

## **Development Control Committee 7 September 2022**

### **Listed Building Consent DC/22/0365/LB – The Deanery, 3 The Great Churchyard, Bury St Edmunds**

**Date Registered:** 24 March 2022      **Expiry Date:** EOT 09 September 2022

**Case Officer:** Amey Yuill      **Recommendation:** Refuse Application

**Parish:** Bury St Edmunds Town Council      **Ward:** Abbeygate

**Proposal:** Application for listed building consent - External alterations to include; a. single storey extension to north wing to include partial demolition of rear wall and window; b. external door and window alterations to include replacement and reinstatement of window and doors to rear elevation; c. provision of gratings to basement window areas; Internal alterations involving remodelling of internal layouts to include; demolition of staircase to main entrance hall to allow for large dining area; b. partial relocation of modified staircase from main entrance hall to new stairwell within existing laundry room; c. demolition of internal partition between existing bedroom one and two; d. provision of new attic staircase; e. upgrading of thermal elements to existing attic accommodation together with provision of shower room; f. upgrading of internal doors to half hour fire resistance; g. renewal of services to include electrics, heating and plumbing together with other modifications

**Site:** The Deanery, 3 The Great Churchyard, Bury St Edmunds

**Applicant:** The Very Reverend Joe Hawes

#### **Synopsis:**

Application under the Town and Country Planning Act 1990 and the (Listed Building and Conservation Areas) Act 1990 and Associated matters.

#### **Recommendation:**

It is recommended that the Committee determine the attached application and associated matters.

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## **Section A – Background**

**The application, as well as a Full Planning Application (DC/22/0364/FUL) for similar works was considered at the Development Control Committee meeting on 6 July 2022 and a Member site visit was undertaken on 04 July 2022.**

**Officers were recommending that the planning application be approved, subject to conditions as set out in Paragraph 93 of Report No DEV/WS/22/024 and were recommending that the application for Listed Building Consent be refused for the reason outlined in Paragraph 94 of the report. This latter recommendation was in conflict with the view of Bury St Edmunds Town Council who supported the proposals.**

**Members at the meeting resolved to grant planning permission for the Full Planning Application (DC/22/0364/FUL), in line with the Officer recommendation, subject to recommended conditions. This decision has subsequently been issued.**

**However, Members at the meeting resolved that they were 'minded to' approve the Listed Building Consent, contrary to the Officer recommendation of refusal. At this point, the Decision Making Protocol was invoked requiring a Risk Assessment report to be prepared for this matter before any decision is made.**

**The reason why Members resolved that they were minded to approve the application was that they considered that the level of public benefit from the proposed works would outweigh the degree of harm caused, due in part to the staircase not being an original feature of the building.**

**The purpose of this report is to provide a more detailed analysis of the public benefit that can be afforded to the Listed Building Consent proposal, as well as a Risk Assessment for Members in accordance with the Decision-Making Protocol which sets out the potential risks that might arise should listed building consent be approved.**

**The previous Officer report for the 6 July 2022 meeting of the Development Control Committee is included as Working Paper 1 to this report. Members are directed to this paper for details of the site and development, summaries of consultation responses and neighbour representations, and for the Officer assessment of the proposal.**

### **Proposal**

1. Please refer to Working Paper 1 paragraph 4 for a description of the proposal.

### **Application Supporting Material:**

2. Please refer to Working Paper 1 paragraph 5 for a description of the supporting material.

**Site Details:**

3. Please refer to Working Paper 1 paragraphs 6-8 for site details.

**Planning History**

4. Please refer to Working Paper 1 for planning history.

**Consultations:**

5. Please refer to Working Paper 1 for a summary of consultation responses.

**Representations:**

6. Please refer to Working Paper 1 for representations received.

**Policy:**

7. On 1 April 2019 Forest Heath District Council and St Edmundsbury Borough Council were replaced by a single Authority, West Suffolk Council. The development plans for the previous local planning authorities were carried forward to the new Council by Regulation. The Development Plans remain in place for the new West Suffolk Council and, with the exception of the Joint Development Management Policies document (which had been adopted by both Councils), set out policies for defined geographical areas within the new authority. It is therefore necessary to determine this application with reference to policies set out in the plans produced by the now dissolved St Edmundsbury Borough Council.
8. Please refer to Working Paper 1 for a list of policies and guidance that have been taken into account in the consideration of the application. However, policy DM46 (Parking Standards) is not relevant to this application.

