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## Appeal Decisions

Site visit made on 24 May 2023

by **Paul Griffiths BSc(Hons) BArch IHBC**

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

Decision date: 12 July 2023

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### **Appeal A: APP/L3245/W/22/3305077**

#### **46 (Flat) Mardol, Shrewsbury SY1 1PP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by John Kuschnir against the decision of Shropshire Council.
  - The application Ref.22/01201, dated 9 March 2022, was refused by notice dated 16 May 2022.
  - The development proposed is described as 'the erection of a second storey to former cold store and two storey warehouse; the installation of two roof-lights to rear roofline; and extension at first floor with formation of roof terrace'.
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### **Appeal B: APP/L3245/Y/22/3309846**

#### **46 (Flat) Mardol, Shrewsbury SY1 1PP**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by John Kuschnir against the decision of Shropshire Council.
  - The application Ref.22/01522/LBC, dated 28 March 2022, was refused by notice dated 17 May 2022.
  - The works proposed are described as 'works to facilitate the erection of second storey to former cold store and two-storey warehouse; the installation of two roof-lights to rear roofline; and extension at first floor with formation of roof terrace'.
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### **Appeal C: APP/L3245/W/22/3315101**

#### **46 (Flat) Mardol Shrewsbury SY1 1PP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by John Kuschnir against the decision of Shropshire Council.
  - The application Ref.22/02424/FUL, dated 23 May 2022, was refused by notice dated 25 July 2022.
  - The development proposed is described as 'the construction of first floor rear extension; insertion of patio doors; formation of roof terrace; and installation of two roof-lights'.
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### **Appeal D: APP/L3245/Y/22/3315167**

#### **46 (Flat) Mardol Shrewsbury SY1 1PP**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by John Kuschnir against the decision of Shropshire Council.
  - The application Ref.22/02357/LBC, dated 18 May 2022, was refused by notice dated 25 July 2022.
  - The works proposed are described as 'the construction of first floor rear extension; insertion of patio doors; formation of roof terrace; and installation of two roof-lights'.
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## Procedural Matters

1. Despite some elements in common, there are differences between the proposals in Appeals A and B, and those in Appeals C and D. In the headers above, I have adopted the more succinct descriptions of development and works in the Council's decision notices and I have dealt with the two pairs of appeals on the basis of those descriptions.
2. Appeals B and D are appeals against the Council's refusal to grant listed building consent for works. When dealing with appeals of that kind, it is incumbent upon me as the Inspector to satisfy myself that what is proposed are in fact works that require listed building consent, notwithstanding the fact that applications for such consent were made.
3. In so doing, my reference point is Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). This sets out 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. Having regard to what the proposals here entail, the central question is whether the alterations and extensions proposed would affect the character of the listed building as one of special architectural or historic interest; the listed building in this case being 46 and 47 Mardol.
4. The list description tells us that 46 and 47 Mardol are a pair of shops, probably built as a house. They date from the early 18<sup>th</sup> Century probably re-fronting an earlier structure. The steeply pitched roof and rendered gable ends behind a parapet suggest a possible timber-framed core.
5. The proposals in Appeals B and D involve changes to the additions to the rear of 46 and 47 Mardol. These additions appear to date from the 20<sup>th</sup> Century and have very little architectural merit, or historic interest. The fact that these rear additions are not mentioned in the list description is not definitive, but it is very clear from that list description that the special architectural and historic interest of the listed building resides in the early 18<sup>th</sup> Century element that fronts Mardol. The changes proposed to the much later rear additions would have no effect at all on that element and for that reason, I am of the view that the alterations and extensions proposed in Appeals B and D would not affect the character of the listed building as one of special architectural or historic interest. On that basis, those proposals would not meet the definition of works and do not, therefore, require listed building consent. For those reasons, I intend to take no further action on Appeals B and D.
6. In terms of Appeals A and C, it is important, first of all, to set out some background. The appellant maintains that the Council granted planning permission (ref.97/1040/114/85) and listed building consent (ref.97/1042/LB2/114/85) for 'replacing a ground floor flat roof with a hip pitched roof, replacing a first floor flat roof with a hip pitched roof, replacing a mono-pitch asbestos roof with a hip pitched roof, demolishing a wall, refurbishing an existing balcony, forming an opening in an existing wall for double French doors and a window, and change of use to residential for the former cold store and rear ground floor' on 3 December 1997. The appellant further maintains that this development was commenced, and the Council confirmed that to be the case on 3 July 2006.

