



Appeal Decision

Site visit made on 11 April 2023

by Paul Griffiths BSc(Hons) BArch IHBC

an Inspector appointed by the Secretary of State

Decision date: 9th May 2023

Appeal Ref: APP/L3245/Y/22/3306565

The Eagles Inn (Former), 1 Harley Road, Cressage SY5 6DE

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period on an application to vary conditions of a listed building consent.
 - The appeal is made by Eagle Mews Ltd against the decision of Shropshire Council.
 - The application Ref.22/02781/VAR, dated 30 June 2022, sought to remove or vary a series of conditions attached to listed building consent Ref.21/02123/LBC, granted on 16 December 2021.
 - The works proposed were described as 'internal alterations in association with conversion of former public house to two residential dwellings'.
 - The conditions in dispute are Nos.3, 4, 5, 8, 9, 10, 11, 12, 13, 15, 17, and 18.
 - The reasons for the conditions, in general terms, relate to the need to safeguard the special interest of the listed building.
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Preliminary Matters

1. The Eagles Inn dates from the late 16th or early 17th Century and was extended and altered in the 19th and 20th Centuries. It was built as a dwelling before becoming a Public House and was recently added to the Statutory List as a Grade II listed building. In December 2021, the Council granted planning permission (Ref.21/02078/FUL) and listed building consent (Ref.21/02123/LBC), for the conversion of the building to two dwellings. The conditions attached to the latter are the subject of this appeal.
2. It is necessary at the outset to address the question of the description of the works that were permitted by the grant of listed building consent. As set out above, the Council's decision notice describes them as: *internal alterations in association with conversion of former public house to two residential dwellings*. Notwithstanding the reference to 'internal alterations', it is clear from the plans that formed part of the application that the works for which consent was sought also included some significant external alterations and additions.
3. The Council acknowledges that their description of the works was not as comprehensive as it might have been. However, the Council's grant of consent must be seen in the context of the application, and the plans. Indeed, the appellant has proceeded on the basis that listed building consent has been granted for the external works because they are shown on the plans. In my view, that must be the correct interpretation.
4. It must follow that if consent has been granted for the external works, then there can be nothing unreasonable, in principle, about the conditions applied by the Council that relate to those external works.

5. Notwithstanding that conclusion, the solution to this question is, I believe, a simple one. Section 19(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Act) sets out that any person interested in a listed building with respect to which listed building consent has been granted subject to conditions may apply to the local planning authority for the variation of the conditions. The originating application was made on that basis.
6. Section 19(4) of the Act makes plain that on such an application, the local planning authority or the Secretary of State may vary the conditions attached to the consent and may add new conditions consequential upon the variation as they think fit.
7. Appeals are dealt with in section 20 of the Act. Section 22 deals with determination of appeals. Section 22(1) says that the Secretary of State (or those acting on their behalf) may allow or dismiss an appeal under section 20 or may reverse or vary any part of the authority's decision (whether or not the appeal relates to that part), and (a) may deal with the application as if it had been made to them in the first instance.
8. What that means is that the original decision is before me in its entirety. On that basis, it is within my powers to adjust the description of the works in order to deal with the difficulty, such as it is, that has arisen from the manner in which the Council approached it.
9. I therefore intend to deal with the appeal on the basis that consent is sought for: *alterations and additions in association with the conversion of a former public house to two dwellings*. Given that that was the basis of the original application for listed building consent, and the plans and details submitted with it, I can do that without causing any unfairness to either main party, or indeed anyone else. It seems to me the most pragmatic way forward.
10. As referred to above, there is a parallel grant of planning permission (21/02078/FUL) for the conversion of former public house to two dwellings; and associated works which repeats several of the conditions that are subject to the appeal before me.
11. Be that as it may, I have dealt with the appeal before me on its own merits recognising that it is open to the appellant to make an application under s.73 for a new grant of planning permission for the proposal. My decision herein would, I imagine, be a significant material consideration in any determination.

Decision

12. The appeal is allowed, and the listed building consent Ref.21/02123/LBC granted on 16 December 2021 by Shropshire Council is varied by changing the description of the works to *alterations and additions in association with the conversion of a former public house to two dwellings*, deleting condition Nos.1-18 inclusive, and substituting for them the following conditions:
 - 1) The works authorised by this consent shall begin no later than three years from the date of this consent.
 - 2) No works shall commence until a Level 3 photographic survey of the interior and exterior of the building (as defined in *Understanding Historic Buildings: A Guide to Good Recording Practice*) has been submitted to and approved in writing by the local planning authority.