**Other Planning Policy:**

9. National Planning Policy Framework (NPPF)
10. The NPPF was revised in July 2021 and is a material consideration in decision making from the day of its publication. Paragraph 219 is clear however, that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the revised NPPF. Due weight should be given to them according to their degree of consistency with the Framework; the closer the policies in the plan to the policies in the Framework; the greater weight that may be given. The policies set out within the Joint Development Management Policies have been assessed in detail and are considered sufficiently aligned with the provision of the 2021 NPPF that full weight can be attached to them in the decision-making process.

**Officer Comment**

11. Please refer to Working Paper 1 from paragraph 54 for the officer assessment of the proposals.

## **Section B – Update**

12. Following the 06 July 2022 meeting of the Development Control Committee, in order to accurately assess the risk of approving the proposal, and in accordance with the Decision-Making Protocol, both The Victorian Society and Historic England were re-consulted to advise them of the Member's 'minded to' approve position for the application. It was asked whether either party wished to provide any additional comments, or whether they wanted to direct the decision to the Secretary of State as they are both able to do so.
13. **The Victorian Society** advised they had no comments to make on the report and that it accurately reflects their objections and concerns with the proposed removal of the staircase. Therefore, they did not wish to make any further comments on the application. In addition, they advised that they did not wish for the application to be referred to the Secretary of State, however, they did wish for their comments to be treated as an objection by the committee Members when they reassess the application.
14. **Historic England** have also provided further comments, which in the interests of completeness are included in full below –

Thank you for your letter of 7th July 2022 regarding the above application for listed building consent. On the basis of the information available to date, we offer the following advice to assist your authority in determining the application.

### Historic England Advice

Historic England wrote to your Local Authority on 14th April 2022 to express our concerns in relation to this scheme. In this letter we informed you of our view that the scheme would result in a high level of less than substantial harm to the significance of the grade I listed building known as The Deanery. This position remains the same and we ask that this letter be read in conjunction with our previous letter.

We understand that this scheme has been reviewed by the planning committee who have asked for some further information. We would like to add the following points;

### Public Benefit

Paragraph 202 of the NPPF states that

'Where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use'.

The NPG paragraph 020 explains that public benefits must be to the public at large and not private benefits however, it does go on to state that works which secure the buildings future as a designated heritage asset could also be a public benefit.

The proposed use of the building is as a private dwelling with limited public access for community and church groups. It would not be available as a general function space for the wider community to hire as it would remain a private home. It would therefore result in some public benefit but, not to the "public at large" as the definition of public benefit in the NPG states.

As stated previously the proposed works to The Deanery, a Grade I listed building would result in a high level of harm to the significance of the building (see our letter dated 14th April) which would not be consistent with the guidance in the NPG that requires public benefit to secure a building's future as a designated heritage asset. The building is listed at grade I. To secure its future as a designated asset the works proposed to it should not cause the building to lose any of its significance through their implementation.

It is the remit of the local authority to determine the planning balance between public benefit and harm. It is hoped however, that the facts above provide useful information in considering this case.

#### General Point

- Should it be felt by your local authority that the public benefits of this scheme would outweigh the high level of harm caused to the grade I listed building through these works, the public benefits should be enforceable both now, and should the property ever change ownership. The public benefits should be able to remain in perpetuity if they have resulted in harm.

#### Recommendation

Historic England's strong concerns as stated in our letter of 14th April 2022 remain and this letter should be read alongside it.

In determining this application you should bear in mind the statutory duty of section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice. If there are any material changes to the proposals, or you would like further advice, please contact us.

