
Appeal Decisions

Site visit made on 13 July 2021

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 01 September 2021

Appeal A: APP/Z3825/W/21/3272015

Kings Mill, School Lane, Shipley RH13 8PL

- 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 Mrs Eustace against the decision of Horsham District Council.
 - The application Ref DC/20/0321, dated 17 February 2020, was refused by notice dated 4 February 2021.
 - The development proposed is described as change of use of engine house to form 2-bedroom residential property.
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Appeal B: APP/Z3825/Y/21/3272017

Kings Mill, School Lane, Shipley RH13 8PL

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) against a refusal to grant listed building consent.
 - The appeal is made by Mrs Eustace against the decision of Horsham District Council.
 - The application Ref DC/20/0322, dated 17 February 2020, was refused by notice dated 2 February 2021.
 - The works proposed are described as works to facilitate the change of use of the engine house to form a 2-bedroom residential property.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matters

3. As set out above, there are 2 appeals on this site. Each relates to the same scheme but they address separate applications for planning permission in the case of Appeal A, and listed building consent in the case of Appeal B. I have considered each on its individual merits, however, to avoid duplication I have dealt with the Appeals together, except where otherwise indicated.
4. The listed building forming the subject of the appeal scheme consists of 2 components: a windmill (mill) and an engine house. As originally submitted, the scheme proposed conversion of the engine house and partial conversion of the mill. The scheme was however modified during the course of the Council's determination of the applications to apply only to the engine house. A set of revised plans were submitted which are identifiable by their dates rather than their numbers. I have therefore determined the appeals on the basis of the scheme as revised. Accordingly, I have used the Council's descriptions of development/works in the banner headings above, albeit omitting unnecessary

references to the application types, and the dates that the descriptions were changed.

5. A Section 106 agreement (S106) was submitted in relation to Appeal A at a late stage in the appeal process. Consequently, this was not the subject of public scrutiny, though earlier drafts apparently were. I have taken into account these earlier comments in making my own assessment of the S106 as submitted. As such I am satisfied that the interests of no party are prejudiced.
6. A revised version of the National Planning Policy Framework (the Framework) was published during the course of the appeal. The parties were given the opportunity to comment on the relevance of any changes, and I have taken any comments into account in determining the appeals.

Main Issue

7. The main issue is whether the scheme would preserve a Grade II* listed building or any features of special architectural or historic interest which it possesses; and, if any harm would arise to its significance, whether this would be outweighed by public benefits.

Reasons

Background

8. At least insofar as the scheme relates to Appeal A, the parties have each described the scheme as 'enabling development'. This appears to have been on the basis that domestic use of the engine house would contravene policies relating to the location of residential development set out within the Horsham District Planning Framework 2015 (the HDPF). In assessing the scheme, the Council however noted that such conflict may not arise in relation to emerging plan policies, or to those contained within the Shipley Neighbourhood Plan. Though it did not go on to set out any conclusion on where the balance should lie, the application subject of Appeal A was not ultimately refused on the basis of conflict with policies relating to the location of development, and the matter has not been addressed any further at appeal. The matter subject of dispute therefore solely relates to the effects of the scheme on the listed building, as set out above.

Listed building

9. The scheme relates to Kings Mill, a Grade II* listed building. At Grade II*, Kings Mill is a designated heritage asset of the highest significance. Whilst the Act sets out the desirability of preserving the special interest of listed buildings, the Framework makes clear that great weight should be given to the conservation of designated heritage assets; the more important the asset, the greater the weight should be.
10. Insofar as it is relevant to these appeals, the special interest and significance of the listed building resides in its rare survival as an intact smock mill, which was unusually provisioned with an attached engine house shortly after its construction in 1879. The latter was designed to provide mechanical power to the mill on days without wind. Though the original engine was removed in the past, another engine has since been installed together with an overhead line shaft with pulleys. If belted, this would provide a link between the engine and a second shaft which pierces the wall of the mill. Though the engine has never

been used to power the mill, it remains possible to clearly see how the mill was able to operate either by wind or by engine, and how the building thus functioned as a whole in the past. The continuing ability to understand how the building was used in the past forms a key aspect of its special interest, and its significance in historic social, economic and technological terms. The listed building is otherwise considered to be an iconic feature locally. It is easily viewed from a nearby footpath, and it is indeed a highly distinctive feature.

