



Appeal Decision

Site visit made on 6 February 2023

by Thomas Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 26 April 2023

Appeal Ref: APP/M1595/Y/22/3292873

St. John the Baptist Church, Sumet, Mucking Wharf Road, Stanford Le Hope SS17 0RN

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended against a refusal to grant listed building consent.
 - The appeal is made by Mr Kevin Leyland against the decision of Thurrock Borough Council.
 - The application ref. 21/01067/LBC, dated 17 June 2021, was refused by notice dated 31 December 2021.
 - The works proposed are described in the Council's decision notice as 'internal and external works to listed building to facilitate: Conversion of the Tower to become a 2 bedroom home on 4 levels; Conversion of the Nave and South Aisle to become a 4 bedroom home on 3 levels and conversion of the Chancel and South Chapel to become a 4 bedroom home on 3 levels.'
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Decision

1. The appeal is dismissed.

Preliminary matters

Planning history

2. Whilst this scheme follows an unsuccessful proposal in 2019, I have considered it independently on its merits. As described in the Design and Access Statement ('DAS'), certain works to convert the Church, grade II* listed,¹ to a single dwelling were undertaken at some point in the 1980s.² They were uncompleted. More recently the Gothic schoolhouse, falling also within the appellant's ownership and featuring a datestone inscribed 1855 next to the separately-listed Vicarage,³ has been converted to a dwelling. I am told the schoolhouse is listed by virtue of its age and falling within the curtilage of the Church, consistent with section 1(5)(b) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the '1990 Act').
3. The proposal to convert the Church into three dwellings has developed over time. At appeal the appellant helpfully clarified the current plans relative to earlier versions.⁴ They are the basis on which I have assessed the scheme. Owing to the dilapidated state of the Church, and on account of the storage of various items within it, I was unable to access certain parts of the listed

¹ List entry no. 1337106.

² I understand as part of the previous planning history a mobile home was permitted on site with the intention of facilitating that conversion.

³ List entry no. 1111587.

⁴ Via correspondence of 22 January 2023.

building. Nevertheless my site visit observations, in conjunction with the evidence before me, are sufficient to reach a suitably-informed decision.

Statutory context

4. Listed building consent is sought. There is, however, no planning appeal before me under section 78 of the Town and Country Planning Act 1990 as amended (the 'Planning Act'). Nor, I understand, has planning permission related to the proposal been sought. Under section 55 of the Planning Act, material changes of use are development, likely to need permission.⁵ My decision is therefore taken in the context of section 16(2) of the 1990 Act.⁶
5. That context is important. Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended, i.e. that decisions must be taken in accordance with the development plan unless material considerations indicate otherwise, applies to 'any determination to be made under the Planning Acts...'. That is not replicated in the 1990 Act. Nevertheless, for fairness and comprehensiveness, I have addressed relevant provisions of the development plan and the broad arguments in respect of the scheme made by both main parties (insofar as they are principal important considerations).

Policy context

6. In a similar vein to the provisions of the 1990 Act, in summary and amongst other things, policies CSTP24 and PMD4 of the Thurrock Core Strategy (adopted in updated form on 28 January 2015) seek to ensure the preservation or enhancement of the historic environment. Criterion 2 of policy CSTP24 seeks to ensure that development options are appraised and that the 'final proposal is the most appropriate for the heritage asset' accordingly. Criterion 3 of policy CSTP24 lends support, in principle, to the appropriate regeneration and use of priority heritage assets to secure their long-term future (including those assets registered as 'at risk').
7. Criterion 3 of policy PMD4 cross-references the approach in the National Planning Policy Framework ('NPPF') in respect of heritage. NPPF paragraphs 189 and 199 set out how heritage assets are an irreplaceable resource, and that 'great weight' should accordingly be given to their conservation (having regard to the importance or significance of the asset). Only around 5.8% of all listed buildings are similarly grade II*. Echoing criterion 3 of policy CSTP24, the Planning Practice Guidance ('PPG') sets out in relation to heritage that 'in the case of buildings, generally the risks of neglect and decay of heritage assets are best addressed through ensuring that they remain in active use that is consistent with their conservation.'⁷

Main issue

8. The main issue is whether the proposed works would preserve the listed building, or any features of special architectural or historic interest which it possesses. The use proposed and physical interventions are intertwined; the former could not occur without the latter.