7. In their submissions on the appeal, the Council has not disputed any of this information. On that basis, it seems to me that the appellant is at liberty to complete the development/works that he has permission and consent for. The proposals at issue in Appeals A and C must be seen in that context.
8. Further, it has been brought to my attention that the Council has granted on 17 April 2023, under ref. 23/00488/VAR, what it terms a 'variation of condition' relating to condition 2 attached to the grant of planning permission ref.97/1040/114/85. Bearing in mind how section 73 actually works, what the Council has done is grant planning permission for the same development that was permitted in December 1997, with a new condition 2. This means that having considered it, the Council has, alongside other things, approved the development that is before me in Appeal C, or at least, something very similar to it. I have no good reason to reach a contrary view, and, on that basis, I intend to allow Appeal C, subject to the conditions suggested by the local planning authority, with some minor adjustments, which cover commencement, the approved plans, external materials, and various details

## **Decisions**

### **Appeal A**

9. The appeal is allowed and planning permission is granted for the erection of a second storey to former cold store and two storey warehouse; the installation of two roof-lights to rear roofline; and extension at first floor with formation of roof terrace at 46 (Flat) Mardol, Shrewsbury SY1 1PP in accordance with the terms of the application Ref.22/01201, dated 9 March 2022, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Un-numbered: Site Location Plan; 05: Proposed Floorplans; 08: Proposed Ground Floor Plan; 09: Proposed First Floor Plan; 10: Proposed Second Floor Plan; 11 (March 2022): Proposed Elevations; and 11 (May 2022): Proposed Elevations.
  - 3) No development shall take place until samples of the wall and roof materials, and details of brick bond, and the treatment of new openings, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 4) No external windows or doors shall be installed until details thereof have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 5) No construction work involving the new roof to the former cold store shall take place until details of the treatment of the eaves, hips, and ridge have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

## **Appeal B**

10. No action for the reasons set out above.

## **Appeal C**

11. The appeal is allowed, and planning permission is granted for the construction of first floor rear extension; insertion of patio doors; formation of roof terrace; and installation of two roof-lights at 46 (Flat) Mardol Shrewsbury SY1 1PP in accordance with the terms of the application Ref.22/02424/FUL, dated 23 May 2022, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with the following approved plans: Un-numbered: Site Location Plan; 09: Proposed Floorplans; 10: Proposed Floorplans; 11: Proposed Elevations.
- 3) No development shall take place until samples of the wall and roof materials, and details of brick bond, and the treatment of new openings, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No external windows or doors shall be installed until details thereof have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

## **Appeal D**

12. No action for the reasons set out above.

## **Main Issue**

13. That leaves Appeal A. Appeal A differs from Appeal C in that as well as the alterations to the existing building covered by Appeal C, it also involves the addition of another storey to what is referred to as the former cold store and a new hipped roof on top of that, with the accommodation so formed being used as a separate residential unit. Having found nothing untoward with Appeal C, it is clear that the corresponding elements of Appeal A should also find favour. The main issue in Appeal A is, therefore, whether the addition of another storey to the former cold store, and the formation of a residential unit within it, is acceptable, having regard to the various issues raised by the Council about it.

## **Reasons**

14. The first aspect of concern to the Council relates to bats and specifically, the absence of a bat survey. Standing advice from Natural England states that a survey should be requested if a development proposal is likely to negatively affect bats or their roost habitats, foraging habitats, or commuting habitats. The remains of the former 'cold store' consist of a roofless shell. There is nothing in what remains of it that is remotely likely to provide a roosting opportunity for bats and neither would an upward extension of it disturb foraging or commuting habitats. In that context, I see no difficulty with the proposal in relation to bats.

15. The second aspect of concern relates to flood risk and the absence of any Flood Risk Assessment. The site is close to the path of the River Severn but it is fair to observe that the floor of the former cold store is raised well above the prevailing street level. More importantly, there are two extant planning permissions (ref.97/1040/114/85 and ref.23/00488/VAR) which allow the use of the ground floor of the former 'cold store' for residential use. Extending that already permitted use upwards, into a new second storey, would have no impact in flood risk terms.
16. That leaves the issue of designated heritage assets. The former cold store is one part of the additions to the rear of Nos.46 and 47 Mardol, a Grade II listed building. Like the other additions, the former cold store dates from the 20<sup>th</sup> Century and has little architectural merit or historic interest. What is more, these later additions to the listed building are prominent in views from Smithfield Road which runs along the path of the River Severn. The sight of the roofless former cold store and for that matter, the other additions to the rear of Nos.46 and 47 Mardol, have a negative impact on views of the rear of the listed building, the setting of other listed buildings on Mardol, and both the character and appearance of the Shrewsbury Conservation Area.
17. The upward extension of the former cold store would be prominent in these views, but if constructed appropriately in terms of the use of materials and architectural detailing, matters that can be dealt with by condition, it would appear resolved, as opposed to the incomplete shell visible at present. In this way the upward extension of the former cold store, alongside the other parts of the overall proposal, would significantly improve views of the rear of the listed building, the settings of other listed buildings, and enhance both the character and the appearance of the Shrewsbury Conservation Area. As a consequence, the proposal would be in full accord with the intentions behind s.66(1) and 72(1) of the Act.
18. Bringing all those points together, I am content that the proposals in Appeal A are in accordance with the development plan and Policies MD12 (Natural Environment) and MD13 (Historic Environment) of the Shropshire Council Site Allocations and Management of Development Plan adopted in December 2015 in particular. There are no material considerations that point towards a decision contrary to the development plan in this case.
19. On that basis, I intend to allow Appeal A, subject to conditions.

**Paul Griffiths**

**INSPECTOR**