11. The mill building is currently in a deteriorated state. Though it was apparently subject of renovation works during the 1990s, its condition has clearly not been fully maintained since. Given that it is largely constructed from timber, visible defects relate to the degradation of external finishes, and the decay, breakage and loss of components exposed to the elements. The cap also no longer turns, and the mill cannot be run. The engine house appears to be in somewhat better condition, and it is the latter which forms the subject of the scheme.
12. The scheme would see the engine house converted to form a 2-bed dwelling. This would involve severance from the mill, and, insofar as the engine house would be fully reclad, entail replacement of much of the existing fabric. Internally the character of the engine house would undergo domestication, which would not be significantly altered by the retention of the engine in a box. The overhead line shaft would presumably be removed as it is not shown on the plans, whilst the proposed treatment of the shaft which pierces the wall of the mill is unclear. The form of the engine house would thus be retained, but its identity would be considerably altered and obscured, as would the ability to appreciate and understand its relationship with the mill as part of a historic functional whole. This would not be compensated for in any meaningful way by installing an electric motor somewhere within the mill. The scheme would as such both fail to preserve the special interest of the listed building, and fail to conserve its significance.
13. The appellant states that the works would be reversible. However, I see no reason why, once converted to domestic use, the use of the engine house would ever be likely to revert. The theoretical reversibility of the works does not therefore lend any weight in favour of the scheme in this case.
14. The appellant has sought to justify the harm that would be caused on the basis that it would facilitate repairs to and ongoing maintenance of the mill. Some such repairs would require significant interventions into the building fabric. As outlined above however, the specific subject of the amended scheme is the engine house. No works to the mill are in fact proposed, and therefore there are none for me to assess. Though major repairs are nonetheless outlined within 2 reports by V Pargeter and Owlsworth IJP, the latter of which is attached to the S106 submitted in relation to Appeal A, these works fall outside the scope of the application subject of Appeal B. The S106 does not in itself constitute a consent. If I was to allow Appeal B therefore, the consent granted would not authorise any works to the mill for which listed building consent is or would be required.
15. It is common ground that the scheme would cause less than substantial harm to the significance of the Grade II* listed building. In view of my findings above, this would clearly be the case. Such harm attracts great weight. In accordance with paragraph 202 of the Framework, it is necessary to balance this harm against the public benefits of the scheme.

16. The Planning Practice Guidance (PPG) states that public benefits may include heritage benefits. In this regard the reduction or removal of risks to a heritage asset, and securing its optimum viable use in support of long-term conservation, are considerations capable of being public benefits. Here the optimum viable use is defined as the one likely to cause the least harm to the significance of the asset.
17. The appellant has considered the viability of industrial, commercial and residential uses, alongside a return to the operation of the mill as a visitor attraction. These considerations are limited by the absence of any marketing evidence. They are also limited by the absence of any evidence of engagement with parties who may be interested in or capable of operating or acquiring the mill on a charitable basis. In the latter regard charities have access to funding streams which private individuals do not. Here the extent of the appellant's consideration of grant funding opportunities, which could provide an alternative source of finance, is also limited.
18. As was demonstrated in the past, operation of the mill by a charity would be likely to entail little change beyond the major repair works that would be common to any scheme. It would also enable the significance of the listed building to be appreciated by the widest possible audience, more completely and presumably far more regularly than the 7 days secured by the S106. This is indeed a popular option locally, and the reasons why the previous operation of the listed building by Shipley Mill Charitable Trust between 1987 and 2009 failed, is the subject of considerable dispute. On the basis of the evidence before me, it is by no means clear that this was due to a charitable operation being inherently unviable. For this reason, and given the lack of evidence that this route has been fully explored, I cannot conclude that the involvement of a charity would be inevitably doomed to failure. Indeed, as this would clearly represent a more favourable means of securing the future of the listed building than that proposed, it clearly undermines the appellant's claim that the proposed use would be the optimum use.
19. Whether the scheme would be viable is itself otherwise subject of dispute. Here the PPG makes clear the importance of viability, not just for the owner, but also for the future conservation of the asset, as a series of failed ventures could result in a number of unnecessary harmful changes being made.
20. The financial viability appraisal submitted in support of the scheme is based on a 10-year model of mortgage borrowing. Taking into account additional costs outlined in the HDAS, the independent financial appraisal (IFA) commissioned by the Council found that this model was viable. It does not however appear that either appraisal took account of the annual insurance costs related to public opening, which the appellant claims was £3838 in 2009. Moreover, the IFA highlighted the risks of higher interest rates, which would exist well beyond the 10-year timeframe considered. In these regards the extent to which rental income would provide funds sufficient to cover mortgage and other payments together with the S106 requirement to divert 30% of rental income to towards the mill, could be adversely affected. As this might ultimately require the input of external funding, there is no certainty that the scheme would be fully self-supporting over the longer term, or therefore viable in this regard.
21. The likelihood of the above would be increased if additional major works above and beyond those set out within the Owlsworth IJP report were to be required

at some point in the future. Indeed, whilst the IFA envisages the potential for a sinking fund to be built up over the early years, it clearly assumes that the mill would be placed in good order first. A reason to doubt that this would be the case is provided by the report supplied by V Pargeter, which differs from the Owlsworth IJP report in its indication that replacement of all the timber cladding on the mill is necessary. In the absence of any explanation for this difference, and indeed in the absence of any comprehensive condition report or conservation plan, the extent to which the condition of the mill would in fact be remedied by implementation of one of Owlsworth IJP schemes is unclear. This has further implications in terms of the long-term upkeep of the mill itself, given that the model presented envisages the financing of relatively small scale ongoing annual maintenance, as opposed to further major interventions. In these regards therefore uncertainty exists both in relation to viability, and in relation to the level of benefit to the mill that would be generated by the scheme over the long term.

