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## Appeal Decision

Hearing held on 5 December 2023

Site visit made on 5 December 2023

**by Laura Cuthbert BA(Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 January 2024**

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### **Appeal Ref: APP/M1005/W/23/3320816**

### **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 failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr and Ms D and M Peacock and Liddle against Amber Valley Borough Council.
  - The application Ref AVA/2022/0198, is dated 10 March 2022.
  - The development is new access to Hillcliff Lane to serve existing residential property of Sherbourne Mill, entrance fencing and field gate and associated landscaping and hedge planting.
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### **Decision**

1. The appeal is allowed and planning permission is granted for a new access to Hillcliff Lane to serve existing residential property of Sherbourne Mill, entrance fencing and field gate and associated landscaping and hedge planting at Sherbourne Mill, Hillcliff Lane, Turnditch, Belper DE56 2EA in accordance with the terms of the application, Ref AVA/2022/0198, dated 10 March 2022, subject to the conditions set out in the attached schedule.

### **Preliminary Matters**

2. Since the appeal was made, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023. I have taken the revised Framework into account as part of the determination of this appeal.
4. Following the submission of the appeal against non-determination, the Council has provided a Delegated Report, which provides clarity in terms of the main reasons why the Council would have refused planning permission had it been able to do so.
5. At the time of my site visit, I saw that the development described in the banner heading above was substantially complete. I also note that the application has been submitted retrospectively. Parties agreed that what has been completed on site is what is shown on the submitted plans. I have therefore dealt with the appeal on that basis.
6. The main parties have set out the relevant planning history related to the site, which includes a previous appeal decision<sup>1</sup>. This appeal related to a new vehicular access to Hillcliff Lane, similar to that which is before me now. The appeal was dismissed. I have had regard to this appeal decision insofar as it is relevant to the development before me now.

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<sup>1</sup> APP/M1005/W/20/3258868

## **Main Issues**

7. The main issues are the effect of the development on i) the setting of the Grade II Listed Buildings known as Sherbourne Mill and Sherbourne Mill House; and ii) the effect of the development on the landscape character of the area.

## **Reasons**

### *Grade II Listed Buildings*

8. The appeal site consists of Sherbourne Mill and Sherbourne Mill House, which are both Grade II Listed Buildings under separate listings. The house is positioned adjacent to the mill, with both buildings situated to the eastern side of Hillcliff Lane, with an open agricultural field lying in between.
9. The earlier access and bridge serving the mill buildings, which collapsed in 2020, sits discreetly to the south of the site, on the southern side of Sherbourne Brook. The disintegration of the earlier access and bridge was the motive behind the vehicular access before me now, which runs through the field situated immediately to the east of the mill house. The original access curves around and over the brook, enclosed by the vegetation which runs along the stream, allowing for access to the front of the mill buildings. There was also a field gate at the rear of the mill and mill house, allowing for an alternative access across the field from the north, albeit it is appreciated that this was not a formal access route. Therefore, whilst the collapsed access track was the primary access, it was not the only way to access the listed buildings.
10. The significance of the listed buildings for the purpose of this appeal lies primarily from their age, historic built form, materials, and architectural details. It is noted from the listing that the mill house is listed for group value only. In regard to the mill itself, its functional significance, through its surviving water infrastructure and historic importance as a corn mill, contributes towards its historic significance, as well as having archaeological importance. There is also a social significance associated with the mill given the important part it would have played in society.
11. Mill buildings are generally situated within rural areas, so it is appreciated that the rural setting of the listed buildings is important to their significance. Whilst the field where the appeal development cuts through may not form part of the functional significance of the mill, it is considered that the undeveloped and rural nature of the appeal site contributes positively towards the rural setting of the designated heritage assets and the contribution this makes to their significance. The earlier access and bridge also contribute positively to the setting of the listed buildings, and thus their significance, by virtue of its functional and historical relationship with the designated heritage assets. Sherbourne Brook itself is also a positive aspect of the setting, again by virtue of its functional and historical relationship with the mill, evidenced by the tail race exit into the brook, which is still visible on site.
12. The mill itself is much earlier than the mill house, with the Council advising that the first reference to the mill dates from 1748. The mill house came later, possibly early 19<sup>th</sup> Century, with its primary reason to support the function of the mill. Unlike the evidence presented to the previous Inspector, it transpired that the original access track and bridge has not existed for the lifetime of the mill, as it was agreed that this was established in the late 18<sup>th</sup> Century or early

19<sup>th</sup> Century alongside Hillcliff Lane and the listed road bridge over Sherbourne Brook, which is positioned to the north of the original access and bridge. It was also agreed that it was likely Hillcliff Lane was built at around the same time as the mill house.

