



Appeal Decision

Site visit made on 16 March 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 April 2021

Appeal Ref: APP/B1930/F/18/3217800

**Land at Kingsbury Watermill (Museum) Limited, St Michael's Street,
St Albans, Herts AL3 4SJ**

- 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 Kingsbury Watermill (Museum) Limited against a listed building enforcement notice issued by St Albans City & District Council.
 - The enforcement notice was issued on 16 November 2018.
 - The contravention of listed building control alleged in the notice is described as: The building has been extended to the south and west elevation of which the extension comprises of a marquee attached to the building via canvas link that is secured in place by keder rails, wooden battens and metal plates. The numerous mechanical fixings along the south and west elevations constitute alterations which have affected the special character of the building.
The extension measures approximately 21.2 metres wide by 10.9 metres deep and 4.1 metres in height to the ridge (shown edged blue on the attached plan.)
The internal metal frame is clad in a white coloured canvas with clear sheet vinyl windows and wooden double doors. The extension is set on a flagstone floor. The extension is attached to the building by a canvas link and fixed via wooden battens and metal plates.
 - The requirements of the notice are: Restore the building to its former state.
 1. Demolish the extension that comprises of a marquee attached to the building via canvas link that is secured in place by keder rails, wooden battens and metal plates (shown edged blue on the attached plan)
 2. Make good any damage to the Building to match the existing original work adjacent undisturbed by the unauthorised works in respect of materials used, detailed execution and finished appearance.
 3. Remove from the site (edged red on the attached plan) all rubble and building materials arising from compliance with steps 1. and 2. above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is made on the grounds set out in section 39(1) (c), (e), (g), (h) and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. It is directed that the listed building enforcement notice be varied by deleting the wording "6 months" in paragraph (5) and substituting it with "18 months". Subject to this variation, the appeal is dismissed and the listed building enforcement notice is upheld, and listed building consent is refused for the retention of the works carried out in contravention of section 9 the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Application for costs

2. An application for costs was made by Kingsbury Watermill (Museum) Limited against St Albans City & District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal has been brought on grounds (c), (e) (g) (h) and (j). The notice states that the steps required in Schedule 2 are to be taken to restore the building to its former state/condition. In a ground (g) appeal, the issue is whether the steps required exceed what is necessary for restoring the building to its former state/condition before the works were carried out. However, on ground (j), the issue is whether the requirements would exceed what is necessary to alleviate the effect of the unauthorised works. Given that the notice was issued under section 38(2) (a), and that the requirements of the notice are intended to restore the building to its former state by removing the marquee and its fixings, and to make good any damage to the building, the arguments put forward by the appellant are not appropriate to a ground (j) appeal. Considering the arguments made under (j) are essentially the same as those made under ground (g), there would be no injustice to either party if I consider the them solely under ground (g). I have determined the appeal on that basis.
4. The expediency of issuing the enforcement notice is not a matter for consideration through this appeal.

The appeal on ground (c)

5. To be successful on this ground of appeal it must be successfully argued that the works carried out (the extension and alteration comprising of a marquee) do not constitute a contravention of sections 7 and 8 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the Act). Section 7 of the Act states that '*Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special or architectural or historic interest unless the works are authorised*'. Section 8 sets out when works to a listed building are authorised.
6. There is no dispute that the works the subject of the notice were carried out without any application being made for listed building consent (LBC). The question is therefore whether the works have affected the character or appearance of the listed building, as one of special architectural and historic interest. This is irrespective of whether the works are considered to be harmful to the building.
7. The marquee is a substantial structure which has been erected at Kingsbury Watermill to extend and improve the running of the café/restaurant business which operates from the premises and is known as the Waffle House. I noted on my visit to the site that the marquee's frame is mainly self-supporting and that its metal legs are predominantly affixed to the ground by steel bearing plates bolted into the paving stones which form the terrace area to front of the building. However, at the time when the enforcement notice was issued it, the marquee was also physically attached to Kingsbury Mill.