22. The appellant nonetheless states that £910 would be released in equity each month, providing a contingency fund of £10,920 over the course of a year. However, these figures make no allowance for mortgage and other payments, and there is additional failure to recognise there would be no obligation on the appellant or any future owner to maintain such a contingency fund if a surplus allowed. Indeed, no such obligation appears within the S106.
23. Works to repair the mill and to bring it back to working condition would clearly be desirable, and would represent a heritage benefit, most particularly if this was to be sustained into the future. Though this may be what the scheme seeks to achieve, I cannot be satisfied that it would deliver either the optimum or a viable use, or that in these regards the scheme represents the only and most appropriate way in which the future of the Grade II* listed building can be secured. It is apparent that in the absence of a solution, the building will continue to slowly decay, giving rise to further harm to its significance. This is not however a reason to accept whatever scheme is advanced. Indeed, and in view of my reasons above, the potential for further harm does not in this case outweigh the harm that would be caused by the scheme were the appeals to be allowed. I therefore attach limited weight to the appellant's claims that the scheme would deliver the optimum viable use of the listed building and secure its future conservation, and so also to the identified heritage benefits.
24. Even had I found otherwise, the drafting of the S106 does not provide any certainty of the works that it would secure. Aside from the likely need for separate consents, much is left for future agreement. More fundamentally, the S106 does not specify which of the 2 schemes of major works set out by Owlsworth IJP is favoured. It also contains no obligation to complete the scheme, and does not as such tie this to the conversion and occupation of the engine house. This is repeated in relation to the annual programme of maintenance, for which there are again no obligations covering completion of works or demonstration of their completion. In itself therefore the S106 attracts limited weight, and does not therefore alter the limited weight I have attached to heritage benefits as set out above.
25. It is of additional relevance that both the Council and Historic England (HE) have indicated that they are open to explore the potential of constructing a separate residential unit adjacent to the mill as an alternative 'enabling' scheme. The Council has further indicated that it would consider this in relation

to other land owned by the appellant. A separate unit would provide what the appellant accepts would be a similar level of benefit, except that in this case the engine house, and thus the listed building as a whole, would remain intact. This model would again presumably offer the potential of greater public access than is secured by the S106. The support of the Council and HE thus clearly stems from the identification of this as a less harmful option than that proposed. That being so, the appellant's rejection of it on the basis that it would cause harm and give rise to policy conflict is hard to comprehend. This option has not otherwise been ruled out as unviable, except in relation to the acquisition of a separate site, which has not in fact been suggested by the Council. The apparent existence of this alternative option undermines any justification of the scheme as a necessity, and so further confirms the limited weight I have attached to the claimed heritage benefits.

26. The scheme would deliver a single new rental dwelling thus helping to address a general need for new housing. The social and economic benefits generated by a single dwelling, both during and after conversion works, would however be limited in scale. I therefore attach limited weight to this consideration.
27. The appellant claims that incidental expenditure would arise from visits to the mill on the 7 open days that would be secured by the S106. It is however unclear where this benefit would be realised, and unlikely that such expenditure across 7 days would be significant. I therefore attach very little weight to this consideration.
28. As I have attached no more than limited weight to the public benefits outlined above, they are insufficient to outweigh the harm that would be caused to the significance of the Grade II* listed building. This provides a clear indication that the appeals should be dismissed.
29. For the reasons outlined above I conclude that the scheme would fail to preserve the special interest of the Grade II* listed building, and that harm which would arise to its significance would not be outweighed by public benefits. With regard to Appeal A the scheme would thus conflict with Policy 34 of the HDPF which seeks to sustain and enhance the historic environment through positive management of development affecting heritage assets. With regard to both Appeal A and Appeal B, the scheme would otherwise fail to satisfy the requirements of the Act, and heritage policy set out within the Framework.

Conclusion

30. The scheme would cause unacceptable harm to a Grade II* listed building, and in relation to Appeal A, conflict with the development plan. There are no other considerations which alter or outweigh these findings. Therefore, for the reasons set out above, I conclude that Appeals A and B should be dismissed.

Benjamin Webb

INSPECTOR