



Appeal Decision

Site visit made on 7 March 2023

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 March 2023

Appeal Ref: APP/A4710/F/22/3306754

Hollins Mill, Rochdale Road, Todmorden OL14 6SA

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA), as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr John Power (V-Power Limited) against a Listed Building Enforcement Notice (LBEN) issued by Calderdale Metropolitan Borough Council (LPA).
- The LBEN was issued on 16 August 2022.
- **The contravention of Listed Building Control** alleged in the notice is as follows: *'The demolition of the top section of Saw Tooth wall forming the eastern boundary of the curtilage of the listed building'.*
- **The requirements of the notice** are as follows:
 - (i) *The section of boundary walling (internal and external faces) shall be rebuilt to match its former length, height, character, appearance and detailing in all respects (as indicated in Appendix 1).*
 - (ii) *The section of boundary walling shall be capped with the existing original capping stones (as indicated in Appendix 1)*
 - (iii) *Any shortfall of original facing and capping stones shall be replaced with new stones (to the former size and shape of the original) of the correct geological source, type and colour and with the associated surface tooling to match the existing exactly.*
 - (iv) *The mortar pointing shall be a lime-based mix finished flush or slightly recessed and with original joint widths (horizontal and perpend joints) all to match the original in all respects identical to the original pointing indicated in Appendix A*
- **The period for compliance** with the requirements is 12 Months.
- The appeal is made on ground (d) only, as set out in section 39(1)(d) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (PLBCAA).

Decision

1. The appeal is dismissed.

Matters of clarification

2. Section 39(1)(d) of the PLBCAA is drafted to provide for only the most pressing works to be carried out on Listed Buildings on health or safety grounds, without Listed Building Consent (LBC) first being obtained. This ground basically addresses situations where essential and urgent works were needed to preserve the Listed Building. The emphasis is on the words '*essential*' and '*urgent*'.

3. This ground of appeal comprises three tests. The first is whether the works were urgently necessary in the interests of safety or health. The second is whether or not it was practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support. The third is whether or not the works carried out were the minimum measures, immediately necessary, to achieve the aims of safety, health or preservation. For an appeal to succeed on this ground an appellant must demonstrate that all three tests have been met.

4. Because the appeal is only made on ground (d), I am not empowered to consider whether or not (LBC) should be granted for the works carried out to the boundary wall. Nor can I consider any of the other grounds set out in S39(1) of the PLBCAA.

Background information

5. The Grade II listed Hollins Mill complex is located on Rochdale Road in Walsden, Todmorden. It lies on a roughly triangular site between Rochdale Road to the south-west and Hollins Road to the north-east. It originally comprised the 4 storey mill building; an engine house; a boiler house; a mechanics' workshops; a 14 bay shed, offices, a warehouse range and a 25 bay, single storey, former weaving shed. The list description is set out in full in the Council's submissions. The main mill building now operates as separate commercial lettable units and parts of the mill building, to the rear and adjacent to the canal, have been converted to flats. The appellant has control of the southern section of the land which includes the former weaving sheds.

6. The appeal wall was originally built along the north-eastern boundary of the mill, on Hollins Road. It formed a long gable wall to the weaving sheds. The distinctive 'Saw-Tooth' shape resulted from the design of the sheds with their regular north-facing skylight layout. LBC had been given for demolition of the sheds and the lowering and removal of 'Saw-Tooth' sections of walling along Rochdale Road. Photographs show the extent of the 'Saw-Tooth' sections which were removed from the Hollins Road boundary and which are now the subject of this LBEN.

7. Planning permission (PP), ref 17/00485/FUL, was granted in December 2017 for, *'Partial demolition and redevelopment of 25 bay weaving shed to form mixed use units to include A1, A3, B1 (a, b and c), B2 and B8 with parking and service area'*. LBC was also granted that month for *'Partial demolition and redevelopment of 25 bay weaving shed to form mixed use units with parking and service area'*. The LBC did not include the demolition of the 'Saw-Tooth' sections of the wall on the Hollins Road boundary. These were supposed to have been retained as part of the LBC granted.