⁵ Noting in particular the provisions of section 55(3)(a).

⁶ Namely 'in considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'

⁷ Reference ID: 18a-002-20190723.

Reasons

Special interest and significance

9. The list entry indicates that the Church's current form dates principally from 1849 to 1852. That is notably the case of the nave, south aisle and west tower. The Church's origin and evolution extends, however, far further back; the tower, for example, rises above a medieval base. In some instances that historic progression is challenging to discern. Some earlier elements of the building have likely been incorporated into latter alterations, and some later alterations emulate earlier styles. As set out in the appellant's Heritage Statement one window within a predominantly nineteenth century element of the Church is likely fifteenth century in origin, and the strapwork to the door at the base of the tower emulates medieval design whilst the door itself is likely early Victorian.⁸
10. The south arcade and chancel are likely thirteenth or fourteenth century in origin. Whilst the south chapel is predominantly mid nineteenth century, the Downes monument of 1607 is set within one wall of it. That is an alabaster decoration of a kneeling figure at prayer, referencing the charitable work of a local person. With certain later medieval alterations, the Heritage Statement therefore aptly describes the Church as a 'multiphase building with fabric from the 13th, 14th, 15th and 19th centuries.' The Heritage Statement rationally draws a distinction in terms of value between earlier and later surviving fabric, the scheme having been orchestrated with that in mind.
11. Nevertheless, all eras of construction tend to be of rough dressed or rubblework Kentish ragstone. There is some flint and brick also. Dressings are of limestone, including quoins, jambs, cusped tracery, mullions and hood moulds. The listed building shows evidence of extensive historic alteration, including by way of scars of former structures and varied stonework. Some historic timbers remain. Certain walls are lime rendered, some scribed to give the semblance of ashlar. Flooring is a mixture of stone flags, incorporating headstones, overlaid in places with tiles or now-deteriorating parquet. In all likelihood the present chancel floor is raised relative to its earlier level.⁹
12. The Church is in a very poor state of repair. Historic England note that it meets the criteria for inclusion on the Heritage at Risk Register.¹⁰ It is vacant, and has been so for many years. The roof has failed in places, or was absent, at the time of my site visit. Elements of the structure have been altered or patched at some point, including by way of use of modern mortar and impermeable paint.
13. Some windows are absent, openings boarded up. I also saw that some of the roof structure is likely relatively recent judging by the machined form of some timberwork, consistent with certain interventions likely undertaken during the 1980s. There is nothing to indicate that the current state of the Church has arisen by virtue of deliberate agency, as opposed to simply incrementally occurring over the passage of time.

⁸ Prepared by Avalon Heritage, June 2021, paragraphs 3.3.3 and 4.1.4.

⁹ Heritage Statement, paragraph 5.2.12.

¹⁰ Correspondence of 22 March 2019.

14. More broadly the Church is set within fairly spacious grounds, demarcated by a predominantly ragstone boundary wall (which, in certain locations, serves a retaining function). Whilst containing mature trees and self-seeded vegetation, the churchyard is largely level and open. The appellant has evidently already put in significant effort to ameliorating its condition. The DAS sets out that about 65% of the graveyard remains owned by the Church of England, as also shown on the location plan.
15. There is a marked step-down in the topography to the land north-west, north and north-east of the Church. In those broad directions the area is characterised by openness, marshland, reed-beds and self-seeded vegetation. Land to the north-east is signed as being part of the Stanford Warren Site of Special Scientific Interest ('SSSI'), there being a nested overlay of environmental assets to the south-east of Mucking Wharf Road towards the Thames.¹¹
16. Ashlar piers sit either side of the straight tree-lined access off Mucking Wharf Road, behind a sliver of green space. That access runs to the doorway at the base of the tower. There is a further, more modest, access to the graveyard closer to Hall Farm Dairy to the east. The Dairy is a relatively small cluster of buildings, some appearing historic.
17. Between the perimeter wall of the churchyard and Dairy there appeared to be a public right of way, extending through the landscape (almost to the railway running between East Tilbury and the DP World London Gateway Port). Otherwise Mucking comprises a small scattering of buildings loosely arranged around the Church, straggling along Mucking Wharf Road south-eastwards also.
18. In evolution, form and architecture the Church physically and authentically represents common themes in terms of ecclesiastical architecture; medieval or earlier origins, subsequent decline around the Reformation and an increased coterminous focus on domestic building, and renewed Victorian interest aligned with changing social, philosophical and political attitudes. I am told that Buckler and Pevsner explain that Church had become ruined until around 1852 when it was largely rebuilt by J.H. Banson (the chancel restored by J. Hunt). That 'rebuilding' also aligned with the economic growth throughout the Thames estuary of that era.
19. The surrounding context to the Church is very much consistent with paragraph 5.145 of the Core Strategy, wherein reference is made to historic character of the area, in part, deriving from a hierarchy of 'smaller settlements ranging from nucleated village, often marked by architecturally significant medieval parish churches...'.
20. Consequently, insofar as it relates to this appeal, the special interest of the listed building derives principally from the authenticity of materials and architectural detailing. It was constructed throughout with materials readily at hand, honestly attesting to the locality and to the constraints of historic craftsmanship.