8. The Act does not define 'alteration'; however, Section 1(5) defines a listed building to include any object or structure fixed to the building. It is the appellant's view that the attachment of the marquee by a canvas gutter, fixed only to the building by screws and wooden battens cannot be considered to have affected what is special about the barn/mill building.
9. The evidence is that the canvas gutter was attached to the mill/barn to provide a weatherproof seal between the marquee and the listed building. Although the fixings are held by screws which have been inserted into the weatherboarding, the Act does not distinguish between the type or scale of fixing, or indeed whether or not the weatherboarding was part of the 'original' fabric of the listed building (LB). The weatherboard cladding and the brick wall upon which one of the bearing plates of a supporting leg were bolted to, both form part of the LB. By attaching the marquee to the LB with screws and a bolt, the building as a matter of fact has been altered. Furthermore, the marquee is an extension to the listed building. The ordinary dictionary definition of an extension is, the act of making something bigger, an enlargement. Even with its fixings removed, the marquee is not a separate building as it utilises the walls of the listed building to provide full enclosure. Moreover, it is not possible to gain access to the dining areas or toilets within the building without first entering the marquee. The marquee clearly functions as an extension to the listed building as well as abutting and resting on it. I have had regard to the appeal decisions provided by the appellant¹ to support his case. However, those decisions involve the interpretation of permitted development rights under The Town and Country Planning (General Permitted Development) (England) Order and are not therefore directly comparable to the matters under consideration in this appeal.
10. Kingsbury Mill is a Grade II listed building and comprises a complex of late C17 and C18 buildings, including the Mill, Mill House, barns, chimneystack and water wheel which are situated on the millstream, with the mill race flowing under the building. The marquee which is the subject of the listed building enforcement notice is a substantial tented structure attached to one of the main facades of the buildings and is an extension to it. It is a modern structure made from contemporary materials and it has affected the character of the Kingsbury Mill. LBC is required for the marquee and has not been granted. The appeal on ground (c) thus fails.

Appeal on ground (e)

11. Section 16(2) of the Act requires special regard to be had to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
12. Kingsbury Mill is an extremely well-preserved example of a watermill which, albeit not longer in use, has been maintained in working order and is remarkable for the intactness of the surviving machinery. For this reason alone, the LB has clear and considerable industrial archaeological interest. Its early origins and the intactness of the historic fabric of the watermill and the associated mill house are also of historic interest and of illustrative value. Furthermore, even though the complex of buildings has been modified over

¹ SB Appendix 30

time, Kingsbury Mill remains a good example of historic industrial architecture. Those architectural features include not only internal features, machinery, its plan form and volume, but also the simple vernacular form and materials of the mill building and barns. This architectural, historic and industrial archaeological interest of the buildings all contribute to its significance as a heritage asset. In addition, the accretive architectural character and mixture of building materials contribute to the picturesque external appearance of Kingsbury Mill, which is enhanced by its waterside setting which is integral to its historic use. These factors contribute to the aesthetic value and significance of the listed building.

13. Kingsbury Mill is situated within the Fishpool Street and St Michael's Village Character Area of the St Alban's Conservation Area (SACA). It occupies a prominent position at the junction of Fishpool Street and St Michael's Street and close to St Michael's Bridge, which is also a Grade II listed building. Kingsbury Mill terminates the view down Fishpool Street from the centre of St Albans, and also contributes to the village feel of St Michael's Street, where the buildings are juxtaposed in a more informal village group. The significant number of historic buildings along Fishpool Street, the parkland which surrounds the area and the picturesque views and village character of St Michael's with its community amenities, all contribute to the character and appearance of the Fishpool Street and St Michael's Village Character Area and SACA.
14. The marquee is a substantial structure constructed from white coloured canvas, with timber doors and some clear plastic panels. Situated directly in front and attached to the mill buildings and barn, it obscures views of Kingsbury Mill from St. Michael's Street and substantially detracts from the appreciation of the building's historic materials and vernacular form. The functional design and form, materials and scale of the tented structure are visually obtrusive, and the marquee fails to respect the historic setting of Kingsbury Mill when viewed from St. Michael's Street and Bridge.
15. I have taken into account the appellant's case with regard to the effect the marquee has on the character and appearance of the SACA. However, despite it being used as a restaurant/café and therefore adding to the vitality of the area, it is clearly visible from public vantage points within the SACA and seriously diminishes the positive contribution that Kingsbury Mill makes to both the character and appearance of the SACA. I recognise that the marquee is not mentioned in the Council's Conservation Character Area Assessment, however, that omission does not alter my conclusion that the marquee does not preserve or enhance the character and appearance of SACA.
16. Paragraph 193 of the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated assets, great weight should be given to their conservation. It goes on to advise that significance can be harmed through alteration or destruction of those assets.
17. I appreciate that the interior of the listed building has remained unchanged and that the front of the building as viewed from Fishpool Street has not been affected. I also understand that no part of the historic fabric of the building has been lost, and that once removed the fixing holes could be restored. However, for the reasons set out in paragraphs above, the overall impact of the alterations and extension to the building have a harmful impact on the special

