

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

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

CONTENTS

1.	Introduction.....	3
2.	Site and Surroundings.....	6
3.	Planning History	7
4.	The Proposal	8
5.	The Development Plan.....	10
6.	Other Material Considerations	11
7.	The Case for The Appellant	13
8.	Conclusion.....	16

APPENDICES

Appendix 1 - High Court Judgement - *Kay v Secretary of State for Homes, Communities & Local Government* [2020] EWHC 2292 (Admin)

Appendix 2 - Original Statement of Case and Appendices for the Appellant dated October 2018

Appendix 3 - Supporting Letter by Heritage Collective dated October 2018

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 appeal is a redetermination appeal, following a Judicial Review of the previous appeal decision in the High Court¹. The original planning and listed building consent appeals were determined by way of written representations (the appellant had originally requested a hearing), with the decision letter being issued on 29 October 2019. There have been no material changes to local or national policy, nor have there been any physical changes to the appeal site and its surroundings during this time.
- 1.3 The original appeal decision was challenged on two grounds, however the first ground upon which the Judicial Review succeeded was on the ground that the Inspector appointed on behalf of the Secretary of State had erred in law by failing to treat the positive heritage benefits which he found would arise from part of the proposals as 'public benefits' to be weighed against the less than substantial harm that he found in respect of other parts of the appeal proposal. In response, the Secretary of State submitted that the inspector was not obliged to approach the decision in any specific way and that, particularly as the applications had been presented as various individual elements, there was nothing unlawful or irrational in the inspector considering their pros and cons on an individual basis. The appellant did not accept that this is what the inspector had done.
- 1.4 Mr. Justice Dove allowed the claim on the above ground. The High Court agreed with the appellant that what the inspector had done was to consider the proposals as a whole when deciding whether there was harm but only consider them in isolation when deciding whether there were 'public benefits' and that this was an error of law. Alternatively, the High Court held that even if the inspector had considered each part in isolation, he had still erred in law because, on the facts of the case, the different elements were so closely related that the benefits of one were necessarily a material consideration in respect of the others.
- 1.5 This statement should be read alongside:
- (a) the High Court judgement of Mr Justice Dove (Appendix 1);
 - (b) the original statement of case for the appellant by Knights dated October 2018 (Appendix 2);
 - (c) the supporting letter by The Heritage Collective dated 9 October 2018 that accompanied the above statement of case (Appendix 3);
 - (d) a further heritage statement by The Heritage Collective dated October 2020 prepared in response to the judgement handed down by Mr Justice Dove. This is provided as a stand-alone document rather than an appendix.

¹ *Kay v Secretary of State for Homes, Communities & Local Government* [2020] EWHC 2292 (Admin)

- (e) Legal Submissions by John Hunter of Counsel, provided as a stand alone document.
- 1.6 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. The revised Framework was subsequently updated in February 2019.
- 1.7 The planning application and listed building consent applications were supported by the following plans and drawings produced by Pulmann 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
- 1.8 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.
- 1.9 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.
- 1.10 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.
- 1.11 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.

- 1.12 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 195 and 196 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.
- 1.13 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, or the previous appeal statement of case, however a supplementary statement by The Heritage Collective accompanies this submission in light of the decision of the High Court.

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 The previous appeal statement of case also addressed the key issues raised in relation to application references 3/2016/0091 and 3/2016/0132 and the subsequent appeal decision.

4. THE PROPOSAL

4.1 The main elements of the proposed extension subject to this appeal are set out again as follows:

- (a) A small extension to the south side of the existing modern extension to the hall (it is important to emphasise again here that the proposed small extension is an extension to a modern addition to Great Mitton 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.

- 4.8 In light of the judgement of the High Court, the Inspector is invited to consider all of these aspects of the proposal as a whole. As part of this appeal proposal, the appellant is willing to accept the imposition of appropriately worded planning conditions that ensure that all of the proposed works are carried out simultaneously, or conditions requiring works other than the extension to be carried out prior to the commencement of the proposed extension itself.

- 4.9 It is suggested that such a condition, as worded above, could be as follows:

“The single storey extension hereby approved shall not be commenced until such time as the balance of the development hereby approved has been fully implemented. For the avoidance of doubt that shall include 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.

Reason: In order to secure the delivery of the public benefits associated with the proposal.”

