

# Memo

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<b>To</b>	Stephen Irvine	<b>Date</b>	9 February 2016
<b>From</b>	Karen Heverin	<b>Ext</b>	3717
<b>Subject</b>	<b>Demolition of 5 no. buildings, Dobcross Works PA/337931/15</b>		

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## Memorandum

Steve,

### The proposal

The proposal is to demolish 5 buildings within the former Dobcross Loomworks site. These buildings are the 'works' part of the site incorporating buildings dating from the 19<sup>th</sup> century to the late 20<sup>th</sup> century. The Grade II listed office building is outside the site boundary set by this application. In assessing this application I have considered Sections 16, 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990, Chapter 12 of the NPPF and Policy 24 of the LDF. I have also referred to guidance on settings and legal cases, particularly *Barnwell Manor v East Northamptonshire District Council 2014*, which expressed the necessity to give 'considerable importance and weight' to the desirability of preserving the setting of listed buildings.

Section 66(1) of the Act states that in considering whether to grant planning permission for development that affects a listed building or its setting, 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.

Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that in the exercise of planning functions special attention shall be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.

In respect to Sections 16, 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Governance and Legal Director of English Heritage ('Legal Developments' Conservation Bulletin Issue 71: Winter 2013) states that the courts have said that these statutory requirements operate as '*a paramount consideration*' and '*the first consideration for a decision maker*'.

I also note the submission of three further applications for this site, including a new secondary school and the removal of part of a link bridge which currently forms access between the listed building and Building A.

### Extent of curtilage

In assessing the significance of the buildings proposed to be demolished, legal advice has been taken by the Council to establish the curtilage of the listed building. The following is an extract of the legal advice:

### **Definition of a listed building**

Section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 defines a listed building as:

“... a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act—

(a) any object or structure fixed to the building;

(b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948, shall, subject to subsection (5A)(a), be treated as part of the building.”

### **Case law**

The meaning of section 1(5) of the Act and its statutory predecessor has been considered by the courts on a number of occasions over the years. Counsel referred to the following passages from the case law to show how that subsection should be approached:

“... three factors have to be taken into account in deciding whether a structure (or object) is within the curtilage of a listed building...whatever may be the strict conveyancing interpretation of the ancient and somewhat obscure word ‘curtilage’. They are (1) the physical ‘layout’ of the listed building and the structure, (2) their ownership, past and present, (3) their use or function, past and present. Where they are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure near a building or even some distance from it into its curtilage.” (*Attorney-General ex relater Sutcliffe v Calderdale BC* (1982) 46 P. & C.R. 399, at p 406).

“... the word ‘structure’ [in section 54(9) of the Town and Country Planning Act 1971, the predecessor to section 1(5) of the 1990 Act] is intended to convey a limitation to such structures as are ancillary to the listed building itself, for example the stable block of a mansion house, or the steading of a farmhouse, either fixed to the main building or within its curtilage. ... the concept envisaged is that of principal and accessory.” (*Debenhams Plc v Westminster City Council* [1987] AC 396, 403F-G).

“... In the context of what is now Part I of the Act, the curtilage of a substantial listed building is likely to extend to what are or have been, in terms of ownership and function, ancillary buildings. Of course, as Stephenson LJ noted in the *Calderdale* case, 46 P & CR 399, 407, physical ‘layout’ comes into the matter as well. In the nature of things the curtilage within which a mansion’s satellite buildings are found is bound to be relatively limited. But the concept of smallness is in this context so completely relative as to be almost meaningless, and unhelpful as a criterion.” (*Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions* [2001] QB 59, 67D-E).

“... the primary focus of enquiry should be on the state of affairs [at the date of listing]” (*Morris v Wrexham County Borough Council* [2002] 2 P&CR 7, para 34).

“... building A is within the curtilage of building B if (1) the buildings are sufficiently close and accessible to one another, and (2) in terms of function, building A is ancillary to building B” (*Morris*, para 33).

### **Guidance**

Historic England’s website gives the following guidance on buildings and structures within the curtilage of or fixed to a listed building:

#### *“Curtilage buildings*

In general, any pre-1948 structure that formed part of the land and was in the curtilage of the principal listed building at the date of listing (or possibly 1 January 1969 for buildings listed before

that date - this is not a settled point of law) and is ancillary to the principal building is considered to be part of the listing.

#### *Objects and structures fixed to the building*

In general, a structure attached to a building, such as adjoining buildings or walls, will also be covered by the listing if the structure was ancillary to the principal building at the date of listing.

An object fixed to the principal building, such as a shop awning or a chandelier will be protected by the listing if it is a 'fixture' according to the usual land law principles. The key considerations in determining this are:

- The method and degree of annexation of the object to the building, the ease with which it can be removed and the damage caused to the structure or object by its removal; and,
- The objective and purpose of the annexation to the building – whether this was for the improvement of the building or for the enjoyment of the object itself.

