

## Appeal Decision

Site visit made on 16 March 2021

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

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

**Decision date: 26 April 2021**

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**Appeal Ref: APP/C1950/F/19/3243041**

**Building known as Judges, formerly The Sun Inn, Judges Hill, Northaw, Potters Bar EN6 4NL**

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr James Cunningham against a listed building enforcement notice issued by Welwyn Hatfield Borough Council.
  - The enforcement notice was issued on 11 November 2019.
  - The contravention of listed building control alleged in the notice is:  
Unauthorised works to a Listed Building, in particular:
    - (1) The erection of a rear extension comprising two large canvas canopies (Jumbrellas), a timber framed section with a Perspex type roof, a timber shed and a cold storage room.
    - (2) The affixing of extractor flues with associated supporting structures, cabling and pipework to the rear of the Listed Building.
  - The requirements of the notice are:
    - (i) Remove the rear extension comprising two large canvas canopies (Jumbrellas), a timber framed section with Perspex type roof, a timber shed and a cold storage room shown in the approximate position outlined and crosshatched in blue on the plan attached to the enforcement notice.
    - (ii) Remove all fixtures and fittings affixing the rear extension to the Listed Building.
    - (iii) Remove the timber frame supporting the two large canvas canopies (Jumbrellas).
    - (iv) Immediately following compliance with requirements (i) to (iii) above, reinstate and make good the areas where the rear extension and timber frame supporting the two large canvas canopies (Jumbrellas) were attached to the Listed Building using materials and finishes to match.
    - (v) Remove the extractor flues affixed to the rear of the Listed Building; their associated supporting structures, cabling and pipework.
    - (vi) Immediately following compliance with requirement (v) above, reinstate and make good the areas where the extractor flues and their supporting structures, associated cabling and pipework were attached to the Listed Building using materials and finishes to match.
    - (vii) Remove from the Land shown edged red on the attached plan all materials (including the whole rear extension with its fixtures, fittings and supporting timber frame and the extractor flues with their supporting structures, cabling and pipework) debris, plant and equipment associated with requirements (i) to (vi) above.
  - The period for compliance with the requirements is 2 calendar months.
  - The appeal is made on the grounds set out in section 39(1) (e), (h) and (j) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the 1990 Act).
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## **Decision**

1. It is directed that the listed building enforcement notice be varied by deleting the wording "2 calendar months" in paragraph 6 and substituting it with "6 calendar months". Subject to this variation, the appeal is dismissed and the listed building enforcement notice is upheld, and listed building consent is refused for the retention of the works carried out in contravention of section 9 the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

## **Procedural Matters**

2. During the appeal process the building has changed ownership. The name of the appellant is taken from the appeal form and he has stated in writing that he is content to remain as the appellant. The new owner of the building has confirmed that he is aware of the enforcement notice and the appeal and will abide by the decision taken on the appeal. I have dealt with the appeal on this basis.
3. Due to the restrictions in place in relation to the COVID-19 pandemic I undertook a site visit on the basis that I was allowed access on to the appeal site by the appellant's agent and there was no discussion on the merits of the case. Both main parties agreed to the appeal being dealt with on this basis.
4. No ground (c) appeal has been made and the appellant has stated that he accepts that the works that are the subject of the enforcement notice are contraventions of listed building control through their current attachment to the listed building. Nevertheless, he has stated that the extract flues, cold store, shed and covered walkway area should be granted listed building consent. He goes on to state that the cold store, shed and covered walkway could be detached from the listed building and in that instance listed building consent would not be required for those parts of the works. I have dealt with these matters under the grounds of appeal below.
5. I note that the appellant has stated that no record can be found on the Council's website as to when designation of the conservation area in Northaw occurred and that there is no conservation area appraisal for it. However, there is no specific evidence disputing the status of the conservation area. Consequently, I will determine the appeal on the basis that Northaw Conservation Area is a designated heritage asset.

## **The ground (e) appeal**

6. This ground is that listed building consent should be granted for the unauthorised works.

### *Main Issue*

7. Based on my observations and the evidence before me I consider that the main issue is whether the unauthorised works preserve the special architectural and historic interest or setting of the listed building known as Judges, listed as The Sun Public House Northaw Road West, whether they preserve or enhance the character or appearance of Northaw Conservation Area (NCA) and whether the significance of the heritage assets is harmed.

