

**Town and Country Planning Act 1990
(As Amended)**

APPENDICES TO APPEAL STATEMENT OF CASE

REDETERMINATION APPEAL

Appeal against the decision of Ribble Valley Borough Council to refuse to grant planning and listed building consent for the erection of a single storey extension to the south of an existing modern extension to Great Mitton Hall; the reconfiguration of the existing patio and railings; the removal of the pointed arch doorway to the southern wall of the modern extension and its replacement with a window; and the re-painting of the existing rendered gable to the Hall.

Site: Great Mitton Hall, Mitton Road, Mitton, Clitheroe

Appellant: Mr and Mrs Kay

Our Ref: KAY159/1/SOC

LPA Ref: 3/2018/0474 (planning)
3/2018/0468 (listed building)

PINS Reference: 3214150

Document date: October 2020

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APPENDIX 1



Neutral Citation Number: [2020] EWHC 2292 (Admin)

Case No: CO/16/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/08/2020

Before :

MR JUSTICE DOVE

Between :

The Queen (on the application of) Kenneth Kay
- and -
Secretary of State for Housing Communities and
Local Government
-and-
Ribble Valley Borough Council

Claimant

Defendant

Interested Party

Mr John Hunter (instructed by **Knights PLC**) for the **Claimant**
Mr Killian Garvey (instructed by **Government Legal Department**) for the **Defendant**

Hearing date: 21st May 2020

Approved Judgment

Mr Justice Dove :

Introduction

1. On the 23 May 2018 the claimant submitted applications for planning permission and listed building consent in relation to his property at Great Mitton Hall, Mitton Road, Mitton, Clitheroe. The development proposed in relation to the planning application was described as follows:

“The development proposed is the erection of a single storey extension to the south of an existing modern extension to Great Mitton Hall, the reconfiguration of the existing patio and railings, the removal of the pointed arch doorway to the southern wall of the modern extension and its replacement with a window, and the repainting of the existing rendered gable wall to the hall.”

2. In relation to the application for listed building consent the description of the works which were proposed under the application were as follows:

“The works proposed are the erection of a single storey extension to the south of an existing modern extension to Great Mitton Hall, the reconfiguration of the existing patio and railings, the removal of the pointed arch doorway to the southern wall of the modern extension and its replacement with a window, and the repainting of the existing rendered existed gable to the Hall.”

3. These applications were refused by the interested party on the 22 July 2018. The claimant appealed to the defendant against the refusal of these applications and the appeal was conducted by an Inspector using the written representations procedure. Following a site visit made by the Inspector on the 29 October 2019, the appeals were dismissed on the 25 November 2019. This application is made pursuant to section 288 of the Town and Country Planning Act 1990 and challenges the Inspector’s decision. At an earlier stage of the proceedings the defendant took the point that the claimant had not pleaded the claim as a challenge under section 63 of the Planning and Listed Building (Conversation Areas) Act 1990 (“the Listed Building Act 1990), which is the equivalent provision in relation to statutory challenges to decisions on listed building appeals. By the time of the hearing the defendant, in my view pragmatically and sensibly, no longer pursued this point, but for the avoidance of doubt the application before the court relates to both the dismissal of the appeal in relation to planning permission and also that in relation to listed building consent.

The facts

4. Great Mitton Hall was constructed in the 17th century and was built close to the Church of All Hallows. Great Mitton Hall is listed at Grade II, whilst the Church of All Hallows is listed at Grade I. The Planning Statement which accompanied the application made clear that the proposals sought to address the reasons for the dismissal of an earlier appeal in respect of alterations to the building on the 19 August 2016. The Planning Statement noted that part of the proposals included the removal of

a pointed arched opening from the south-west wall of the modern extension to Great Mitton Hall and its replacement with a window to match others, thereby improving the overall character of the hall by removing a feature that was not original or authentic, reducing architectural confusion and providing consistency to the fenestration of the elevation. The simplification of the railings as part of the applications was also identified as an improvement to the appearance of the building. Reliant upon a Heritage Assessment which had been submitted along with the applications, the Planning Statement concluded that the concerns raised by the Inspector who had previously dismissed the appeal were addressed and observed in particular as follows:

“7.12 In addition, the proposal seeks to soften the stark white tone of the existing render to the gable and also seeks to reconfigure the existing patio and railings to make them less evident in long range views. The proposals therefore address the concerns of the previous Inspector and the associated improvement to the existing hall and modern extension would address the Inspector’s conclusions further.

7.13 As a result, there would be no harm and there would therefore be preservation for the purpose of the decision makers during under the relevant legislation, and paragraphs 133 and 134 [of the National Planning Policy Framework of the Framework] are not engaged.”

5. Having analysed the significance of both Great Mitton Hall and also the nearby heritage assets, the Heritage Assessment addressed each of the elements of the proposed development in turn, noting that, in particular, the removal of the pointed arched opening from the south-west wall of the modern extension and its replacement with a window to match others on the same elevation “will improve the overall character of the listed building” in a number of ways that are then described. The Heritage Assessment also noted that the reconfiguration of the railings would make them less evidently a modern feature alongside the older part of the listed building. Re-painting the gable wall of the hall would not affect any historic fabric and would tone down the gable wall to a colour which would be better balanced with the adjacent church. This led, in turn, to the conclusion that the setting of the church would be improved. The Heritage Assessment concluded that there was no reason to believe that either the setting or significance of the listed building would be harmed as a result of any change arising from the proposed development.
6. Following consultation, Historic England offered no views in relation to the applications. The planning officer’s assessment of the proposal in a delegated report was as follows:

“The applicant’s re-consideration... of extension eaves and ridge heights and fenestration form is recognised. However in my opinion, the proposed extension and formal railings (atop patio) are harmful to the special architectural and historic interest of Great Mitton Hall and the setting of the listed building ensemble (particularly the church) because the forward projection of the extension and urban style railings

compound the incongruity and conspicuousness of the 1996 extension at the most important and sensitive alleviation of the listed buildings. The extension will project the 1996 extension forward to the Hall Gable and is a concern from all oblique views including Mitton Bridge. Photographs show that stone walling and hedgerow was the historic boundary treatment of the ensemble – unfortunately, different types of prominent timber fencing has been erected along this boundary in recent years.

...

NPPF paragraph 196 requires that any “public benefits” be considered (highlighting the securing of the optimum viable use in this regard). The applicant does not suggest that works are essential to the maintenance and occupation to the property...

I note that existing Hall Gable render colour follows the resolution of unauthorised works (the Gable had been painted green)- mindful of the comments of LAAS I would not consider the proposed repainting of the C1600 building (Georgian stucco render was imitate local stone colour) to be a public benefit. The provenance of the existing railings is not clear... I do not consider the proposed replacement of the existing extension door with a matching two light window to be beneficial... as the doors vertical emphasis helps provide termination to the elevation.”

7. As a consequence of this assessment the interested party refused permission for the following reasons, firstly in relation to the application for planning permission:

“1) The proposal will have a harmful effect upon the special architectural and historic interest in the listed building, the setting of a adjoining listed buildings and the cultural heritage of the area immediately adjoining the Forest of Bowland Area of Outstanding Natural Beauty because the extension, railings and door replacement will compound the existing incongruity and conspicuousness of the modern extension.”

And further, in relation to the application for listed building consent as follows:

“1) The proposal will have a harmful impact upon the special architectural and historic interests of the listed building because the extension, railing and door replacement will compound the existing incongruity and conspicuousness of the modern extension.”

8. As set out above, the claimant appealed against both of these decisions and the appeal was heard by means of the written representations procedure. Pursuant to the appropriate rules the claimant and the interested party prepared a Statement of

Common Ground in which they identified the main area of dispute between them for the purposes of the appeal as follows:

“(a) the level of harm that would be generated by the appeal proposal (less than substantial harm in the opinion of the LPA or no harm in the opinion of the Appellant) and whether the proposed extension would result in Great Mitton Hall becoming less significant if the development were to be permitted.”

9. In the claimant’s Statement of Case similar points were rehearsed to those which had been set out in the Planning Statement. In particular the claimant relied upon the conclusion that there was no harm to the listed building and its interests would be preserved. In particular, it was pointed out by the claimant that the appeal turned on whether heritage harm would arise, contending that this was not the case on the basis of the material placed before the Inspector. By contrast the interested party contended in its Statement of Case that there was harm to the listed building and that the appeal should, therefore, be dismissed. The author of the claimant’s Heritage Assessment produced a response to the interested party’s Statement of Case in which, having rehearsed his assessment in relation to each of the elements of the applications, he concluded that the interested party had failed to identify either a category of harm or the extent of any harm which would arise as a consequence of the proposals to the listed building.
10. The Inspector undertook a site visit on the 29 October 2019 leading to his decision letter dated 25 November 2019. The key paragraphs of that decision letter for the purposes of the present case are as follows:

“6. Great Mitton Hall originated in the early 17th century. It is constructed in rubble stone under a steep slate roof. Original windows are mullioned and the south-east gable is buttressed and rendered. This gable has mullioned windows at all four levels; a four light window at basement level, a 14 light window at ground level, a 7 light window at first floor level, and a 5 light window at attic level. At the east corner of the building, adjoining the south-east gable, is a turret with gable roof. The listed building has many other historic features and, to the owner’s credit, is well preserved and maintained.

7. Attached to the south-west elevation of the listed building, and set back only slightly from the south-east gable, is a modern single storey extension that is about 7 metres wide and 13 metres long. It has a stone gable but is otherwise rendered under a slate roof. To the left of the south-east elevation of the extension is an arched doorway with chamfered surround. Otherwise the windows in the extension have plain casements. Adjoining the extension, on its south-east side, is a paved terrace with curved railings.

8. The principle elements of the proposed works is the erection of a new extension to the extension. It will be about 4.3 metres wide and 2 metres deep, and will be slightly left of centre of the

south-east elevation of the existing extension. Other works include the replacement of the arched doorway with a window to match others, reconfiguration of the terrace railings, and the re-painting of the south-east rendered gable end of the original building.

9. The existing extension of the listed building has, at the very best, a neutral effect of the architectural and historic interest of the listed building. Despite its position relative to the distinctive south-east gable of the listed building it is a simple, restrained, relatively unadorned, structure that does not compete with the form and historic detailing of the gable. The principle adornment of the extension is the arched doorway, which, alongside plain casement windows, is incongruous and draws attention away from the gable of the listed building. The replacement of the doorway with a matching window, in this regard, would be a positive alteration that would benefit the architectural and historic interest of the listed building.

10. The existing extension has a roof pitch significantly lower than that of the listed building; about 24 degrees compared to about 42 degrees. The proposed new extension would have a lean-to roof that would have an even lower roof pitch of about 14 degrees. It would be, consequently, inappropriate and incongruous in form. Furthermore, the extension would be forward of the gable of the listed building and would draw attention to the existing extension and away from historic gable and its distinguishing fenestration. The new extension would detract from, and would harm, the architectural and historic interest of Great Mitton Hall.

11. The current railings are over-elaborate and replacing them with straight railings would, as is identified in the Heritage Statement that accompanied the applications, simplify this feature of the immediate surroundings at the listed buildings. The Statement with regard to the repainting of the existing rendered gable to the Hall states that “by toning down the stark white gable to a stone colour, the Hall will be tonally balanced with the adjacent Church”. But white is the traditional colour for painted render and the gable does not need to be “tonally balanced” with the church. In this regard there is no justification for the repainting of the south-east gable of the Hall.

12. The erection of a single storey extension to the south of the existing modern extension and the re-painting of the existing rendered gable would adversely effect, and would harm, the architectural and historic interest and significance of Great Mitton Hall. These elements of the proposed works conflict with policy DME4 of the Ribble Valley Core Strategy (RVCS). The reconfiguration of the existing patio and railings and the

removal of the pointed arch doorway to the southern wall of the modern extension would not harm the architectural historic interest and significance of Great Mitton Hall. These elements of the proposal do not conflict with RVCS policy DME4.

13. Paragraph 196 of the National Planning Policy Framework states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset the harm should be weighed against the public benefits of the proposal. The harm that would be caused to the listed building by the new extension and the re-painting of the gable would be less than substantial but there are no public benefits to be weighed against the harm caused.”

11. The Inspector went on to consider whether or not there would be an improvement to the setting of the church of All Hallows. He concluded that there would be no improvement but that the harm that might be caused by the proposals was “negligible”. Finally, after these conclusions, the decision of the Inspector was set out as follows:

“16. The erection of a single storey extension to the south of the existing modern extension and the repainting of the existing rendered gable would adversely affect, and would harm, the architectural and historic interest and significance of Great Mitton Hall. For these works the appeals have been dismissed. The reconfiguration of the existing patio and railings and the removal of the pointed arch doorway to the southern wall of the modern extension would not harm the architectural and historic interest and significance of Great Mitton Hall. For these works the appeals have been allowed.”

12. The effect, therefore, of the Inspector’s decision was to grant permission for some of the elements of the works proposed and to refuse permission and listed building consent for others.

The grounds

13. It will be worthwhile to set out at this stage the grounds which are pursued in this challenge in brief. The claimant pursues two grounds. The first ground is the Inspector erred in law when he held that there were “no public benefits to be weighed” against such harm as he had identified from the proposals to the special historic interest of Great Mitton Hall. Mr John Hunter, who appears on behalf of the claimant, characterises that error in a number of ways. He submits that this was a failure by the Inspector to properly interpret the relevant paragraphs of the National Planning Policy Framework (“the Framework”) related to this. The contention is that the Inspector failed to take account of a material consideration, namely the benefits which he had concluded would arise to the heritage assets from the improvement that would arise from the removal of the arched doorway, together with, potentially, the simplification of the railings which were proposed within the applications. In short, these elements of improvement were matters which the Inspector should have

recognised as public benefits of the proposal and taken into account in striking the overall balance. His failure to do so was an error of law.

14. In response to these submissions Mr Killian Garvey, who appears on behalf of the defendant, contends that the Inspector was perfectly entitled to consider each of the elements of the proposal separately and to treat the application as comprising a number of severable elements. This approach entitled him to reach the conclusion that certain parts of the proposal before him could be granted consent whereas others, giving rise to harm to the listed building, had to be rejected. It was for the Inspector to determine how he approached the applications and there was no requirement that he should consider the whole development first, prior to giving consideration to treating the application as severable and considering its parts in turn. In truth, the application was presented as a suite of individual elements and there was no necessary linkage between them.
15. Ground 2 is the claimant's contention that whilst the Inspector was perfectly entitled to issue a partial permission, or grant parts of the application and refuse other parts, it was necessary for him to have consulted with the parties in relation to whether or not to adopt that course. There was an issue in relation to procedural fairness in respect of the action in which the Inspector took. It ought to have been obvious to him that there was a significant difference between dealing with the application and granting a partial consent, and there was a legal obligation on the Inspector to consult with the parties. In response to this contention the Defendant submits that, as already noted, there was no necessary or suggested linkage between the elements of the application, and the Inspector was perfectly entitled to treat the elements of the applications as severable and to reach separate decisions in relation to those elements of the application.

