Date: 18 October 2016

Applicant: Ms Nicola Tinker

Property: The Barn, Off Church Street, Bolton-upon-Dearne, Barnsley

REPORT

Legal analysis relating to applications for:

(1) Listed Building Consent for demolition of listed barn; and
(2) Outline planning application for residential development

The Stoneleigh Partnership

Rural Innovation Centre
Avenue H
Stoneleigh Park
Kenilworth
CV8 2LG

www.thestoneleighpartnership.com

1. Background

1.1 This former barn is Grade II Listed and is located to the rear of 6 Church Street, Bolton-upon-Dearne. The Applicant has inherited the application site from her father. It is understood that originally the building was agricultural, but at the time of the listing in 1985, the Applicant's father used the listed barn as a joinery. Planning permission was granted on 9 May 1995 for the conversion of the listed barn into 5 dwellings, together with the development of a further 8 dwellings on the site. Two of the additional 8 dwellings were constructed, but no work on the conversion of the barn was undertaken.

1.2 On 12 December 2010 a serious fire took place at the barn. Both the fire brigade and the police attended the scene. It is understood that a crime reference was given for the fire, but the police no longer have this reference number as they do not retain records back to this date.

1.3 A letter is attached at Appendix 1 from the Building Control Department at Barnsley Council dated 20 December 2010. This confirmed that as a consequence of the fire the roof to the listed barn had been almost completely lost, and the rear wall to the barn was no longer retrained by a roof. The gable nearest to the properties on Church Mews had begun to come away from the corners of the building and lean outwards.

1.4 The letter states that at that time the building was in an unsafe condition and posed a danger to anyone in the vicinity. However, it was not considered practical by the Building Control Manager at that time to remove the gable or fully secure the building. Therefore, a fence was erected around the dangerous gable end to contain any falling debris within the cordon and to try to prevent entry into the site by trespassers. These measures were considered to be the minimum necessary to remove imminent danger at that time.

1.5 Over the last six years, since the fire took place, the remains of the buildings on the site have deteriorated substantially. Our client has now inherited the site from her father and is extremely concerned about the danger that the remains of these buildings pose. She has attempted to secure the site with perimeter fencing and warning signs, but despite this she has been notified by neighbours that they have witnessed trespassing on the site.

2. Analysis of structural integrity of the remains on the site

2.1 Mr. David Hough, a Chartered Building Surveyor, was engaged by our client to assess the remains of the buildings on the site. As can be seen from his report date 26 September 2016, he states that the "buildings are in an unsafe condition after being extensively damaged by fire".

2.2 In relation to the listed building, Mr. Hough notes that prior to the fire this used to be a long rectangular shaped building. Following the fire only a section of the building measuring approximately 7.50m wide x 9.0m deep remains. He

notes that the remaining freestanding walls are distorted and not vertical. He has concerns about the stability of the 4.5m high wall to the right hand side of the ruin and fears it may collapse in adverse weather conditions.

2.3 In relation to the single storey brick building Mr. Hough notes that there has been extensive fire damage to the roof and external timber. The poor condition of the roof made it unsafe to enter the building.

2.4 The two-storey building on the site is stated by Mr. Hough to be in "an extremely dangerous condition and carries a high risk of collapse". The building is considered to be unsafe and presents "a considerable health and safety risk". It is noted that the left hand side of the roof is in an extremely dangerous condition. Further, the outer leaf of masonry is separating and as there is no tie between the inner and outer face of the wall, it is vulnerable to collapse. The wall to the right hand side of the elevation is also stated to be in a very poor and unsafe condition.

2.5 In conclusion, Mr. Hough considers that this is "a site with very dangerous buildings". He states that there are no buildings on the site that are capable of being retained and redeveloped. The buildings are too unstable and present too great a risk to anyone in their vicinity. It is considered that the cost of repair and renovation of the brick building would likely exceed the cost of demolition and its rebuild. The two storey building is stated to be too badly damaged to allow it to be safely repaired. This building is stated to be "an immediate danger to the public". Mr Hough concludes that the safest and most cost effective way to deal with the buildings is demolition, thereby removing the imminent danger.