### *Reasons*

8. The appeal building is a grade II listed building in the centre of NCA which has been used for many centuries as a public house. It appears that it has also recently been used as restaurant and function space. The list description states that it dates from the 17<sup>th</sup> Century and is an 'L' shape timber framed inn, extended at both ends in the late 18<sup>th</sup> or early 19<sup>th</sup> Century. The building was refronted in around 1900. The main part of the building is of painted brick with a steep pitched plain tile roof. The extensions at both ends are weather boarded with pantile roofs.
9. Section 16(2) of the 1990 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. Section 72(1) of the 1990 Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
10. I consider that the significance/special interest of the listed building is largely derived from the vernacular nature of the origins of the building, its age, form, fabric, architectural features and its use as a public house. The evidence before me indicates that some of the nearby buildings, including the church, are also listed. These buildings, the mature landscaped grounds associated with nearby buildings and the large landscaped area at the junction of Northaw Road West and Vineyards Road together form an attractive ensemble in the centre of this village. This ensemble makes a significant contribution to the character and appearance of the area and this group value also forms part of the special interest/significance of the listed building.
11. The listed building is seen from Northaw Road West and Vineyards Road. Whilst, these roads appear to be quite busy roads through the village the landscape and group value cited above provide an attractive setting to the listed building that contributes to its significance. The listed building is also viewed from within its car park and the areas to the rear of the building by customers and staff of the public house/restaurant. Furthermore, the composition of the rear elevations can be seen from the areas to the rear of the building. In these respects, the setting provided by these areas also makes a positive contribution to the significance of the listed building.
12. The appeal site is within NCA and given the above I consider that the character and appearance of NCA derives from the quality of the historic buildings within it, their materials, their uses and the relationship of the buildings to each other and the landscaped areas between them.
13. The appellant has stated that the ground (e) appeal only relates to the extractor flues and associated works. However, he has also stated within his evidence that elements of the rear extension should be granted listed building consent. As such, I have considered whether all or part of the unauthorised works should be granted listed building consent.
14. The rear extension infills the majority of the space between the rear and side walls of the 'L' shape of the building and as a whole it is a substantial structure. The extension comprises a number of elements that have been connected by a timber frame and it is clearly a utilitarian response for additional operational space. The timber frame although painted a similar colour to the weather boarding is constructed in a crude manner unlike that of the weather boarding.

15. Two Jumbrellas constitute a large proportion of the extension and a tarpaulin or plastic sheet has been affixed over them and in places to the listed building to fashion a 'roof' to that part of the extension. Timber framing/walling has been erected around the sides of the Jumbrellas to form an additional dining/function space under the Jumbrellas.
16. Adjoining the rear elevation of the listed building the roof of the extension is formed of timber with a 'Perspex' type material and the timber is attached to the listed building. The width of the space covered by this roof is relatively restrictive adjacent to the timber frame of the Jumbrellas. Nevertheless, adjacent to the shed and cold store the space covered is appreciably wider. The shed is of timber and has the appearance of a typical shed found in domestic gardens. The cold store has the appearance of a large white box with doors on it and a timber sheeted 'roof' has been constructed over it and this appears to be affixed to other parts of the timber frame and roof of the extension.
17. The rear extension as a whole is a substantial structure that obscures views of the rear elevations of the listed building from the rear garden area. Moreover, its utilitarian and crude design and materials are visually obtrusive and divert attention away and substantially detract from the appreciation of the building's vernacular form and fabric.
18. Without the Jumbrellas in place the extension would be a substantially smaller structure. Nevertheless, the utilitarian and crude design and materials of the remaining part of the extension would still be apparent against the rear elevation of the building. Whilst the shed and cold store are capable of being detached structures, they currently form an integral part of the rear extension. Even if it was self-supporting the timber and Perspex roof would need to remain close to the rear elevation of the listed building to ensure that it continued to act as a covered walkway for staff to access the shed and cold store. As a result, it would continue to have the appearance of and function as an extension to the building. Moreover, it is more likely than not that for the cold store and shed to carry on being used as part of the operational space of the public house/restaurant that they would also continue to be seen and function as part of an extension, albeit a smaller one, when considered together with the timber and Perspex roof.
19. The retention of this smaller extension would also be visually obtrusive, and it would divert attention away and detract from the appreciation of the building's vernacular form and fabric. As such, that smaller extension would harm the special interest/significance of the listed building and the contribution that its setting makes to that special interest/significance.
20. The extract flues are on the rear of the building, they appear to have a limited height above its eaves and with the unauthorised rear extension in place they are not readily apparent when the building is viewed from the rear garden area. Nevertheless, the one flue extends through the weather boarding of the rear wall and the other one through a pane of a sash window. As such, they are clearly apparent when adjacent to the rear elevation of the listed building.
21. In addition, the materials utilised for the flues and their bulky design means that they result in obtrusive and visually alien additions to the listed building. I accept that flues are regularly required in association with a public house/restaurant use but these are significantly insensitive in terms of their