The law and relevant policy

16. An application for planning permission falls to be determined in accordance with section 70(2) of the 1990 Act, by having regard to the provisions of the development plan so far as material to the application, and any other material considerations. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that if regard is to be had to the development plan for the purpose of any determination then that determination must be made in accordance with the development plan unless material considerations indicate otherwise. It is beyond argument that the Framework is a material consideration for the purposes of this exercise.
17. In relation to an application for planning permission which effects a listed building or its setting there is a general duty under section 66 of the Listed Building Act 1990 for the decision-taker to 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".
18. When planning consent has been refused, section 78 of the 1990 Act provides a right of appeal to the Secretary of State against that decision, and section 79 of the 1990 Act provides the powers of the Secretary of State on an appeal. In effect the power under section 79 allows the Secretary of State to allow or dismiss the appeal or "reverse or vary any part of the decision of the local planning authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had

been made to him in the first instance”. Similar rights exist in relation to a refusal of listed building consent, whereby under section 20 of the Listed Building Act 1990 there is a right of appeal to the Secretary of State against the decision refusing listed building consent, and under section 22 of that Act the Secretary of State has similar powers to those granted by section 79 of the 1990 Act in relation to listed building appeals. Further consideration as to how these powers should be exercised is set out below.

19. The question of interpretation of a planning policy, such as the Framework, is a question of law for the court to determine: see *Tesco Stores v Dundee City Council* [2012] PTSR 983. However, questions of application rather than interpretation are matters for the decision-taker and in particular in this context the expert tribunal.
20. Questions of the interpretation of planning policy, when they genuinely arise for the courts determination, require the court to bear in mind that planning policy is neither a statute nor a formal legal instrument, but rather a tool which is intended to be a practical aid to consistent decision-taking. Statements of planning policy should be interpreted with their purpose and intended audience (both professionals but also wider public) clearly in mind. The policy should be read and interpreted in a straightforward manner, taking into account the context in which it arises. The correct approach to the interpretation of planning policy is now well established from cases such as *Canterbury City Council v Secretary of State for Housing Communities and Local Government* [2019] PTSR 81 (see paragraph 23) and *Monkhill Limited v Secretary of State for Housing Communities and Local Government* [2019] EWHC 1993, with both of these authorities and the recent decision of Holgate J in *Gladman v Secretary of State for Housing Communities and Local Government* [2020] EWHC 518 synthesising the earlier authorities that are referred to in these judgments.
21. When providing a decision on an appeal under section 78 of the 1990 Act an Inspector is under a duty to provide reasons. In accordance with the well-established principles from the speech of Lord Brown of Eaton-Under-Heywood in *South Bucks District Council v Porter (no. 2)* [2004] 1 WLR 1953 (at page 1964 B-G) the reasons must not give rise to doubt as to whether the Inspector went wrong in law, for example by misunderstanding a relevant policy. It is not, however, necessary for the Inspector to engage with every issue or material consideration raised in the appeal, but rather to focus upon the principle important controversial issues. When dealing with a challenge to an appeal decision under section 78 the decision letter is to be read in a purposeful way, bearing in mind that the letter is addressed to the principal participants in the decision-taking process who will be familiar with the issues at stake in the appeal as well as the evidence and arguments deployed by the relevant parties.
22. The courts have given consideration to the duty under section 66(1) of the Listed Building Act 1990 and how the duty it creates should be taken into account by decision-takers addressing proposals which affect listed buildings. In the case of *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council* [2014] EWCA Civ 137 the Court of Appeal considered the impact of section 66 of the Listed Buildings Act 1990 on a decision in relation to a wind turbine proposal which impacted upon the setting of heritage assets. Giving the leading judgment in the Court of Appeal, Sullivan LJ provided the following analysis supporting the conclusion at first instance that the Inspector had erred in law in relation to his duty:

“29. For these reasons I agree with Laing J’s conclusion that Parliament’s intention in enacting section 66(1) was that decision-makers should give “considerable importance and weight to the desirability of preserving the setting of listed buildings” when carrying out the balancing exercise. I also agree with her conclusion that the Inspector did not give considerable importance and weight to this factor when carrying out the balancing exercise in this decision. He appears to have treated the less than substantial harm to the setting of the listed buildings, including Lyveden New Bield as a less than substantial objection to the grant of planning permission. The appellant’s skeleton argument effectively conceded as much as contending that the weight to be given to this factor was, subject only to irrationality, entirely a matter for the Inspector’s planning judgment. In his oral submissions Mr Nardell contended that the Inspector had given considerable weight to this factor, that he was unable to point to any particular passage in the decision letter which supported this contention, and there is a marked contrast between the “significant weight” which the Inspector expressly gave in paragraph 85 of the decision letter to the renewable energy considerations in favour of the proposal having regard to the policy advice in PPS 22, and the manner in which he approached the section 66(1) duty. It is true that the Inspector set out the duty in paragraph 17 of the decision letter, but at no stage in the decision letter did he expressly acknowledge the need, if he found there would be harm to the setting of the many listed buildings, to give considerable weight to the desirability of preserving the setting of those buildings. This is a fatal flaw in the decision even if grounds 2 and 3 are not made out.”

23. This approach was reinforced by the Court of Appeal in the case of *Mordue v Secretary of State for Communities and Local Government* [2015] EWCA Civ 1243 where, in paragraph 28 of the judgment, Sales LJ concluded that the relevant legal duty was, in effect, encapsulated in the paragraphs of the 2012 Framework, starting at paragraph 131 and proceeding through paragraph 134. Sales LJ concluded that working through these paragraphs in the 2012 Framework (which reflect the paragraph set out below from the 2018 Framework) would enable a decision-taker to properly direct themselves in relation to the discharge of duty under section 66.

24. The relevant paragraphs of the Framework operative at the time of the decision addressing the issues in relation to designated heritage assets are as follows:

“193 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 (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.

194 Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

- a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;
- b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional

195. 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 total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- a) the nature of the heritage asset prevents all reasonable uses of the site; and
- b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and
- d) the harm or loss is outweighed by the benefit of bringing the site back into use.

196. 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.”

25. Further assistance in relation to understanding the provisions of the Framework is provided in the National Planning Practice Guidance (“the PPG”). The PPG provides particular assistance in relation to the term public benefits as follows:

“What is meant by the term public benefits?

The National Planning Policy Framework requires any harm to designated heritage assets to be weighed against the public benefits of the proposal. Public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (paragraph 8).

Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.

Examples of heritage benefits may include:

- sustaining or enhancing the significance of a heritage asset and the contribution of its setting
- reducing or removing risks to a heritage asset
- securing the optimum viable use of a heritage asset in support of its long-term conservation.”

26. The correct approach to the interpretation of paragraph 196 of the Framework was recently considered by Sir Duncan Ousley in the case of *Safe Rottingdean Limited v Brighton and Hove City Council* [2019] EWHC 2632. In that case a challenge was brought to the grant of planning permission for a package of residential development and the restoration and reuse of listed buildings. The first ground of the application for judicial review related to the question of whether or not the committee report had fallen into error in the way in which it dealt with the application of development plan policy in relation to listed building and conservation areas. The argument in relation to these policies also engaged consideration by the court of the correct interpretation of paragraph 196 of the Framework. In that regard Sir Duncan Ousley observed as follows:

“68...Paragraph 196 contemplates the position where there is some but less than substantial harm to a heritage asset, whether listed building or conservation area. It does not look at the overall balance of advantage or disadvantage to the heritage asset at that stage. The weighing exercise then includes the advantage of “securing its optimum viable use” as a factor against which the less than substantial harm has to be weighed. That is a clear reference to the public policy advantage of bringing a listed building or part of conservation area into a viable long term use. Such public heritage benefits are clearly among those to be weighed against the less than substantial harm. So the Framework adopts its own approach but emphatically is not dependant on a view that the less than substantial harm is a net overall less than substantial harm.”

27. As set out above there was no dispute between the parties to the proposition that by virtue of section 79 of the 1990 Act and the equivalent provisions in the Listed Buildings Act 1990 the Inspector had power to issue a split decision in relation to some of the elements of the development proposed. The relevant legal powers were analysed by Mr John Howell QC sitting as a Deputy Judge of the High Court in the case of *R v Holborn Studios Limited v Hackney London Borough Council* [2017] EWHC 2823 (Admin); [2018] PTSR 997 his analysis is set out as follows:

“63. In my judgment it is necessary to distinguish the substantive and the procedural constraints on the power of the local planning authority to grant planning permission for a development other than that for which an application was originally made.

64. There are three ways in which a planning permission may be granted for such a development: the initial application may itself be amended; permission may be granted only for part of the development applied for; and permission may be granted subject to a condition that modifies the development applied for. Quite apart from any requirements for notification and consultation there are substantive limitations on the changes that can be effected by such methods. These limitations have been variously described but they are all concerned with whether the result is the grant of permission for development that is in substance something different from that for which the application was initially made. That is because the legislation only gives power to local planning authorities to determine the application describing the development for which permission is sought which is made to them in the prescribed form and manner.

...

66. The planning authority also has power to grant planning permission for part of the development applied for under section 70(1)(a) of the 1990 Act and to refuse permission for another part under section 70(1)(b) where such parts are separate and divisible: see section 70(1)...; and *Kent County Council v Secretary of State for the Environment* [1976] 75 LGR 452, 455. In such a case the development for which permission is granted is the same as that in part of the application but there remains a question (apart from one about consultation about such a partial grant) whether the permission would be for a development that would be substantially or significantly different in its context from that which the application envisaged: see *Bernard Weatcroft Limited v Secretary of State for the Environment* 43 PNCR 233, 240; and *Johnson v Secretary of State for Communities and Local Government* [2007] EWHC 1839 (Admin) at [25].

28. These paragraphs make clear the evident power of the decision-taker in relation to a planning application to grant permission for a severable part of that application. This is an issue to which I shall return below. As the judgment of Sir Douglas Frank QC sitting as a Deputy Judge of the High Court makes clear, where an application is comprised of separate parts, it is open to a decision taker to grant permission for such of those parts as it is thought should be permitted. Sir Douglas Frank QC observed in the course of his judgment as follows:

“In my judgment the correct approach to this matter is to ascertain the powers under section 29 of the Act by reference to the purposes of Part III, in which it appears. It seems to me that everything in Part III flows from and is consequential on the provision in section 23 that planning permission is required for the carrying out of any development of land; hence, when the matters come before the determining authority, in this case the first respondent, what that authority has to do is to decide whether, having regard to the provisions of the development plan and to any other material considerations—that is, planning considerations—permission ought to be granted, and, if so, what, if any, conditions should be imposed. It further seems to me that, as a matter of common sense, the determining authority can grant as much of the development applied for as they think should be permitted.”

29. The requirements in relation to the issuing of a split or part permission were further considered by Ouseley J in the case of *Johnson v Secretary of State for Communities and Local Government* [2007] EWHC 1839 (Admin). In that case the claimant had applied for planning permission in respect of two elements of development. The first was the erection of a new dwelling as an extension to a detached double garage, and the second was the conversion of a larger building into a single dwelling together with a garage from what was currently two dwellings. The local planning authority had no objection to the conversion of the two dwellings into a single dwelling but did object to the proposed dwelling as an extension to a detached double garage. Permission was refused and was appealed. The Inspector agreed with the local planning authority and dismissed the appeal in relation to the creation of the new detached dwelling, but allowed the appeal granting permission for the conversion of the existing dwelling houses into a single dwelling house. As a result of practical problems with implementing the permission which had been granted, the claimant made an application to this court for the quashing of the Inspector’s decision, including within his grounds a complaint that he ought to have been given the opportunity at the hearing of the appeal to explain what the problems would be were a split decision to be issued. The question of whether or not a split decision ought to be made had not been aired at the hearing of the appeal. Having rehearsed the authorities such as *Kent County Council* and *Bernard Wheatcroft Limited*, Ouseley J expressed his conclusions on the question of whether or not an opportunity to make representations on the implications of a split decision should have been granted in the following terms:

“21. The first issue is whether the Inspector here entirely inadvertently, and with the most benign and efficient of intentions, failed to afford to Mr Johnson the procedural fairness to which he was entitled. I have come to the conclusion that the Inspector did act fairly. There was no material at all to alert the Inspector to any problem in the way of the grant of permission for the works to the existing dwelling. The levels issue was not raised; the degree of dependence between the two parts of the scheme was not raised; no party referred to it; there was nothing in the representations or the nature of the sight to lead an Inspector to suppose that there might be any basis for any objection at all to such a decision.

22. It is my judgment that if it is to be said that there was some unfairness in the Inspector not raising the question of a split decision, there had to be something, whether in representations or on the ground, to alert him to the fact that what might otherwise be a perfectly sensible, unobjectionable course could give rise to difficulties, and indeed give rise to difficulties who, on the face of it, was being benefited. There was nothing before him which would have had that effect. I do not think that it can in those circumstances be said, after the event, that it was unfair for the Inspector not to give Mr Johnson the opportunity of saying that he did not want the uncontentious part of the permission to be granted.

23. Mr Johnson is a planning professional, in addition, and would have been (and indeed was) aware that sometimes such split decisions are granted. Bearing in mind the attitude which the local authority had expressed towards the larger building and maintained at the hearing, it must have been on the cards that a split decision would be made. It was in my judgment incumbent on Mr Johnson to raise in some form or other something which would have alerted the Inspector to the fact that such a decision could be a problem, e.g. saying that the scheme was an integrate whole for certain reasons.”

Submissions and conclusions

30. On behalf of the claimant, Mr Hunter’s submissions in relation to ground 1 are in essence as follows. Firstly, and applying the interpretation of paragraph 196 of the Framework from *Safe Rottingdean*, it was incumbent upon the Inspector to solely examine the harmful effects of the proposals before him upon the heritage assets involved in the decision at the first stage of the analysis. Any beneficial effect in relation to the heritage assets came into the balance at a later stage. Mr Hunter submits that it is clear from the Inspector’s report that he found that one element of the proposal, namely the removal of the arched doorway and its replacement with a matching window, would be a positive alteration of benefit to the listed building: see paragraph 9 of the decision letter. Furthermore, he submits that the conclusion in paragraph 11 which the Inspector reached in relation to the replacement of the railings was, in effect, recognised as another improvement. Certainly, when read with paragraph 12 of the decision letter, he submits that no harm arises from the replacement of the railings, and this issue is at least neutral. He submits that the less than substantial harm that the Inspector found at paragraph 13 of the decision letter reflects an overall assessment based upon his conclusions in relation to the proposal before him in paragraph 12 of the decision letter. Where the Inspector then fell into error was in concluding that “there are no public benefits to be weighed against the harm caused”. The Inspector had clearly found that one of the works included in the proposal would benefit the architectural and historic interest of the listed building, and therefore amounted to a public benefit which the Inspector failed to take into account. Thus, Mr Hunter submits that the Inspector failed to correctly interpret paragraph 196 of the Framework, and failed to have regard to a material consideration namely the public benefit that he had found from one of the works included in the proposal in

paragraph 9 of the decision. Alternatively, there was a failure on the part of the Inspector to explain the conclusions which he had reached in paragraph 13 of the decision letter.