3. Policy, Case Law and Legislation

3.1 Sections 16(2) and 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 state that in considering whether to grant listed building consent for any works the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

3.2 Policy CP30 of the Barnsley MBC Local Development Framework – Core Strategy (September 2011) states that the Council will encourage the management, conservation and enjoyment of Barnsley's historic environment and make the most of the heritage assets. It states that development which affects the historic environment and Barnsley's heritage assets and their settings will be expected to protect or improve the character and / or appearance of Listed Buildings.

3.3 Paragraph 132 of the National Planning Policy Framework states that, "when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be lost or harmed through alteration or destruction of the heritage asset or development within its setting. As heritage assets are

irreplaceable, any harm to or loss of a Grade II listed building, park or garden should be exceptional…"

3.4 Paragraph 133 of the National Planning Policy Framework states that, "Where the proposed development will lead to substantial harm to or loss of significance of a designated asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh the harm or loss, or all of the following apply:

- The nature of the heritage asset prevents all reasonable uses of the site; and
- No viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- Conservation by grant funding or some form of charitable or public ownership is demonstrably not possible; and
- The harm or loss is outweighed by the benefit of brining the site back into use".

3.5 It is submitted that the proposal to demolish the remains of the buildings on the application site complies with all of these policies. As the Statement of Significance shows, there remains very little of the listed building or its setting which is worthy of retention. The damage caused by the fire has resulted in the loss of any remaining features of architectural or historical interest in the building, including the items in the Listing Description. Therefore, the loss in terms of the remains of the listed building and its setting would not be significant. Therefore, it is submitted that, in accordance with Paragraph 132 of the NPPF, the loss of the asset should not be accorded significant weight when considering the impact of the proposal to demolish the remaining structure.

3.6 Further, we believe that the circumstances surrounding the proposal for the loss of the remaining structures on the site are exceptional, given the extensive damage caused by the fire and the evidence that has been provided to show that it is not safe, practical or viable to use the remaining structure for any other purpose. Therefore, it is submitted that the proposal complies with Paragraph 132.

3.7 In relation to Paragraph 133 of the NPPF, again it is submitted that the proposal to demolish complies with all of the four points listed. Firstly, the nature of the heritage asset prevents all reasonable uses of the site and no viable use can be found to conserve the asset. Given its structural instability and the conclusions of Mr. David Hough that this is a site with very dangerous buildings, and that the safest and most cost effective way to deal with the situation on this site is demolition, it is clear that there is no reasonable use for the existing structure.

3.8 Grant funding has been thoroughly explored (see Appendix 2) and the conclusion from this exercise is that there is no funding available which would

enable the remains of the buildings on this site to be brought back into a viable use in the medium term.

3.9 Further, in terms of marketing, it is necessary to take into consideration that it is extremely unlikely that there would be any potential use for the remains of the buildings as the expert evidence clearly shows that the remains are not structurally safe and pose an imminent danger of collapse. It is therefore more than reasonable to conclude that there is not likely to be any interest in the buildings on the site in the medium term.

3.10 Finally, the harm or loss of the heritage asset is outweighed in this case by bringing the site back into use. Clearly, it will be more beneficial to being the site back into a positive use, for residential purposes, as this will provide housing that is needed for the area, in a sustainable location. When weighed against the alternative of the site remaining as an unsafe ruin, with all of the health and safety issues this would incur, together with the financial costs associated with this, it must be concluded that redevelopment of the site brings public benefits and the loss of the site is outweighed by the proposal to redevelop.

3.11 In many respects it is submitted that the proposal to demolish the remaining structures on this site falls outside the remit of policy requirements. Case law shows that where a listed building is dangerous and a threat to public safety, this is a strong ground for demolition. In the case of *Liverpool (17/05/1985) (DCS No 031-717-051)* the Secretary of State concluded that the unsafe condition of the buildings weighed against preservation.

3.12 In *Rossendale (07/02/1989) (DCS No: 057-489-666)* the Grade II* listed hall was a shell. The Inspector observed that if the structure was allowed to deteriorate further the stability of the outer walls would become increasingly a matter of concern. It was concluded that the building should be demolished.

