



Appeal Decision

Site visit made on 12 January 2021

by K Savage BA MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th April 2021

Appeal Ref: APP/M1005/W/20/3258868

Sherbourne Mill, Hillcliff Lane, Turnditch, Belper DE56 2EA

- 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 M Wildsmith against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2020/0306, dated 24 March 2020, was refused by notice dated 28 July 2020.
 - The development proposed is 'construction of replacement 10m radii access from the highway to property following closure of existing; new porous 3m wide access track to replace part of existing driveway.'
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. An access and track have already been constructed on site; however, I saw the track to follow a curved path which does not accord with the straight line route shown on the submitted plans. For the avoidance of doubt, therefore, I have considered the appeal on the basis of the submitted plans.

Main Issues

3. The main issues are i) the effect of the proposal on the setting of designated heritage assets, and ii) the effect of the proposal on the landscape character of the area.

Reasons

Setting of designated heritage assets

4. The appeal site is a former mill now in residential use located within the open countryside. Both the former mill building and the associated house are Grade II listed, the latter only for group value, as is the bridge over Sherbourne Brook over which Hillcliff Lane passes. The appeal scheme has no direct effect on any listed building, but it falls within their settings.
5. The mill building dates from the early 19th century, its significance lying in it being a surviving example of a corn mill from this period, with a number of features, including millstones and a long head race still evident. It therefore has demonstrable historic and architectural interest. The setting of the listed buildings is a natural one with a clear sense of enclosure provided by trees and hedgerows, both to the buildings and the access, and more broadly by

surrounding agricultural fields, which still reflect the rural surroundings of the property when it was constructed. The location of Sherbourne Brook next to the mill is an important and positive aspect of its setting, given the historic functional relationship between the two exemplified by the surviving head and tail races.

6. Access from Hillcliff Lane was formerly taken from a point to the south of the mill and immediately south of the listed bridge. The access route followed a curved path which took it over Sherbourne Brook across a small bridge and led straight to the mill complex. This access is indicated by the Council to have existed for the lifetime of the mill, and given its physical and visual connection with the brook and mill complex, it contributes positively to the overall significance of the listed buildings.
7. The access bridge has suffered significant collapse, which I saw on site, and has rendered this access inaccessible to vehicles and unsafe for pedestrians. Consequently, the appellant has constructed a new entrance and track which crosses the agricultural field which separates the dwelling from Hillcliff Lane. The splayed entrance with timber post fencing to either side reflects the submitted plans. However, the track does not, as it is shown as following a straight line on the plans, but a curved path has been constructed on site.
8. The proposed access would reach the front garden through a gap in the hedgerow and would meet the existing drive at right angles in front of the dwelling. The creation of a second access would alter the long established layout of the property, which is characterised by its secluded entrance and setting amid trees and hedgerows which screen it from the road. In contrast, the proposal would have a more expansive, engineered appearance due to the wide splayed entrance and straight path of the track through an open agricultural field, coupled with the loss of sections of hedgerow both on Hillcliff Lane and to the side of the garden. This would be at odds with the natural, enclosed character of the existing access and the site surroundings generally, and more harmful even than the slightly more natural looking curved route constructed on site.
9. The appellant indicates a willingness to retain the path of the historic access, and to restore a pedestrian bridge across the brook. However, the larger, more conspicuous new access would become the dominant feature, relegating the former access to a secondary status, unacceptably jarring with the historic physical arrangement of the site and diminishing the contribution of the historic access to the overall significance of the listed buildings. Moreover, the proposed access would cut across the surviving path of the tail race which, notably, the historic access does not. This would result in the harmful destruction of an important heritage feature of the mill, and dilution of the historic physical and functional links between the mill and the brook.
10. For these reasons, the proposed access would not preserve the setting, or heritage significance, of the listed corn mill and mill house. The identified harm in this respect would be less than substantial, in the language of the National Planning Policy Framework (the Framework). Paragraph 196 advises that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.