13. The definition of the 'setting of a heritage asset' is set out in the glossary to the Framework, which states it is 'the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve'. The setting of the heritage assets over time have clearly changed from that associated with a working corn mill, with surrounding agricultural land to what is now a site in primarily residential use, with surrounding agricultural land. I note that the mill building itself was granted planning permission for conversion for use as a residential unit, albeit it is appreciated that this has since lapsed. This expired consent would have significantly altered the function of the mill building and its relationship with the surrounding agricultural land.
14. I note the previous Inspector as part of their reasoning stated that 'the proposed access would cut across the surviving path of the tail race..... 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'. However, extensive evidence regarding the history and operation of the mill has since been produced by the appellant<sup>2</sup>. This demonstrated that the most likely position of the tail race was in culverted form, running underneath the earlier access track, evidenced by the tail race exit into the brook. The Council does not dispute the findings of this report and agree that what the previous Inspector thought was the tail race associated with the mill is in fact a field ditch. Therefore, unlike the earlier appeal, I am satisfied that the development does not destruct an 'important heritage feature of the mill'.
15. Nevertheless, the development has introduced a new access across the rural field, which is seen in the context of the heritage assets. Its relatively formal, structured appearance, when compared with the more unobtrusive and enclosed original access, sits incongruously within the undeveloped, rural setting of the heritage assets. Furthermore, the abandonment of the original access as a result of the development, is also harmful to the setting of the designated heritage assets, albeit to a lesser degree than the impact of the new access.
16. Therefore, in view of the above, the development is harmful to the setting of the Grade II Listed Buildings known as Sherbourne Mill and Sherbourne Mill House. The development is contrary to Policy EN24 of the Amber Valley Borough Council Local Plan (Local Plan) (adopted 2006), which seeks to ensure that development 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, having regard to the elements which make up its special interest including the character, appearance, scale and its original function.

### *Landscape Character*

17. The appeal site is within the Peak Fringe and Lower Derwent Landscape Character Area within a 'Wooded Farmlands' landscape type. I note that the

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<sup>2</sup> Document titled 'Discussions Following On-site Investigations – Mr Alan Gifford'

area is also a Special Landscape Area (SLA). As recognised by the previous Inspector, 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. An established hedgerow runs along Hillcliff Lane, enclosing the field adjacent to the listed buildings.