- positioning on the building, their materials and size. As a result, they materially diminish and harm the aesthetic contribution that the vernacular design and materials make to the special interest/significance of the listed building.
22. The appellant has stated that the flues replaced similar extract flues and the works were not carried out by him. The flues may have been positioned and inserted in a similar way to previous extract flues and the impact on the historic fabric of the listed building would have been negligible in that instance. Nevertheless, no evidence in relation to any previous flues on the property has been provided. Additionally, ownership of a listed building is onerous and it is the current owner of a listed building who is responsible for the consequences of any works carried out to the building even if the works are carried out by a tenant or previous owner of the building.
23. In this case the unauthorised works are largely hidden from views from the public domain and as such the attractive ensemble that forms this part of NCA is and would not be materially affected. Nevertheless, the high quality of the historic buildings within it contributes to NCA's evidential, historic and aesthetic value. Moreover, the duty to have special attention to the desirability to preserve or enhance the character or appearance of a conservation area applies with equal force whether or not the works are in public view.
24. Given my findings above, in relation to the special interest/significance and setting of the listed building, I consider that the unauthorised works as a whole or in part therefore also harm/would harm the character, appearance and significance of NCA. Consequently, whilst the magnitude of the harm of the works may be concluded to only be minor adverse in the context of NCA as a whole, they nevertheless fail/would fail to preserve it, and so are/would be in conflict with the requirements of the Act.
25. In conclusion, I consider that the unauthorised works as a whole or in part fail/would fail to preserve the special interest and setting of the listed building and the character and appearance of NCA contrary to the expectations of the 1990 Act. I must attach considerable importance and weight to these considerations when reaching my decision. I conclude that the harm caused to the designated heritage assets, is/would be, in the context of the significance of the assets as a whole and in the language of the National Planning Policy Framework (the Framework), less than substantial. In those circumstances, paragraph 196 of the Framework says that this harm should be weighed against the public benefits of the works including, where appropriate, securing its optimum viable use.
26. The continued use of this historic public house within NCA can reasonably be treated as a public benefit. I also acknowledge the appellant's concerns about closure especially given the impact that the Covid-19 pandemic has recently had on public houses/restaurant uses. The additional operational space provided by the rear extension appears to assist the viability of that use. Furthermore, it appears that the provision of a covered walkway to the cold store and shed was a requirement of the Council's Environmental Health department. However, it has not been demonstrated that extensions of the current size and form or the proposed reduced size and form are the only way to extend the building, provide additional space for the use and/or meet the Council's Environmental Health requirements.