11. The appellant argues that the new access is required to provide safe access to the dwelling, and that the cost of repairing the collapsed bridge and bringing it to modern engineering standards would be prohibitive. The appellant has provided a structural report which details the extent of the failure of the bridge structure. It notes the significant presence of tree roots has weakened the overall structure. The report outlines a possible means of repair which would retain the existing level of the bridge deck, but it points out that this would leave the bridge vulnerable to future damage from high water and flooding. The cost of this operation is estimated at £45,000 to £60,000.
12. A second option set out in the report is to rebuild the bridge entirely. These works would have to meet modern engineering standards. This would include having to raise the deck of the bridge by one metre to safeguard against flood risk, given the fast flowing brook is located within Flood Zone 3. It is indicated that there is insufficient land within the appellant's ownership to realise this option, which is estimated to cost between £50,000 and £75,000.
13. I saw for myself that the bridge was severely damaged and hazardous to cross even on foot. I also saw the sharp bend in the lane immediately next to the bridge and the confined space available to implement the necessary repairs. I have no evidence from the Council to contradict the suggested engineering solutions set out by the appellant, or the estimated costs.
14. Both options have constraints. The 'repair' option is indicated to leave the bridge vulnerable to high water or flooding events, and would require widening to accommodate modern vehicles. The 're-build' option is indicated to involve significant engineering operations resulting in a taller and possibly more conspicuous bridge, which may itself detract from the established natural setting of the listed buildings. It also may be prevented by a lack of available land, though in the absence of detailed plans, I cannot be certain of this. Nonetheless, the appellant's report does not rule out the repair option as unfeasible and I am not persuaded on the evidence before me that there is no realistic possibility of the existing bridge being restored.
15. The proposed alternative access would be harmful to the settings of the listed buildings, for the reasons set out above. There is no indication in evidence that alternative, less harmful locations for the access have been considered. Although the appellant refers to an historic access across the field to the north-east of the listed buildings, I saw no evidence of such a route still existing, even as a footpath as the Council suggests it was. In any event, the proposal does not seek to rely upon this or any other documented route to justify the location of the proposed access, which is a wholly new route which appears to have been chosen as the most direct route to the highway.
16. I accept that use of the listed buildings for residential purposes represents their optimum viable use, and the need to provide suitable access is an important consideration and potentially significant public benefit. However, the proposed straight access route would itself be harmful, and the evidence before me does not provide certainty that other, less harmful options do not exist, whether in location or form, which would merit different weight in the heritage balance.
17. I note that the proposed access would provide better sightlines for vehicles emerging from the site, which would be a modest benefit given the scale of the use. The better revealing of the listed highway bridge would be a negligible benefit, given its lack of visibility from public areas.

18. Finally, it is argued that works to repair the bridge would conflict with the Environment Agency's (EA) policy to approve in-channel structures only where certain criteria are met. However, I have limited information as to the criteria which would be applied. Neither has a fully detailed scheme been prepared upon which the EA could comment specifically. Consequently, I have no indication as to the potential scale of the effect on the riverine environment, and I cannot be certain that adverse effects would in fact occur, such that a new access would provide public benefit as an alternative. As such, I can afford only limited weight to this as a potential public benefit.
19. Therefore, whilst I ascribe considerable weight to the benefit of enabling access to the listed buildings and acknowledge other small benefits, these do not cumulatively outweigh the less than substantial harm to the heritage significance of the listed buildings.
20. Therefore, the proposal would be contrary to Policy EN24 of the Adopted Amber Valley Borough Local Plan 2006 (the Local Plan) which states that new buildings within the setting of a listed building will only be permitted where the proposals contribute to the preservation of the listed building and its setting.