18. There are a number of existing vehicular accesses along Hillcliff Lane, most notably to the south of the appeal site. There are also a handful of pedestrian access openings to the north. The Council confirmed that these other accesses are within the same landscape character area as the appeal site and are also within the SLA. I also noted that tarmac was used for the surfacing for one of the accesses.
19. The vehicular access before the previous Inspector was a straight track which was 'more harmful even than the slightly more natural looking curved route constructed on site'. However, the development before me now mirrors the curved route constructed on site which allows it to sit sympathetically within the landscape character of the rural setting, which includes curving lanes.
20. I acknowledge that the gap in the hedgerow is an interruption to the rhythm of the continuous hedgerow along this section of Hillcliff Lane, which has undoubtedly had a visual impact. However, gaps in hedgerows in order to accommodate either pedestrian or vehicular access points are not uncommon along Hillcliff Lane. Furthermore, the existing field gate access along Hillcliff Lane, which I appreciate is a smaller gap in the hedgerow, would be filled in under the proposed landscaping scheme before me. This would assist in maintaining a more continuous hedgerow along Hillcliff Lane. Therefore, the opening is not overtly stark or incongruous to the landscape character.
21. The new access is slightly wider than some of the other vehicular accesses in the vicinity. However, unlike the scheme before the previous Inspector, a landscaping scheme, which has yet to be implemented, has been submitted as part of the appeal development. The Council raise no objections to the species of the landscaping scheme. Rather than domesticate the access track, the proposed landscaping would be appropriate to its rural setting and would help to mitigate the visual impact of the new access. An appropriately worded condition would ensure a suitable landscaping scheme is secured on the site. The use of a timber fence and a 5 bar field gate also helps the access to assimilate into its rural setting, allowing the development to be less of an 'urban, engineered intervention' as argued by the Council.
22. Therefore, rather than 'detract from the irregular, natural form which characterises the surrounding Wooded Farmlands landscape' as the previous Inspector concluded, I am satisfied that the curved route of the access, alongside the proposed landscaping, allows the development to reflect the irregular and natural form of its surroundings. Whilst it is a relatively sparsely developed landscape, any visual impact would now not be significant enough to be materially harmful, and the landscape character of the natural environment would be respected.
23. I acknowledge the Council's concern regarding the use of crushed limestone for the access track and their preference for 'grasscrete' to be used instead. However, the crushed limestone, which I note is from a local quarry, sits appropriately in the landscape. I also observed a very similar limestone access

track along New Road to the north of the appeal site, so the use of limestone is not uncharacteristic to the area. Furthermore, there is evidence of a mixture of surfacing materials used on access tracks in the vicinity, including tarmac. Consequently, the use of crushed limestone does not have an adverse effect on the landscape character of the area.

24. Therefore, with an appropriately worded landscaping condition, the development does not harm the landscape character of the area. It is in accordance with Policies LS1, LS3, criteria b of EN1, EN6, EN7 and EN8 of the Local Plan and Policies L1 and E1 of the Idridgehay & Alton and Ashley Neighbourhood Development Plan (2015). In combination, these policies seek to protect the local distinctiveness of the natural environment and its scenic beauty, respecting the character of the locality having regard to materials and landscaping, by only allowing development which is necessary in the countryside and cannot be reasonably located within an existing settlement. Development in Special Landscape Areas should not have an adverse effect on the landscape quality or character. Proposals should protect and enhance landscape features, taking in to account the pattern and composition of trees, woodlands and field boundaries, ensuring that development would not damage or destroy significant trees, woodlands, hedgerows, dry stone walls or other landscape features.
25. The Council allege conflict with Policy H5 of the Local Plan. However, this relates to planning permission for housing development, which whilst the proposal relates to a new access for a house, does not involve 'housing development' per se. Therefore, any alleged conflict with Policy H5 is not determinative in these circumstances.

### **Other Matters**

26. The appellant alleges that an access could be introduced off New Road to the north under Permitted Development, in relation to the agricultural use at the appeal site. However, it is not currently clear whether the land associated with the appeal site, which is used for the grazing of animals, falls under the definition of an 'agricultural trade or business' which is required to be eligible for permitted development rights. There is also a disagreement between parties as to the highways classification of New Road which would impact its eligibility. Nevertheless, within the context of an appeal under section 78 of the Act, it is not within my remit to formally determine whether a development would fall under the provisions of permitted development. Therefore, in this instance, any fallback position has not been determinative.
27. I noted that there were some similarities in the construction of the collapsed bridge and that of the listed road bridge to the north. However, whilst the larger road bridge is listed in its own right<sup>3</sup>, the relevant access bridge for this appeal is only considered to be listed by virtue of it being a curtilage structure to the listed mill and mill house.

### **Heritage and Planning Balance**

28. The Framework advises at paragraph 205 that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 206 goes on to advise

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<sup>3</sup> List Entry Number - 1335377

that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification.