27. In relation to the extract flues I accept that to maintain the kitchens they are important to the continuing viable use of the listed building as, in my experience, the restaurant element of public houses is now very important to that viability. In addition, moving the flues to differing positions would more than likely have an impact on some historic fabric of the building. However, the extract flues are significantly insensitive in relation to their position, size and materials and there is little to demonstrate that there are no other reasonable possibilities or that exploration of all other options has been completed.
28. In order to enable time for alternatives for the extension and the extract flues to be explored I will consider the time given for compliance in the ground (h) appeal below.
29. Even though I have found that the harm to the designated heritage assets is less than substantial, it is not to be treated as a less than substantial objection. The appreciable public benefits of the rear extension and the extract flues, set out above, do not/would not outweigh the great weight to be given to the harm to the significance of the heritage assets.
30. For the reasons set out above, and taking into account all other matters raised, I conclude that the appeal on ground (e) fails and listed building consent is refused.
- 31. The ground (j) appeal and hidden ground (g) appeal**
32. The appellant has stated that he has appealed on ground (j) rather than ground (g) as the requirements of the notice utilise the word 'reinstate' which does not appear within the formal grounds of appeal. He goes on to state that whether through ground (g) or ground (j) the appellant requests that the requirements of the notice be revised.
33. Section 38(2) of the 1990 Act states that: '*A listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken within such period as may be so specified- (a) for restoring the building to its former state; or (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent;....*'
34. The Notice does not state as to whether it has been issued under section 38(2)(a) or 38(2)(b). Nevertheless, even though requirements iv) and vi) of the notice cite the word 'reinstate' it is clear that the requirements of the notice are intended to restore the building to its former state by removing all the components of the rear extension, the fixtures and fittings affixing it to the listed building, the supporting timber frame, the extractor flues and their associated supporting structures, cabling and pipework, and to make good any damage to the building.
35. Section 38(2)(b) is only applicable in cases where the Council consider that such restoration would not be reasonably practicable or would be undesirable. There is no indication that the Council took such a view and there is nothing to suggest that restoration to the former state would be impracticable or undesirable. The appeal under ground (j) must therefore fail.



36. In order to appeal against a listed building enforcement notice brought under section 38(2)(a), an appeal should be brought on ground (g) – that the requirements exceed what is necessary for restoring the building to its condition before the works were carried out.
37. This is basically what the appellant argues, in that he states that the extract flues have replaced previous flues of a similar design and position. Furthermore, he states that the cold store and shed were detached buildings prior to the rear extension being constructed and that the timber and Perspex roof, cold store and shed could be detached from the listed building.
38. However, as stated above, other than the appellant's statement no evidence of any previous flues or when they were installed has been provided. I accept that detached buildings within the grounds of a listed building do not normally require listed building consent. Nonetheless, there is little specific evidence as to when or how long the cold store and shed were free-standing structures on the site to indicate that they were not erected as an integral part of the rear extension.
39. In addition, I have found under ground (e) above that even if it was self-supporting the timber and Perspex roof would continue to have the appearance of and function as an extension to the building.
40. Consequently, as a matter of fact and degree, it has not been demonstrated that the suggested revisions to the requirements of the notice would achieve the objective of restoring the listed building to its former condition. Therefore, only the complete removal of the unauthorised works, their fixtures and fittings and the making good of any damage to the listed building would restore the listed building to its former condition and had an appeal been made on ground (g) it would have failed.

### **The ground (h) appeal**

41. The issue is whether the compliance period of two calendar months is reasonable. The appellant has requested the period for compliance be extended to 8 months due to the potential serious consequences the loss of the rear extension and extract flues would have for the viability of the business and the need for the appellant to find an alternative solution to maintain that viability.
42. The Council has stated that given the current climate as a result of the Covid-19 pandemic, the Council has no objection to extending the compliance period to four months.
43. It appears from the evidence before me that the new owner of the listed building would need time to engage with the Council and their own professionals to find alternative solutions which would enable them to submit an application for the works to extend the operating area of the use and replace the extract flues and have that considered.
44. Furthermore, whilst I appreciate the constraints which the Covid-19 pandemic has and will have on the business, I am also mindful of the harm that I have identified to the heritage assets. Therefore, the conclusion that I have reached is that a period of 6 months would be a reasonable time period for compliance, given the nature of the development and the circumstances of the case. To this extent the appeal on ground (h) succeeds.

### **Other Matters**

45. In reaching my conclusions on all of the grounds of appeal I have taken into account all of the other matters raised by the appellant, the third party and the Council. However, none of these alters any of my conclusions on the various grounds of appeal and nor is any other factor of such significance so as to change my decision.

### **Overall Conclusion**

46. For the reasons given above, I conclude that the appeal shall not succeed. I shall uphold the enforcement notice with a variation.

*D. Boffin*

INSPECTOR