interest of the building and on the character and appearance of SACA. In the context of the significance and special interest of the assets as a whole, and in the language of the Framework, the harm would be less than substantial. Because the harm is less than substantial, paragraph 196 of the Framework says that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

18. There would be a public benefit in facilitating and maintaining the effective and viable operation of the restaurant use at Kingsbury Mill and in helping to secure a long term viable future of the listed building and continued public appreciation of its industrial archaeological and historic interest. There are also economic benefits from employment opportunities in the business and local spend. However, from the evidence before me, I am not convinced that there would not be a more sympathetic way to extend the business on this site which would secure the optimum viable use for it, and to do so in a way which would be less harmful to the special character and interest of the listed building. Indeed, it is apparent from the appellant's appeal submission that they have already entered into discussions with the Council and engaged the services of professionals to achieve that aim.
19. Even though I have found that the harm to the designated heritage assets is less than substantial, it is not to be treated as a less than substantial objection. The modest public benefits attributable to the proposal, as set out above, would not outweigh the considerable importance and weight to be given to the harm to the heritage asset. As such, the works do not comply with paragraph 196 of the Framework and would conflict with Policy 86 of the adopted St Albans's District Local Plan Review, 1994 (LP) which requires special regard to be had to the desirability or preserving the building or its setting or any features or historic interest which it possesses. There is also some conflict with Policy 69 and 85 of the LP which seek to achieve a high standard of design in development and pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.
20. For the reasons set out above, and taking into account all other matters raised, including the considerable support from local residents for the works, I conclude that the appeal on ground (e) fails and listed building consent is refused.

Appeal on ground (g)

21. This ground is pleaded because the appellant considers the marquee to be an entirely independent structure which was only lightly attached to the building for the purposes of weatherproofing. Therefore, removing the attachments and fixings alone would restore the building to its previous condition and the appellant does not consider it to be necessary to remove the marquee, as its removal would go well beyond the work needed to return the building to its former condition.
22. I have found that the works undertaken, including the erection of the marquee, are works of both alteration and an extension to the listed building. Therefore, only the complete removal of the marquee, its fixings and the making good of any damage resulting from those works would restore the building to its former condition. The appeal on ground (g) fails.

Appeal on ground (h)

23. The issue is whether the compliance period of six months is reasonable. Taking into account the serious consequences the loss of the marquee would have for the viability of the business, and need for the appellant to find an alternative solution to maintain the success of the business, a period of 24 months was initially requested. However, the appellant now submits that the COVID-19 pandemic has also had an impact on the business, giving rise to further uncertainty for funding future works and for the viability of the business and now requests an extended period of 42 months.
24. It is clear from the evidence before me that the appellant has previously sought to and would like to continue to engage with the local planning authority and their own professionals to find an alternative solution which would enable them to extend and improve the operation of their business. This approach would appear to be supported by the Council. I agree that six months would not be sufficient time to submit an application and have that considered. However, the appellant has already made considerable progress in preparing a scheme, and whilst I appreciate the constraints which the recent pandemic has and will have on the business, I am also mindful of the harm that I have identified to heritage assets. Therefore, the conclusion that I have reached is that a period of 18 months would be a more reasonable time period for compliance, given the nature of the development and the circumstance of the case. To this extent the appeal on ground (h) succeeds.

Other Matters

25. In reaching my conclusions on all of the grounds of appeal I have taken into account all of the matters raised by the appellants, the Council and third parties, including local residents and users of the business. These include the full planning history, the initial grounds of appeal, legal advice and subsequent supporting statements with photographic evidence and final comments. However, none of these carries sufficient weight to alter my conclusions on the grounds pleaded. Nor is any other factor of such significance so as to change my decision.

Overall Conclusion

26. For the reasons given above, I conclude that the appeal shall not succeed. I shall uphold the enforcement notice with a variation.

Elizabeth Pleasant

INSPECTOR