31. In relation to ground 2 Mr Hunter submits that whilst the Inspector was entitled in principle to issue a partial permission in respect of the application before him, he should have been aware that there was a very significant difference between permitting the proposals as a whole and permitting individual works within the proposal. Mr Hunter submitted that there was a clear linkage between the elements of the proposal namely that they were all proposals in respect of the same listed building and that fairness required that the Inspector should consult with the parties prior to issuing a split or partial permission.
32. In response to these submissions Mr Garvey on behalf of the Defendant contends that, firstly, the application comprised a number of individual elements none of which were linked. They were presented and considered separately in the application material. Secondly, he submits that it is clear from the material accompanying the appeal that the issue before the Inspector was stark: the claimant submitted that there was no harm arising from the proposals to the heritage assets concerned, whereas the interested party submitted that harm arose. Thus, the decision turned on a finding as to whether or not harm would arise. Thirdly, and in the light of the first submission, it was open to the Inspector to decide for himself as to how to go about considering the proposal and, in particular, open to him to conclude that he should examine and determine each of the elements individually and decide in relation to each of those elements whether or not they should be permitted. Thus, in paragraphs 12 and 13 of the decision letter the Inspector was entitled to review each of the elements of the proposal individually and to reach the conclusion that those which were harmful had no public benefit to be weighed against them on the basis of their own individual merits. In so far as the claimant's case is that it was mandatory for the Inspector to consider the proposal as a whole first before he went on to examine the individual elements of the applications to see whether any of them could be granted on their own merits, there was no authority supporting this proposition and no warrant for the court mandating such an approach. Finally, Mr Garvey submitted that whereas here there were individual elements, some of which were beneficial and some harmful, it would create absurd results if one part of the proposal were said to support a different part of the proposal, since the developer could choose which parts of the proposal to implement.
33. In respect of ground 2 Mr Garvey submitted that, in truth, there was no suggested linkage between the different elements of the appeal proposals and no basis upon which the Inspector, consistent with the principles set out in *Johnson*, should have been required to consult with the parties before issuing a split decision.
34. The starting point for the consideration of ground 1 is the question of what is required by paragraph 196 of the Framework and its correct interpretation. I have no doubt that the interpretation of paragraph 196 provided by Sir Duncan Ousley in *Safe Rottingdean* is correct. The clear focus of paragraphs 193-196, and the fulcrum or essential finding necessary to apply the policy contained in those paragraphs correctly, is an initial establishment of the extent and nature of the harm to the significance of a designated heritage asset as a consequence of what is proposed. At the stage of establishing the nature and extent of the harm to significance any

beneficial impact on the significance of the heritage asset is left out of account. It is only after that level of harm has been fixed that any beneficial effect upon the building which, in accordance with the PPG would properly be considered to be a public benefit, is to be taken into account in assessing whether or not the overall balance to be struck in applying the policy, including any other public benefits, enables the conclusion to be reached that the proposals do not conflict with the policy.

35. The second issue is whether, in the light of this understanding of the requirements of paragraph 196 of the Framework, the Inspector interpreted the policy correctly in considering the appeal which was before him. In my view the starting point for considering this issue must be an understanding of what the Inspector did in forging his decision. It is clear to me that in paragraph 9 of the decision letter he made a clear finding that the removal of the arched doorway and its replacement with a window matching the other fenestration in this element of the building “would be a positive alteration that would benefit the architectural and historic interest of the listed building”. In paragraph 10 of the decision letter he found that the proposals in relation to the new extension would detract from and harm the historical and architectural interests of the listed building. In paragraph 11 of the decision letter he concluded that the railings would simplify the surroundings of the listed building and therefore it appears to me when read together with paragraph 12 that this element would be at least neutral or not harmful to the interests of the listed building. Finally, he concluded that there was no justification for the re-painting of the south-east gable end of the hall. At paragraph 12 he draws these conclusions together in relation to those works included in the proposal which would be harmful and those which would not. Thereafter in paragraph 13 having referred to the contents of paragraph 196 of the Framework he concludes “the harm that would be caused to the listed building by the new extension and the re-painting of the gable would be less than substantial but there are no public benefits to be weighed against the harm caused”.
36. When reading paragraphs 9 to 13 together in my view it appears the Inspector is forming a judgment in relation to the proposed development as a whole, aggregating his analysis of the elements of which it was comprised and forming an overall judgment about the totality of the development. In paragraphs 12 and 13 he draws together an assessment of the impact of the proposals on the listed building as a whole and then applies the relevant policy in paragraph 196 of the Framework to the proposals as a whole. He does not suggest that he is applying paragraph 196 of the Framework to each of the works included in the proposal individually, or suggest or explain that this is the exercise he is performing. Indeed, in the last sentence of paragraph 13 he treats two elements of the development proposals together and in aggregate in assessing that harm will be less than substantial. The Inspector then asserts in the same paragraph that there are no public benefits to be weighed against this collective harm. All this reinforces my view of the exercise that the Inspector was performing, which was to look at the development proposal as a whole at the outset of his decision determining the appeal. Thus, I accept Mr Hunter’s submission that within paragraph 13 the Inspector is addressing the overall effect of all of the elements of the proposals taken together. After all, that was the way in which the application had been considered by the interested party when permission was refused.
37. The fact that he reached a conclusion that he should give a partial permission and listed building consent after he reached the conclusion that the proposals taken as a

whole should be dismissed does not mean that he was not in these paragraphs addressing the proposal taken as a whole. It appears that what occurs in the decision letter is that in paragraphs 9 to 13 (and in particular 12 and 13) the Inspector concludes that the proposals as a whole should be dismissed, and he then decides to give a partial permission and listed building consent to the parts of the proposal which he had concluded were not harmful and indeed in one case beneficial. It is not without significance that he does not suggest at this later stage that he has treated the application as, in effect, four separate applications and decisions.

38. I am unable to accept, therefore, the submission made on behalf of Mr Garvey that in truth the Inspector separately considered each of the individual elements of the proposals and did not consider them together. However, for reasons which I shall explain shortly, even were I to accept that the Inspector considered the works comprised in the proposals separately my overall conclusion would be the same for reasons which are set out below. Where the Inspector fell into error, in my judgment, is that having concluded that the proposals gave rise to less than substantial harm as a result of his findings in respect of two of the proposed works, he went on to contend that there were no public benefits to be weighed against any of the harm caused. This was inconsistent with the earlier finding in paragraph 9 that there would be improvements to the architectural and historic interest of the building as a result of one of the elements of the proposal, and which gave rise to public benefits which ought to have been taken into account. This error can be characterised as either a failure to properly interpret the policy in paragraph 196 of the Framework as to how to go about striking the balance in relation to heritage assets, failing to properly interpret what might amount to a public benefit or, alternatively, the leaving out of account of a material consideration which was required by the policy to be taken into account, namely the improvements to the architectural and historic interest of the building as a consequence of one of the elements of the proposal which was by definition a public benefit.
39. I have no difficulty in accepting the proposition that it was open to the Inspector to grant a partial permission: indeed, such was not controversial between the parties in this case. Further, I accept the proposition that it is for the Inspector to determine how he might go about his task of dealing with the decision on the appeal before him. The Inspector will need to form a view as to how to address the application bearing in mind the circumstances of the case and, in some instances, how it has been presented by the applicant. However it is done, it should be clear from the reasoning of the decision how it has been undertaken, so that the recipient of the decision can understand the structure of the decision-taking process. Depending on the facts of any particular case, it may be more convenient to first tackle an assessment of the individual works or parts comprised in an application, or alternatively it may make more sense to deal with the application as a whole. If, for instance, having concluded that taking the works together as a whole the merits of the application justify the grant of permission it may be a pointless exercise to go back and consider the works comprised in the application individually, and vice versa. There is no mandated approach and it is a matter for the Inspector to resolve on the facts of the individual case. It may not, however, be open to an Inspector when considering elements of an application individually to leave out of account aspects of the works or parts comprising the application which may be a material consideration relevant to the merits of others, where they are inter-related. Of course, that inter-relationship can

arise in a variety of different ways: they may be connected as a result of the application of policy, or because on the facts of the case the merits of one work comprised in the application is obviously material to another so as to require them to be taken into account when considering the latter (see paragraphs 29 to 32 of in the judgment of Lord Carnwath in *R (on the application of Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council* [2020] UKSC 3), or as a result of some proposed condition or obligation. This is not an exhaustive list. The point is, it may well be on the given facts of a particular case that the benefits arising from one part of a proposal needs to be taken into account in support of another, as offsetting the harm arising from it; indeed, it may be that the purpose of putting the individual elements into a single application is so as to enable the decision-taker to balance the benefits and harm arising from different parts of a proposal containing multiple individual items of development.

40. The significance of this in relation to the current decision is this. If the Inspector in paragraph 13 was, as I consider he was, assessing the works comprised in the proposal collectively, then he left out of account the public benefit from at least one of the works comprised in the proposal as set out above. If, on the other hand, he was considering the new extension and the re-painting of the gable separately, then he left out of account in considering each of those works separately the public benefit which would arise to the architectural and historic interest of the building as a consequence of the removal of the pointed arch doorway and its replacement with a window, which was a work he approved of and which gave rise to an improvement to the significance of the heritage asset. There is certainly no reasoning or explanation setting out why it was that the public benefit he had identified as arising from this improvement to the listed building was not relevant or should not be taken into account when appraising the other works which he was assessing as part of the application.
41. Although Mr Garvey contends that each of these individual elements were not linked, and their merits were isolated from each other, in my view that is an approach based upon an overly forensic review of the application documentation and without properly taking account of the realities of the situation. Whilst as a matter of judgment the heritage merits of the individual works might legitimately have their impact assessed separately, they are inevitably connected and inter-related on the facts of this case by reason not only of them being proposals in relation to the same listed building, but moreover on the basis that they were closely physically related to a particular aspect of the listed building. An alternative way of examining the connection or relationship is the simple point that it was the same particular aspect or elevation of the heritage asset which was being benefitted by the replacement of the pointed arch doorway that was being affected by the two proposals that the Inspector found less than substantially harmful. Different listed building applications comprising multiple works will give rise to different considerations which have to be considered on a case by case basis, but here whichever of the individual works were granted in combination would have an overall effect on the significance of the same part of the listed building, whether positive or negative. Whilst in some cases it may be necessary for an applicant to point out any potential linkage or inter-relationship between parts comprised in a proposal, in the present case the relationship between the parts of the proposal, which all related to a particular part of the listed building, was clear and obvious. For instance, the pointed arch window and its proposed beneficial replacement is in the same elevation of the same extension, and

immediately adjacent to, the proposed further extension to that extension which the Inspector concluded was harmful. Thus, even if the Inspector had been considering the works comprised in the proposal separately, that did not permit him to leave out of account in considering the merits of a work comprised in the proposal which he considered gave rise to less than substantial harm to the heritage asset, the public benefits from a work comprised in the proposal which he considered was an enhancement of the heritage asset given, and this must be emphasised, the particular circumstances of the present case. The public benefit was material in terms of the policy which was being applied and was, in any event, obviously material to the decision being taken for the reasons set out above.

42. I do not consider that there is any substance in the concern of Mr Garvey that such an approach might lead to the grant of a planning permission for both beneficial and harmful elements, which could lead to only the harmful elements being developed. Situations of this kind are commonly encountered within the development control system whereby, as alluded to above, harmful elements of a development proposal are justified on the basis of other parts of the scheme which are beneficial. In those instances, by means of conditions or the entering into of an obligation under section 106 of the 1990 Act the planning system ensures the delivery of the beneficial aspects of the scheme as part and parcel of the proposals overall. In the present instance these solutions would have been equally available.
43. It follows that in my judgment the claimant is entitled to contend that the Inspector fell into error in relation to his assessment in the decision letter. It would have been open to the Inspector to conclude, and express in his reasons, that, for instance, the public benefit from the replacement of the arched window was insufficient to justify the harm arising from the small extension to the extension adjacent to the new window being installed, but he did not. It is not possible, nor was it contended on behalf of the defendant, to suggest that the decision would inevitably have been the same had the Inspector taken account of the public benefits which he had found in paragraph 9 of the decision letter and therefore the decision must be quashed.
44. In the light of the conclusions which I have reached in relation to ground 1 I propose to deal with ground 2 briefly. In my view there is no justification for the claimant's complaint that the Inspector behaved unfairly in reaching a split decision, or issuing a partial permission, without first consulting with the parties. There are several reasons for reaching that conclusion. Firstly, there was nothing in the material before the Inspector to give cause for concern that there would be any prejudice or difficulty arising from a split decision. Whilst issues have been raised in the evidence in this statutory challenge none of them were articulated in the material before the Inspector. Secondly, it is obvious in my view that in submitting an application which is comprised of a number of works in relation to the same building the possibility of a split decision will almost always exist, as it did in the present case. If there were particular difficulties in relation to a split decision the Inspector is entitled to assume that those would be raised as part of the parties' submissions, and in the absence of concern being raised conclude that there would be no difficulty in the split decision being issued. Allied to these points, and given the breadth of the powers under section 79 of the 1990 Act which are engaged by the appellant in appealing under section 78 of the 1990 Act, it appears to me to be appropriate to expect that if there is any particular reason why the full breadth of those powers ought not to be wielded in any

particular case that an appellant might make that clear to a decision taker along with the reasons for their concerns. This is the consequence of the approach taken by Ouseley J in *Johnson*, which is an approach which I would endorse and apply in the present case. It follows that I would not have been minded to allow this application under ground 2 in the absence of the claimant succeeding under ground 1.

45. It follows that for the reasons set out above claimant succeeds under ground 1, but that ground 2 must be dismissed. For that reason the decision in the present case must be quashed.

APPENDIX 2

**Town and Country Planning Act 1990
(As Amended)**

Appendices to Appeal Statement of Case

Appeal against the decision of Ribble Valley Borough Council to refuse to grant planning and listed building consent for the erection of a single storey extension to the south of an existing modern extension to Great Mitton Hall; the reconfiguration of the existing patio and railings; the removal of the pointed arch doorway to the southern wall of the modern extension and its replacement with a window; and the re-painting of the existing rendered gable to the Hall.

Site: Great Mitton Hall, Mitton Road, Mitton, Clitheroe

Appellant: Mr and Mrs Kay

Our Ref: KAY159/1/SOC/Appendices

LPA Ref: 3/2018/0474 (planning)
3/2018/0468 (listed building)

Document date: October 2018

APPENDICES

Appendix 1 - Supplementary Letter by Heritage Collective

Appendix 2 - Appeal Decision Letter dated 19 August 2016 (appeal references 3148964 & 3148963)

Appendix 3 - Planning application documents associated with appeal references 3148964 & 3138963

APPENDIX 1

Our ref: 4004

Carl Copestake
Partner
Knights plc
The Brampton
Newcastle-under-Lyme
Staffordshire
ST5 0QW

9 October 2018

Dear Carl

Great Mitton Hall, Mitton Road, Clitheroe, Lancashire, BB7 9PQ
Ribble Valley Borough Council References: 3/2018/4074 and 3/2018/4068

Thank you for forwarding Ribble Valley Borough Council's reasons for refusing applications 3/2018/4074 and 3/2018/4068, and the officer reports relating to the two applications. As you know, I am fully in support of Mr Kay's proposal to appeal these applications, and it is my view that an appeal by way of informal hearing is absolutely essential if the issues are to be properly heard. Although I consider the Council's reasons for refusal to be untenable, I propose to attend the hearing to give full weight to the case set out in the Heritage Assessment that I prepared in May 2018, and which was submitted with the applications. There is no need, in this instance, for me to prepare a further statement for this appeal, since the case was set out in sufficient detail in the Heritage Assessment (although it should be noted that the paragraph numbers relating to the NPPF have now changed – an administrative point with which the Inspector will no doubt be familiar).

In both cases, the applications were refused "because the extension, railings and door replacement will compound the existing incongruity and conspicuousness of the modern extension." The Council does not explain how the listed building (Mitton Hall) would become less significant after the development were executed, if it were permitted. In circumstances where the Council cannot demonstrate a loss of significance, there is no harm, as I made clear in my Heritage Assessment at and after paragraph 2.2. Therefore, paragraph 134 of the "old" "PPF, which is now paragraph 196 of the "new" NPPF, is not engaged.

As far as the "Assessment" of the proposed development is considered in the officer reports relating to the planning and listed building applications, I can see little evidence of a fair assessment at all. The reports assume, in the subheadings, that there is an "Impact", and they execute a series of scolding blows by which the application proposal is

treated, in my view, unfairly. The reports are written as though the application had set out to cause harm, and as though the applicants and their professional advisers were to be taught a severe lesson. Public benefit is dismissed out of hand. It is as though the only possible outcome was refusal, and as though the applications were incapable of having any redeeming qualities.