29. The harm to the significance of the listed buildings, via the harm to their setting, is less than substantial. The appellant considers that any harm is at the lower end of a sliding scale of such harm, whilst the Council consider it to be at the moderate to high end. However, I am mindful that less than substantial harm does not equate to a less than substantial planning objection and that any such harm is to be given considerable importance and weight. As required by paragraph 208 of the Framework, this harm must be weighed against the public benefits of the proposal, including where appropriate, securing its optimum viable use.
30. The optimum viable use of the appeal site is accepted by all parties to be residential use. Whilst it is accepted that this is the only public benefit mentioned in the Framework, this is not an exclusive list. Nevertheless, the development is related to the established and continued residential use of the site.
31. Whilst the previous Inspector did not have detailed plans, 2 alternative bridge designs have now been submitted. One of these cannot be implemented due to the lack of available land within the appellant's ownership. The other alternative option would involve a new bridge running straight across the brook directly to the north of the damaged bridge. The landscape impact of this option has been assessed by the appellant<sup>4</sup>, which states that it would involve the removal of the well-established vegetation along the brook which would harm the 'verdant character of Sherbourne Brook'. From my observations on site, I agree. Any replacement would also involve the loss of the historic crossing due to the new alignment required. I noted from my site visit that a realignment of the bridge to the north would also affect the tail race exit into the brook, which would be harmful to the functional significance of the mill.
32. I acknowledge that the Council suggested at the hearing that the existing bridge could be widened, or an additional flood arch or concrete pipe added to help release more water at times of flood. However, these would all have an impact on the existing bridge in some way and would also impact the established vegetation along the brook. Based on the evidence that is before me now, I am not convinced that a less harmful option exists to give access to the residential property, particularly given the constraints of the site and the sensitivity of the brook corridor. I give this significant weight.
33. In regard to highway safety matters, it is agreed that the new access provides improved visibility sightlines. However, whilst the stretch of road is subject to a speed limit of 60mph, I have not been provided with any evidence that the original access arrangement was problematic to highway safety. Notably, the appellant confirms there has been no recorded accidents in the area in the last 5 years. Nonetheless, I acknowledge that there is approximately 7 acres of agricultural land associated with the appeal site, which is currently used for the grazing of a small number of animals. Unlike the original access, the new vehicular access is also suitable for agricultural machinery. Therefore, I attach any benefits related to highway safety matters modest weight.

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<sup>4</sup> Replacement Bridge Alternative – 862/Doc 2 – October 2021 – Bradford Smith



34. Whilst the structural report does not rule out the repair of the original access and bridge option as unfeasible, I appreciate the challenges in carrying out the repair, which would include a temporary diversion of the brook in order to work in the water corridor of the brook. I also appreciate the appellant's argument that a simple repair of the bridge and access in the same position as the original bridge would result in an arrangement that would be subject to the same difficulties as the original bridge and access in terms of highway safety and its vulnerability to flooding due to its position in Flood Zone 3 which is pertinent.
35. I visited the site after a period of heavy rain and snow. There were significant volumes of water at the entrance of the original access and along the first part of the original access track. I also note the recent video footage submitted by the appellant after Storm Babet, which resulted in the brook bursting its bank, completely submerging the original access. However, the new access was not flooded. These matters give support to why the Local Lead Flood Authority (LLFA) indicate that they would not support a new bridge in Flood Zone 3.
36. This is further supported by the objectives set out in Chapter 14 of the Framework in regard to meeting the challenge of climate change, flooding and coastal change. Paragraph 157 of the Framework requires the planning system to minimise vulnerability and improve resilience and paragraph 159 states that new development should be planned for in ways that avoid increased vulnerability to the range of impacts arising from climate change which states that development should be resilient to climate change. I therefore attach significant weight to the location of the new access outside of Flood Zone 3.
37. I have found that the abandonment of the original access and bridge is in itself harmful to the setting of the designated heritage assets. However, the appellant is agreeable to a condition which would adapt the original bridge and access route for pedestrian use only. It is considered that the adaptation of the original access route, even just for pedestrian purposes only, would help to retain the functional and historical relationship of both the brook and the original access route with the mill buildings, which would help to mitigate the harm to the setting which has arisen from its disintegration. I attach significant weight to this benefit, which would be secured by a suitable worded condition.
38. For the above reasons, I consider that the benefits of the development, taken together, outweigh the less than substantial harm to the designated heritage assets. Hence, there would be no conflict with the relevant heritage objectives of the Framework.
39. I agree with the previous Inspector that Policy EN24 of the Local Plan is not entirely consistent with the heritage policies in the Framework as it does not allow for the consideration of public benefits in the planning balance. However, the intentions of the policy do conform with those of the Framework as ultimately it seeks to protect the setting of the listed buildings. Nevertheless, the development is in conflict with the development plan as a whole. However, there are material considerations as outlined above which outweigh that conflict.