¹¹ Including the Thameside Nature Discovery Park built on a former landfill site, the Mucking Flats SSSI and the Thames Estuary Special Protection Area.

21. Significance is not only, or arguably principally, embodied in the oldest elements of the structure, but rather how collectively the listed building reflects broader changes over many centuries. The Church and its relationship to its surroundings honestly reflect the passage of time and in turn represent wider religious, and cultural and economic trends. In my view, given the complexity of the building the ability to appreciate it 'as a whole' internally is, accordingly, of some importance.

The proposal

22. One proposed dwelling would be located within the tower, another making use of the nave and south aisle, and a further dwelling formed within the chancel and south chapel.¹² As described in the Heritage Statement the 'separation of each residential unit would be achieved by walling up the tower arch, the chancel arch and the arch between the south aisle and the south chapel.'
23. There are also supporting section plans showing the lateral as well as vertical subdivision proposed.¹³ The sills of windows in the north wall of the nave would be raised, and two 'French' doorways would be created below each (entailing the removal of, and alteration to, nineteenth century fabric). The Heritage Statement sets out how 'the proposed floor will be supported on padstones which will be self-supporting and not require fixings...'
24. Existing window openings and ornamentation would, broadly, remain. However, within the northern elevation, one window opening would be partially blocked up,¹⁴ two new windows would be created within the tower, and 10 rooflights of varying size and dimension would be inserted.¹⁵ At the southern-facing elevation a third doorway would be introduced next to a central buttress, three rooflights and what is potentially a flue would be inserted in the roof slope, and glazed panels would replace the louvres currently in place at the tower window. The provision of a first floor would be at a level such that it would cut across existing window openings related to the nave and south aisle.¹⁶
25. The proposed works are also set out in three documents related to the respective subdivisions of space, each prepared by Permanens Ltd. Those detail how new subdivisions will be created, principally by virtue of the use of steels, oriented strand board, studwork walls, plasterboard, gypsum plaster, wooden floors and stairs and also glass partitions.
26. Lime plaster would be used for repairs to that which currently exists. Reference is made to the need to cut 'pockets' into the existing structure to provide steels to support lateral subdivisions at the tower and chancel and south chapel, and details are also given of resin bolts. In respect of the tower existing floorboard and sub floors are indicated to be 'removed and replaced as necessary'. Some tying in, making good, and cosmetic finishes would also inevitably be required.

¹² Plan nos. PF01, PF02 and DAS section 8. I note that plans nos. PF03, PF04 and PF05 are not referenced in the appellant's correspondence of 22 January 2023, albeit that they are logically congruent with the foregoing plans. I am directed towards plan no. PF06, a title which does not appear on a plan showing the different locations of the dwellings and appears instead to be entitled 'EX372130'.

¹³ Plan nos. PS01 and PS02.

¹⁴ Including to provide an external staircase as shown on plan no. PE02.

¹⁵ Plan no. PE01.

¹⁶ Plan no. PE02.

