

Agenda Item	A7
Application Number	20/00678/LB
Proposal	Listed Building application for the removal of a partition wall, installation of new partition walls and internal doors on the first floor, installation of partition walls and roof lights and infilling of external doors on the second floor and installation of ventilation system
Application site	15 China Street Lancaster Lancashire LA1 1ET
Applicant	Mister Capital Holdings
Agent	Mr Michael Harrison
Case Officer	Mrs Petra Williams
Departure	No
Summary of Recommendation	Refusal

1.0 **Application Site and Setting**

- 1.1 The application site is located on China Street, Lancaster on the junction with Church Street. The overall site comprises the former Duke of Lancaster public house, a grade II listed building and its associated curtilage listed former stable block which lies to the south of the plot with a gable fronting China Street. An open service yard lies between the main three storey building and the single storey stable block to the rear of the plot which is in use as four student apartments with the benefit of planning and listed building consents. The first and second floors of the subject building have been converted to two flats without the benefit of planning permission and are known as flats 5 and 6, 15 China Street. The ground floor, which was last used as a restaurant, is identified as 75 Church Street. The ground floor is also the subject of a legal agreement which prevents it being used as a public house.
- 1.2 The neighbouring properties are 73 Church Street, a listed town house currently used as a solicitor's office and an open car parking area associated with the neighbouring office building which lies to the south of the site. The eastern gable of the stable building forms part of a larger boundary wall separating 73 and 75 Church Street. The ground floor of 75 Church Street recently gained listed building consent for works to facilitate its use as a restaurant by new tenants.
- 1.3 The site is located on the eastern side of China Street within the boundary of the city centre. China Street forms part of the one way gyratory system which runs through the city centre and is a public transport corridor and cycle route. The site is within an Air Quality Management Area and Lancaster Conservation Area.

2.0 **Proposal**

- 2.1 The application seeks retrospective Listed Building Consent for the for the removal of a partition wall, installation of new partition walls and internal doors on the first floor, installation of partition

walls and roof lights and infilling of external doors on the second floor and installation of ventilation system.

3.0 **Site History**

- 3.1 The property has been the subject of an ongoing Enforcement case since April 2013. At that time, it came to the attention of the local planning authority that unauthorised works had taken place to the building to facilitate a change of use of the first and second floor to separate living accommodation. Although consent was subsequently granted for some works to the listed building (13/00692/LB) an Enforcement Notice was issued in April 2014 which required the use of the first and second floors as separate residential student accommodation to cease within six months of the date of the Notice. The reasons for issuing the Notice related to air quality impacts and noise impacts on the occupiers from the ground floor public house use. The Enforcement Notice was subsequently appealed but this was dismissed by the Inspector in February 2015 and the enforcement notice upheld.
- 3.2 Notwithstanding the outcome of the Enforcement Notice appeal, internal and external works to the listed building continued despite conditions not having been discharged in respect of 13/00692/LB. However, these works were the subject of ongoing monitoring by the Senior Conservation Officer at that time and conditions were formally discharged in August 2015. Parallel to this, applications were submitted (14/01322/FUL and 14/01323/LB) in December 2014 for the change of use of vacant former stable block which was associated with the original public house to form four student apartments. These permissions were granted in September 2015 but were subject to a legal agreement to ensure that the ground floor of the adjacent building could not be used a public house in order to protect the residential amenity of the occupants of the converted stable building.
- 3.3 Since the outcome of the Enforcement Notice Appeal, the applicant has received regular contact from the Planning Enforcement Team which encouraged him to submit an application to regularise the unauthorised residential use of the upper floors of the building through the submission of planning and listed building applications with the necessary supporting documents in relation to air quality and noise.
- 3.4 Applications 18/00119/FUL and 18/00120/LB were subsequently submitted in February 2018. These applications were the same as the current submissions but failed to fully assess the impacts on the student accommodation from the ground floor use with regard to noise and failed to give adequate consideration to air quality measures. Although the use had already commenced, the applicant was advised to withdraw the applications at that time and resubmit with all of the required information. The scheme was re-submitted in April 2019 (19/00477/FUL and 19/00478/LB) but the applications were returned in July 2019 as they had remained invalid despite the fact that the applicant had been notified and reminded that outstanding information was required for the purposes of validation. The current applications were submitted in July 2020 but pending the submission of required information they were not validated November 2020. Notwithstanding this, the applicant was required to carry out a further noise assessment in respect of the ground floor restaurant use and the possible impacts on the residential amenity of the upper floors.
- 3.5 Relevant applications include:

Application Number	Proposal	Decision
20/00677/FUL	Retrospective application for the change of use of the first and second floor managers accommodation (C3) to student accommodation comprising of one 7-bed flat (sui generis) and one 4-bed flat (C4)	Pending consideration
20/01363/LB	Listed building application for the infilling a doorway and removal of an internal wall at ground floor level and installation of new steelwork	Permitted
19/00477/FUL	Change of use of the first and second floor managers accommodation (C3) to student accommodation comprising of one 7-bed flat (sui generis) and one 4-bed flat (C4)	Application returned
19/00478/LB	Listed Building application for the removal of a partition wall, installation of new partition walls and internal doors	Application returned

	on the first floor, installation of partition walls and roof lights and infilling of external doors on the second floor and installation of ventilation inlet to roof	
18/00119/FUL	Change of use of the first and second floor managers accommodation (C3) to student accommodation comprising of one 7-bed flat (sui generis) and one 4-bed flat (C4)	Withdrawn
18/00120/LB	Listed Building application for the removal of a partition wall, installation of new partition walls and internal doors on the first floor, installation of partition walls and roof lights and infilling of external doors on the second floor and installation of ventilation inlet to roof	Withdrawn
14/01322/FUL	Change of use of vacant former stable block to form 4 no. student apartments	Permitted
14/01323/LB	Listed Building consent for works to facilitate the change of use of former stable block, within site curtilage of vacant public house (A4) to form 4 no. student apartments (C3)	Permitted
13/00692/LB	Listed Building Consent for various alterations including replacement windows, doors, gates and works to ceilings, courtyard and elevations and the blocking up an existing doorway	Permitted

4.0 Consultation Responses

4.1 The following responses have been received from statutory and internal consultees:

Consultee	Response
Conservation Officer	No objection

4.2 No items of public comment have been received.

5.0 Analysis

5.1 The key considerations in the assessment of this application are:

- Principle
- The impact on heritage assets

5.2 **Principle (NPPF Section 2: Achieving Sustainable Development);**

5.2.1 The accompanying full planning application (20/00677/FUL), which also appears on this Committee Agenda, outlines the planning considerations in this case. This Listed Building application considers the impact of the proposed alterations upon the character and appearance of the Listed Building and the Conservation Area.

5.2.2 Planning permission for the use is unlikely to be granted given the fact that 45.45% of the housing stock within 100m radius is HMO. Given this, a grant of Listed Building Consent for works enabling a change of use that will not happen is considered to be contrary to DM37 and Paras. 199,200,201,202 & 204 of the current NPPF. The proposal cannot be considered acceptable in principle.

5.3 **The impact on heritage assets Impacts on the heritage assets (NPPF Section 16: Historic Environment; policies DM37: Listed buildings, DM38; Conservation Areas; DM39: Setting of Heritage Assets)**

5.3.1 The proposal relates to a Grade II Listed Building, which is situated in a Conservation Area. As outlined in the Planning (Listed Buildings and Conservation Areas) Act 1990, the local authority should have a desirability of preserving the Listed Building and any features of special interest which it possesses (s.16 and 66) and preserving or enhancing the character and appearance of the

Conservation Area (s.72). The National Planning Policy Framework (NPPF) highlights that any harm to the significance of a designated heritage asset should require clear and convincing justification (par.200) and 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 (par. 202). This is reiterated by Policies DM37, DM38 and DM39 of the DM DPD. Policy DM37 relates to development affecting Listed Buildings and state that proposals which involve the alterations or extensions to Listed Buildings, should be based on an accurate understanding of the significance of the asset. Proposals which involve external and/or internal alterations to a Listed Building which would have an adverse impact on the special architectural or historic character of the building and/or their surroundings will not be permitted.

5.3.2 Formerly known as Black Bull Hotel, the former Duke of Lancaster public house dates from c1900 and the building is likely to be Austin and Paley with sandstone ashlar and roughcast upper floors with ashlar dressings. In terms of alterations to facilitate the use, minor changes to the internal layout have been undertaken and involve alterations to timber stud partitions and the insertion of a number of conservation roof lights. External doors on the second floor have also been infilled following the removal of an external fire escape. It is noted from the planning enforcement history that these unauthorised works were the subject of some oversight by the previous Senior Conservation Officer. The current application includes the proposed installation of a ventilation system in association with the air quality mitigation. It is also considered that secondary double glazing would be necessary in order to ensure occupants are not unduly impacted from external noise.

5.3.3 Whilst the retrospective and proposed works to the listed building are acceptable in their own right, they are not considered to be essential to the future preservation or enhancement of the building. Although the degree of heritage impact is very modest, the physical interventions implemented at the site could only be justified where this supports an acceptable use and development of the site. There is some public benefit of bringing the building back into use and refurbishing the building. However, the use is considered to be unacceptable for the reasons set out above and therefore the public benefits of bringing the building back into use are outweighed by the principle of development being considered as unacceptable and therefore the development is considered contrary to NPPF Paragraph 202 and policy DM37.

6.0 Conclusion and Planning Balance

6.1 Whilst the individual detail of the elements of this Listed Building application are broadly acceptable, the absence of planning permission for the use of the Listed Building in a Conservation Area, means that there is no overriding heritage argument supporting the works to facilitate the conversion which have been carried at the property. Given that the Listed Building application is incidental to the planning application, the local planning authority does not consider that it can presently support the works of which have been undertaken.

Recommendation

That Listed Building Consent **BE REFUSED** for the following reasons:

1. At this time there is insufficient justification that the proposed works required to the Listed Building to facilitate use as two houses in multiple occupation, as shown on the submitted plans, would facilitate the optimum viable use of the building given the use is not established via a grant of planning permission. Without such justification the Local Planning Authority cannot conclude that the harm identified would outweigh the public benefit of the proposal, including securing its optimum viable use, and as such the proposal is considered contrary to Policy DM37 of the Development Management DPD and to Paragraphs 199,200,201,202 and 204 of the NPPF.

Background Papers

None