

**8. SECTION 73 APPLICATION FOR THE VARIATION OF CONDITION 2 ON NP/SM/0321/0297 AT DAINS MILL, ROACH ROAD, UPPER HULME (NP/SM/1022/1315, DH)**

**APPLICANT: MR MICHAEL JONES**

**Summary**

1. The application is for a metal balcony to the loading door at first floor level on the south facing (principal) elevation of the historic former corn mill building; and for a new post and rail fence with double gates to the south of the building.
2. The balcony would cause harm to the significance of the mill which is considered to be a non-designated heritage asset.
3. The harm to the non-designated heritage asset is not outweighed by any public benefits.
4. The application is recommended for refusal.

**Site and Surroundings**

5. The application site is located in open countryside to the southern (lower) end of a narrow steep sided valley on Back Brook, a tributary of the River Churnet. It is approximately 300m north of Upper Hulme, which is not a named settlement in policy DS1.
6. The site comprises a C17th former corn mill and detached corn drying store (the Kyle Building) to the west, a mill pond, dam and weir to the north, set within 4.4 acres. Dains Mill is a two-storey structure constructed in natural gritstone with a pitched roof and an adjoining waterwheel house. The Kyle Building is a three storey pitched roof building built into the bank side and constructed in the same materials.
7. The historic buildings on site are not listed but are considered to be non-designated historic assets.
8. The site does not lie within the designated conservation area, but is described in the Upper Hulme Conservation Area Appraisal.
9. A public right of way runs in a north to south direction along the track between the former mill and the former drying store (referred to as the Kyle Building).
10. The mill and drying store were restored in 2006, and planning permission was granted for the mill to be a holiday let. In 2021 planning permission was granted for the conversion of the corn mill to a single open market dwelling, and for the conversion of the drying store (now known as the 'Kyle' building) to a further single open market dwelling or holiday let.

**Proposal**

11. The proposal is a Section 73 application to vary condition 2 on NP/SM/0321/0297, which reads, "*The development hereby permitted shall not be carried out otherwise than in complete accordance with the amended plan no.s L100-P2, L103-P5, L104-P2, L105-P3, L106-P2, L109- P3, L110-P2 and L118-P3 subject to the following conditions or modifications.*"

12. The variations proposed to the approved plan are to have a larger balcony to the loading door at first floor level in the principal (south) elevation of the Mill, in place of the approved Juliet balcony to the bedroom beyond. Also, to have a post and rail fence with double five bar gates to the site entrance at the south.

### **RECOMMENDATION:**

13. That the application be **REFUSED** for the following reasons:

**The balcony, by virtue of its position on the building, its size and its design, would cause harm to the significance of the non-designated heritage asset. The harm would not be outweighed by any public benefits. Consequently, the proposal is contrary to Core Strategy policies GSP3 and L3, Development Management policies DMC3, DMC5, DMC10, and DMH7, and advice in the Authority's Adopted Supplementary Planning Documents 'Conversion of Historic Buildings' and 'Alterations and Extensions'**

### **Key Issues**

14. The key issues are the impact of the proposals on the significance of the non-designated heritage asset.

### **History**

15. 2004 – The restoration of the derelict mill was approved under NP/SM/1203/0923
16. 2006 – The change of use of the restored mill to holiday accommodation was granted subject to conditions under NP/SM/0106/0032
17. 2016 – A Section 73 application to remove condition 4 from the above (holiday occupancy restriction) was refused by NP/SM/0716/0609
18. 2018 - A Section 73 application to remove condition 4 from the above (holiday occupancy restriction) to allow the property to be occupied as a single open market dwelling was granted conditionally by NP/SM/1017/1042.
19. July 2021 – The conversion and change of use of the former drying store (Kyle Building) to an open market dwelling or holiday let was granted subject to conditions by NP/SM/0321/0302. Non-Material Amendments to this application were accepted by NP/NMA/0921/0958
20. July 2021 - The change of use of the Mill to residential and holiday let with external alterations was granted subject to conditions under NP/SM/0321/0297
21. April 2022 – Applications for the erection of a double garage (NP/SM/0422/0516) and a Section 73 for the variation of condition 2 on NP/SM/0321/0297 (NP/SM/0422/0514) were both refused.
22. July 2022 - Post decision correspondence following refusal of NP/SM/0422/0514 (the Section 73 regarding a larger balcony than approved by NP/SM/0321/0297) advised:
23. *"My view is that the Authority would not accept a balcony any bigger than the French balcony that was approved as part of the original application. However, one of the reasons you set out for why the applicant wished to have a balcony, was because a condition appended to the original permission prevented use of the land in ownership to the north of the mill building as domestic curtilage. The condition was necessary because*