I very much hope to have the opportunity of making a verbal contribution to a hearing so as to set the record straight, and so as to amplify that part of the assessment that is so lacking in the Council's reports. Such a process would allow an independent conclusion to be fairly reached.

I would be grateful if you would append this letter to your appeal statement and keep me informed of the emerging timetable.

Yours sincerely



Dr Jonathan Edis BA MA PhD MCIFA IHBC
Managing Director
Jonathan.edis@heritagecollective.co.uk

APPENDIX 2

Appeal Decisions

Site visit made on 9 August 2016

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 August 2016

Appeal A: APP/T2350/W/16/3148964

Great Mitton Hall, Mitton Road, Mitton, Clitheroe BB7 9PQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Kay against the decision of Ribble Valley Borough Council.
 - The application Ref: 3/2016/0091, dated 22 January 2016, was refused by notice dated 22 March 2016.
 - The development proposed is a conservatory on the south east elevation of a modern extension.
-

Appeal B: APP/T2350/Y/16/3148963

Great Mitton Hall, Mitton Road, Mitton, Clitheroe BB7 9PQ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr and Mrs Kay against the decision of Ribble Valley Borough Council.
 - The application Ref: 3/2016/0132, dated 22 January 2016, was refused by notice dated 22 March 2016.
 - The works proposed are a conservatory on the south east elevation of a modern extension.
-

Decision

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Preliminary Matter

3. As the proposal affects listed buildings I have had special regard to sections 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

4. The main issues are whether the proposal would preserve a Grade II listed building, Great Mitton Hall, and any of the features of special architectural or historic interest that it possesses; and whether the proposal would preserve the setting of nearby listed buildings.
-

Reasons

5. Great Mitton Hall was listed in 1954 and was originally constructed in the 17th century. It comprises two stories with an attic and cellar. It is constructed from coursed rubble with a slate roof. A gabled, single storey extension projects at a right angle from one end of the south-western elevation. The extension is a modern addition which forms a partially enclosed courtyard. This elevation also accommodates the main entrance to the building via a single storey, gabled porch. Hooded mullion windows predominate and an impressive series of windows characterise the buttressed, south-eastern gable of the original building. These comprise a mullioned cellar window, a 14-light mullioned and transomed ground floor window, a 7-light first floor window and a 6-light attic window. Given the above, I find that the special interest of the listed building, insofar as it relates to this appeal, to be primarily associated with the fenestration and architectural detailing of its south-western gable.
6. The appeal property is within the setting of a Grade I listed building, Church of All Hallows, and a further Grade II listed building, Aisled Barn, Mitton Old Hall Farm, 35 Metres West of Great Mitton Hall. The Church was listed in 1954 and was originally constructed in the late 13th century with an early 15th century west tower and a late 16th century north chapel. It is constructed from coursed, sandstone rubble with a stone slate roof. The Barn was listed in 1984 and dates from the 17th century and is also constructed from coursed, sandstone rubble with a slate roof. The close juxtaposition of these buildings, common materials and highly prominent position at the top of an escarpment have created an ensemble of considerable historic and aesthetic value. As noted by a previous Inspector¹, 'the historic and visual connections between the three adjacent listed buildings adds to their significance and distinctiveness'. Given the above, I find that the special interest of the setting of these listed buildings, insofar as it relates to this appeal, to be primarily related to the close visual juxtaposition of the Church and appeal property when viewed from the southwest along Mitton Road and the valley of the River Ribble.
7. The proposal would lead to the construction of a neo-classical style conservatory on the southern elevation of the single storey extension to the original building. It would be located centrally and utilise the existing terrace as a foundation. A number of minor changes would be made to the existing fenestration of the extension and the structure would not extend above the ridge line. Consequently, there would be no loss of original fabric or any change to the original layout of the listed building. However, the introduction of this alien feature would diminish the dominance of the windows of the buttressed gable and undermine their functional role. This is because the conservatory would create a diversionary feature and introduce a new vantage point from which wider views of the landscape to the southwest would be gained. It would also significantly increase the extent of the reflective surfaces associated with the extension during the day as well as the prominence of its illumination at night. Whilst I accept that the latter could be controlled through an appropriate condition, this is not the case for the former. Even if less reflective glass was used the overall extent of the reflective surface would still remain unacceptable.

¹ APP/T2350/D/13/2210765

8. Notwithstanding the modern origin of the extension, the proposed structure would introduce a highly incongruent feature that would lack sympathy with the simple architectural form and period detailing of the original building. This harm would also erode the setting of the church given the prominence of the conservatory within the asset grouping. Given the above, I find that the proposal would fail to preserve the special interest of the listed building as well as the setting of the nearby listed church. I consequently give this combined harm considerable importance and weight in the planning balance of this appeal.
9. Paragraph 132 of the National Planning Policy Framework 2012 (the Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Given the fact that the conservatory would be attached to a modern extension and contained within its form, I find the harm to be less than substantial in this instance. Under such circumstances, paragraph 134 of the Framework advises that this harm should be weighed against the public benefits of the proposal. The appellants have not suggested that any public benefits would arise in this instance.
10. Given the above, and in the absence of any defined public benefit, I conclude that the proposal would fail to preserve the special historic interest of the Grade II listed building and the setting of the Grade I listed building, thus failing to satisfy the requirements of the Act and paragraph 134 of the Framework. This would conflict with key statement EN5 and policies DME4 and DMG1 of the Ribble Valley Borough Core Strategy 2008-2028 (2014) that seek, among other things, to protect, conserve and enhance heritage assets and their settings. Consequently, the proposal would not be in accordance with the development plan.

Conclusion

11. For the above reasons and having regard to all other matters raised I conclude that the appeals should be dismissed.

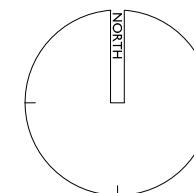
Roger Catchpole

INSPECTOR

APPENDIX 3

Figured dimensions only
to be taken from this
drawing. All dimensions
to be checked on site and
any discrepancies should
be reported to the
architect immediately.

REVISIONS:



GREAT MITTON HALL Mr & Mrs Kay

WOODHALL
PLANNING AND CONSERVATION

Woodhall Lane
Calverley
Leeds
LS28 5NY

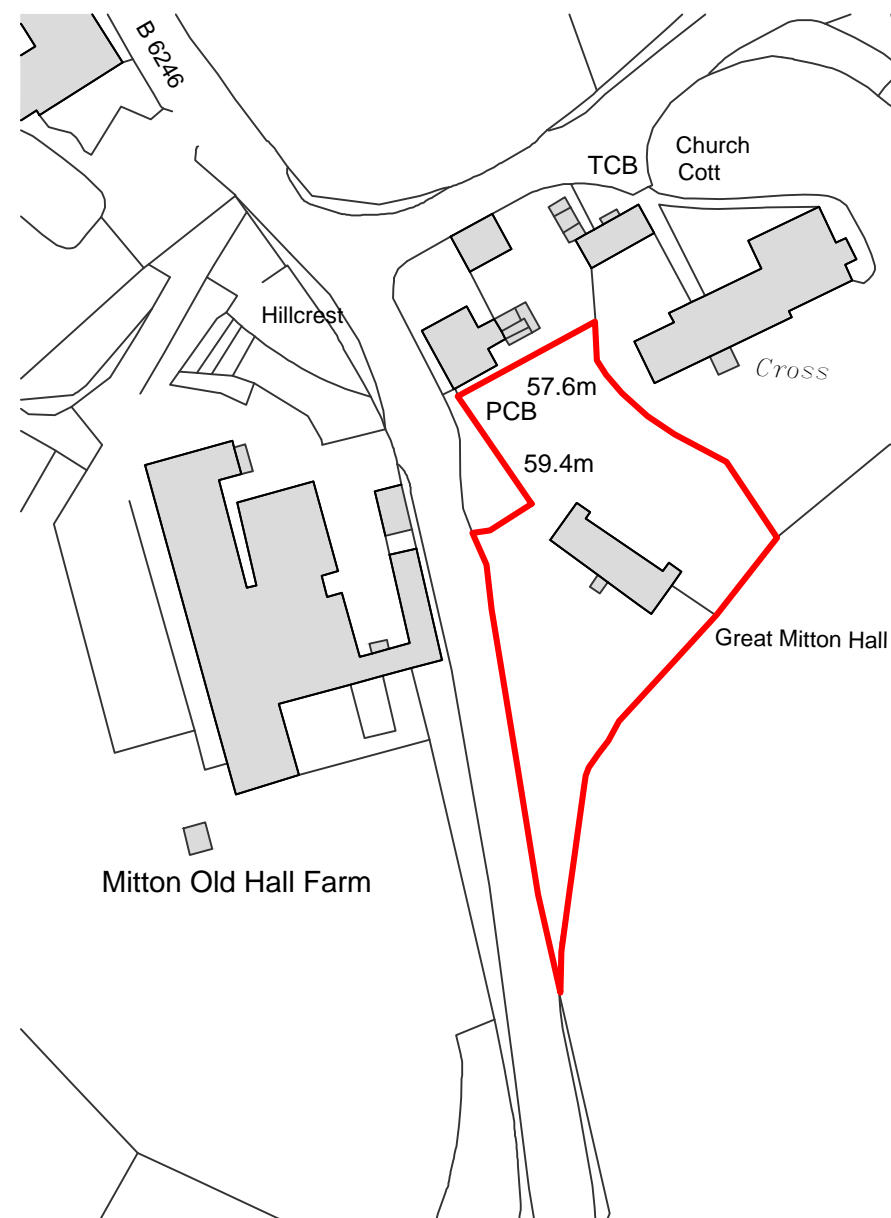
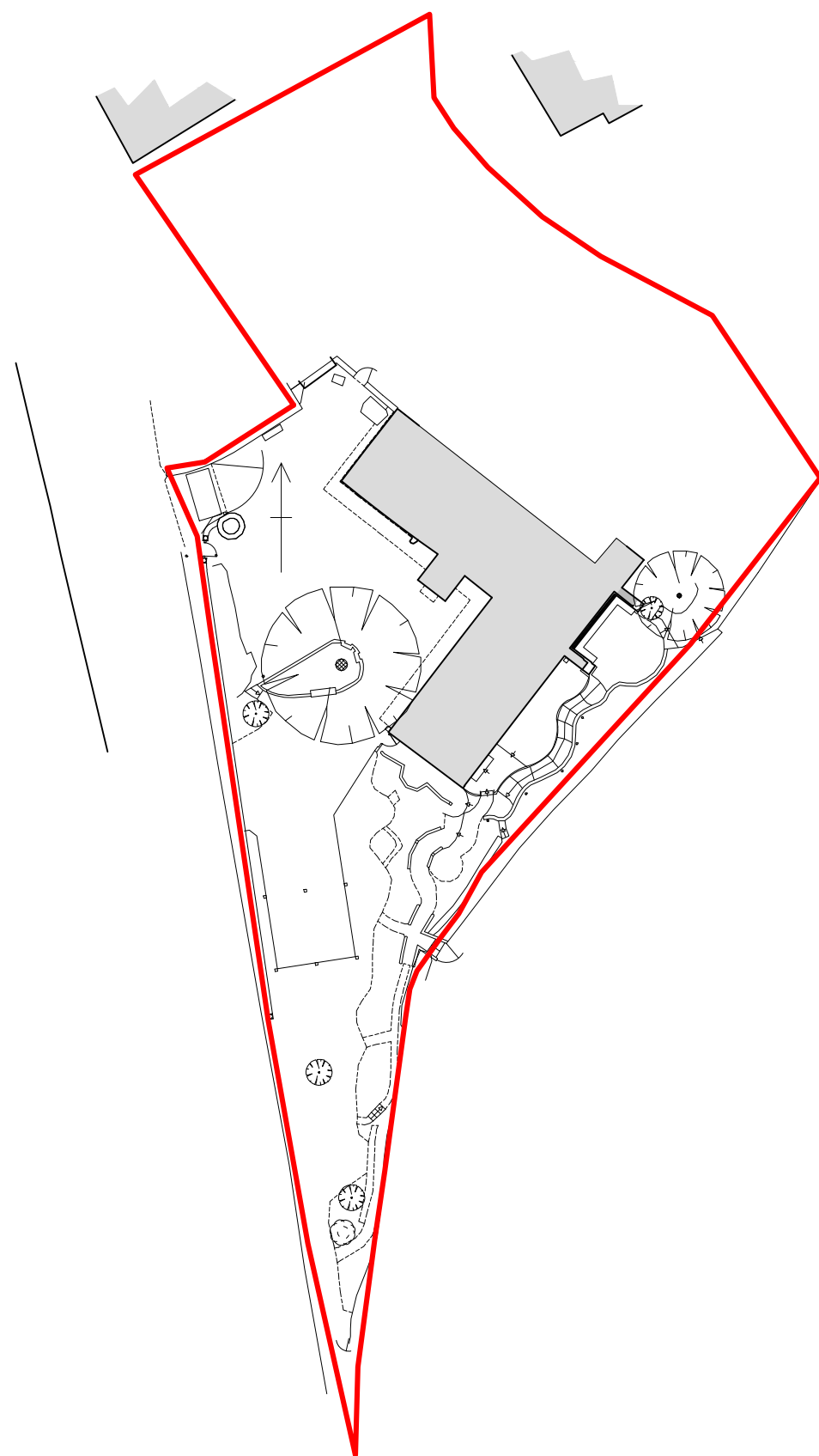
Telephone:
0113 - 255 4660
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0113 - 256 9688
e- mail:
planning@woodhall.co.uk