### **Section B – Refusal Reasons**

15. The Officer recommendation remains one of refusal, as per paragraph 94 of Working Paper 1, with the reason being below:

When considering the impact of a proposed development on significance of a designated heritage asset, great weight should be given to the asset's conservation and the more important the asset the greater the weight should be, this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm or loss of the significance of a designated heritage asset should require clear and convincing justification, in accordance with

paragraphs 199-202 of the NPPF, policy DM15 of the JDMPD and section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The staircase removal would cause harm to the significance of the building and especially the understanding of its adaptation from use as an Almshouse to Vicarage, which has become a large part of its significance. This harm would not be mitigated by its partial reuse within the building, the staircase would be removed from its original setting and its character as a piece of architecture designed to impress would be lost. The grandeur of the staircase albeit it in a modified form would also appear inappropriate to its proposed back of house location.

The level of public benefit from the proposed works, resulting in the proposed use of a hospitality space, is not considered to be of such significance that it would outweigh the degree of harm caused to the highest grade listed building.

Given the importance of partition wall between bedroom one and two and the effect of its partial removal on the building's significance, insufficient justification has been provided for its removal, contrary to paragraph 200 of the NPPF.

The proposal does not therefore meet the provisions of policy DM15 or paragraphs 199-202 of the NPPF, and there are no material considerations, including the limited public benefit for the use of the hall, that outweigh this very significant conflict with the policy.

16. The proposal is considered to be contrary to the provisions of the development plan, in particular policy DM15 of the Joint Development Management Policies Documents by the case officer and Conservation Officer. It is also not considered to accord with the provisions of paragraphs 199, 200 and 202 the National Planning Policy Framework (2021) and this is supported by comments of objection from Historic England and The Victorian Society.
17. The relevant legislative provisions require, in order for an application of this nature to need to be referred to the Secretary of State for determination, either Historic England or a relevant Amenity Society must raise an objection to a proposal AND specifically state that they require the matter to be referred to the Secretary of State for a decision. Whilst both Historic England and The Victorian Society have raised objections to this matter, neither have specifically directed that the decision must be referred to the Secretary of State. Thus, West Suffolk Council is free to make the decision.
18. Accordingly, and if notwithstanding the above advice, the Committee remains of the opinion that this application should be approved, then Officers would recommend the following conditions:
  1. The works to which this consent relates must be begun not later than three years from the date of this notice.

Reason: In accordance with Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following approved plans and documents, unless otherwise stated below:

Reason: To define the scope and extent of this permission.

<b>Reference number</b>	<b>Plan type</b>	<b>Date received</b>
C250.3.13 68	Window details	24 February 2022
C250.3.13 55	Garage floor & elevations	24 February 2022
C250.3.13 44A	Floor plans	24 February 2022
C250.3.13 45A	Floor plans	24 February 2022
C250.3.13 46A	Floor plans	24 February 2022
C250.3.13 47	Proposed elevations & floor plans	24 February 2022
C250.3.13 48	Ex elevations & floor plans	24 February 2022
C250.3.13 50	Proposed floor plans	24 February 2022
C250.3.13 51	Proposed ground floor plan	24 February 2022
C250.3.13 52	Proposed first floor plan	24 February 2022
C250.3.13 53	Proposed floor plans	24 February 2022
C250.3.13 62	Floor plans	24 February 2022
C250.3.13 19A	Internal elevations	24 February 2022
C250.3.13 60	Window details	24 February 2022
C250.3.13 57	Window & door details	24 February 2022
C250.3.13 58	Window details	24 February 2022
C250.3.13 59	Window details	24 February 2022
C250.3.13 61	Window details	24 February 2022
C250.3.13 65	Cycle plans	24 February 2022
C250.3.13 67	Door details	24 February 2022
C250.3.13 69	Window details	24 February 2022
C250.3.13 70	Plan	24 February 2022
C250.3.13 71	Existing and proposed plans	24 February 2022
C250.3.13 36B	Proposed elevations	23 June 2022
C250.3.13 14G	Proposed block plan	23 June 2022
C250.3.13 56	Door details	24 February 2022
C250.3.13 54	Garage floor & elevations	24 February 2022
C250.3.13 49B	Services plan	24 March 2022
C250.3.13 01F	Existing block plan	23 June 2022
C250.3.13 42B	Location plan	24 March 2022
C250.3.13 03	Existing elevations	23 June 2022
C250.3.13 04D	Proposed floor plans	24 February 2022
C250.3.13 06F	Proposed ground floor plan	24 February 2022
C250.3.13 15	Existing floor plans	24 February 2022
C250.3.13 10F	Proposed first floor plan	24 February 2022
C250.3.13 13D	Proposed floor plans	24 February 2022
C250.3.13 02D	Existing floor plans	24 February 2022
C250.3.13 35A	Proposed floor plans	24 February 2022
C250.3.13 34	Existing floor plans	24 February 2022