The effect of the proposed works

27. The works proposed have been orchestrated carefully to ensure that, crudely, the oldest parts of the listed building remain appreciable. Notably the proposal would ensure 'a strip of the south aisle and nave would remain undivided, allowing the medieval stonework to be visible...'.¹⁷ Interventions in, or loss of, historic fabric are principally related to nineteenth century elements of the listed building.
28. The proposal would also be sensitive in subdividing the Church broadly in line with its historic phasing. Works have evidently been proposed with an awareness of the need to limit interventions in existing fabric, including through the use of a self-supporting padstone-based floor and making use of existing openings. There is some detail in the structural works documents as to how new stud walls would interact with existing features.
29. The appellant contends that Avalon Heritage, Historic England and Permanens Ltd., have all endorsed the proposal as appropriate. However, whilst Avalon Heritage observe that 'we are satisfied that the applicant will undertake a high-quality, conservation-led scheme of works', the Heritage Statement also deals with the loss of historic fabric and visibility of the interior of the Church, and casts the foregoing position in the context of the benefits of the scheme (to which I will subsequently turn).¹⁸
30. Similarly whilst Historic England comment that there is 'much for us to welcome', that position is in the context of their position being in draft and caveated by other reservations about the proposal.¹⁹ The terms of the documents by Permanens Ltd. are to describe the proposed works rather than to evaluate them in the context of decision-taking. As set out in paragraphs 27 and 28 above, there are various ways in which the works have been designed so as to limit their effects. However, for seven principal reasons, the proposal would fail to preserve significance.
31. Firstly, the Church originated and developed as a communal or community space. Its use as three private dwellings would, accordingly, be anachronistic. Secondly, the proposal would represent an extensive subdivision, or compartmentalisation, of an internal space (designed for communal worship and to physically convey the significance of Christianity). The proposal would serve to hamper an understanding of the spaces within the Church relative to one another. That would undermine the significance embodied in it, and an understanding of the evolution of the listed building along with the wider trends that attests to.
32. In terms of fabric, and in its surroundings, the Church reflects its historic evolution. It is fundamentally interconnected with its surroundings. In that context, thirdly, subdivision and domestication would, for the reasons noted in paragraph 24, be experienced externally as well as internally. Fourthly the new internal structures and surfaces created will inevitably impair visibility of historic materials and methods, notably scribed plaster, existing flooring, and parts of structural elements.

¹⁷ Heritage statement, paragraph 6.2.3.

¹⁸ Paragraph 7.1.1 onwards.

¹⁹ Correspondence of 22 March 2019.

33. Importantly, and fifth, historic fabric would be lost, both directly and indirectly. That would be directly via the creation of new openings and alteration of existing openings (and, albeit to a lesser degree and potentially via the proposed removal of existing floorboards and subfloors in the tower and insertion of roof lights). Indirectly the proposal would also entail the loss of historic fabric via the creation of pockets for structural steels, use of resin bolts, or other means of affixing new elements to existing fabric.
34. Sixth, although I appreciate the use of modern materials may be advantageous for structural, thermal and acoustic performance, those materials are inherently different from the local materials and context in which the Church emerged and evolved. Whilst modern materials and interventions and historic character are not inherently inimical, the current deleterious state of the Church has in part been caused by the use of insensitive finishes. There is no robust evidence before me as to how the pathology of the listed building as a whole has been assessed.
35. Seventh, the details provided of works are, as yet, relatively limited. Work specifications provided by Permanens Ltd. are somewhat indicative as to measures that may potentially be required. The majority of the proposed plans are also of limited resolution, including being at a scale of 1:100 such that any existing features and proposed interventions are subject to a margin of uncertainty.
36. The latter point may, potentially, be addressed via condition. However I note that the appellant objects to what they consider the unnecessary minutiae advanced by the Council in terms of conditions, in the eventuality the appeal were to be allowed.²⁰ Such details are, however, commonplace in respect of listed building consents in order to ensure that works integrate suitably with historic fabric, and are accurately recorded (heritage assets being an irreplaceable resource, noting the particular importance of the Church being grade II* listed).

Consideration

37. Even discounting the sixth and seventh points above, the proposal would fail to preserve the special interest and significance of the listed building, and the significance it presently embodies. It is for the decision taker, having identified harm to a designated heritage asset, to consider the magnitude of that harm. I have acknowledged above that there are moderating factors. In that context the harm that would result may fairly be characterised as 'less than substantial' with reference to NPPF paragraph 199 (essentially a binary categorisation, relative to substantial harm).
38. Nonetheless the proposal would conflict with the clear expectations of the 1990 Act and the relevant provisions of CSTP24 and PMD4 of the Thurrock Core Strategy. NPPF paragraph 202 guides that where a proposal will lead to less than substantial harm, that should be weighed against the public benefits of the proposal (including, where appropriate, securing an optimum viable use).