Scale: as noted @A3

Date: 25.01.16

Drawn/Checked: HJW/MP

Dwg no.: 2771/02/010



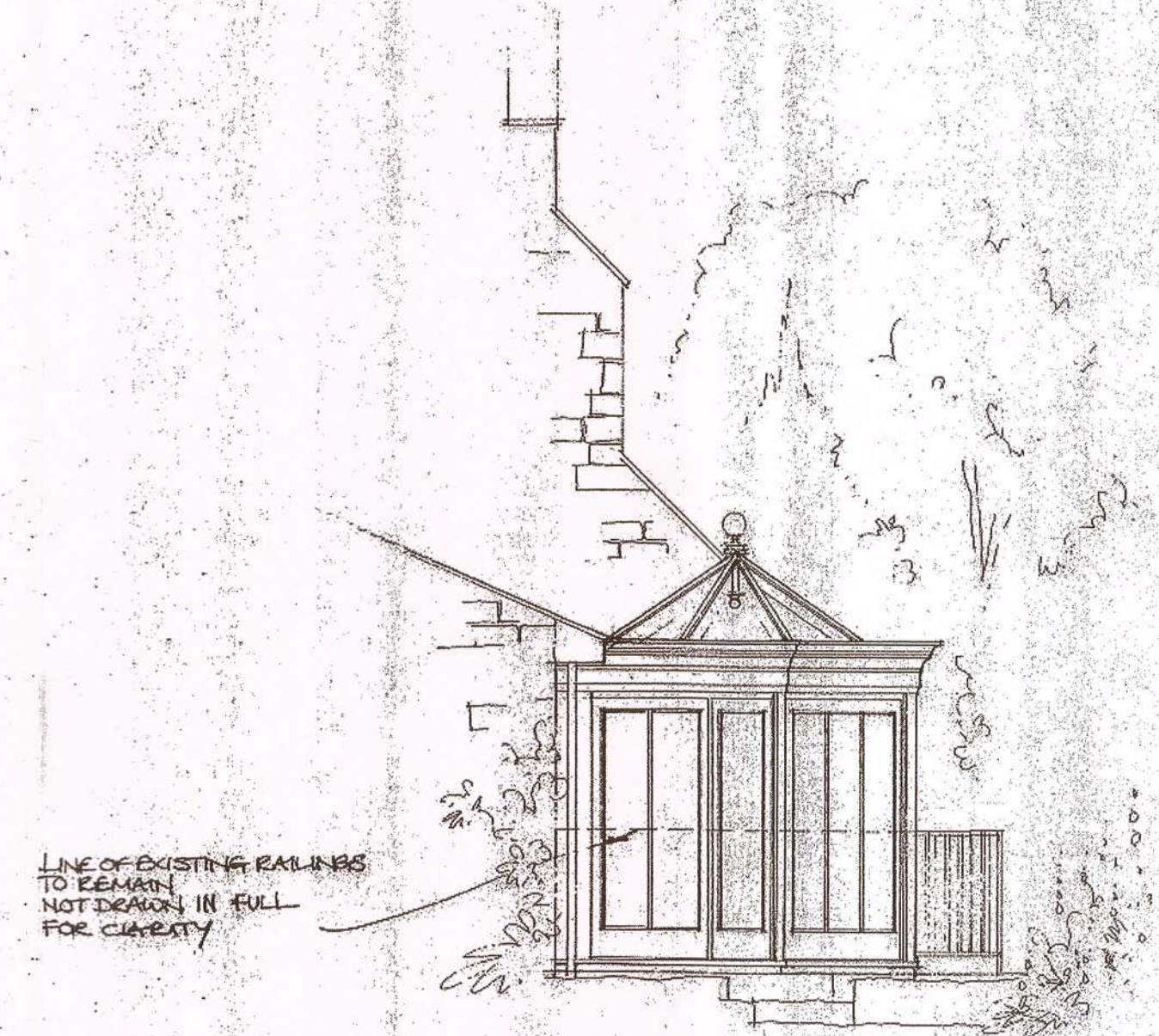
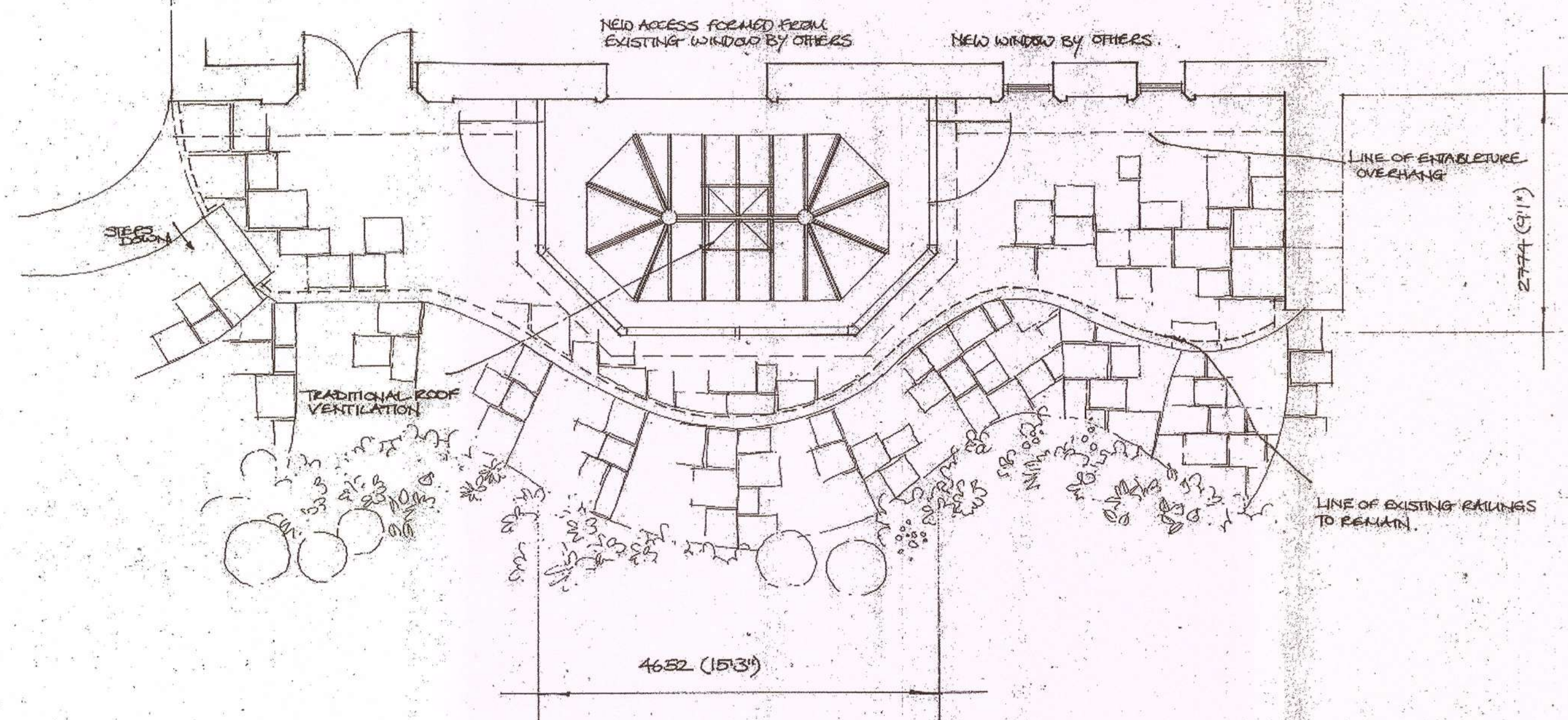
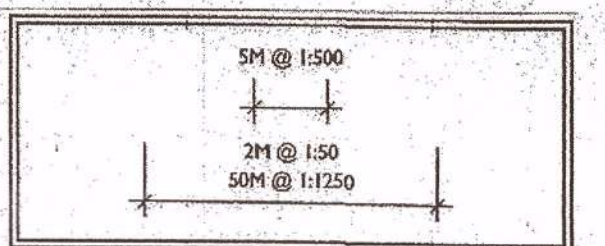
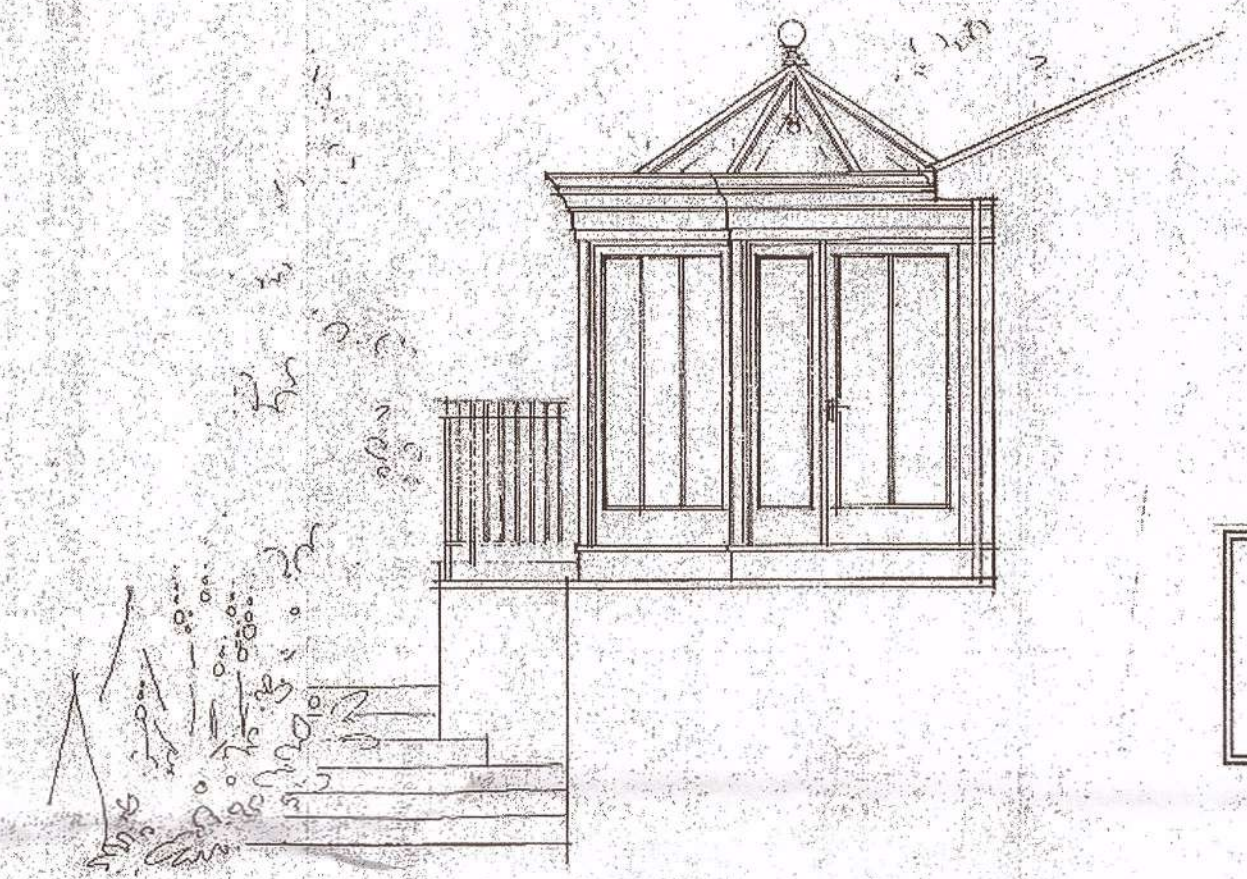
Ordnance Survey, (c) Crown Copyright 2016. All rights reserved. Licence number 100022432

1:1250 SCALE BAR
0 10 20 40 60
Metres

As Existing Site Plan and Location Plan

Based on survey by TriCAD and OS map

1:500 SCALE BAR
0 5 10 20 30
Metres



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Rev / Date: Details:

Client: 25054

MR & MRS KAY

Address:

GREAT MITTON HALL
MITTON ROAD
MITTON
CLITRE ROAD
LANCASHIRE
BB7 9TG

Scale:

1:50 @ A1

Date:

6 JAN 2016

Drawn By:

DIANE

Checked By:

G. HOOD

Drawing: PLANNING

CONCEPT / PROPOSED

Drawing No:

A13/10554/2

320160091P

PLANS RECEIVED

DATE 2/2/16

Notes

All Dimensions to be checked on site. Walls shown on plans are not to be assumed to be solid & should be checked for thickness, construction, load bearing capacity & stability.

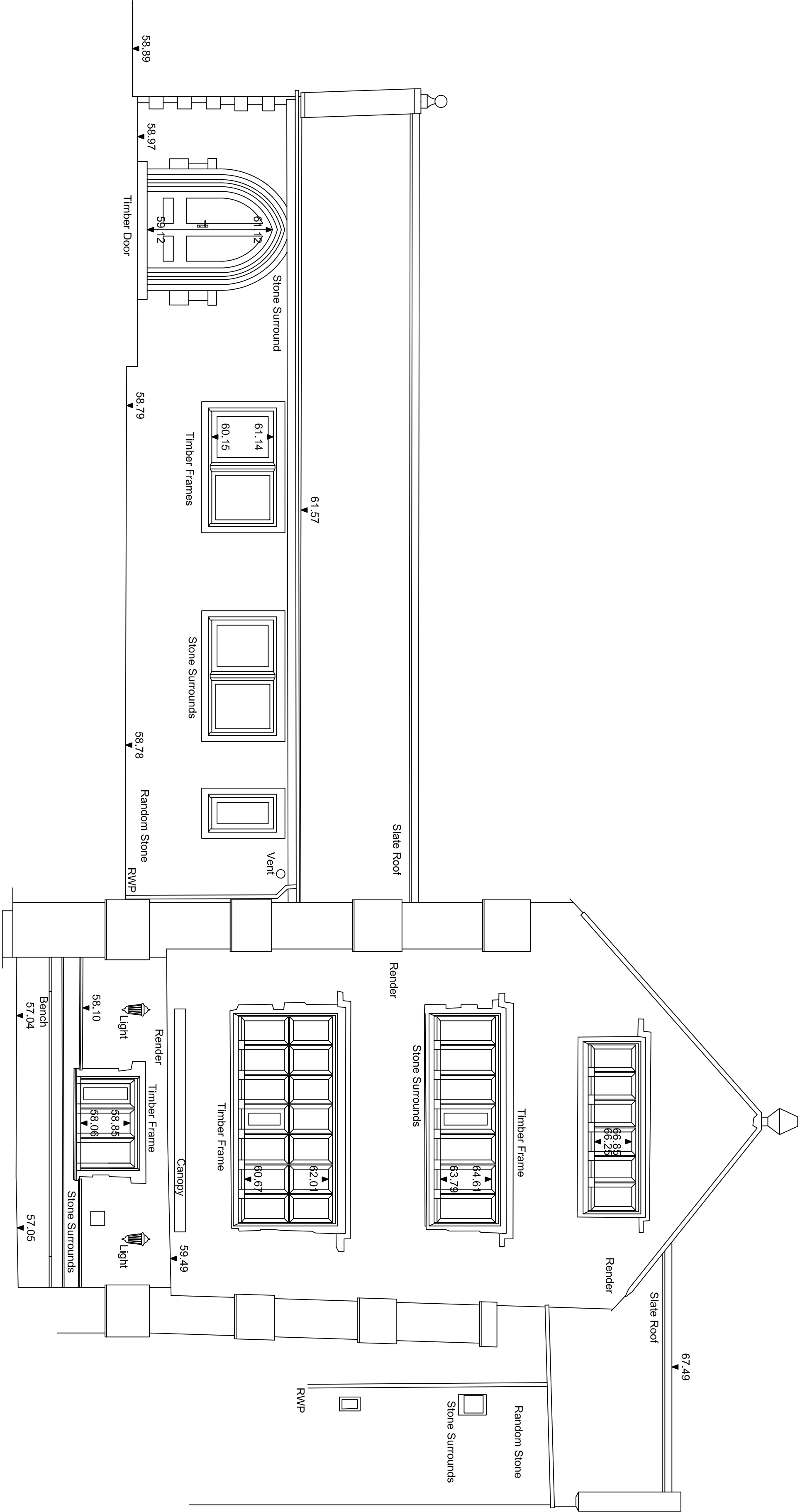


ABBREVIATIONS

- CH Cable Height
- EH Eaves Height
- FFL Finished Floor Level
- GU Gully
- LP Lamp Post
- RH Ridge/Roof Height
- SP Sign Post
- TL Threshold Level
- TH Top of House
- TW Top of Wall

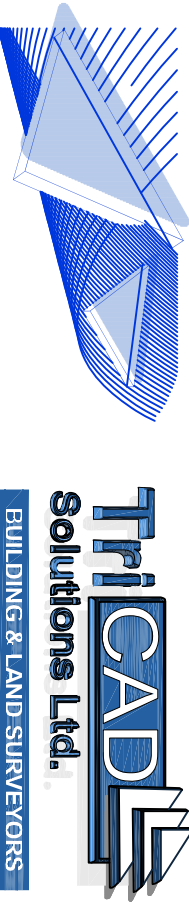
- d Trunk Diameter
- c Canopy Diameter
- h Tree Height

NOTE
All measurements are taken to the centre of the object unless otherwise stated.
The existing edge of the carriageway is shown at the bottom of the drawing.