Effect on Landscape Character

21. The appeal site lies in the Peak Fringe & Lower Derwent Landscape Character Area, within a Wooded Farmlands landscape type. The area is also designated as a Special Landscape Area (SLA). The key characteristics of this landscape type include undulating, intermediate landform with gentle slopes, dense tree cover along streams, small to medium irregular fields enclosed by mixed species hedgerows and curving lanes within irregular verges. The appeal site is characteristic of the landscape type in these respects, particularly given the presence of the brook and the agricultural field separating the listed buildings from the main road.
22. The proposed access would be created by opening a gap in the continuous hedgerow along the adjacent side of Hillcliff Lane. There would also be the loss of a section of the hedgerow which defines the grounds of the listed buildings. I saw during my visit that a number of accesses exist along Hillcliff Lane, particularly to the south where several exist along a short stretch of the road. A number of these are large and allow clear views into properties and their surrounding land.
23. In this respect, the addition of a further access would not appear wholly out of character with the area generally; however, it is located along a stretch of Hillcliff Lane with a consistent and established hedgerow, which would be visibly interrupted by the broad, splayed entrance. Moreover, the access route would cut straight across the existing field in a crude manner, changing the character from agricultural to residential. The plans do not indicate any landscaping, in the absence of which the entrance would remain a stark insertion into the natural landscape.
24. I note the comments of the parties with respect to the potential effect on two mature ash trees. I saw the trees are not immediately next to the location of the entrance, and though an arboricultural report has not been provided, I am satisfied that the proposal, given the nature of its construction, would not have a significant adverse effect on the health of the trees.

25. However, for the reasons set out above, I find that the proposal would detract from the irregular, natural form which characterises the surrounding Wooded Farmlands landscape type. I acknowledge that this harm would be localised, and would not have a significant effect on the wider landscape character area.
26. Nonetheless, there would be conflict with Policies EN7 and EN8 of the Local Plan which together require new development to be appropriate to the landscape character type within which it is proposed, having regard to the pattern and composition of trees, woodlands and field boundaries; the presence and pattern of historic landscape features; the scale, layout, design and detailing of local buildings; and to resist damage to significant trees and hedgerows.
27. There would also be conflict with Policy EN6, which permits development in SLAs only where it does not have an adverse effect on the landscape quality or character; and with Policies L1 and E1 of the Idridgehay & Alton and Ashleyhay Neighbourhood Plan (March 2015) which require development to reflect the distinctive character of the landscape and its scenic beauty; to respect the setting of any group of houses or single farmstead; not to be unduly prominent in the landscape; and to respect the topography, protect and enhance the biodiversity value of landscape features including woodland, trees and hedges, dry stone walls, rivers, streams and ponds.
28. Finally, there would be conflict with Paragraph 170 of the Framework which states that decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes and recognising the intrinsic character and beauty of the countryside.

Other Matters

29. The EA did not object to the proposed access on flood risk grounds, and no concerns have been raised by the Council in respect of neighbours' living conditions or highway safety. On the evidence before me, I have no reasons to conclude otherwise.

Planning Balance and Conclusion

30. I agree with the Council's view that Policy EN24 is not entirely consistent with the Framework in that it does not allow for consideration of public benefits as set out in Paragraph 196. Accordingly, the conflict with this policy attracts only moderate weight. In seeking to protect a valued landscape and recognising the intrinsic character and beauty of the countryside, I find that Policies EN6, EN7 and EN8 are generally consistent with the aims of the Framework, and therefore should be afforded significant weight.
31. However, although I have found certain policies of the Local Plan to be out of date, the 'tilted balance' of Paragraph 11 of the Framework is not engaged where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Designated heritage assets are one such area or asset, as made clear by Footnote 6. In view of the harm to the setting of the listed buildings identified above, Paragraph 11 does not indicate a presumption in favour of development, but rather points to the refusal of permission.
32. I therefore conclude that the identified harm in this case results in conflict with the development plan, taken as a whole. The other material considerations in

this case do not indicate permission should be forthcoming in spite of this conflict. For the reasons given, and taking all relevant matters into consideration, the appeal should be dismissed.

K Savage

INSPECTOR