- 3) No works involving external services shall commence until details of all new external services (including but not limited to soil and vent pipes, waste pipes, boiler flues, ventilation terminals, meter boxes, cabling, electrical fittings and rainwater goods) have been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.
- 4) No works involving internal services shall commence until details of internal service runs have been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.
- 5) No works to the stone boundary wall, proposed to be reduced in height, shall take place until details of the lowered wall, including its parapet/capping detail and mortar mix and colour, have been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.
- 6) No works to the roof shall take place until details of any new roofing materials, and associated ventilation fittings, have been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.
- 7) Before its installation, details of the replacement of the first-floor projecting roof-light shall be submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.
- 8) No works of re-pointing shall take place until details of that re-pointing have been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.
- 9) No works of re-rendering shall take place until details of that re-rendering have been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.
- 10) No works involving external joinery shall take place until details of all new windows, doors, porches, and any other new external joinery, including finishes, have been submitted to and approved in writing by the local planning authority. Works shall be carried out in accordance with the approved details.

Main Issue

13. I should make clear at this juncture that because the original decision of the Council is before me in its entirety, the question of whether listed building consent should actually be granted for the works proposed is before me. That said, I see no good reason to question the grant of consent. I am content that, subject to conditions, the works proposed to the listed building, seen in the context of bringing it back into use, need not be harmful to its special architectural or historic interest. In that way, the works do not offend section 16(2) of the Act. As a result and having set out above my approach to the description of the works, I intend to confine myself to the conditions attached to the original grant of consent including, for reasons that will become clear, those not in dispute.

14. Paragraph 56 of the National Planning Policy Framework (the Framework) says that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. Conditions that are required to be discharged before development commences should be avoided unless there is a clear justification.
15. Obviously, this statement of Government policy refers to the use of conditions in the context of a grant of planning permission for development. However, the 'tests' therein seem to me to be similarly applicable to conditions attached to grants of listed building consent for works.
16. As a result, the main issue in this case is whether the conditions attached to the original grant of listed building consent, meet these 'tests'.

Reasons

17. I will begin by addressing the conditions disputed by the appellant.

Condition 3

18. This condition requires the provision of a photographic survey of the interior and exterior of the building, for the approval of the Council before any development commences. The position of the appellant is that because the Council changed the description of works to cover internal alterations and additions only, then the condition should reflect that, and the reference to the exterior of the building should be removed. However, as set out above, I am able to change the description of works to ensure that the external works are covered by the grant of consent.
19. Paragraph 205 of the Framework does say that local planning authorities should require developers to record and advance understanding of the significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence publicly accessible. In that context, I can see the justification for the condition and consider it reasonable to require a proportionate (in the words of the Framework), preliminary photographic survey to be carried out.
20. That said, condition 3 is inaccurate, and thereby imprecise, in its reference to 'before any development commences'. Listed building consent is granted for *works* rather than *development* so condition 3 needs adjustment to reflect that.

Condition 4

21. Condition 4 requires the submission of a schedule of building works to be submitted for the approval of the local planning authority before works commence with all works being required to be carried out in accordance with the approved schedule, and all existing original features to be retained unless shown to be removed on the approved plans. The appellant makes the point that this condition should be adjusted to reflect that the grant of consent was for internal works.
22. I have addressed that matter above and the same principles would apply. However, it is my view that there is a more fundamental difficulty with this condition. As set out above, the grant of consent needs to be seen in the context of the application, and the associated plans.

23. In that context, I do not see the purpose of a condition requiring a further schedule of building works. If unforeseen works turn out to be required in the course of converting the building, for whatever reason, then a further grant of listed building consent would be required for them. Similarly, if original features that are intended to be retained as part of the proposal need to be removed then again, a further grant of listed building consent would be required for these works.
24. A condition cannot lawfully circumvent those requirements and as such, it is my view that condition 4, as applied to the original grant of consent, is both unnecessary, and unreasonable. It must, therefore, be removed.

Condition 5

25. External services are the subject of condition 5. The appellant suggests that this condition should be removed because the repair of existing services, or their replacement with matching fittings, would not need listed building consent. That is correct, as far as it goes, but what is proposed here is the conversion of a public house to two dwellings. Details of external services are not shown on the plans and elevations and there are bound to be meter boxes, boiler flues, external lighting, and so forth needed to facilitate the conversion.
26. In the context of a grant of listed building consent for that conversion, it seems to me necessary to allow for some control to be exerted over the details of any external services to ensure that they can be installed in a way that does not cause undue harm to the special interest of the building.
27. In essence, then, condition 5 is necessary. However, it would function more effectively if it was widened in scope to include any and all external services, including rainwater goods. Moreover, the implementation clause needs to be changed to refer to works rather than development. On that overall, basis, I intend to vary condition 5.