55.00m above OS Datum

South East Elevation



2 Berkshire Close | Wilpshire | Blackburn | Lancashire | BB1 9NG
tel 01254 614055 fax 01254 209754 e-mail sales@tricadsolutions.co.uk

Site Address

Great Mitton hall
Mitton Road
Mitton. BB7 9PQ

Project Description
Site and Building Survey

Drawing Title
South East Elevation

Scale	Date	Drawn By
1:50@A1	07/06/2013	MM

Drawing Number

TRL-1031-04

**PROPOSED CONSERVATORY,
GREAT MITTON HALL,
GREAT MITTON**

DESIGN AND ACCESS STATEMENT
Including Heritage Statement

Woodhall Planning & Conservation,
Woodhall, Woodhall Lane,
Calverley, Leeds. LS28 5NY

Tel: 0113 255 4660
Email: info@woodhall.co.uk

2771/2
January 2016

1.00 INTRODUCTION

- 1.01 This Design and Access Statement has been prepared by Woodhall Planning and Conservation on behalf of Mr and Mrs Kay, in connection with the proposed conservatory at Great Mitton Hall.
- 1.02 Woodhall Planning & Conservation is a professional architectural and planning consultancy operating in the specialised areas of historic building conservation, urban design and planning law. The consultancy has extensive experience of building evaluations, the repair and alteration of listed buildings, conservation area and urban design appraisals, historical and archaeological research, public inquiry and “expert witness” work, condition surveys, and conservation legislation.

2.00 THE SITE AND ITS SURROUNDINGS

- 2.01 Great Mitton Hall is a Grade II listed building located on the southern edge of the hamlet of Great Mitton. The Hall is bounded to the north and east by a stone boundary wall which separates the Hall from the Grade I listed All Hallows Church. To the west it is separated from Mitton Road by a stone wall. On the west side of Mitton Road is the Grade II listed ‘Aisled Barn’ at Mitton Old Hall Farm. Great Mitton is situated to the south of the Forest of Bowland which is an Area of Outstanding Natural Beauty.
- 2.02 The two storey Main Hall dates back to the 17th century and has a single-storey extension to the west which was constructed in the 20th century. This extension was formerly a garage but was converted into an office/study by previous owners of the property (see 3.01 below).
- 2.03 To the south of the Hall the land falls away towards the River Ribble and the Grade II listed Mitton Bridge.

3.00 PLANNING HISTORY

- 3.01 The recent planning history of the site is as follows:
- 3/2007/0582 Modification of condition no.2 of planning consent 3/1998/0048P to convert consulting rooms to domestic use. Planning permission approved
 - 3/2009/0055 proposed new garage and conversion of garage to office/study. Planning permission refused
 - 3/2009/0054 Proposed new garage and conversion of garage to office/study. New stone boundary wall. Listed building consent approved.
 - 3/2009/0624 Conversion of existing residential garage to form office/study accommodation re-submission. Planning permission approved
 - 3/2011/0849 Construction of detached garage, boundary wall, gates and hard landscaping. Permission refused and subsequent appeal dismissed.
 - 3/2013/0793 Construction of Carport and boundary wall. Permission refused and subsequent appeal upheld.

4.00 PLANNING POLICY

- 4.01 The following policies from the Ribble Valley Core Strategy 2008 - 2028 are relevant to this proposal:

EN5: Heritage Assets,

DMG1: General Considerations,

DME4: Protecting Heritage Assets.

5.00 HISTORICAL DEVELOPMENT

Introduction

5.01 Paragraph 128 of the National Planning Policy Framework (the Framework) indicates that applicants should provide a description of the significance of any heritage assets affected by their proposals, together with an assessment of impact.

5.02 In Annex 2 of the Framework 'significance' is defined as,

The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage assets physical presence, but also from its setting.'

5.03 The Hall is located adjacent to the Grade I listed All Hallows Church to the north-east and the Grade II listed 'Aisled Barn' at Mitton Old Hall Farm to the west. In addition Great Mitton is situated to the south of the Forest of Bowland which is an Area of Outstanding Natural Beauty.

Historical background

5.04 The earliest known reference of a church in Great Mitton was in 1103 when a man named Ralph the Red was the rector. It was typical for the rector of a Norman church to have his lodgings built nearby and in "A History of the Parish of Great Mitton" F.G. Ackerley makes reference to a document dating back to 1338 which describes a house nearby the church which was created for the vicar. It is likely that this rectory was on the site of Great Mitton Hall.

5.05 In 1603 the rectory and advowson of the vicarage of Great Mitton were purchased by Richard Sherburne (1546—1629) of Stoneyhurst. The Sherburnes were an influential catholic family who constructed the northern extension to the Church in 1594. Sherburne Chapel houses several monuments to the Sherburne family including the family burial vault. It seems likely that the timber framed wing of the house was reconstructed in stone by the Sherburnes in the early 17th century. This is in keeping with the outline of the central hall which can clearly be seen in scarring on the west elevation (Photo 3), in addition to the architectural detailing of the windows and the doorways and the now blocked links to the former open hall.

5.06 It is unclear as to when the central hall was demolished but it appears to have been replaced with the current porch at some point in the 19th century. Evidence of this can be seen in the resetting of the 14th century doorway to form the external entrance to the porch, whilst the internal doorway has a 19th century stone surround.

5.07 By the beginning of the 19th century the Hall had descended in status to a farmhouse thus emphasising the link with the Grade II listed Aisled Barn. A number of alterations took place during this period, including the possible loss of the open hall. A painting by John Buckler from the early 19th century shows a view of the Hall from the Churchyard and depicts numerous blocked openings, lime render and large buttresses to the south gable.

5.08 On the OS map of 1848, the present Mitton Road appears as a track between the Hall and the Aisled Barn to the west and the present Mitton Bridge had been constructed by this date. The earlier road and river crossing appear to have been further to the east. It is possible part of the open hall was still extant and the west projection illustrated on the OS Map. By 1894, the present Mitton Road appears to have become an established route. The planform of the Hall on the OS map of 1894 shows the present west porch, in addition to a small outbuilding in the south west corner of the site which was subsequently demolished in the 20th century to enable construction of the present single-storey west extension. In 1963 the exterior of the Hall was recorded as having "little architectural interest" by the Inspector of Historic Buildings, reflecting the random nature of the openings to the external elevations. Since then a

number of these alterations have been reversed by the previous occupants and stonework repairs have been undertaken and a single-storey extension constructed at the south end of the west elevation.

Significance

- 5.09 As noted previously the Hall is Grade II listed and is therefore a designated heritage asset and is of national importance. It is also located adjacent to the Grade I listed All Hallows Church and the Grade II listed 'Aisled Barn' at Mitton Old Hall Farm. In addition Great Mitton is situated to the south of the Forest of Bowland which is an Area of Outstanding Natural Beauty. As such there are a number of factors which need to be taken into account when assessing significance.
- 5.10 The Hall is reputed to be on the site of the former residence of the vicar of All Hallows Church and its setting adjacent to the church is of historic interest. The external fabric of the Hall has been altered but these alterations provide evidence of the historic development of the Hall.
- 5.11 There is a historic relationship between the Hall, Barn and the Church and the visual relationship between the three buildings, particularly when viewed from the existing entrance gates on the north-west side of the hall contributes to the setting and significance of all three listed buildings.
- 5.12 In addition to its architectural significance, the historical links with the Sherbourns of Stoneyhurst who were responsible for the construction of the Grade I listed Stoneyhurst College contribute to the significance of the house. The Sherbourns contributions to All Hallows Church and their role in the development of Great Mitton are also of significance.
- 5.13 The west extension is a 20th Century addition and a detached carport has recently been erected on south-western section of the site. These elements are considered to be of limited interest.

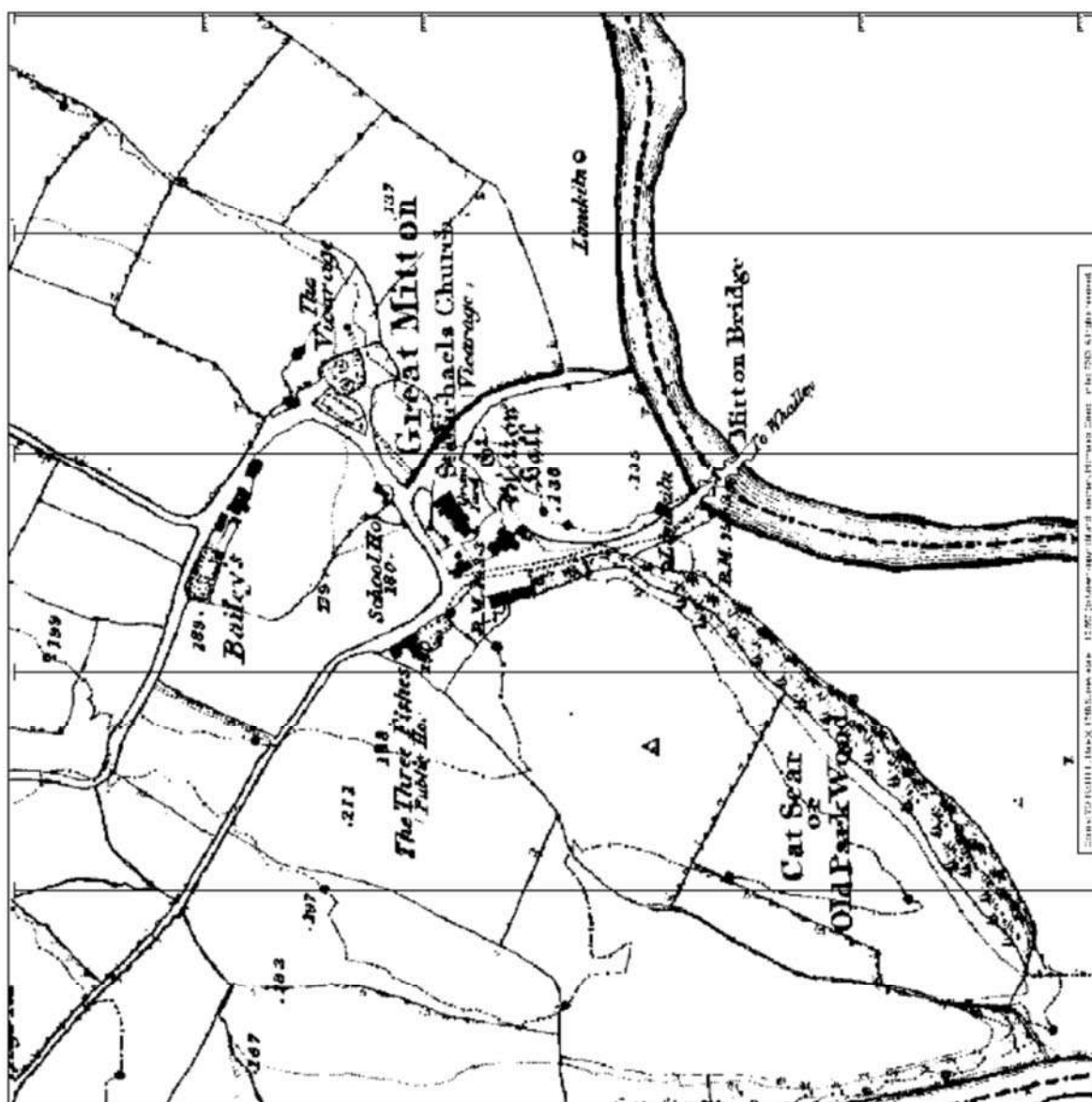


Figure 1: OS Map published 1848

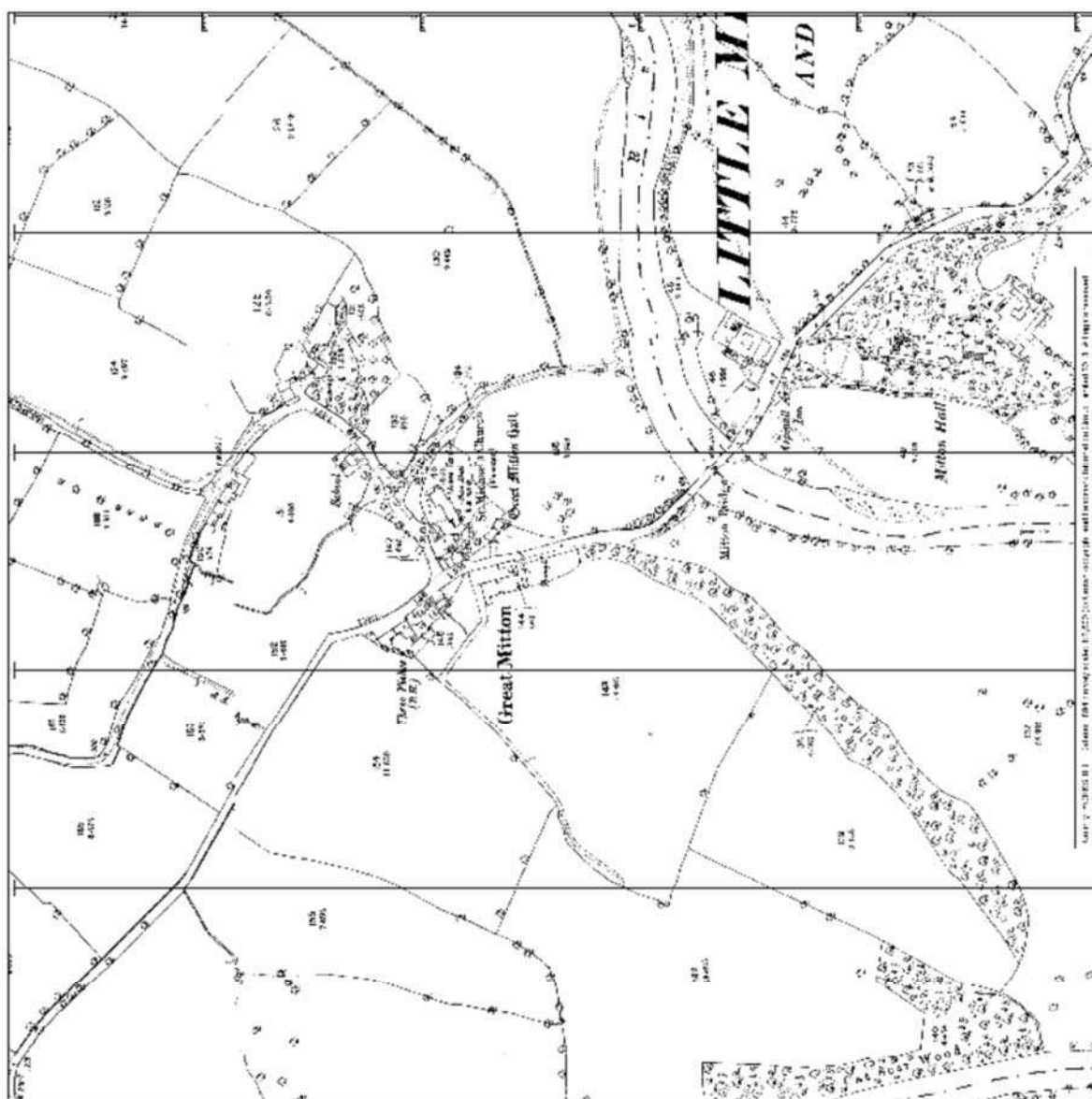


Figure 2: OS Map published 1894

6.00 THE PROPOSAL

Scheme Development

- 6.01 Initial proposals for a conservatory where located on the north-east side of Great Mitton Hall facing All Hallows Church - see Fig. 3. This 23 square metre conservatory was positioned at the north end of the façade and comprised a rectangular shaped plan with a high pitched roof form. It was considered that the location would cover a window and door of the early house and more importantly would interrupt the unbroken 'line' of the rear elevation (which in many ways is the most important elevation of the historic house). It would also be visible from All Hallows Church.