*the area in question, which contains the former mill pond and other water management features, is important to the setting of the Heritage Asset. However, as I outlined at the time of the original application, if the applicant is seeking a little more domestic curtilage, we would be sympathetic to a modest area of this land, directly adjacent to the north side of the building, being used as a small garden area. As well as being modest in size, the boundary treatments between the garden and the remaining area in ownership to the north would need to be carefully considered so as to conserve the setting of the building. You may wish to consider submitting a section 73 application to amend the condition in question.”*

### **Consultations**

24. Staffordshire County Council (Highway Authority) – No response
25. Staffordshire Moorlands District Council – No response
26. Leekfirth Parish Council – No response
27. PDNPA Conservation Officer - The balcony proposed on the front elevation is a domestic feature and a non-traditional detail. It is entirely out of character with a mill building, out of keeping with its historic development and function, and would be harmful to the character of the front elevation and the significance of the mill. The fencing, if not used to demarcate a private garden area (which would be detrimental to the setting of the mill building and wider landscape) may be acceptable provided the character of the area is not altered.

### **Representations**

28. During the publicity period the Authority received 13 representations, all of which support the proposals. The following comments were made:
  - *The balcony proposed for this property which will be constructed in a sympathetic manner in accordance with the Mill itself.*
  - *The balcony will be in keeping with the style of the Mill*
  - *A balcony can only add design merit to the building*
  - *A balcony can only benefit the future privacy of the site once occupied and used as a residence*
  - *The balcony in no way affects the alleged historic value of the site*
  - *The building is not listed*
  - *There is no private amenity area*

### **Main Policies**

29. Relevant Core Strategy policies: GSP1, GSP2, GSP3, DS1, RT2, L1 & L3
30. Relevant Local Plan policies: DM1, DMC3, DMC5, DMC10 & DMH7
31. National Planning Policy Framework

### **Wider Policy context**

32. National Park designation is the highest level of landscape designation in the UK. The Environment Act 1995 sets out two statutory purposes for national parks in England and Wales:
  - Conserve and enhance the natural beauty, wildlife and cultural heritage
  - Promote opportunities for the understanding and enjoyment of the special qualities of national parks by the public

- When national parks carry out these purposes they also have the duty to:
- Seek to foster the economic and social well-being of local communities within the national parks.

#### National Planning Policy Framework

33. The National Planning Policy Framework (NPPF) replaced a significant proportion of central government planning policy with immediate effect. A revised NPPF was published in July 2021. The Government's intention is that the document should be considered as a material consideration and carry particular weight where a development plan is absent, silent or relevant policies are out of date. In the National Park the development plan comprises the Authority's Core Strategy 2011 and policies in the Peak District National Park Development Management Policies document 2019. Policies in the Development Plan provide a clear starting point consistent with the National Park's statutory purposes for the determination of this application. It is considered that in this case there is no significant conflict between prevailing policies in the Development Plan and more recent Government guidance in the NPPF.
34. Paragraph 176 of the NPPF states that *'great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues. The conservation and enhancement of wildlife and cultural heritage are also important considerations in all these areas, and should be given great weight in National Parks and the Broads.'*
35. Paragraph 134 states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.
36. Part 16 of the NPPF relates to conserving and enhancing the historic environment.
37. Paragraph 194 states that in determining applications, local planning authorities (LPA's) should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. It advises that the level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance.
38. Paragraph 196 deals with balancing harm. It says 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.
39. Paragraph 197 states that LPAs should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation.
40. Paragraph 203 states that the effect of an application on the significance of a non-designated heritage asset applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

#### Peak District National Park Core Strategy

41. GSP1 & GSP2 - *Securing National Park Purposes and sustainable development & Enhancing the National Park.* These policies set out the broad strategy for achieving the National Park's objectives, and jointly seek to secure national park legal purposes

and duties through the conversion and enhancement of the National Park's landscape and its natural and heritage

42. GSP3 - *Development Management Principles*. GSP3 states that all development must respect, conserve and enhance all valued characteristics of the site and buildings, paying particular attention to, amongst other elements, impact on the character and setting of buildings, scale of the development appropriate to the character and appearance of the National Park, design in accordance with the National Park Authority Design Guide and impact on living conditions of communities.
43. DS1 - *Development Strategy*. DS1 sets out what forms of development are acceptable in principle within the National Park.
44. L1 - *Landscape character and valued characteristics*. This policy states that all development must conserve and enhance valued landscape character and valued characteristics, and other than in exceptional circumstances, proposals in the Natural Zone will not be permitted.
45. L3 - *Cultural Heritage assets or archaeological, architectural, artistic or historic significance*. L3 requires that development must conserve and where appropriately enhance or reveal the significance of historic assets and their setting. Other than in exceptional circumstances, development will not be permitted where it is likely to cause harm to the significance of any cultural heritage asset or its setting.
46. RT2 – *Hotels, bed and breakfast and self-catering accommodation*. RT2 (A) is supportive of the change of use of traditional buildings of historic or vernacular merit to holiday accommodation except where there could be unacceptable landscape impact. RT2 (B) relates to appropriate minor developments which extend or make quality improvements to existing holiday accommodation.

