



Appeal Decision

Site visit made on 5 December 2023

by G Bayliss BA (Hons) MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 19th December 2023

Appeal Ref: APP/D3505/Y/22/3310472

Yn Chroit Yiarg-Bane, 72 Angel Street, Hadleigh IP7 5EY

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Graham Hart against the decision of Babergh District Council.
 - The application Ref DC/22/00128, dated 10 January 2022, was refused by notice dated 6 May 2022.
 - The works proposed are described as: Clay tiled roofs including outhouse - replace felt and battens and retile with existing and replacement tiles. Repair and treat exposed rafters and soffits. Repair dormers and install lead flashing. Chimney to clay tiled roof - repair render and install lead flashing. Gutters - realign, repair or replace rainwater goods.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the proposed works given on the application form is extensive in detail. I have had regard to this in my assessment. However, for the purpose of my banner heading above, I have shortened this description, coinciding with that used in the appellant's appeal form and the Council's decision notice.
3. Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (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. I shall have regard to this statutory duty in my determination of this appeal.
4. Since the determination of the application, The Babergh Local Plan has been superseded by the Babergh and Mid Suffolk Joint Local Plan-Part 1, 2023 (BMSLP). I am satisfied that overall intention of the relevant, revised policies is similar. In any event, listed building appeals are not subject to section 38(6) of the Planning and Compulsory Purchase Act 2004. Consequently, they do not need to be determined in accordance with the development plan, although policies have been referenced insofar as they are relevant. Furthermore, protected species are also covered by separate legislation.

Main Issues

5. The main issues are:
 - Whether the proposed works would preserve the Grade II listed building (listed as 72 Angel Street), including any of the features of special architectural or historic interest that it possesses; and

- The effect of the proposal on protected species, specifically bat habitats.

Reasons

Grade II listed building

1. The appeal property was listed in 1972 (Ref 1036829) and the list description mentions that the two storey part is probably 19th century with a slate roof alongside an early 18th century single storey part with attic and a steep roof of old tiles. It is included for Group Value. Numbers 66-72 (even) and 76 to 90 (even) and Eight Bells Inn are also identified as forming part of this group. It is a modest terraced building in terms of its size and architectural detailing and is part of an historic streetscape which provides evidence of the historic origins of the settlement. Internally, the historic fabric, plan form and alterations over time are evident. These contribute to the historic and aesthetic value of the building. The significance of 72 Angel Street is set out in the appellant's Heritage Statement, and this is not disputed by the Council.
2. The works propose the re-roofing of the tiled roof, repairing timbers as required, replacing any tiles to match and a replacement breathable membrane. The works also include leadwork, render repairs, painting exterior walls, where necessary, and realigning guttering. The Council considers that the details of the proposed works are appropriate and would preserve the historic interest and architectural value of the listed building, subject to appropriate details to be agreed by condition. Having viewed the property and the specification I have no reason to disagree with these findings. On that basis, the proposal would preserve the significance and special interest of the listed building and would satisfy the requirements of the Act as set out above. The proposal would also satisfy the requirements of BMSLP Policy LP19, insofar as this is relevant, which sets out that heritage assets must be preserved in accordance with their significance.

The effect of the proposal on protected species

3. It must be noted that any grant of listed building consent would not override the requirements of separate legislation, which dictates that it would be an offence to kill, capture or disturb a bat, or to damage or disrupt access to a roost. The Natural Environment and Rural Communities Act 2006 (the NERC Act) places a duty on all public authorities to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. In addition, Circular 06/2005 (the Circular) states that the presence of protected species is a material consideration when a proposal would be likely to result in harm to the species or its habitat. It goes on to explain that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before an application is determined, otherwise all relevant material considerations may not have been addressed in making the decision. It advises that surveys should only be required by condition in exceptional circumstances.
4. The proposed works are predominantly limited to replacing part of the listed building's roof covering and necessary repairs to the roof timbers. The appellant indicates that the works would be like-for-like, carried out by a reputable roofing contractor and both he and the contractor are fully aware of their legal obligations should protected species be found during the works, and

the correct procedures would be followed in such an event. It is also suggested that the contractor could re-create the crevices when re-fitting the tiles.

5. The appellant's Preliminary Roost Assessment (PRA) found no signs of bats roosting but identified a moderate number of external crevices present under the roof tiles which could allow bats to roost. Therefore, despite the relatively built-up nature of the immediate surroundings, a lack of clear commuting corridors and a negligible to very low probability of bats using the building for roosting, the PRA recommends that a further survey would be required. It suggests that initially one nocturnal survey should be undertaken with further advice regarding how works should proceed depending on the outcome of that survey. Furthermore, the PRA advises that no works should be undertaken on the building until the further survey has been completed, and then only in accordance with any recommendations provided by the ecologist based on the findings of the survey.
6. The Council's ecology advisor agrees with the findings of the PRA and considers that the further survey is required to establish if bats are using the building and to assess any impacts arising from the proposal. This would then provide the Council with certainty of likely impacts on legally protected species and to enable it to demonstrate compliance with its statutory duties.
7. Therefore, despite the relatively small scale of the works proposed, being mindful of placing additional costs on the building owner and the protected species legal obligations also placed on the roofing contractor, I must be guided by the findings of the PRA and the Council's specialist advisors, and I need to take a precautionary approach. Although the PRA recommends that the further survey could be conditioned to ensure that any bat roost could be easily retained in a lawful manner, this approach is not supported by the Circular for the reasons given above, and I have not been presented with adequate exceptional circumstances to depart from this guidance. Furthermore, if protected species were affected, even with best practice measures, I cannot be certain as to what mitigation, if appropriate, may be required.
8. I have some sympathy with the appellant that they have followed the correct procedure, incurred additional costs and this has delayed undertaking necessary repairs to the building. I have also had regard to the suggestion that owners of other listed buildings nearby may not have applied for listed building consent for re-roofing, but I have no evidence before me to substantiate this or to enable me to draw any comparisons. However, there is no adequate evidence before me to depart from the very clear recommendations in the PRA and the Circular.
9. Therefore, in the absence of the further survey and having viewed the nature of the proposal and the site context, I cannot conclude that the proposal would not adversely affect protected species. It would be contrary to the NERC Act and the Circular, as well as Paragraph 174(d) of the Framework which amongst other things, seeks to minimise impacts on biodiversity.

Other Matters

10. I note that the property lies within the Hadleigh Conservation Area. However, as this appeal relates solely to an application for listed building consent this is not a matter before me. I have therefore considered it no further in this appeal.

Conclusion

11. The lack of harm I have found in relation to the special interest/significance of the listed building does not outweigh the potential for the proposal to adversely affect protected species. Accordingly, for the reasons set out above, having regard to the development plan as a whole and all other material considerations, including the Framework, the appeal is dismissed.

G Bayliss

INSPECTOR