Condition 8

28. Condition 8 deals with roofing materials and attendant fittings. The plans describe what is proposed as *remove roof covering; replace leadwork, felt and re-tile roof using matching plain tiles*. The appellant argues that this operation would not constitute works as, with reference to Section 7 of the Act, it would not affect the character of the building as one of special architectural or historic interest.
29. There is some force in that argument provided that what took place in relation to the roof was limited to that. However, I have my doubts about whether it could be. If the condition was removed on the basis the appellant suggests, then it seems to me that the appellant might be put in a difficult position if, for example, roof ventilation fittings, needed to be installed. They might well need a further grant of listed building consent.
30. In the context of what is a conversion, where unforeseen difficulties might arise in relation to the roof, and applying a degree of pragmatism, it seems to me that it is in everyone's best interests for condition 8 to remain. However, it needs to be adjusted to reflect the fact that like-for-like replacement of roof tiles and/or leadwork would not constitute works. The implementation clause also needs to be changed to refer to works rather than development.

Condition 9

31. The proposal includes five new replacement roof-lights. In the light of what I have said above about changing the description of the works to cover internal and external alterations, these clearly form part of the works of conversion. Condition 9 requires details of the roof-lights to be submitted for the approval of the local planning authority and for installation to take place in accordance with the approved details.
32. The plans say that in four cases, what would be installed are black conservation roof-lights from the Roof-Light company. In my view, roof-lights of this specification would be acceptable, and the information provided is sufficient to obviate the need for any further details to be submitted for approval.
33. However, the remaining roof-light is a different matter. What is proposed, according to the plans, is for a first-floor projecting roof-light to be replaced with a conservation roof-light flush with the roof-scape. No further details of how that would be achieved have been provided. A condition is therefore necessary to secure those further details and ensure that the replacement can take place without harm to the special interest of the listed building. Condition 9 needs to be adjusted to reflect that.

Condition 10

34. Condition 10 addresses pointing and/or re-pointing requiring details to be submitted for approval, though I would add that the condition, as applied, does not require the pointing or re-pointing to be carried out in accordance with the approved details.
35. The only reference to pointing/re-pointing on the plans is in relation to the chimneys. No further details are given but if it is done with sufficient care, in relation to the mortar mix, and attention to detail, and the finish of the pointing (for example whether it is flush or recessed), then re-pointing the chimneys need not affect the character of the building as one of special architectural or historic interest. In that way, the re-pointing would not constitute works and condition 10 could be seen as superfluous and removed. However, if in carrying out the re-pointing referred to on the plans, the level of care and attention to detail is a little wanting, then it may affect the character of the building as one of special architectural or historic interest and constitute works.
36. In the absence of any further details of the re-pointing proposed, or of the manner in which the existing pointing to the chimneys has been carried out, then it is in my view prudent to apply a condition requiring details of what is proposed to be submitted to and approved by the local planning authority. Condition 10 needs to be adjusted however, because in the form drafted it is too restrictive and lacks an implementation clause. It is also necessary to make provision for the fact that areas of masonry beyond the chimneys might need re-pointing too.

Condition 11

37. This condition relates to the re-rendering proposed to the exterior of various elements of the building, as shown on the plans. Given what I have set out above about changing the description of the works to include external works as well as internal, this is very clearly something that falls to be considered.

38. The principal area of re-rendering, on the west elevation of the building, would replace an area of existing tile-hanging. This operation would clearly affect the character of the building as one of special architectural or historic interest and thereby constitute works.
39. No details of the re-rendering proposed, beyond what is shown on the plans, have been put forward. In that context, it is important for the local planning authority to be able to control the nature of the re-rendering and its finish to ensure that the works cause no harm to the special interest of the listed building. However, condition 11 is quite specific in its requirements, particularly in relation to the 'sample panel'. To my mind, it would be sufficient for the condition to require 'details of the re-rendering' to be submitted for approval. That would make possible a more proportionate approach.

Condition 12

40. This condition refers to new external doors and windows and other new external joinery. The plans make reference to several new windows and doors, and there are new porches too. There are no details beyond what is shown on the plans. If the description of the works is changed to include external as well as internal works then in principle, it is reasonable for the Council to be able to exert some control over the design and finish of these elements.
41. I take the point that some of the existing windows that are scheduled for replacement are uPVC. However, it appears that these windows were in place when the building was added to the statutory list. Although replacing these uPVC windows with hardwood windows would on the face of it be an improvement, the operation would still affect the character of the building as one of special architectural or historic interest. The alteration would therefore be works and as such, it is important that the details of the new windows are properly considered.
42. That said, I do have some issues with the wording of condition 12 as drafted because it is rather prescriptive. I will adjust the condition so that it acts in a more proportionate way.