8. The LBC and PP works were commenced but the contractor removed the 'Saw-Tooth' sections along Hollins Road, leaving a stone-coped wall. Coping stones from the original 'Saw-Tooth' wall were used to form the top of the altered boundary wall.

9. Following a complaint to the Council a site visit was carried out in January 2022 and an initial challenge, 'Stage 1' enforcement letter, was issued on 25 May 2022. The LPA was informed, at a subsequent site meeting, that the sections of walling had been removed on the advice of the contractor because they were considered *'unsafe'*.

The appeal on ground (d)

The gist of the case for the Appellant

10. The Appellant indicates that the roof of the weaving shed comprised slated roofs to the south pitches and corrugated polycarbonate sheeting to the north pitches. These bore directly on to cast-iron gutter sections spanning approximately 6m east to west, with a double pitch of northlights. In turn, these were supported on bow-shaped beams spanning between 125mm diameter cast-iron columns and the existing gable stone walls. It is further indicated that many of the columns had fractures near to the base due to lateral movement in the original structure and that the walls had relied on the lateral and longitudinal support of the rooflights.

11. It is reported that during demolition of the existing roof the contractors noted *'instability of the gable wall immediately adjacent to the footpath'* on Hollins Road.

Thus the upper pitched sections were taken down and capped in the interests of public safety, *'until new supporting structure was in place to provide lateral stability'*.

The gist of the case for the Council

12. The Council contends that the demolition of top section of 'Saw Tooth' curtilage wall has drastically altered the appearance of the Listed Building and has resulted in harm to the significance of the heritage asset and that the result is that its character and appearance has not been preserved.

13. It is contended that this has resulted in detrimental impacts on the special architectural and historic interest of this listed asset. It is stressed that the top sections of the 'Saw Tooth' wall was a valuable part of the character of the Mill and that it should have been retained in its entirety in accordance with the LBC.

14. It is stressed that the 'Saw Tooth' shape was highly characteristic and that it reflected the unique roofing pattern of the former weaving shed. It is argued that the removal of the feature impacts on the ability to read, understand and appreciate the former use of this important part of the mill complex.

15. The Council does not consider that the Appellant has demonstrated that the three tests necessary in a ground (d) appeal have been met. It is stressed that there was no indication that the works were so *'urgently necessary'* that some form of consultation with the Council was precluded through pressure of time. It is further indicated that there is no indication that temporary works could not have been carried out whilst LBC was sought. Furthermore, it is not accepted that the situation was of such a pressing nature that the works carried out were so *'urgently necessary for safety or health reasons'* or that there was no opportunity to apply for LBC.

16. On the basis of the Appellant's submissions, the Council considers that the works carried out cannot be said to be the *'minimum measures'* necessary. Nor has it been conclusively shown that the works were *'immediately necessary'* to overcome the issues identified. It is stressed that there is no record that Planning Services, a Conservation Officer, or Building Control Officers were contacted prior to the works being carried out by the appellant (or another acting on his behalf).

17. It is contended that the Council acted correctly and in accordance with the guidance in the National Planning Policy Framework (NPPF). It is also stressed that there is no appeal made on ground (e) (that listed building consent ought to be granted for the works) and, therefore, that it must be assumed that the appellant accepts that the removal of the 'Saw Tooth' sections of wall is harmful to the character of the listed building and should not be granted LBC.

My Assessment

Introduction

18. There can be no dispute that the 'Saw-Tooth' sections of walling formed a significant and valuable part of the character of the Hollins Mill complex and that is why LBC was not granted for its alteration in relation to the consent to demolish the weaving sheds. One of the main design features of the mill complex had been the 'Saw-Tooth' walls and during my site visit I noted some remaining sections of these wall features in the northern part of the complex. I agree with the Council that the loss of this feature along the Hollins Road boundary fails to preserve the character and appearance of the Listed Building and detrimentally impacts and affects it as a special architectural and historic asset.

19. The NPPF stresses that such assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. The importance and significance of the 'Saw Tooth' feature lies not only in the fact that it formed a boundary wall to the Mill, but that it also emphasised a design element which directly related to the functioning of the weaving sheds, a feature that occurred on other parts of the site. The feature was clearly characteristic of its time and a clear design feature for this and other parts of the mill complex.