3.13 In *Newcastle upon Tyne (23/05/2002) (DCS No 033-800-784)* the Inspector determined that the cost of repair of a listed coach house would be very substantial and that extensive demolition and rebuilding would be required. The Secretary of State agreed that the building was largely unsafe and unstable and the cost of repair was not justified.

3.14 In relation to cases of fire damage the case law shows that where there remains features of architectural and historical interest, the possibility of achieving restoration must be fully considered, together with any potential uses for the building. Further, grant funding must be explored to show that restoration is still not a practical or economically viable option, even if grants were taken up. We consider that the analysis provided in this application shows that restoration is not a practical or economic option for this site and there are no viable potential uses for the remains of the building. Any potential of grant funding would be so small that it would make no significant difference to this position.

3.15 The case of *South Cambridgeshire DC (1/4/89)* related to a listed pub that was severely damaged by fire. The Secretary of State considered that restoration of

the building was not financially viable even with the take up of grants. In any case it was considered that the resulting building would not be of much value as the timber structure would have to be replaced. Listed building consent was therefore granted for demolition.

3.16 Other cases consider the position where the building is beyond practical restoration. In *Methyr Tydfil (27/09/1995) (DCS No 041-267-033)* demolition of a listed chapel was proposed. It was considered that the building had gone beyond the point where it could be rescued.

3.17 In the case of *Kings Lynn & West Norfolk (06/02/1989) (DCS No 051-891-620)* a conservation are barn was thought to be so seriously decayed that there was no hope of it being saved.

3.18 In the case of *Camarthen (27/11/1992)* related to demolition of several houses by a castle wall in Camarthen. The Secretary of State concluded that the buildings were in such poor condition that refurbishment was not viable. The listed house was so ruinous that if rehabilitated the result would be a replica devoid of most of the features that made it worthy of being listed. Consent was given for demolition.

3.19 In the case of *Merseyside (2000) (DCS No: 040-875-336)* listed building consent and planning permission was requested for the demolition of a Grade II listed hall and its replacement with housing. The case was called in by the Secretary of State. He concluded that the building was in a serious state of repair and could be in a dangerous condition. Although the hall was not offered on the market with an indication that the price may reflect its dilapidated condition, no substantial expressions of interest were received. It seemed clear that the cost of restoration and refurbishment for some new use exceeded its subsequent value in economic terms and there was currently little prospect of grant funding being available. It was concluded that the right way forward was to allow demolition to take place and a replacement housing scheme to be constructed on the site.

3.20 In the case of *Sutherland (19/02/1987)(DCS No: 100-011-113)* it was proposed to demolish two listed grain warehouse in a dock area. It was felt that the buildings made a substantial contribution to the character of the area, but were obsolete for the purpose for which which were designed. Although in disrepair, the buildings were capable of conversion for residential use, but to do so would create security problems due to the location of the site. The location also weighed heavily against alternative use. All these factors and the fact that marketing had been carried out led an inspector to recommend that demolition be permitted.

4. Conclusion

4.1 It has been demonstrated that any architectural and historical features which merited the listing of the building on this site have been lost as a direct result of the fire which took place in 2010. There are no obvious factors in favour of retaining the remaining structures on the site, but any possible advantages are

heavily outweighed by the fact that it is not practical or economical to restore the remains of the buildings on the site.

4.2 The independent report from Mr Hough shows that due to the structural condition of the ruins, it is not practically possible to restore what remains, and demolition is the only option. However, grant funding has been explored and it is clear that very little funding (if any) would be available for any restoration project. As such restoration is neither a practical nor economically viable option in this case.

4.3 Planning policy and case law shows that in such exceptional circumstances as are faced on this site, the Secretary of State would be very likely to permit the demolition of what remains of this structure. The benefits of demolition clearly outweigh the risk and costs of retaining a structure which has lost is historical and architectural value and for which there is no prospect of economic or practical use in the medium term.

4.4 It is submitted that the proposed application for demolition and the application for residential development on this site (in accordance with a scheme that has been previously approved for this site) accords with national and local planning policies and is the best option available for this site. It is therefore submitted that Listed Building Consent should be granted for demolition and consent granted for the replacement residential scheme.

Appendices:

- *Appendix 1 – Letter dated 20 December 2010 from Barnsley MBC*
- *Appendix 2 – Table showing grant funding explored*