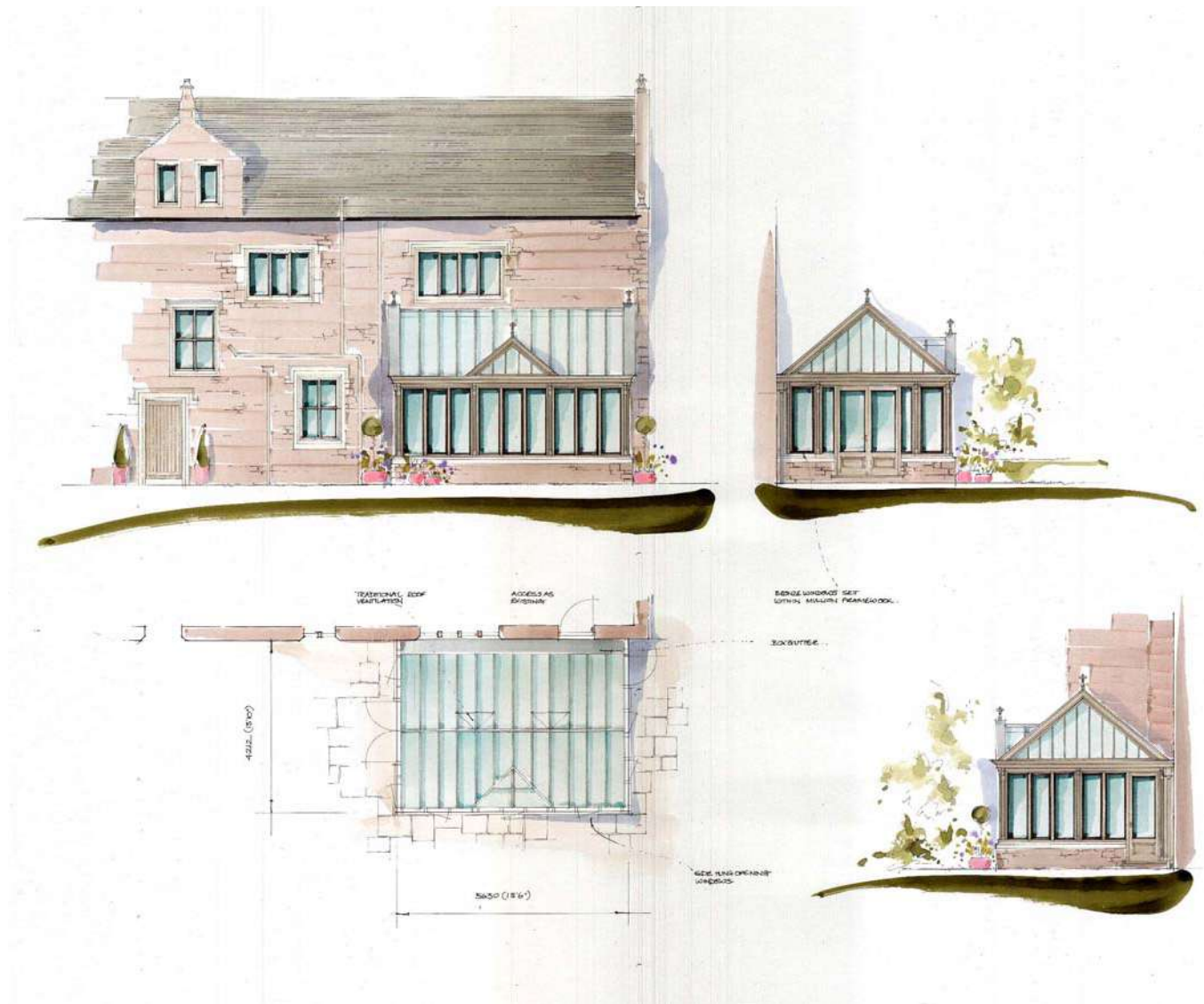


Figure 3

- 6.02 As a result, it was considered more appropriate to propose a smaller conservatory to the south-east elevation of the 20th century extension at the south-west side of the house. This modern extension is the least significant element of Great Mitton Hall.

The Design

- 6.03 The proposal would involve the construction of a 12 square metre conservatory that would be located on an existing patio that is defined by metal railings. It would be constructed with timber, with areas of glazing and leadwork - see Fig. 4. The conservatory would be located centrally on the elevation and would require the removal of the western double window to form the access to the conservatory. In addition, the eastern double window would be reduced in size, to form a similar opening to the single window immediately to the east. The conservatory has been designed to match the heaves height of the modern extension.



Figure 4

7.00 ACCESS

7.01 Pedestrian and vehicle access will remain unaltered at the site.

8.00 IMPACT OF THE PROPOSAL

8.01 As the conservatory would be added to the twentieth century section of Great Mitton Hall, its construction would not involve the loss of any historic fabric.

8.02 As identified above, the visual and historic link between the Church, the Aisled Barn and the Hall contribute to the significance of Great Mitton Hall. Taking this into account, the location of the conservatory on the south-east façade of the modern extension, has been carefully considered to ensure that this relationship is maintained.

8.03 With regards to the potential impact on the views into the site from Mitton Bridge, the conservatory would be visible, but would not detract from the south gable of the Hall, which would remain the dominant feature of the house.

8.04 When approaching the site from the north the conservatory will not be visible.

9.00 CONCLUSION

9.01 With regards to planning policy, the proposed conservatory has been designed to be a high quality structure using appropriate natural materials. It is considered the proposal is in accordance with policy DMG1.

9.02 The location and design of the conservatory has been carefully considered, it will not cause visual harm to the Grade II listed Hall and as a result is considered that the proposal is in accordance with policies EN5 and DME4.

9.03 The location of the conservatory would ensure that the proposal will not impact upon the setting of the surrounding listed buildings. Long distance views of the conservatory from the Mitton Bridge would be possible but in these views it would be a small element added to the existing twentieth century section of the Hall. However, it is not considered that the proposed conservatory would cause harm to the setting of the Bridge, All Hallows Church or the Aisled Barn.

APPENDIX A

LISTED BUILDING DESCRIPTIONS

List Entry Number: I163479

SD 715 389 GREAT MITTON

12/87 Great Mitton Hall (previously listed as Mitton Old Hall) 16.11.1954 GV II
GV II

House, c.1600. Rubble, pebbledashed towards south-west, with steep slate roof. 2 storeys with attic and cellar. Original windows mullioned with outer chamfer and inner hollow chamfer. The south-west wall has a single-storey gabled porch near the centre having a re-used outer doorway, probably C14th, with pointed head and with a roll moulding with fillet. Above is a coping with finial. To the right is a gabled single-storey extension with the remains of the hood to a blocked window on the 1st floor. To the left is the line of what appears to be a demolished wing, implying that the porch is an addition. At the left is an enlarged 3-light window with hood. On the 1st floor is a 5-light window with hood. The left-hand gable has a chimney with brick cap. Gable copings, the left-hand one with finials. The left-hand (north-west) gable has a hood remaining on the 1st floor and an attic window with hood and with one light remaining. The right-hand gable is buttressed and has a mullioned cellar window, a 14-light mullioned and transomed ground-floor window, a 7-light 1st floor window and a 5-light attic window. The north-east wall has a turret at its left-hand end, gabled with a coping and finial. Chamfered lights at intermediate levels suggest that it may once have contained a stair. It has a 2-light window with hood on the 1st floor and a similar blocked window to the attic. Its right-hand return wall has a wooden door surround with triangular head, probably re-set. A Buckler drawing of 1809 shows a doorway in the left-hand return wall, now blank. Near the centre of this facade is a gabled dormer with blocked window and hood, and with a small chimney cap. At the right on the ground floor is an original window with one mullion remaining. Above is a 4-light window with hood, with a 3-light window to its left. There are a number of blocked window openings, but the 4 remaining windows are C19th with chamfered stone surrounds. The door has a chamfered stone surround with hood. Interior not accessible at time of survey but said to contain no features of particular interest.

List Entry Number: I07218212/88 Aisled Barn, Mitton Old Hall Farm, 35 Metres west of Great Mitton Hall
GV II

Aisled barn, possibly c.1600. Sandstone rubble with slate roof. The stone walls are probably reconstructed. The east wall has openings with plain reveals and a door of C19th type with plain stone surround at the right. The wide entrance is recessed and opens directly into the nave. The north gable has 3 windows with plain stone surrounds and a pitching door above with similar surround. Inside are 5 aisle trusses forming 6 bays. Each truss has a king post rising from a tie beam and braced to the ridge (some of the braces are now missing), only the outer trusses having queen struts. The purlins are trenched over the backs of the principals. The aisle posts are braced to the arcade plates and to the tie beams, all the braces being curved. Only the east aisle has aisle ties with principles, the ties being mortised into the aisle posts. The western aisle is narrower and the lack of peg or mortise holes in the aisle posts suggests that it did not originally have aisle ties, a tie attached to the northern truss being a later addition. The arcade plates have short scarf joints, edge-halved with bridled butts. The soffits of the aisle ties on the east side, at their outer ends, have lap joints cut in an 'X' pattern. The lack of any other associated mortises suggests that they sat on a timber wallplate of an earlier stone wall.

List Entry Number: I16343212/80 Church of All Hallows, (formerly listed as Church of St Michael) 16.11.1954
GV I

Church, late C13th with early C15th west tower and late C16th north chapel. Sandstone rubble with stone slate roof. Comprises a west tower, nave, narrower chancel, north chapel, and south porch. The 3-stage tower has diagonal buttresses, and an embattled parapet. The bell openings have pointed heads with hoods, and 2 cinquefoiled lights with panel tracery. The west window has 4 cinquefoiled lights, panel tracery, and a hood. The west doorway is wide and moulded with a pointed head and hood. The nave

windows are chamfered in 2 orders and are of 2 lights with Y-tracery and pointed heads. In the north wall there are 2 to the east of the door. To the west is a 2-light window of C18th type, with a window with plain reveals above lighting the gallery. The door is chamfered with a pointed head. The south wall has one original window to the west of the porch and 2 to the east, the right-hand one being reconstructed. To the west of the porch is a window with plain reveals lighting the gallery. The porch has a wide chamfered outer doorway with hood. The inner doorway is moulded, with a pointed head and with a hood with head stops. The south chancel wall is peddledashed. To the right of the priest's door are 2 windows matching the early ones to the nave. To the left is a window with mullion and transom, trefoiled heads to the upper lights and a trefoil under a pointed head. The doorway has a pointed head and 3 orders of sun quadrant moulding. The east window is of 5 lights and intersecting tracery. The north-east, or Shireburne, chapel is of ashlar, with one bay to the east and 2 to the north. The windows have Tudor-arched heads, ogee heads to the lights, and panel tracery. The west wall has a moulded doorway with Tudor-arched head. Above is a wall tablet with attached columns enclosing a coat of arms and date '1594'.

Interior. The nave has a west gallery with panelled timber front. The open roof is possibly early C17th and has 9 trusses with arch-braced collars and short king posts braced to the ridge. Between the purlins and principals are carved brackets, possibly a C19th addition. The chancel arch has 2 orders of sunk quadrant moulding. On each side of the opening are attached shafts with capitals. The chancel screen incorporates some medieval woodwork, possibly from Sawley Abbey, including an incomplete C15th inscription. Much of the decoration is an imitation in cast iron or terra cotta. In the chancel are triple sedilia and a piscina, moulded and with trefoiled heads. The chancel is divided from the Shireburne chapel by 2 pointed arches of 2 chamfered orders carried on octagonal piers. Beneath the arches is a wooden screen with turned balusters, the upper parts of the openings being filled by carved tracery with an ogee under, possibly C15th and re-used. The nave pews incorporate old woodwork, including initials and a date '1628'. The pulpit incorporates some C17th carving. In the chapel the main memorials are as follows. An alabaster chest tomb of Sir Richard Shireburne (d. 1594) and his wife Maude, with recumbent effigies and with the sides of the chest decorated by figures and by coats of arms. By Roilly of Burton (Church Guide). A wall monument to Richard Shireburne (d. 1667). Kneeling figures face one another across a prayer desk within an architectural frame with paired columns and an entablature supporting a cartouche. Recumbent effigies of Richard Shireburne (d. 1667), Richard and Isabel Shireburne (d. 1689 & 1693), and Richard Shireburne (d. 1690), all with lengthy inscriptions. Commissioned by Isabel Shireburne c.1690 and carved by Edward Stanton. A wall monument to Richard Shireburne (d. aged 9 in 1702) by William Stanton. Figure of boy against reredos background, with cherubs. Rupert Gunnis, Dictionary of British Sculptors 1660-1851, 1953.

**Town and Country Planning Act 1990
(As Amended)**

Appeal Statement of Case

Appeal against the decision of Ribble Valley Borough Council to refuse to grant planning and listed building consent for the erection of a single storey extension to the south of an existing modern extension to Great Mitton Hall; the reconfiguration of the existing patio and railings; the removal of the pointed arch doorway to the southern wall of the modern extension and its replacement with a window; and the re-painting of the existing rendered gable to the Hall.

Site: Great Mitton Hall, Mitton Road, Mitton, Clitheroe

Appellant: Mr and Mrs Kay

Our Ref: KAY159/1/SOC

LPA Ref: 3/2018/0474 (planning)
3/2018/0468 (listed building)

Document date: October 2018

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APPENDICES

Appendix 1 - Supplementary Letter by Heritage Collective

Appendix 2 - Appeal Decision Letter dated 19 August 2016 (appeal references 3148964 & 3148963)

Appendix 3 - Planning application documents associated with appeal references 3148964 & 3138963

1. INTRODUCTION

- 1.1 This appeal statement of case has been prepared to support a householder and listed building consent appeal by Mr and Mrs Kay ("the Appellant") against the decision of Ribble Valley Borough Council for the erection of a modest single storey extension to the south east of an existing modern extension at Great Mitton Hall, Mitton Road, Mitton, Clitheroe.
- 1.2 This statement should be read alongside the supporting heritage assessment by Heritage Collective, that sought to justify the proposals against the relevant policies of the Development Plan and National Planning Policies, including the National Planning Policy Framework ("the Framework").
- 1.3 At the time that the applications were submitted, the proposals were submitted in the context of the original Framework published in 2012, however two days prior to the determination of the applications the revised Framework was published on 24 July 2018.
- 1.4 The planning application and listed building consent applications were supported by the following plans and drawings produced by Pullman Associates Architects:
 - (a) M18-07-01 - Location and Site Plan
 - (b) M18-07-02 - Existing Floor Plans and Elevations
 - (c) M18-07-04 - Proposed Floor Plans and Elevations
- 1.5 In addition to the consideration of the application with regard to the provisions 1990 Town and Country Planning Act (as amended), the decision maker is required by sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed building or its setting.
- 1.6 In recognition of the statutory duty, the refused applications were supported by a heritage assessment by Heritage Collective. This submission assessed the proposals in heritage terms against the statutory requirement of the 1990 Listed Buildings and Conservation Areas Act, as well as having regard to national policies contained within the National Planning Policy Framework and guidance by Historic England.
- 1.7 The information submitted with the application also assessed the previous appeal decision dated 19 August 2016 (appeal reference 3148964, which was dismissed), which considered an alternative proposal for a single storey extension, which comprised a neo-classical style conservatory.
- 1.8 Despite the submission of the above documents, the applications were refused for the following reasons:
 - (a) Listed Building Consent Application (Reference 3/2018/0468):

The proposal will have a harmful impact upon the special architectural and historic interest of the listed building because the extension, railings and door replacement will compound the existing incongruity and conspicuousness of the modern extension.