- A minimum of seven days' notice shall be given to the Local Planning Authority of the commencement of works to remove the internal partition wall between bedroom one and two. Opportunity shall be allowed for on-

site observations and recording by a representative of the Local Planning Authority or a person nominated by the Authority during any period of work relating to this element of the works and no part of any feature of the building revealed by the works shall be removed unless first approved in writing by the Local Planning Authority.

Reason: To protect the special character, architectural interest and integrity of the building, in accordance with policy DM15 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and all relevant Core Strategy Policies.

Note: This condition does not automatically allow the removal of the parts(s) of the building revealed. If any part of the building revealed cannot be removed because of its architectural, historic or structural importance, Listed Building Consent for an alternative scheme may be required.

4. All new external and internal works and finishes and works of making good to the retained fabric shall match the existing historic work adjacent in respect of materials, methods, detailed execution and finished appearance unless otherwise approved in writing by the Local Planning Authority.

Reason: To protect the special character, architectural interest and integrity of the building, in accordance with policy DM15 of the West Suffolk Joint Development Management Policies Document 2015, Chapter 15 of the National Planning Policy Framework and Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and all relevant Core Strategy Policies.

#### **Section D – Risk Assessment:**

19. Members are again reminded, notwithstanding these conditions, and for the reasons set out above, that Officers remain very firmly of the view that this proposal should not be supported and that to approve would be at odds with the clear and considered advice from the Conservation Officer, as well as the views of Historic England and The Victorian Society. Accordingly, if the Committee remains of the opinion that this application should be approved then they must be aware of any potential risks that may arise.

20. Attention is drawn specifically to elements of the Historic England advice dated 24 August 2022. In particular their conclusion that this scheme will lead to 'a high level of harm to the significance of the building'. Historic England also express their position as having 'strong concerns'. It must also be remembered that this is a Grade I listed building, the highest grade. Only around 2.5% of all listed buildings are at this Grade, and extreme caution is therefore advised in relation to approving works contrary to the advice of Historic England for a proposal which will cause a 'high level' of harm to such a scarce heritage asset.

21. The NPPF position is set out clearly at Para. 202 –

202. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

22. As explained, the degree of harm is 'less than substantial', albeit Historic England qualify this as being a 'high level of less than substantial harm'. Reference to any harm being 'less than substantial' is not intended to downplay the extent of such harm, it merely seeks to differentiate it from 'substantial' harm, but the fact remains that it is still harmful (in fact a high level of such harm), which must otherwise be offset against any public benefit.
23. In this regard officers would wish to express significant further caution in relation to the benefits mooted by the Committee. It is noted that The Dean will have some additional benefits arising from the more flexible opportunities presented for the use of the reception room space following the removal of the staircase. In a wider public sense however these benefits will be modest and this is reflected also in the Historic England advice that this would not lead to any benefit to the public at large, as Government guidance otherwise requires.
24. It had been further suggested that the space provided as a result of the removal of the staircase could subsequently be used by wider public groups, as a meeting space for example, and that this would provide some public benefit. Great caution is advised in this respect however. Firstly the space is modest and there is no obvious shortfall of alternative community space in central Bury St. Edmunds. These factors significantly limit any benefits. Secondly, and while the use of the space by The Dean for Deanery related uses would not need planning permission, the use of the space otherwise by groups, individuals or organisations unconnected with The Dean and Deanery, if such occurred with a sufficient degree of intensity or regularity, might in fact be a material change of use for which planning permission would be needed. On the contrary, if the use of the space was so insignificant so as to not trigger a material change of use then this fact also limits the extent to which this is a weighty public benefit in favour of approval. So, the fact that permission might in some cases be needed for the uses that Members are attaching weight to in support of this decision is a fact that must therefore be treated with a high degree of caution.
25. Furthermore, because this is not an application for the community use of the space, and because of the doubts expressed above about whether such use would need planning permission, no scope currently exists for the imposition of any conditional control in relation to such. So, in this regard, Members would be attaching weight to this (very minor) benefit without any certainty that it could be delivered, and with absolutely no control over ensuring that it was retained in perpetuity. Again, these factors significantly limit the weight that could and should be attached in this balance and, again, are reflected in the very firm advice of Historic England.
26. There is no public benefit whatsoever arising from the removal of the first floor partition wall. This is merely a private benefit and officers again reiterate that absent any such public benefit the only possible recommendation can be for refusal.