Plant and machinery, even if it forms part of the land, cannot of itself be a building and therefore cannot be listed in its own right. It can, however, be protected by listing if affixed to a listed building in a way that satisfies these tests.

Extensions or alterations to listed buildings made after listing form part of the listed building and are subject to the protection regime.

As from 26th June 2013 some new list entries or list entries amended after that date may expressly exclude certain attached structures or objects from protection.”

#### **Counsel's advice**

The view was that the listed office building was part of a substantial manufacturing complex, devoted first to the manufacture of looms and then the manufacture of pallets. The office provided the space in which administrative tasks supporting the manufacturing processes were carried out. In terms of scale and function the view taken was that the listed building was ancillary to the other principal buildings and structures around it at the time of listing in 1968.

As a result, applying the case law and the guidance from Historic England referred to above, it was Counsel's view that the listed building is likely to have had a restricted curtilage, not extending to any other building or structure in its vicinity (unless those buildings and structures could be said to have been ancillary to the office building). If anything, it is more likely that the office building was within the curtilage of the primary manufacturing buildings (particularly the large building to which it was linked by a footbridge) than the other way round.

As a consequence of this advice, it has been concluded that the buildings to the rear, attached to the end of the bridge, are not within the curtilage of the listed building and are not listed by association. As a consequence of this conclusion, I have considered the significance of these buildings using the Conservation Principles published by English Heritage and would consider the pre 1948 non-listed buildings on the site to have a degree of significance meriting consideration in planning decisions. Therefore they should be considered as non-designated heritage assets.

#### Significance of buildings

The buildings proposed for demolition are of varying architectural and historic interest, ranging from Building A incorporating buildings and elements dating from the original Hutchinson and Hollingworth site of the 1890's to Building G – a portal framed building constructed in 1979. (identification of buildings A-L is taken from the 'Archaeological Report on the Buildings' accompanying the application).

I have considered the significance of the buildings, individually and as a whole.

#### Building A

Buildings A (incorporating B, C, F and H) is connected to the listed building by a link bridge. A separate application is being considered for its alteration to remove this link. This building contains some of the oldest elements of the works, and the importance of this site is evident in the surrounding residential development, with the housing opposite called 'Foundry View'. The buildings have been heavily altered due to a fire in the earlier part of the 20<sup>th</sup> century, and as a consequence of alterations to Building F. These alterations have resulted in the introduction of timber boarding and concrete frame construction, and, whilst this does reflect a further period of development in the loomworks, I do consider this has detracted from the overall aesthetic significance of the building. Nevertheless, the building holds some historic and associative interest, and the aesthetics of the remaining pitched faced local stone elements of the external elevations of the building, including the water tower and chimney, contribute to the significance of the site and the setting of the listed office building, and canal and listed structures to the rear. The stone elevation and windows of the remaining front elevation show a simplicity of design which reflects the materials prevalent in the local area and forms a context to the listed building attached to it.

#### Building D

This building was constructed in different stages from 1912 through to Building H in 1980 at the rear.

The architectural detailing used on the different phases of this building shows that design was a consideration at this time of the sites development. The semi octagonal bay, parapets, pediment and arched details of the north gables, and the pitched face local stonework express a level of care in the design which ensured that, whilst these buildings did not compete with the office building for supremacy, they did complement the site and exhibit a certain style in a utilitarian, functional sense. The stonework, whilst not of the same quality as the ashlar detailing of the office building allows the buildings to harmonise with the surrounding vernacular buildings apparent on the valley sides and the structures serving the canal.

#### Building E

This building, is the remains of the larger industrial building to the rear. It is understood that the two storey element was constructed between 1893 to 1906, and the single storey element to the front, approximately 10 years later. The building that remains, shows a range of materials to the rear, where part of the original building has been demolished. However, the front elevation, facing Huddersfield Road, retains the timber windows and pitched local stone of the original construction. The single storey addition has disturbed the original front elevation and appears to have cut through openings. However, the building again illustrates the continuing development of the site over time and, whilst not competing with the office for prominence, it does complement its setting when considered from the prominent Huddersfield Road viewpoint.

#### Building G

I would agree with the Statement of Significance analysis that this portal frame building has no heritage significance. I did not consider this a non-designated heritage asset as it is a post 1948 construction with little interest. Its removal would allow clearer views of the more significance buildings to the rear and therefore have a positive impact on the setting of the designated and non-designated heritage assets.

#### Building I

This building does not appear to be described within the Archaeological Report. However, it would appear to be a small flat roofed masonry building of little significance, which I understand is the industrial water abstraction equipment and housing noted in the Canal and Rivers Trust letter.

### Impact of proposed works

The impact of the proposed works on the non-designated heritage assets would be high due to their proposed complete loss. I have considered the Statement of Significance accompanying the application. This has concluded that the significance of the group of buildings is low or negligible and the outcome of the demolition would be intermediate minor to neutral. I disagree with this conclusion.

