



Appeal Decisions

Hearing held on 14 February 2012

Site visit made on 14 February 2012

by John Chase MCD Dip Arch RIBA MRTPI

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

Decision date: 7 March 2012

Appeal Ref: APP/V2255/A/11/2159422

St Paul's Dockyard Church, Naval Terrace, Sheerness, Kent, ME12 1RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission on an application for the extension to the time limit for implementing a planning permission.
 - The appeal is made by WDS Design Ltd against the decision of Swale Borough Council.
 - The application Ref SW/11/0277, dated 7 March 2011, was refused by notice dated 27 May 2011.
 - The development proposed is the conversion of St Paul's Church to create 22 one and two bedroom apartments and 5 new terraced houses to act as a screen between the church and the dockyard.
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Appeal Ref: APP/V2255/E/11/2166035

St Paul's Dockyard Church, Naval Terrace, Sheerness, Kent, ME12 1RR

- 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 on an application for the extension to the time limit for implementing a listed building consent.
 - The appeal is made by WDS Design Ltd against the decision of Swale Borough Council.
 - The application Ref SW/11/1112, dated 7 March 2011, was refused by notice dated 28 September 2011.
 - The works proposed are the rebuilding of the existing Grade II* listed fire damaged church to create new flats internally.
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Decisions

1. Both appeals are dismissed.

Procedural Matters

2. An application for costs was made by Swale Borough Council against WDS Design Ltd. This application is the subject of a separate Decision.
3. At the Hearing evidence was produced that part of the site is in separate ownership, indicating an error in the certificates issued with the applications. The owners of the portion of land in question have subsequently been notified by the appellants and confirm that they have no observations to make about the proposals.
4. These appeals relate to a Listed Building, which is set within a Conservation Area, and which is in the vicinity of other Listed Buildings. Regard is had to the preservation of the special architectural and historic character and setting of the Listed Buildings, and the character and appearance of the Conservation Area.

Reasons

5. The appeal property is a former dockyard church, listed Grade II*, forming part of the comprehensive planned development of the dockyard which took place in the early 19th century. The listing indicates that the building was first constructed in 1828 and then substantially remodelled in 1884 following a fire. A second fire occurred in 2001, largely destroying the interior of the building and its roof, leaving the outside walls and a tower over the entrance. The building remains in this condition, with scaffolding and some weather proofing to retain the structure. Planning permission and Listed Building consent were granted at appeal (APP/V2255/A/07/2057263 and APP/V2255/E/07/2060948) in 2008 for the conversion of the building into flats, along with the addition of five houses in the grounds of the property. It was acknowledged that some aspects of the scheme were contrary to the development plan, but that the restoration and retention of the Listed Building outweighed any harm.
6. In setting out the procedure for the extension of time of a planning permission, *Greater Flexibility for Planning Permissions*, 2009, indicates that such an application might be refused if changes in the development plan or other relevant material considerations would lead to the proposal no longer being treated favourably, reflecting the advice in Circular 11/95. In the present case, there are no significant changes in the development plan, but it is asserted by the Council, and by third parties including English Heritage, that changes of circumstances have altered the balance between the benefit of conserving the Listed Building and the harm arising out of the enabling development, and this is the main issue in these appeals. Particular attention is drawn to the financial viability of the scheme, the introduction of Planning Policy Statement 5, and the availability of alternative means of securing the future of the building.

Financial Viability

7. It was central to the reasoning behind the permissions for this project that the residential development would fund the restoration of the church building, which would thereafter have a beneficial use, and reference was made to an independent audit which recommended acceptance of the scheme. The Inspector recognised that the financial aspects were finely balanced, and that additional costs could emerge, but there was no indication that the viability had not been adequately proved. Since that time, the economic environment has worsened and a new report by BNP Paribas, commissioned by the Council in 2011, estimates a deficit in excess of £1m if a normal development profit is taken. The appellants do not accept these figures, and there may be some scope for reducing costs or maximising revenue. Nonetheless, there are adequate grounds to consider that the scheme would no longer achieve the financial viability previously envisaged.
8. To address this point, the appellants propose to hold and let the flats in the converted church, rather than selling them on the market at the reduced prices now achievable. This is a positive response to the changed economic conditions, but it would rely on significant contributions from the appellants' own funds, as well as a mortgage, and there is no confirming evidence that these sources of finance would be available and secured for the scheme. In the absence of such assurance, there is significant doubt about whether the project would be likely to be implemented within the foreseeable future and, even if it were, the underlying lack of profitability would diminish the likelihood of a satisfactory outcome.