20. As indicated above there is no ground (e) appeal and, therefore, in not having to consider whether to grant LBC the duty set out in Section 16 (2) of the PLBCAA is not directly applicable. However, in accordance with the way in which Section 39(1)(d) of the PLBCAA is drafted, it is now necessary to consider whether the unauthorised works were so '*essential*' and '*urgent*', that it was justified for them to be carried out without first obtaining LBC. I now turn, therefore, to the three necessary tests.

1. Whether the works were urgently necessary in the interests of safety or health

21. I acknowledge that the age of the Weaving Sheds must have resulted in some structural weaknesses due, amongst other things, to the poor condition of some of the cast-iron columns and the possible instability of some parts the wall immediately adjacent to the footways. I accept, therefore, that there was a possibility that there might have been a risk to users of the footway along Hollins Road. However, there is no submitted evidence, for example, in the form of a structural report or even a photographic record of the condition to indicate that this part of the boundary wall was in any imminent danger of immediate collapse.

22. There was no contact at any time made with the Planning, Conservation or Building Control sections of the Council. It would appear that the Appellant company simply accepted a verbal report from the contractor that the top sections of walling were unstable and needed to be removed. One of the statements made indicates that '*the upper pitched sections were taken down and capped in the interests of public safety until new supporting structure was in place to provide lateral stability*'.

23. However, even though the latter part of this statement infers that the unauthorised works were carried out '*until new supporting structure was in place to provide lateral stability*', the 'Saw Tooth' sections were neither strengthened nor rebuilt. There is also nothing to indicate that any new temporary supporting structure was considered or put in place.

24. In situations such as this it would normally be necessary for a developer to immediately liaise with the Council and to provide evidence to corroborate the contention that the upper sections of 'Saw- Tooth' walling were in such a state that it was '*urgent*' and '*essential*' to demolish these parts of the listed building. No such indication was given and nor is there any comprehensive record of the condition of the appeal wall at that time to justify the actions taken.

25. I do not consider, therefore, that it has been demonstrated that the removal of the top sections of the wall were so urgently necessary in the interests of safety or health. This first test is not, therefore, met.

2. Whether or not it was practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support.

26. There is no evidence to indicate whether or not any attempt was made to achieve the aims of safety, health or preservation of the top sections of wall, by

repair or temporary support. As indicated above reference is made to a supporting structure possibly being put in place to provide '*lateral stability*'. However, instead the top sections were simply removed. It may well have been practicable to repair or temporarily support the top sections of walling, but apparently no attempt was made to do so and again there is no structural evidence to indicate that the wall was in any imminent danger of collapse. As indicated by the Council there is no indication why temporary works could not have been carried out whilst the necessary LBC was sought if indeed it had been necessary to remove the section of walling.

27. Having visited the site and seen the wall as remaining, it seems perfectly feasible to me that temporary shoring up of the 'Saw Tooth' sections could have retained them in position, whilst further investigations and a possible LB consent application was made. I see no evidence to indicate that it was not practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support. The appeal on ground (d), therefore, fails on this second test.

3. Whether or not the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation.

28. On this last test I agree with the Council that the works carried out cannot be said to be the '*minimum measures immediately necessary*'. The evidence indicates that the demolition of the sections of the listed wall was an action carried out without consideration of the overall impact. Instead of carefully analysing the situation and considering whether or not temporary works (or other minimum measures) could have enabled the sections to be retained, a decision was made to simply remove the historic 'Saw Tooth' sections of wall. Therefore, this third test must also fail.

Overall Conclusion

29. As indicated above, to succeed on a ground (d) appeal all three tests need to be met. In this case I have concluded that none of the tests have been demonstrated to have been met. It follows that the appeal must fail on the ground (d) as pleaded.

Other Matters

30. In dealing with this appeal I have taken into account all of the submissions made by the Appellant and the Council. These include the full planning history of the site and the wall; the justification statement; details of the Officer Report on the LBC application to demolish the weaving shed; the comments by Historic England and others on the application and the drawn and photographic evidence.

31. However, none of these carries sufficient weight to alter my conclusion that the appeal must fail on ground (d). Nor is any other factor of such significance so as to change my decision that the appeal should be dismissed.

Anthony J Wharton
Inspector