#### Local Plan Development Management Policies

47. DM1 – *The presumption of sustainable development in the context of National Park purposes*. These being (i) to conserve and enhance the natural beauty, wildlife and cultural heritage of the National Park; and (ii) to promote opportunities for the understanding and enjoyment of the valued characteristics of the National Park.
48. DMC3 - *Siting, Design, layout and landscaping*. DMC3 states that where development is acceptable in principle, it will be permitted provided that its detailed treatment is of a high standard that respects, protects and where possible enhances the natural beauty, quality and visual amenity of the landscape, including the wildlife and cultural heritage that contribute to the distinctive sense of place.
49. DMC5 - *Assessing the impact of development on designated and non-designated heritage assets and their setting*. DMC5 provides detailed advice relating to proposals affecting heritage assets and their settings. It states that applications affecting a heritage asset should clearly demonstrate its significance including how any identified features will be preserved and where possible enhanced and why the proposed works are desirable or necessary. Development of a heritage asset will not be permitted if it would result in harm to, or loss of significance character and appearance unless the harm would be outweighed by public benefit.
50. DMC10 – *Conversion of a heritage asset*. DMC10 states (amongst other things) that conversion will be permitted provided that the new use can be accommodated without changes that adversely affect its character.

51. DMH7 - *Extensions and alterations*. DMH7 states (amongst other things) that extensions and alterations to dwellings will be permitted provided that the proposal does not detract from the character, appearance or amenity of the original building, its setting or neighbouring buildings, or create an adverse effect on, or lead to undesirable changes to the landscape or any other valued characteristic.

#### Supplementary Guidance

52. The Authority has a Supplementary Planning Document (Detailed Design Guide) for alterations and extensions, which states that the original character of the property should not be destroyed when providing additional development. It goes on to state that an insensitive design can easily spoil both an existing building and an area. The key to a more sensitive approach is to take careful note of what is there already before preparing the design, to work with rather than against the character of the building.
53. Further advice is given with the Authority's recently adopted Supplementary Planning Document (SPD) on the '*Conversion of Historic Buildings*'. It states that the guiding principle behind any conversion is that the new use should respond to the character, form and function of the building, rather than the building being made to fit the new use. It goes on to say that garden areas or outdoor sitting areas are best accommodated in small walled enclosures where these exist, or where they can be added discreetly without adversely affecting the setting.

#### Assessment

##### Principle of the development

54. Policy LC3 states that if it can be demonstrated that development which affects cultural heritage assets is desirable or necessary, and would not harm the significance of the heritage asset and its setting or detract from the valued characteristics and the scenic beauty of the wider landscape, in principle they would be acceptable.
55. Alterations to dwellings and their boundaries are acceptable in principle provided the development is of a high standard of design and does not detract from the character and appearance of the locality.

##### Visual and Heritage Impacts

56. The conversion of Dains Mill, as approved in 2021, included a very modest 'Juliet' balcony within the width of the first floor door opening as a safety feature. This was in place of the originally proposed larger balcony which was considered to have a harmful impact on the character and appearance of the non-designated heritage asset.
57. The view of the Authority was that the balcony, as amended to a Juliet balcony, would cause some minor harm to the significance of the heritage asset but that the public benefits of securing a long term sustainable use of the building outweighed this 'less than substantial harm' even though the view was maintained that without it the character of the building would have been better conserved.
58. The Mill dates from the C17th, or possibly earlier, and is an example of a traditional waterpowered corn mill. The restoration of the Mill granted in 2004 was sensitive to its significance. A detailed archaeological building assessment carried out before the restoration works in 2004 indicates that the south elevation (where the proposed balcony would be erected) dates from between 1640 to 1680 and 1720 to 1760 and highlights details such as the red sandstone walls, large sandstone quoins and doorway architraves and arched cart entrance. All of these features contribute to the significance of the

building. Although parts of the mill have been re-built the report states '*The mill has been rebuilt using the original collapsed stonework on site and has been restored with extreme accuracy and authenticity under the direction of the Peak District National Park Authority.*'