9. Whilst a planning condition to require completion of the works to the church before occupation of the houses would provide an incentive to carry out the restoration, there would remain the risk that a substantial start could be made but without further effective progress, especially if unforeseen problems should be encountered. Having regard to the invasive nature of the conversion, including the introduction of a basement car park, there would be considerable risk to the structural stability of the Listed Building if the work were only partially carried out.
10. The previous Inspector noted the desirability of a planning agreement for a financial bond, to enable completion of the works if the developer should default. In the event, no such agreement was offered, and it was concluded that the delay that would result from a dismissal on this ground was outweighed by the urgent need to restore the building. Four years on, the building remains un-restored, and the changed economic climate increases the risk of an unsatisfactory outcome. Whilst the previous decisions recommended that a bond should, nonetheless, be prepared, there is no indication that this has occurred, and no obligation is offered with these appeals.
11. The objective of the procedure to extend the time limit of a planning permission is to enable the scheme to be more quickly implemented as the financial climate improves. However, there are significant risks in allowing that additional time in the present case. Any loss arising out of an unsuccessful project would not solely be borne by the developer, but would impinge on matters of public interest concerning the future of the Listed Building. There are adequate grounds to consider that the diminished viability arising out of the changed economic situation is a matter of significant weight which counts against the scheme.

Planning Policy Statement 5

12. Planning Policy Statement 5 (PPS5) replaced Planning Policy Guidance Note 15 (PPG15) in 2010. Whilst Policy EH9 creates a presumption in favour of all designated heritage assets, it draws a distinction between substantial harm and less than substantial harm, the acceptability of the former being wholly exceptional in the case of grade II* Listed Buildings. The assessment of whether or not any harm is substantial lies with the decision maker, and is subject to the circumstances of the case, but it would be reasonable to assume that substantial harm is that which would significantly or totally undermine the heritage value of the asset.
13. Whilst the guidance available at the previous appeals did not draw the distinction between substantial and less than substantial harm, it is clear that the Inspector made a judgement about the level of any harm that would arise out of the enabling development, and considered whether it was outweighed by the benefit to the Listed Building. It would have been self defeating to permit a scheme to save a heritage asset if the damage caused by that scheme was so great as to undermine the reason for allowing it, and there is no indication that the previous decisions were flawed in that way. It is axiomatic that the harm assessed in those appeals would now fall into the category of less than substantial harm. The methodology introduced by PPS5 does not alter that position.

14. However, even if a different conclusion was reached on this point, and that a re-evaluation was justified, there are grounds to consider that the outcome would be the same. Amongst the matters raised, the block of new houses would have some effect on the setting of the Listed Building and the Listed dock wall, but would not upset the most important views, nor the relationship with Naval Terrace, a Grade II* group of Listed Buildings to the south. Similarly, a parking area at the front of the building, whilst harmful to its open setting, would be of limited impact in relation to the scale of the building. Subdivision of the interior of the church would remove its spatial qualities, but so little remains of the original finishes that any alternative scheme would necessarily be a reconstruction, rather than the preservation of existing fabric. The clerestory lights would not significantly alter the form of the roof, and there is not sufficient evidence to show that any structural implications of the basement car park would not have a technical solution. That is not to say that these features would not have some effect on the heritage value of the Listed Building, but, whether considered individually or cumulatively, they would not amount to substantial harm.
15. Policy HE11 provides guidelines to establish whether the harm arising out of enabling development is outweighed by the benefit to the heritage asset. Making the assessment against those criteria, the harm to the heritage asset would not be so great as to undermine the purpose of preserving it; the division of the building into flats would result in multiple occupation, but there is no reason to consider that this would also lead to a fragmentation of the freehold or the management of the external maintenance; the scheme would provide a long term use for the building; the enabling development is required to resolve problems arising out of the inherent needs of the heritage asset, rather than those of the owner; and, for the reasons set out above, there is no indication that the enabling development would exceed the minimum necessary to support the works to the Listed Building. The potential for an alternative source of funding is considered below.
16. There was no comparable procedure for assessing enabling development in PPG15, but English Heritage's policy statement entitled *Enabling Development and the Conservation of Heritage Assets*, 2001, contained similar provisions to HE11, and was referred to by the Council in the officer report related to the previous applications, in 2007. Whilst the planning appeal decisions do not refer to this document, there is no reason to consider that the Inspector did not take these matters into account, nor that the decisions were at variance with the thrust of the English Heritage policy.
17. There is not a compelling case that the changes introduced by PPS5 would, of themselves, lead to a different conclusion from that previously made about the balance between the benefit to the Listed Building against any harm arising out of the enabling development.