Condition 13

43. Condition 13 requires all existing features of (special) architectural and historic interest to be retained in-situ and fully protected during the approved works.
44. The scope of the works is as shown on the plans. If an existing feature that is meant to be retained is removed, then that would constitute works for which consent would be required. If the removal took place without consent then it would be possible for the Council to take enforcement action. Similarly, if an existing feature of special interest is damaged in the course of the conversion works then again, then that would be a failure on the part of those carrying out the works and the Council would be able to take action. In that context, the condition is unnecessary and can be removed.

Condition 15

45. This condition requires all new external and internal work and finishes, and work of making good, to match existing original work adjacent, except when shown to be different on the plans. In the context of the changed description of the works, the inclusion of a reference to external as well as internal works is

no difficulty. More fundamentally though, the condition is unnecessary because any new external or internal interventions not shown on the plans, including making good, would constitute works if they were not carried out in matching materials and methods. As a result, condition 15 serves no purpose.

Condition 17

46. Condition 17 seeks the submission of details of proposed decorative finishes and colour scheme to be submitted for approval. The Council suggests that this condition is meant to require details of the proposed porches and hard surfacing (patios). If that is the case, then the condition as applied is imprecise, to say the least. Details of porches, including finishes, are covered by the Council's condition 12. The hard surfacing to form patios is not something that would affect the character of the building as one of special architectural or historic interest and in the context of a conversion of the building to dwellings, it is something that can be left to the developer and/or occupiers. As a result, condition 17 is unnecessary and can be removed.

Condition 18

47. This condition requires all gutters, downpipes soil and vent pipes and other external plumbing to be formed in cast iron or cast aluminium. There is no reference on the plans to rainwater goods. From what I saw, there is quite a mixture in place currently, with metal guttering of some vintage, and some more modern, in terms of design and materials. The building was added to the Statutory List with that mixture in place.
48. In that context, it seems to me onerous, and unreasonable for the Council to require all new external plumbing to be formed in cast iron and aluminium – it might be preferable, but the 'betterment' it entails is not necessary to make the conversion proposed acceptable. That said, it is my view that some control needs to be exerted over this aspect of the works. However, this can be achieved through the condition that addresses external services (the Council's condition 5, my new condition 3).

The Conditions not in Dispute (1, 2, 6, 7, 14 and 16)

49. I will deal with these in turn. Condition 1 deals with implementation. However, it is inaccurate in that it refers to the commencement of development rather than works. It needs to be adjusted to suit.
50. Condition 2 requires all works to be carried out in complete accordance with the terms of the application and approved plans. Conditions of this sort have been applied to grants of planning permission for some time in order to allow for subsequent applications for minor material amendments. There is no parallel facility in relation to grants of listed building consent.
51. Further, section 7 of the Act makes plain that no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised. The terms of the listed building consent granted in this case are based on the particulars of the application and the submitted plans.
52. As section 8 of the Act says works for the alteration or extension of a listed building are authorised if (a) written consent for their execution has been

granted by the local planning authority or the Secretary of State (including those acting on their behalf); and (b) they are executed in accordance with the terms of the consent and of any conditions attached to it.

53. It is therefore clear that if the appellant, or indeed anyone else, carries out works to the listed building that go beyond the terms of the grant of listed building consent, terms that include the plans and other particulars, then they would be in breach of section 7, and as a result, in breach of section 9 of the Act that deals with offences. Against that overall background, condition 2 is of no utility and can be removed.
54. Condition 6 requires details of all routes for internal mechanical and electrical services and drainage to be submitted to and approved in writing by the local planning. I can see the necessity for that given that new kitchens and bathrooms are proposed as part of the proposed conversion, without details of how they will be serviced being provided. I strongly suspect that rewiring will be involved too.
55. The first difficulty with the condition as drafted is that it requires development to be carried out in accordance with the approved details rather than works. Second, I consider 'mechanical and electrical services' to be too specific in its phrasing. There may be internal runs required for services that do not meet either definition. As such, condition 6 requires adjustment.
56. Works to the stone boundary wall to meet highways requirements are the subject of condition 7. In the absence of details on the plans, I can see the necessity for these works to be made subject to the approval of the Council. However, the implementation clause needs to refer to works rather than development.
57. Condition 14 requires all new partitions and other elements of new construction to be scribed around rather than cut into architectural features. To my mind, that is simple good practice and if features of this sort were damaged in the course of carrying out the conversion, then the Council could take action. Condition 14 is unnecessary.
58. Finally, condition 16 is intended to secure a record of any features of special interest that might be uncovered in the course of the works and affected. It seems to me though that if any previously unknown features were uncovered, any effect upon them would not be covered by the grant of listed building consent. Works to them would need a separate grant of consent in order to avoid breaches of sections 7 and 9 of the Act. As such, condition 16 is unnecessary.

Conclusion

59. On that overall basis, I intend to allow the appeal and vary the grant of listed building consent accordingly.

Paul Griffiths

INSPECTOR