## **Conditions**

40. The standard time limit condition is not required as the development permitted has already been implemented. A condition requiring compliance with the relevant plans is however considered necessary in the interests of certainty.
41. As already alluded to, a landscape condition is necessary in the interests of the landscape character of the area. I have amended it for clarity purposes and to ensure that the condition would be enforceable. As noted above, I consider the use of crushed limestone as appropriate for the vehicular access. Therefore, the Council's suggested condition for an alternative surface material is not necessary.
42. Finally, for the reasons already outlined above, I consider it necessary to attach a condition requiring the existing access and bridge to be adapted for pedestrian access only. The amended wording of the condition has been rewritten in collaboration with the main parties. I have removed the reference to 'repair' and 'retention' as suggested by the appellant for clarity purposes. Whilst the Council suggested parts of the condition were removed, I have included them in order to ensure the condition would be enforceable.

## **Conclusion**

43. For the reasons given above, I conclude that the appeal should be allowed.

*Laura Cuthbert*

INSPECTOR

## **Schedule of Conditions**

1. The development hereby permitted shall be carried out in accordance with the following approved plans:-
  - Site location plan identified as plan X2 received on 10.03.2022
  - Red line Plan X1 received on 10.03.2022
  - Block Plan reference LS/GB/2390-1 rev 0 received on 10.03.2022
  - Replacement bridge Alternative ref 862 Doc 2 received on 10.03.2022
  - Ownership plan identified as Overall Ownership x3 received on 10.03.2022
  - Entrance plan reference drawing. No X5 received on 22.03.2022
  - Elevation ref PLAN X4 MARCH 22 received on 22.03.2022
  - Somerset 5 Bar Gate received on 22.03.2022
2. Unless within 3 months of the date of this decision, a scheme for landscaping based on the 'Landscape Concept Strategy Plan' dated June 21 (prepared by Bradford-Smith) is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 6 months of the date of the local planning authority's approval or the first planting season following the local planning authority's approval (whichever is the sooner), the use of the site shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.



If no scheme in accordance with this condition is approved within 3 months of the date of this decision, the use of the site shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved landscaping details specified in this condition, that scheme shall thereafter be maintained. Any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority gives written consent to any variation.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

3. Within 4 months of the date of this decision, a scheme for the adaptation of the existing access and bridge, to facilitate pedestrian access only, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full within 12 months of the approval. Should any of the works require Listed Building Consent, an application for Listed Building Consent shall be submitted to the local planning authority within 28 days of the formal discharge of this condition and the approved scheme shall be implemented within 12 months of any grant of Listed Building Consent.

Unless the approved scheme is implemented within 12 months of the local planning authority's approval of the scheme, the use of the access and track shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is submitted within 4 months of the date of this decision, the use of the access and track shall cease, and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained to allow pedestrian use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Graham Bell BA Dip TP MSc Env Ass MRTPI  
Mr Jon Millhouse BA MRTPI IHBC

Mr Dan Peacock  
Ms Marie Liddle  
Mr Max Wildsmith RICS

Planning Consultant, GC Bell  
Author of the Heritage Impact  
Assessment  
Appellant  
Appellant  
Former Owner

### **FOR THE LOCAL PLANNING AUTHORITY:**

Laura Anthony MSC Planning,  
Licentiate member of RTPI  
Alan Redmond BA(Hons) MPlan MRTPI

Melanie Lloyd Morris BA Hons, Dip Arch Cons,  
IHBC and MRPTI

Planning Officer, Amber  
Valley Borough Council  
Principal Planning Officer  
(consultant) Amber Valley  
Borough Council  
Heritage Consultant