I consider the assessment has focused on the significance of the individual buildings and concluded the significance of the whole to be similar. Whilst I agree that the individual significance of the buildings is low, when considered in isolation, due to the level of alteration and loss. I agree with the conclusion within the Environmental Statement, that the pre 1948 buildings, when considered as a group, are of medium significance. Therefore, their proposed total loss would result in a substantial impact and consequently the magnitude of effect would be intermediate.

In reaching this conclusion, I have considered the Statement of Significance and Archaeological Report on the buildings proposed for demolition and I do not believe they have fully considered the contribution these buildings taken together make to the context of the listed office building and therefore the impact of their loss on its significance and setting. I also consider the impact of the loss of the works on the setting of the surrounding designated heritage assets has not been fully considered and I disagree with the conclusions reached regarding the impact of the proposals in these documents.

I have come to this conclusion for the following reasons:

- The visual and aesthetic association of the works as a back drop to the grade II listed office building, provides an important visual context to the role of the office within the loomworks site. Historic England designation guidance includes a photograph of the former loomworks and notes '*many otherwise utilitarian factories and industrial buildings were given some architectural panache by the design of their offices and administration buildings, as here at Dobcross works of Hutchinson and Hollingworth*'. This understanding of the architectural juxtaposition between the works and the offices would be lost through the proposed works and therefore the significance of the setting of the remaining office would be harmed.
- The use of traditional pitched faced local stone to the works buildings assists in the integration of this large scale industrial site within the rural area, which, considering its position on the valley floor, is visible from surrounding listed buildings and elements of the Holly Grove Conservation Area including Hollin Greave Farmhouse. Elements of the works, such as the water tower and stone walls to the canal, form a positive setting, in terms of materials and association, which enhances the historical appreciation of the role of the canal and its listed assets in the industrialisation of the area.
- The stone buildings also reflect the materials of the farm buildings and weavers cottages and form a context for the surrounding listed buildings and farmland situated within the valley. The progressive transformation of the area, from the domestic production of woollen cloth, to the large scale production of looms and introduction of mills, exemplifies the industrialisation of the Saddleworth area, and this site represents an important historical development in the area.
- The archaeological report comments that the other engineering works in the Saddleworth area were on a smaller scale, and compares the Hutchinson and Hollingworth site to the larger engineering works of the Oldham area. I consider this rarity increases the interest and significance of site in historical terms as, from the information provided, it appears to represent a unique form of works of this size within the Saddleworth area.

As a consequence of these perceived impacts, I believe the overall impact of the demolition will be intermediate adverse, when assessed using the Cultural Impact Assessment Methodology.

Justification for the proposals

I have particularly considered Para 135 of the NPPF which states '*a balanced judgement is required having regard to the scale of harm or loss and the significance of the heritage asset*' when considering the effect of an application on a non-designated heritage asset. With the information before me, the proposal is to demolish the works element of the former loomworks and retain a graded site until a development proposal is found to be acceptable. This will have a substantial impact on the site.

The justification includes evidence of marketing the site, which has been unsuccessful; removing a derelict site which is subject to anti-social and criminal behaviour; clearing the site for potential development; regeneration of the site which detracts from the character of the area and forms an important part of the setting of the listed building; increasing the viability of finding a use for the listed building, by clearing poor quality vacant properties around it; providing an opportunity to deal with site contamination and invasive plant species.

I have considered this justification and whilst I agree that the site has fallen into disrepair and sustained damage through vandalism, I am not satisfied that this justifies the loss of the non-designated heritage assets and the resulting impact this will have.

I have also considered para 137 which states '*proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably*'.

In this instance I would not object to the loss of the post 1948 portal frame structure and other mid to late twentieth century additions to the site. However, I consider the older works buildings to be of medium significance and having considered the justification for the works, I cannot support the loss of these buildings from a heritage perspective in view of its impact on the setting of the listed office building and the designated assets surrounding the site and for the reasons noted earlier. I consider the loss of these buildings will have a detrimental impact upon the setting and appreciation of the adjacent listed office building, and how its development can be understood. A significant part of their value lies in providing the context for the Grade II listed office building and the wider area and their loss will have a detrimental impact upon the way this building and the adjacent assets can be understood and appreciated. This application does not include a proposal for the site and, although I appreciate a school is proposed under another application, this has not been decided upon and therefore I have not considered the merits of this proposal against the loss.

Additionally, this application does not make any provision for the support of the end of the listed link bridge serving the office building. This may become a consideration once the application for Listed Building Consent to remove part of the bridge has been decided.

If the LPA were minded to recommend this application for approval, I would suggest close consultation with GMAAS to ensure all assets of archaeological interest are fully considered and any recording/protection measures are put in place.

Regards,  
Karen