

# PLANNING AND HIGHWAYS REGULATORY COMMITTEE

## Request for the Preservation of the Mitchells Brewery Building by the Serving of a Building Preservation Notice 27<sup>th</sup> July 2009

### Report of Head of Planning Services

#### PURPOSE OF REPORT

To seek a decision from Members on whether to take steps under Section 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to serve a Building Preservation Notice on the Mitchells Brewery Buildings, and with that to ask English Heritage and the Secretary of State to list the buildings.

This report is public.

#### RECOMMENDATIONS

- (1) **That the Committee resolves that it would be inappropriate to serve a Building Preservation Notice on the Mitchells Brewery Building in the light of the three previous decisions of the Secretary of State not to list this building.**

#### 1.0 Introduction

- 1.1 A request has been made by Councillor J Whitelegg for the Council to consider serving a Building Preservation Notice on the Mitchell's Brewery building on Brewery Lane, Lancaster because in his view they are at risk of demolition. He feels that after much discussion about the future of buildings at the recent Centros call-in inquiry they need to be protected to ensure that they can be retained on site and incorporated as a heritage feature should a re-think have to take place about how the Canal Corridor North is re-developed. This report is put before the Committee as an urgent item rather than a decision being made under delegated powers because of the high profile and controversial nature of the issues surrounding the inquiry.

#### 2.0 Proposal Details

- 2.1 A Building Preservation Notice enables a Local Planning Authority to forestall a threatened demolition or alteration of a building whilst consideration is given to whether the building should be formally listed. The power is only exercisable where in the authority's opinion the building is in danger of demolition, or alteration in such a way as to affect its character as a building of special architectural or historic interest. The power temporarily lists the building for six months and gives time for the Secretary of State to consider whether it should be permanently listed.

Compensation is payable to the owners for any loss or damage caused by its service, if the Secretary of State decides not to list the building.

- 2.2 There was considerable debate at the recent public inquiry into the proposals for the Canal Corridor North about the merits or not of retaining the brewery and other non listed buildings on the site. The brewery building is not listed, nor does it lie within a conservation area, which would have the effect of legally restraining the owners from demolishing it without obtaining Conservation Area Consent. Despite the fact that English Heritage, in their changed opinion from the time Planning Committee considered the development proposals, now favour the retention of the brewery building and its conversion within any scheme, the Planning Inspector pointed out on more than one occasion that the owners currently had the right to demolish it. This, and the fact that its retention on the site would form a constraint to any future scheme if the Centros proposals fail, appear to form the grounds for Councillor Whiteleggs opinion that it is under threat of demolition.
- 2.3 English Heritage in the evidence they gave to the Inquiry took the view that the brewery building makes a positive contribution to the historic environment and that it would be worthy of inclusion on a local list. Such a list would not carry protection from demolition in the same way as the statutory list, but would help a Local Planning Authority make a material case for retention and conversion, rather than demolition if planning proposals were considered.
- 2.4 The other material consideration in this case relates to the pending review of the conservation area boundaries which affect the Canal Corridor North site. There is a pending review of the boundaries of the City Centre Conservation Area and consultants on behalf of the Council have been instructed to carry this out. Should advice be received that the boundaries should be extended to include some of the buildings such as the brewery, as advocated by English Heritage in their new position, then statutory protection against demolition can be achieved that way.
- 2.5 At the Inquiry the Inspector made it clear to all parties that whether or not the unlisted buildings outside the conservation areas were subsequently to become protected, the Secretary of State would still have to consider whether there are significant benefits arising from the Centros proposals to override any desire to retain those buildings making a positive contribution to the historic environment. It is clear therefore that statutory protection from demolition would not, by itself prevent any decision being made to demolish the buildings in the future if a case was proven that they should be replaced by something else.
- 2.6 Turning to the issue of whether it would be right to achieve temporary protection from demolition by the use of a Building Preservation Notice there appear to be a number of material considerations which are important. There is firstly no indication from the owners of the building that there is an immediate threat of demolition. They would be required by Section 80 of the Buildings Act to give notice to the City Council of an intention to demolish the buildings and the legislation does not permit demolition to commence until the Council has agreed conditions (to ensure proper treatment and sealing of services, and safety measures for demolition), or a period of six weeks has elapsed without response. Whilst it is acknowledged that this does not guarantee that demolition will not take place, it does mean that there is a prosecutable offence if the terms of the legislation is breached.
- 2.7 The next material consideration that the Council has to consider is that it has already agreed by resolving to grant planning permission for the Centros scheme, that the buildings need not be retained within the development. This has to be balanced

against what the outcome of the Secretary of States deliberation on the call in case might be. If the Secretary of State were to take the view that the scheme fails and that the brewery building should be retained in any development scheme, then the Council will have to consider how it should proceed with subsequent negotiations as it will be obliged to take full account of the Secretary of States views.

