes how restoration or refurbishment, however well-intentioned, may undermine the ability to understand the historic development of the area.

¹³ Reference ID: 18a-018-20190723.

considered as less than substantial. However less than substantial harm does not equate to a less than substantial planning consideration. NPPF paragraph 196 directs that in such circumstances, the extent of such harm should be weighed against any public benefits.

33. The PPG, in addressing how neglect and decay may be considered in respect of heritage assets, sets out how sympathetic changes and on-going management may be required.¹⁴ The appellant avers that, in the absence of remedial works, the stone crusher stand may 'totally collapse', or that during particularly adverse weather there may be some form of 'catastrophic failure'.
34. However there is little technical information before me as to the structural effect of the proposal. In theory, at least, encasing the stone crusher stand in an impermeable layer may serve to seal in moisture, thereby advancing decay internally by trapping moisture rather than allowing the structure to breathe. Moreover the supporting Structural Survey indicates that masonry deterioration may be classified as 'category II', i.e. neither purely superficial, nor so significant as to entirely compromise structure integrity. The stone crusher stand is of substantial mass, and there is no indication in the evidence before me, nor from what I saw, that it is structurally compromised. It has evidently survived for over a century.
35. I acknowledge that the proposal is intended to benefit the soundness and safety of part of the Listed Building, and thereby to enable its appreciation in the long term. However, as set out above, the benefits of the scheme in that regard have not been robustly demonstrated such that they may be accorded only very little weight in favour of allowing the appeal. Consequently neither the public benefits of the scheme, nor any other relevant matters, are sufficient to outweigh the clear harm that would result.

Conclusion

36. Notwithstanding the appellant's intentions, the proposal would result in significant harm to the stone crusher stand and to the WHS. There are no public benefits or other considerations sufficient to justify allowing the appeal. Therefore, having had regard to the development plan as a whole, the approach in the NPPF, and to all other relevant material considerations, I conclude that the appeal should be dismissed.

Thomas Bristow
INSPECTOR

¹⁴ Reference ID: 18a-002-20190723.