(b) Planning Application (Reference 3/2018/0474):

The proposal will have a harmful impact upon the special architectural and historic interest of the listed building, the setting of adjoining listed buildings and the cultural heritage of the area immediately adjoining the Forest of Bowland Area of Outstanding Natural Beauty because the extension, railings and door replacement will compound the existing incongruity and conspicuousness of the modern extension. This is contrary to Ribble Valley Core Strategy Key Statements EN5 and EN2 and Policies DME4, DMG1 and DMG2.

- 1.9 In summary, this appeal will seek to demonstrate that the proposals address the previous reasons for refusal of planning permission by the planning inspector, that paragraph 133 and 134 of the National Planning Policy Framework are not engaged; that the proposals would preserve the listed building for the purposes of the decision maker's statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990; and that in accordance with section 38(6) of the 2004 Planning and Compulsory Purchase Act, planning permission and listed building consent ought to be granted.
- 1.10 This hearing statement does not seek to repeat the submissions made within the planning statement and the heritage assessment that accompanied the planning application, which are before the Inspector, however a supplementary note by Heritage Collective is attached to this hearing statement at **Appendix 1** in response to the specific reasons for refusal.

2. SITE AND SURROUNDINGS

- 2.1 A detailed description of the appeal site, its surroundings and setting are provided within the planning statement by Knights and the Heritage Assessment by Heritage Collective that accompanied the original applications. This information is not repeated here. Photos of the appeal site are provided within the Heritage Assessment by Heritage Collective.

3. PLANNING HISTORY

3.1 Great Mitton Hall has been subject to a number of applications for planning and listed building consent, all of which are listed within the planning statement by Knights that accompanied the planning application. The list of planning and listed building consent applications will not be repeated again here.

3.2 However, of most relevance to the current appeal proposal are the most recent planning and listed building consent applications (3/2016/0091 and 3/2016/0132), and the subsequent appeal decision, where planning and listed building consent were refused for the erection of a proposed conservatory roughly in the same position. The previous appeal decision is attached at **Appendix 2**. Some of the key conclusions of the Inspector are provided below:

- (a) The special interest of the listed building, insofar as it related to the appeal proposal, was found to be primarily associated with the fenestration and architectural detailing of its south-western gable.
- (b) With regard to the location of the site within the setting of the listed barn and the listed church, the Inspector found that the special interest of the setting of these listed buildings, insofar as it related to the appeal proposal, to be primarily related to the close visual juxtaposition of the Church and appeal property when viewed from the southwest along Mitton Road and the valley of the River Ribble.
- (c) The appeal proposal would lead to the construction of a “neo-classical” style conservatory, however there would be no loss of the original fabric or any change to the original layout of the listed building.
- (d) The introduction of a neo-classical style conservatory would be an alien feature that would diminish the dominance of the windows of the buttressed gable and undermine their functional role. This is because the conservatory would create a diversionary feature and introduce a new vantage point from which wider views of the landscape to the southwest would be gained. It would also significantly increase the extent of the reflective surfaces associated with the extension during the day as well as the prominence of its illumination at night. Whilst the Inspector concluded that the illumination could be controlled through the imposition of an appropriate condition, the overall extent of reflective surface would remain unacceptable.
- (e) The proposed conservatory would be a highly incongruent feature that would lack sympathy with the simple architectural form and period detailing of the original building, which would erode the setting of the church given the prominence of the conservatory within the asset ground.
- (f) Whilst the Inspector identified harm, given that the proposed conservatory would be attached to the modern extension, the Inspector found such harm to be less substantial, but that such harm would not be outweighed by the public benefit.

3.3 For the purposes of comparison, details of the previous proposal are provided at **Appendix 3**.

4. THE PROPOSAL

- 4.1 The main elements of the proposed extension subject to this appeal are as follows:
- (a) A small extension to the south side of the existing modern extension to the hall;
 - (b) Reconfiguration of the existing patio and railings to the south of the modern extension to make them less evident in long views;
 - (c) Removal of the pointed arch in the south wall of the modern extension to the hall;
 - (d) Painting the white render on the south gable of the Hall so that it harmonises tonally with the church;
 - (e) Removal of a coniferous tree to the south side of the hall in order to improve its appearance and setting.
- 4.2 The proposed extension would not require any historic fabric to be removed, and would not affect the historic fabric of the building in any other way.
- 4.3 In terms of appearance, the roof to the proposed extension has been designed as a monopitch so that it consists of a single plane following the pitch of the existing modern extension as closely as possible, in order to keep the appearance of the new roof subtle.
- 4.4 The materials to be used in the proposed extension would be similar to the materials used in the construction of the existing buildings and the windows for the proposed extension would take their cue from the existing windows on either side of the proposed extension.
- 4.5 The removal of the pointed arched opening from the south wall of the existing modern extension and its replacement with a new window to match others on the same elevation would improve the overall character of the Hall by:
- (a) removing a feature that is not original or authentic;
 - (b) providing consistency to the fenestration of this elevation;
 - (c) reducing the architectural confusion that currently exists on the southern elevation. The pointed opening is more characteristic of the Church than the Hall, and being located at the western end of the modern extension, it visually muddles the distinction that should really exist between the Hall as a domestic building and the Church as a place of worship.
- 4.6 The reconfiguration of the patio railings would simplify this aspect of the Hall without affecting any historic fabric so that it becomes a less evidently modern feature.
- 4.7 The gable end of the hall has already been rendered and painted white, providing a stark and white feature that draws the eye away from the Church from more distant views from the south. By toning down the existing stark white colour to a stone colour, this would tonally balance the Hall with the adjacent Church, which would provide a more sensitive solution when compared to what exists at present.

5. THE DEVELOPMENT PLAN

- 5.1 The adopted Development Plan for the area comprises the Ribble Valley Borough Council Core Strategy 2008 - 2028: A Local Plan for Ribble Valley ("the CS"). The CS was adopted in 2014 and is considered generally to be an up-to-date plan as it was examined and adopted with regard to National Policy contained within the Framework (2012). It is not considered that the publication of the revised Framework has resulted in material change to planning policies concerning the conservation and enhancement of heritage assets
- 5.2 Relevant policies for the proposed development are listed below:
- (a) Key Statement EN5: Heritage Assets
 - (b) Policy DMG1: General Considerations
 - (c) Policy DME4: Protecting Heritage Assets
 - (d) Policy DMH5: Residential and Curtilage Extensions

6. OTHER MATERIAL CONSIDERATIONS

- 6.1 A key material consideration in this case is the National Planning Policy Framework (“the Framework”) as revised on 24 July 2018. The planning statement that accompanied the application for planning and listed building consent listed relevant paragraphs of the original Framework. For completeness, the relevant paragraphs of the revised Framework are provided below.
- 6.2 Paragraph 11 of the Framework requires that applications that accord with the development plan should be approved without delay.
- 6.3 Section 12 of the Framework requires good design. Paragraph 124 states that the Government attaches great importance to the design of the built environment, and that good design is a key aspect of sustainable development.
- 6.4 Section 16 sets out the Governments policy for conserving and enhancing the historic environment.
- 6.5 Paragraph 185 states that LPAs should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment.
- 6.6 Paragraph 189 states that in determining applications to describe the significance of any heritage assets affected, including any contribution made by their setting.
- 6.7 Paragraph 192 states that in determining applications, LPAs should take account of:
- (a) The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
 - (b) The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
 - (c) The desirability of new development making a positive contribution to local character and distinctiveness.
- 6.8 Paragraph 193 states that 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.
- 6.9 Paragraph 195 states that where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, LPAs should refuse consent, unless it can be demonstrated that the harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:
- (a) The nature of the heritage asset prevents all reasonable uses of the site; and
 - (b) No viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and

- (c) Conservation by grant-funding or some form of charitable public ownership is demonstrably not possible; and
- (d) The harm or loss is outweighed by the benefit of bringing the site back into use.

6.10 Paragraph 196 states that 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 securing its optimum viable use.

7. THE CASE FOR THE APPELLANT

- 7.1 The key issue in the determination of this appeal is whether or not the proposed extension would preserve or enhance the listed building (Great Mitton Hall), and whether or not the proposal would harm the setting of other nearby heritage assets.
- 7.2 To support the original application, a heritage assessment was submitted that was prepared by Dr Jonathan Edis of Heritage Collective, who is a qualified heritage expert.
- 7.3 Of relevance to the determination of this appeal is the 2016 appeal decision. At that time, the appeal considered the erection of a neo-classical style conservatory, roughly in the same location as the current proposal.
- 7.4 The documentation submitted with the application for planning and listed building consent sought to demonstrate that the proposals would not cause any harm to the Listed Buildings or their setting, taking into account the previous Inspector's conclusions.
- 7.5 This appeal statement of case does not seek to repeat the submissions made at application stage, and the submissions made then are considered to remain entirely valid for the purposes of determining this appeal, save for references to the relevant paragraphs of the original Framework (2012).
- 7.6 Accompanying this statement is a supplemental letter by Heritage Collective in response to the reasons for refusal of the planning and listed building consent. This letter is provided at **Appendix 1**.
- 7.7 In summary, the case continuing to be made on behalf of the Appellant is that the test of paragraph 196 of the revised Framework is not engaged, given that no harm would arise as a result of the appeal proposal, which seeks to provide a modest extension to an existing single storey modern extension.
- 7.8 The Council fails to explain how the listed building would become less significant in the event that the proposed development were to be implemented. In circumstances where the Council cannot demonstrate a loss of significance, there is no harm as set out in the original heritage assessment by Heritage Collective.
- 7.9 Furthermore, the Council has failed to explain how the proposals would harm the landscape of the area in refusing the planning application (it is not a reason for the refusal of the listed building consent), and have cited a "minor" harmful impact on the character of open countryside adjacent to the Forest of Bowland AONB. Paragraph 172 of the Framework is very clear in terms of applying to sites within such areas, and in any event, suggests that scale and development within designated areas should be limited. Even if the site were to fall within the AONB, a minor extension such as that proposed would not offend paragraph 172 of the Framework. Therefore, landscape impact is not material to the determination of this appeal.

7.10 It is expected that the above issues will be fully explored through the hearing process before the Inspector.

8. CONCLUSION

- 8.1 This statement of case has been prepared to support a householder planning application and listed building consent appeal for the erection of a modest single storey extension to the south east of an existing modern extension at Great Mitton Hall, Mitton Road, Mitton, Clitheroe.
- 8.2 This statement, along with the documents that accompanied the planning application, clearly justifies the proposals against the relevant policies of the Development Plan and National Planning Policies.
- 8.3 This appeal statement should be read alongside the following plans and documents:
- (a) Drawings by Pullman Associates Architects:
 - (i) M18-07-01 - Location and Site Plan;
 - (ii) M18-07-02 - Existing Floor Plans and Elevations;
 - (iii) M18-07-04 - Proposed Floor Plans and Elevations.
 - (b) Documents by Heritage Collective:
 - (i) Heritage Assessment (including historic maps and photographs) dated May 2018 (reference 4004);
 - (ii) Supplemental letter dated 9 October 2018 provided at Appendix 3.
 - (c) Documents by Knights:
 - (i) Planning Statement dated May 2018 (reference KAY159/1/PS).
- 8.4 In addition to the consideration of the application with regard to the provisions 1990 Town and Country Planning Act (as amended), the decision maker is required by sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed building or its setting.
- 8.5 The supporting heritage assessment and supplemental letter by Heritage Collective assesses the proposals in heritage terms against the statutory requirement of the 1990 Listed Buildings and Conservation Areas Act, as well as having regard to national policies contained within the National Planning Policy Framework and guidance by Historic England.
- 8.6 The various documents supporting the original application also addressed the previous appeal decision dated 19 August 2016 (appeal reference 3148964, which was dismissed), which considered an alternative proposal for a single storey extension which comprised a neo-classical style conservatory.
- 8.7 In summary, the appeal submission has demonstrated that the proposal would:
- (a) not impact upon the visual juxtaposition of the church and the Hall;
 - (b) not introduce an alien or diversionary feature;
 - (c) not increase the extent of reflective surfaces or increase prominence by way of illumination at night;

- (d) provide an extension with simple architectural form and detailing that reflects the character of the hall; and improves the appearance of the existing modern extension by removing the current visual confusion with the church;
 - (e) soften the stark white tone of the existing render to the gable of the Hall;
 - (f) reconfigure the existing patio and railings to make them less evident in long range views.
- 8.8 As a result, paragraph 195 and 196 of the National Planning Policy Framework (2018) are not engaged, and the proposals would preserve the listed building for the purposes of the decision maker's statutory duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 8.9 With regard to landscape impact, and despite the references to landscape harm in the decision notice refusing planning permission, the appeal proposal is very minor in scale and would be viewed against the backdrop of a substantial and imposing building. In any event, the site is not located within the nearby AONB. Therefore, paragraph 172 of the Framework is not engaged.
- 8.10 Therefore, it is clearly the case that the determination of this appeal turns upon whether heritage harm would arise. The submitted documents clearly demonstrate that under the relevant policy and legislation, harm would not arise.
- 8.11 In accordance with section 38(6) of the 2004 Planning and Compulsory Purchase Act, it is respectfully requested that the appeals be allowed and that planning permission and listed building consent should be granted.

Carl Copestake, BA (hons), Dip UPI, MRTPI
Partner
Knights plc

Alan Corinaldi-Knott, MTCP, MRTPI
Associate
Knights plc

October 2018

APPENDIX 3

Our ref: 4004

Carl Copestake
Partner
Knights plc
The Brampton
Newcastle-under-Lyme
Staffordshire
ST5 0QW

9 October 2018

Dear Carl

Great Mitton Hall, Mitton Road, Clitheroe, Lancashire, BB7 9PQ
Ribble Valley Borough Council References: 3/2018/4074 and 3/2018/4068

Thank you for forwarding Ribble Valley Borough Council's reasons for refusing applications 3/2018/4074 and 3/2018/4068, and the officer reports relating to the two applications. As you know, I am fully in support of Mr Kay's proposal to appeal these applications, and it is my view that an appeal by way of informal hearing is absolutely essential if the issues are to be properly heard. Although I consider the Council's reasons for refusal to be untenable, I propose to attend the hearing to give full weight to the case set out in the Heritage Assessment that I prepared in May 2018, and which was submitted with the applications. There is no need, in this instance, for me to prepare a further statement for this appeal, since the case was set out in sufficient detail in the Heritage Assessment (although it should be noted that the paragraph numbers relating to the NPPF have now changed – an administrative point with which the Inspector will no doubt be familiar).

In both cases, the applications were refused "because the extension, railings and door replacement will compound the existing incongruity and conspicuousness of the modern extension." The Council does not explain how the listed building (Mitton Hall) would become less significant after the development were executed, if it were permitted. In circumstances where the Council cannot demonstrate a loss of significance, there is no harm, as I made clear in my Heritage Assessment at and after paragraph 2.2. Therefore, paragraph 134 of the "old" "PPF, which is now paragraph 196 of the "new" NPPF, is not engaged.

As far as the "Assessment" of the proposed development is considered in the officer reports relating to the planning and listed building applications, I can see little evidence of a fair assessment at all. The reports assume, in the subheadings, that there is an "Impact", and they execute a series of scolding blows by which the application proposal is

treated, in my view, unfairly. The reports are written as though the application had set out to cause harm, and as though the applicants and their professional advisers were to be taught a severe lesson. Public benefit is dismissed out of hand. It is as though the only possible outcome was refusal, and as though the applications were incapable of having any redeeming qualities.

I very much hope to have the opportunity of making a verbal contribution to a hearing so as to set the record straight, and so as to amplify that part of the assessment that is so lacking in the Council's reports. Such a process would allow an independent conclusion to be fairly reached.

I would be grateful if you would append this letter to your appeal statement and keep me informed of the emerging timetable.

Yours sincerely



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Managing Director
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