²⁰ In final comments submitted at appeal dated 10 July 2022, including in respect of a programme of historic building recording, a schedule of all internal fixtures, and details of internal surfacing and joinery.

The heritage balance

39. The proposal would entail various public benefits. If effected it would, in line with the PPG, assist in preventing further deterioration of a designated heritage asset which meets English Heritage's criteria for being at risk (notwithstanding my observations in paragraph 34 above). Albeit that there is no planning appeal before me, there is a compelling need for housing nationally.
40. Moreover, as the Church is in private ownership and vacant, future occupants of the dwellings proposed and visitors would appreciate its significance in a way that is not currently possible. I also note that the appellant proposes to further 'clear the vegetation and reinstate an area of lawn'.²¹ That, along with the maintenance of the listed building and churchyard that would go hand-in-hand with an active, viable and ongoing use, would also represent a modest public benefit; appreciation of the building and its surrounding context is presently somewhat hampered by the site's partially untended condition.
41. The kernel of the Council's position is that alternative uses, potentially less interventionist and harmful, have not been suitably considered relative to justification for the proposed works. They contend that a 12 month marketing period should have been undertaken, albeit the justification for that period is unclear. Conversely the appellant is evidently familiar with a rental property business model in this location, contending principally that the lack of viability of an alternative use or different proposal is substantiated by the property receiving no bids at auction in 2014.
42. There is logic in both positions. I accept that market interest in the property is likely highly limited, as indicated by both its sales history and that works for the Church's conversion to a dwelling were not completed. However, in short, there is no robust evidence before me that similar benefits to those outlined above are solely reliant on the proposal before me.
43. There is no robust evidence to indicate that the use of the Church for three dwellings, as opposed to any other number, is the 'tipping point' whereby rental income or returns related to sales make an active use here viable (and hence justify the level of harm).²² Similarly there is no indication as to, say within the terms of the PPG, whether the anticipated rental income of £4,500 a month here would be sufficient, or more than sufficient, in terms of financial returns relative to a costed scheme of works. The only points in respect of the foregoing are observations as opposed to evidence, notably in the appellant's 'Alternative Uses Considered' document. Therein points regarding market demand, housing size and rental levels are stated without underlying evidence.
44. The appellant has furthermore discounted certain alternative uses on account of heritage harm without robust comparison of any works relative to the scheme before me. I have noted above that the Church was originally a communal space, and therefore its use for something comparable would not intrinsically be unacceptable. More fundamentally, though I do not doubt the appellant's sincere intention to bring the Church back into active use, the appellant has blurred the line between use and ownership. The appellant's appeal statement sets out, for example, that 'with zero catering experience

²¹ Heritage Statement, paragraph 6.3.8.

²² Noting the PPG sets out extensive guidance in respect of viability.

'my' restaurant would certainly fail'. Similarly, that many new businesses fail, is no reason to intrinsically discount an alternative use.

45. I note that concerns have been raised by those nearby in terms of car parking facilities, impeding access to the right of way referenced above, and potential implications in terms of accessing the graveyard. Nevertheless even if the proposal were acceptable in all those respects, that would not result in a public benefit (but rather avoid other harms from arising).

Conclusion

46. I appreciate the proposal before me is one option of restoring an active use here, and that, if effected and viable, it would have various benefits. However, based on the evidence before me, the benefits fall short of indicating that the works proposed are the most appropriate solution. NPPF paragraph 200 sets out how 'any harm to, or loss of, the significance of a designated heritage asset... should require clear and convincing justification'. In that context, despite the nature of the harm that would result, and even were the proposal acceptable in all other respects, that has not been demonstrated.
47. Notwithstanding the history to the Church as it now stands, the proposal would fail to preserve the listed building. There are no public benefits or other considerations of sufficient weight, individually or collectively, based on the information before me that would serve to outweigh that harm. Whilst I recognise the application and appeal process has taken considerable time, and that this decision will not be welcome to the appellant, I therefore nonetheless conclude that the appeal should be dismissed.

Tom Bristow
INSPECTOR