59. The balcony proposed by this application would be to the loading door (D7) at first floor level in the principal elevation of the building, which would historically have been an open access for sacks of grain. As such it would introduce a feature which would cause significant harm to its architectural and historic character, appearance and setting.
60. As proposed in the previous application to vary condition 2 (NP/SM/0422/0514) the revised balcony spanned almost the width of the lower part of the building and would have been supported on cast iron columns. This application has reduced the size significantly and omitted the supporting columns. Nonetheless, the balcony is a domestic feature which is out of character to the mill building.
61. The balcony now proposed extends beyond the width of the door opening to each side, to a width of 2.2m, and protrudes 1.2m from the face of the building. The balcony is the same width as the cart door below (D3) and is positioned such that it is directly over this opening but without obscuring the stone arch above the cart door.
62. The depth of, and extension of the balcony beyond the width of the opening it would serve, the asymmetry of its position relative to that opening, and the door details, now shown as French doors with no subdivision, are considered to result in an alien feature which would be prominent and visually intrusive on the elevation.
63. The justification provided is that the floor level of the bedroom the balcony would serve does not allow for inward opening doors. However, the floor is not historic fabric and could be altered to allow inward opening, and this option does not appear to have been explored. At the last committee meeting Members queried whether designing balcony doors with a fixed bottom panel to address the difference in floor height could be considered. The applicant advises that they have been discounted that suggestion on the basis that the door design would not be reflective of the historic function of this opening. Whilst that may be true to an extent, it would be significantly more in keeping with the heritage of the building than the proposed balcony. Therefore, it is considered that the need for the proposed alteration to the approved plans on grounds of inoperability of the design as approved is not justified.
64. A second reason given for the larger balcony is the lack of amenity space to the five bedroom dwelling, due to a condition on NP/SM/0321/0297. The officer's delegated report at that time also noted that the submitted plans did not show any space set aside for residential curtilage in association with the property. The reports stated '*The area to the north of the building, around the mill pond forms an important part of the setting of the mill and domestication of this whole area would cause unacceptable harm to the character and setting of the mill. We have made several attempts to agree a defined, modest residential curtilage that is drawn tightly up to the building. This is because if insufficient garden space is provided at the design stage it is likely that future owners (especially if the property is used a full time dwelling) will expand their domestic activity into this area in an uncontrolled manner. The applicant seems adamant however that the rear balcony is sufficient to serve the needs of the development.*' Consequently, a condition was imposed that required that none of the area to the north of the building is to be used as residential curtilage.
65. Notwithstanding the restriction on the land to the north of the Mill, there is space within the surfaced area to the south of the mill (between the building and the line of the proposed post and rail fence), as well as on the rear balcony. Together these provide a relatively modest area, but it is adequate to serve the needs of the development.

66. Nevertheless, following the refusal of the previous application by Members, and their discussions around scope to increase the curtilage in this area, officers contacted the applicant to suggest that they may wish to seek to pursue an application to relax the condition currently limiting the use of that land – see ‘History’ section above.
67. Beyond this scope, we take this view in the context of the SPD on Conversions which states that *‘in some cases it may prove impossible to provide much in the way of garden space’*. Any perceived need for additional outdoor living space is a private benefit that does not outweigh the harm caused by the balcony that has been identified above.
68. It is therefore concluded that the proposed balcony would cause significant harm to the historic and architectural significance of the this former mill building, contrary to policies GSP3, L3, DMC3, DMC5, DMH7 and DMC10 and advice in the Authority’s Supplementary Planning Documents. There are no public benefits that would offset or outweigh this harm.
69. With regard to the proposed post and rail fence to the front (south) of the building, which, it is stated, is to contain dogs, provided this area is clearly restricted to non-curtilage use to prevent domestic paraphernalia being introduced, the harm to the setting would be minimal.
70. Drystone walls would be a more traditional boundary treatment, however, the proposed is lightweight in appearance, and, stained a dark recessive colour, would maintain the open character of the mill frontage better and therefore would not harm the setting of the mill building.
71. It is also noted that Members previously discussed that a more discrete option may be black estate fencing; this could be addressed through conditions should Members be minded to approve the proposals and to consider this alteration to be required.

### Amenity Impacts

72. The only neighbouring property is the Kyle building, to the north-west of the Mill, and in the same ownership. The proposed balcony would be on the east side of the southern elevation of the Mill, and therefore, by virtue of the separation distance of approximately 27m, the presence of the intervening bays that form the remainder of Dains Mill, and the fact that the balcony would face away from the Kyle building, the development would not cause harm to the amenity of that property as a result of any overlooking or noise generation.

### Conclusion

73. The balcony, by virtue of its position, size and design would cause harm to the significance of Dains Mill, which is a non-designated heritage asset. The harm would not be outweighed by any public benefits. Consequently the proposals are contrary to Core Strategy policies GSP3 and L3, Development Management policies DMC3, DMC5, DMH7 and DMC10 and advice in the Authority’s Adopted Supplementary Planning Documents ‘Conversion of Historic Buildings’ and ‘Alterations and Extensions’.

74. The application is recommended for refusal.

### Human Rights

Any human rights issues have been considered and addressed in the preparation of this report.



**List of Background Papers** (not previously published)

Nil

**Report Author and Job Title**

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