

Alleged Unauthorised Development

West Malling

15/00002/COM

568054 157790

West Malling And
Leybourne

Location:

65 High Street West Malling Kent ME19 6NA

1. Purpose of Report:

- 1.1 To report the unauthorised work to this Grade I Listed Building, being the installation of an air conditioning unit and a new flue and air intake unit to the rear of the property.

2. The Site:

- 2.1 The site is the rear of a Grade I listed building dating from 15th Century and it neighbours a Grade I listed building from 1160-1180. It is in a Conservation Area. There are a mix of retail, office and residential activities in the locality.

3. Planning History (most recent/relevant):

TM/13/03238/LB Approved 22 May 2014

Listed Building Application: Internal and external alterations including new kitchen, new WC, downstairs WC, replacement staircase, part exposure of loft space, replacement door to shop front, new signage, rear porch and front awning plus air conditioning

TM/13/03257/FL Approved 22 May 2014

Alterations to shop front, new awning and rear porch and replacement air conditioning condenser units (screened)

TM/15/00598/LRD Approved 12 June 2015

Details pursuant to conditions 8 (wall repairs), 12 (roof insulation), 13 (shopfront affixation) of Listed Building consent TM/13/03238/LB (Internal and external alterations including new kitchen, new WC, downstairs WC, replacement staircase, part exposure of loft space, replacement door to shopfront, new signage, rear porch and front awning plus air conditioning) (Conditions 6 (structural works), 7 (timber repairs), 11 (porch), 14 (replacement plant) not relevant)

TM/15/00603/RD Application Withdrawn 26 October 2015

Details pursuant to condition 3 (ventilation system acoustics) of planning permission TM/13/03257/FL (Alterations to shop front, new awning and rear porch and replacement air conditioning condenser units)

TM/15/01533/RD Approved 4 September 2015

Details of Archaeological observation and recording pursuant to condition 4 of TM/13/03257/FL (Alterations to shop front, new awning and rear porch and replacement air conditioning condenser units (screened))

TM/15/01677/NMA Approved 27 October 2015

Non Material Amendment to planning permission TM/13/03257/FL (Alterations to shop front, new awning and rear porch and replacement air conditioning condenser units (screened)) to alter the internal layout

TM/15/02125/LB Application Withdrawn 26 October 2015

Listed Building Application: Internal and external alterations including new kitchen, new WC, downstairs WC, replacement staircase, part exposure of loft space, replacement door to shop front, new signage, rear porch and front awning plus air conditioning and new kitchen external extraction flue location at the rear of the property (retrospective)

4. Alleged Unauthorised Development:

- 4.1 Without Listed Building Consent the retrospective installation of an air conditioning unit and a new flue and air intake unit to the rear of a Grade I listed café/restaurant.

5. Determining Issues:

- 5.1 This is a Grade I listed building and is situated within the West Malling Conservation Area. It has become clear that the owners have installed a large air conditioning unit and new flue to the rear of the building without the benefit of planning permission or listed building consent.
- 5.2 Sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 require that in considering whether to grant listed building consent or planning permission for development which affects a listed building or its setting, the Local Planning Authority or, as the case may be, the Secretary of State 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.
- 5.3 Part 72 of the Act states that, with respect to any buildings or other land in a Conservation Area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

5.4 As a heritage asset, the following requirements of the NPPF are also relevant:

Paragraph 17: conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations;

Paragraph 65: Local planning authorities should not refuse planning permission for buildings or infrastructure which promote high levels of sustainability because of concerns about incompatibility with an existing townscape, if those concerns have been mitigated by good design (unless the concern relates to a designated heritage asset and the impact would cause material harm to the asset or its setting which is not outweighed by the proposal's economic, social and environmental benefits).

Paragraph 132: 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 harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building; park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.*

Paragraph 133: Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage 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 that 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 bringing the site back into use.*

5.5 I understand that the installed external equipment was designed and specified to satisfy requirements of DEFRA, HSE and EHO in order to minimise noise and odours. In terms of health and safety, it is the Borough Council Safety team which oversees this issue advises that there is no maximum working temperature, but it must be 'reasonable'. So if ventilation to a kitchen cannot be improved physically, it

has to be managed by extra breaks, provision of fans/portable air con units, allowing staff to drink during their shift outside of breaks.

- 5.6 The first unauthorised flue and air intake plant (subject of the withdrawn application TM/15/02125/LB as set out above) was unacceptable to officers and to Historic England. However, the newly installed plant/extraction, the subject of this report, is considered to be even less aesthetically acceptable and in the event that formal retrospective applications were made in an attempt to regularise the unauthorised works they would almost certainly produce strong objections from Historic England.
- 5.7 The issue concerns the setting of this sizeable combination of plant in the context of two listed buildings both of national importance, the character and appearance of the Conservation Area and the general harmful impact on outlook to residents and other users of the public domain at Mill Yard.
- 5.8 Consideration has been given as to whether or not any remedies to disguise the plant could be implemented, including the possibility of screening and painting. However, the former would increase the bulk and would therefore be unacceptable. Whilst painting the plant in a darker grey would visually help, there remain fundamental issues with the visual impact and masking of the views of the listed building. This is due to significant bulk and unsympathetic industrial form in the vicinity of 12th and 15th century listed buildings.
- 5.9 It is accepted that the proposed drawings for the renovation of the café for the use by the current occupier did show an open kitchen and those plans were approved at the time. However, it was repeatedly confirmed by the architect throughout that process that there would be no need to alter the external flue or air intake plant. Had this proposal been submitted for planning permission and listed building consent at the correct time, that would have called into question both the open plan nature of the kitchen and the type of foods cooked (there being a significant level of chargrilling of food which produces smoke).
- 5.10 There is no doubt that the current development has a significant impact on the fabric of the building and affects, by its significant bulk and industrial form, the view of this Listed Building from the Conservation Area. The setting of this sizeable combination of plant in the context of two listed buildings, both of national importance, has resulted in an adverse impact on the character and appearance of the Conservation Area and has a general harmful impact on outlook to residents and other users of the public domain at Mill Yard. As such it fails to meet the criteria set down in the Act and the requirements of the NPPF.
- 5.11 For the above reasons I believe that formal action should be taken to seek the removal of this significantly harmful development to this nationally important Grade I Listed Building along with an appropriate scheme for the restoration of the building once the equipment has been removed. It is accepted that there may now be a requirement for an extraction system of some sorts to serve the authorised use of the

building as a café but this must not be to the detriment of the listed building in any way. In seeking the removal of the existing equipment, a subsequent restoration scheme of the building itself will be required. I accept that the scheme could in itself involve, at least in part, the installation of a more appropriate form of ventilation equipment. This will be subject of further negotiation amongst relevant officers.

5.12 In light of the above considerations the following recommendation is put forward:

6. Recommendation:

- 6.1 A Listed Building Enforcement Notice **BE ISSUED** to seek the removal of the unauthorised air conditioning unit and the new flue and air intake unit to the rear of the Grade I listed building along with a suitable scheme of restoration of the building following the removal of the equipment, the detailed wording of which to be agreed with the Director of Central Services following further liaison with relevant Officers.

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