Alternative Schemes

18. The previous appeal decisions gave no indication of alternative sources of finance which might achieve the conservation of the Listed Building without the enabling development. Since that time, the Spitalfields Trust have implemented a programme of repair and beneficial use of a group of listed dockyard buildings on land to the west of the appeal site. The improvement of part of the historic dockyard raises the prospect of a complementary scheme to restore the Dockyard Church, and feasibility studies and costings have been

carried out to consider a range of options. It was indicated at the Hearing that the preferred solution would be division of part of the building into offices, to be let for a commercial rent, and retention of a large space with public access for displaying an original model of the dockyard.

19. These proposals would avoid the need for a separate block of houses, and for a basement parking scheme, and would retain the open space in front of the building. However, they are at a preliminary stage, without planning permission and, whilst the harm to the Listed Building would be less than the appeal scheme, there would be some implications for its setting and form, including partial division of the interior space, and the use of parts of the site for car parking. In addition, the feasibility study identifies the commercial risks associated with the various options, which would affect the long term viability of the beneficial use of the building. The capital cost of the project is estimated to be in the order of £5 million, and it would be necessary to obtain grant funding of this sum. Whilst there is evidence that it would meet the criteria of the National Lottery Fund, it falls short of a clear indication that the amount required would be likely to be forthcoming from potential funding bodies.
20. Overall, the proposals are at an early stage, it being indicated at the Hearing that a 3 to 5 year timescale would be realistic, and the evidence presently available falls short of the level necessary to prove the financial feasibility, and long term viability, of the scheme. As such, it is not possible to give significant weight to the availability of an alternative source of funding, in terms of PPS5 Policy HE11.

Conclusions

21. The changes to Government policy and the emergence of alternative proposals do not justify dismissal of these appeals. However, the diminished financial viability arising out of the changed economic conditions raises a serious doubt about whether there is a realistic prospect that the enabling development would be capable of funding the restoration of the church, and creates the risk that any start of development without underlying financial soundness could further endanger the Listed Building. This matter is of sufficient weight to alter the balance between the harm arising out of the enabling development and the benefit of conserving the Listed Building, and an extension of time for implementation is not justified in these circumstances. In reaching this conclusion, it is recognised that the Dockyard Church is left without a programme for its restoration, but there remains the opportunity for proposals to emerge which overcome the identified shortcomings.

John Chase

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Mr P Hadley BA, DipTP, MRTPI	Robinson Escott Planning
Mr P Watson	Appellant
Mr D Watson	Appellant
Ms L Stephen BA, MSc	Heritage Collective LLP

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Allen BSc PGDip MRTPI	Swale Borough Council
Mr P Bell	Swale Borough Council
Mr A Vee	BNP Paribas Real Estate

INTERESTED PERSONS:

Ms B Harries	English Heritage
Ms C Dobson	Barrister instructed by SAVE
Mr W Palin	SAVE
Mr P Drury FSA, MRICS, IHBC	Drury McPherson Partnership
Mr F Kelsall MA, FSA, FRSA, IHBC	Ancient Monuments Society
Mr G Horner	CPRE Protect Kent
Ms C Georgeson	Sheerness Society
Mr K Georgeson	Sheerness Society
Mr T Foxall BA, MA, PGDip Cons, IHBC	English Heritage

DOCUMENTS

- 1 Notice of time and venue of Hearing
- 2 Plan No P002/P3
- 3 Appeals concerning Resurrection Manifestations against Islington BC, 2011
- 4 Appellants' response to costs application
- 5 Land Registry entry concerning the appeal site and email from ASB Law LLP dated 14 April 2011.
- 6 Correspondence surrounding the ownership of part of the land, including an email from Spinnaker Properties Ltd dated 17 February 2012.
- 7 List of previously approved plans.
- 8 Copies of the previously approved plans.

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Services Department:

Telephone: 0870 333 1181

Fax: 01793 414926

Textphone: 0800 015 0516

E-mail: customers@english-heritage.org.uk