27. To conclude therefore, officers are of the opinion that there is no benefit to the wider public at large at any level close to that required by Para. 202 of the NPPF. It is the case based on the comments provided by the Conservation Officer, and by other respected organisations, that the loss of the staircase will lead to harm, at the 'less than substantial' end of the spectrum, but harm nonetheless. The NPPF requires any such harm to be offset by public benefits if it is to be approved. There is no public benefit arising from the removal of the partition wall, and any public benefits from the removal of the staircase are modest at best, and may in fact require a separate grant of planning permission, and in any event are incapable of being controlled or guaranteed. In the view of officers therefore this balance is a very clear one, and one that falls robustly in favour of refusal.
28. Officers consider the development proposed in this case to be contrary to policies DM1, DM2, and DM15. Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require decisions to be made in accordance with the development plan unless there are material considerations that indicate otherwise. It is not considered that in this case there are any material planning considerations which would outweigh the conflict with policy and a risk is that the Authority would make a decision that could be challengeable if adequate reasons are not provided to depart from the statutory presumption of the primacy of the development plan.
29. A further risk to the Authority from an approval is reputational as it may show a lack of regard for the interpretation of historic buildings protection policies. In coming to their decision Members must clearly identify whether they consider the proposal complies with the development plan and their reasons for reaching their decision. If it is decided that the proposal does not comply with the policies of the development plan and they wish to approve the application, the material considerations which justify the departure must be identified. Failure to adequately identify the reasons for a decision would adversely impact on the reputation of the Council.

### **Section E – Conclusion**

30. For the reasons outlined above and also set out within the original report to Development Control Committee, Officers consider that the development would be harmful to the significance of the building, and that there is plainly inadequate public benefit to outweigh this harm.
31. In this case, any public benefit is uncertain, and marginal, and in the opinion of officers insufficient to outweigh the degree of harm caused to this Grade 1 Listed Building.
32. In coming to their decision, Members must clearly identify how they consider the proposal complies with the development plan and their reasons for reaching their decision in circumstances such as this where the proposal does not otherwise comply with the Development Plan.

33. It is recommended still therefore that Listed Building Consent be **REFUSED** for the following reason:

When considering the impact of a proposed development on significance of a designated heritage asset, great weight should be given to the asset's conservation and the more important the asset the greater the weight should be, this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm or loss of the significance of a designated heritage asset should require clear and convincing justification, in accordance with paragraphs 199-202 of the NPPF, policy DM15 of the JDMPD and section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The staircase removal would cause harm to the significance of the building and especially the understanding of its adaptation from use as an Almshouse to Vicarage, which has become a large part of its significance. This harm would not be mitigated by its partial reuse within the building, the staircase would be removed from its original setting and its character as a piece of architecture designed to impress would be lost. The grandeur of the staircase albeit it in a modified form would also appear inappropriate to its proposed back of house location.

The level of public benefit from the proposed works, resulting in the proposed use of a hospitality space, is not considered to be of such significance that it would outweigh the degree of harm caused to the highest grade listed building.

Given the importance of partition wall between bedroom one and two and the effect of its partial removal on the building's significance, insufficient justification has been provided for its removal, contrary to paragraph 200 of the NPPF.

The proposal does not therefore meet the provisions of policy DM15 or paragraphs 199-202 of the NPPF, and there are no material considerations, including the limited public benefit for the use of the hall, that outweigh this very significant conflict with the policy.

**Documents:**

- All background documents including application forms, drawings and other supporting documentation relating to this application can be viewed online DC/22/0365/LB
- Working Paper 1 : Committee Report – 6 July 2022