- 2.8 There is a final hurdle however which is difficult to clear. The Governments most recent advice on principles for the selection for listing buildings is given in Circular 1/2007. This makes it clear in paragraph 6.25 that where a building has recently been the subject of a listing decision, and any period for challenging that decision has expired, the Secretary of State will not normally be disposed to reconsider earlier decisions unless there is significant new evidence about the special architectural or historic interest of a building, or a material change in circumstances affecting the assessment. A later paragraph clarifies that this might include the failure to consider some factual matter or an irregularity in the process.
- 2.9 The brewery buildings have been the subject of 3 previous requests to consider listing, the most recent being in April 2007. That assessment was carried out in the knowledge that the building was the subject of pending redevelopment proposals in the form of the Centros scheme, and the assessor did note, as English Heritage have recently done, that the building was a significant component in the urban landscape and of local significance and interest. The assessment considered however that the key criteria for listing were not met as it is too altered and is of insufficient architectural and historic interest to justify a listing. With two previous assessments having taken place and the last one re confirming the findings of the earlier ones, then it would seem to your officers that the Secretary of States position is conclusive on the matter.
- 2.10 In your officers view nothing emerged in the recent call in inquiry which materially adds to the deliberations which previously took place which would suggest that the Secretary of State might review the position and one also has to consider the material fact that despite English Heritage having changed their position on whether the Centros scheme justified the loss of the building, they have taken no unilateral steps to spot list the building either leading up to, or since the inquiry. For these reasons it appears to your officers conclude that it would be inappropriate in the knowledge of the three previous listing decisions, to serve a Building Preservation Notice.

### **3.0 Details of Consultation**

This request has been treated as an urgent item and only internal service based consultations have taken place.

### **4.0 Options and Options Analysis (including risk assessment)**

- 4.1 **Option 1** To Serve a Building Preservation Notice. This would be done in the knowledge that the Secretary of State has considered three previous requests for listing and found that the criteria for listing would not be met. There appear to be no immediate proposals by Mitchells to demolish the buildings and so it is unlikely that compensation would be payable although there is always the risk that Mitchells could prove some form of loss as a result of the service of a notice. In the light of the Inspectors clear view that statutory protection would not mean that he couldn't consider replacement by a justifiable re-development scheme, a BPN would not appear to undermine the Secretary of States ability to make a decision to approve the Centros scheme.

4.2 **Option 2** Not to serve a Building Preservation Notice. This would mean that the control over demolition, pending the Secretary of States decision remains under the notification procedures under the Building Act and no stronger. It does not however prevent English Heritage from spot listing the building if for some reason the criteria for listing, which they have control over, was to change. In addition it does not prevent that the Council, under its review of the Conservation Area boundaries, from including the brewery in such a designation. The latter would be a more appropriate means of safeguarding the building pending certainty over the future of the site, than a Building Preservation Notice.

#### 5.0 **Officer Preferred Option**

Option 2 is the preferred option.

<b>CONCLUSION OF IMPACT ASSESSMENT</b> (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)	
No direct implications arising from the report.	
<b>FINANCIAL IMPLICATIONS</b>	
There are potential financial implications if compensation were payable as a result of serving a notice.	
<b>SECTION 151 OFFICER'S COMMENTS</b>	
The S151 has not been consulted.	
<b>LEGAL IMPLICATIONS</b>	
The legal implications are detailed in the report.	
<b>MONITORING OFFICER'S COMMENTS</b>	
The Monitoring Officer has not been consulted.	
<b>BACKGROUND PAPERS</b>	<b>Contact Officer: Andrew Dobson</b>
Previous listing decision by the Secretary of State dated 4 <sup>th</sup> April 2007	<b>Telephone:</b> 01524 582303
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