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
- 5.3 Since the determination of the original appeal, the Council adopted its Housing and Economic Development - Development Plan Document in October 2019. This DPD sets out more detailed policy coverage for matters relating to housing and economy to fully implement the policies of the Core Strategy. It does not contain policies relevant to the determination of this appeal. Therefore, this appeal should be determined on the basis of the development plan policies listed under paragraph 5.2 above.

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 and updated in February 2019. 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**. In addition a supplemental appeal statement of case on heritage matters is provided as a stand alone document which provides additional commentary following the High Court Judgement.
- 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 failed to explain both through their original decision, and through their appeal submission 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 In light of the High Court Judgement the decision-making process that the Inspector is invited to take is as follows:
- (a) To determine whether or not the proposed extension would result in no harm, less than substantial harm, substantial harm, or total loss of significance of the designated heritage asset;
 - (b) If the Inspector concludes that no harm would arise, then planning permission and listed building consent should be granted accordingly;
 - (c) If the Inspector concludes that some harm would arise, the Inspector would need to determine whether or not such harm would be substantial harm or less than substantial harm and where within the spectrum of less than substantial harm or substantial harm the proposal would fall;
 - (d) As part of the heritage balancing exercise, determine whether or not there would be any public benefits of the proposal;
 - (e) Weigh any public benefits against any level of harm.
- 7.11 In this case, the appellant's position is that the proposed extension would result in no harm. Therefore, there would be preservation for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the appeal should be allowed and planning permission granted.
- 7.12 However, should the Inspector disagree, and conclude that there would be some harm, it is considered that any alleged harm would fall very low down in the spectrum or less than substantial harm.
- 7.13 Any alleged less than substantial harm needs to be weighed against the public benefits of the proposal as follows:
- (a) The removal of the arched doorway to the existing extension, which is considered to be incongruous and draws attention away from the gable of the listed building would be a positive alteration that would benefit the architectural and historic interest of the listed building.
 - (b) The removal of railings that are considered to be over-elaborate and replacing them with straight railings which would simplify this feature of the immediate surroundings of the listed building.
 - (c) The re-painting of the white render to existing gable to tone down the stark colour and ensure that the Hall is tonally balanced with the Church and the rest of the listed building. The render is not an original feature of the Hall and is a stark feature that stands out when viewed in the wider setting. Therefore, this is considered to be a benefit of the proposal.
- 7.14 The benefits above are considered to outweigh any alleged harm that, at best, would fall under the lower end of the spectrum of less than substantial harm.

- 7.15 As set out earlier with regard to the High Court judgement, the Inspector is invited to consider the proposals cumulatively and as a whole. When the proposals are considered as a whole, it is very clear that on balance, planning permission and listed building consent ought to be granted. This redetermination appeal should therefore be allowed.

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. This submission follows the quashing of the original decision made on behalf of the Secretary of State in the High Court.
- 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:
- 8.4 This statement should be read alongside:
- (a) the High Court judgement of Mr Justice Dove (Appendix 1);
 - (b) the original statement of case for the appellant by Knights dated October 2018 (Appendix 2);
 - (c) the supporting letter by The Heritage Collective dated 9 October 2018 that accompanied the above statement of case (Appendix 3);
 - (d) a further heritage statement by The Heritage Collective dated October 2020 prepared in response to the judgement handed down by Mr Justice Dove. This is provided as a stand-alone document rather than an appendix.
 - (e) Drawings by Pulmann 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.
 - (f) Documents by Heritage Collective:
 - (i) Heritage Assessment (including historic maps and photographs) dated May 2018 (reference 4004);
 - (g) Documents by Knights:
 - (i) Planning Statement dated May 2018 (reference KAY159/1/PS):
 - (h) Legal Submissions by John Hunter of Counsel which is provided as a stand alone document.
- 8.5 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.

- 8.6 The supporting heritage assessment and additional submissions 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.
- 8.7 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.
- 8.8 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.
- 8.9 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.
- 8.10 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.
- 8.11 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.
- 8.12 In the event that the Inspector judges that some harm would arise, it is considered that such alleged harm would fall at the lower end of the spectrum of less than substantial harm. When such harm is weighed against the public benefits of the proposal, and such benefits are considered in cumulation (i.e. the proposed alterations including the extension are considered as a whole), it is very clear that the public benefits would outweigh any alleged harm.

- 8.13 Therefore, 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 2020