

COMMITTEE REPORT

Enforcement Report: Stall 36, Guildhall Market, Bath BA2 4AW

Background papers: 10/00564/LBA Refused

REASON FOR PRESENTING TO COMMITTEE

This report seeks Members' authority to take enforcement action in respect of unauthorised alterations to one of the stalls.

Subject to members' view, the report requests authority from members to issue a listed building enforcement notice to remedy the breach of listed building control.

BACKGROUND AND SITE DESCRIPTION

The existing Guildhall Market dates from the 19th century and is a grade II listed building within the Bath World Heritage Site and the designated conservation area. The market is also part of the wider grade I listed Guildhall complex of buildings comprising the Town Hall, art gallery, former technical school and municipal offices.

The market building, from the outside, is largely concealed behind other municipal buildings. It has three access/exit points: Boatstall Lane, Newmarket Row and the High Street. Boatstall Lane is a minor entrance mainly used by traders whilst visitors use the two main entrances which lie on an east-west axis at opposite sides of the market. Once inside, the layout of the market encourages visitors to navigate around the stalls giving traders the opportunity to showcase their goods. The central hub of the market is beneath a fine twelve sided dome.

Guildhall Market has a long and complex history of development and redevelopment. The pattern over the years has generally been one of contraction and today the market has 21 stallholders (in some cases two or more stalls have been amalgamated to operate as one business).

A serious fire in 1972 destroyed the impressive central dome and damaged several of the stalls immediately below it. Although the market rapidly reopened the dome was not finally restored until 1992. In 1993, in an effort to give the market a greater sense of coherence, an application submitted by the Council for listed building consent was granted for stall structures with canopies, supporting posts and signboards. These stall structures generally comprised a simple lean to canopy arrangement not dissimilar to that found on outside markets. Many of the modern stalls have this general form although individual stallholders have used display arrangements to personalise their space.

Consequently, today the Guildhall Market has a mix of stalls which contribute to its vitality and character. The modern lean-to canopy stalls form a significant part of the market.

Several older stalls have in part survived previous redevelopments and this historic and authentic late Victorian/Edwardian fabric makes its own special and significant contribution to the character of the market (examples are the sweet shop, Gillards coffee and the fruit and vegetable stalls). Stalls commonly comprise a hybrid design using a combination of enclosed and unenclosed space. Only two of the stalls – the sweet shop and the barbers - could be described as completely and formally enclosed in the style of shops rather than stalls. The sweet shop appears historically as a one-off design. The barbers was presumably enclosed as a consequence of the use.

Although there is not a precise pattern, generally the older, more formally designed stalls are clustered towards the centre of the market whilst the perimeter corridors are flanked by the newer post and canopy design.

The character of the Guildhall Market is therefore complex and comprises a mixture of older stalls with fabric which survived the 1972 fire and newer post and canopy style stalls constructed post 1993, generally open but personalised to suit the products for sale.

Stall 36 is positioned on the outer perimeter of the market and prior to the unauthorised alteration, was included as part of the 1993 scheme of work, and comprised a simple lean-to canopy arrangement.

THE NEED FOR LISTED BUILDING CONSENT

Section 7 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) states, so far as relevant, that “no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised under section 8.”

Under Section 1(5) “listed building” means a building which is included in a list compiled or approved by the Secretary of State and includes:

- (a) any object or structure fixed to the building;
- (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948.

Such objects and structures are subject to listed building control.

Two questions need to be addressed before a view can be formed about whether the works to stall 36 require listed building consent. First, is stall 36 a fixture and therefore subject to listed building control? Second, if yes, are the works an alteration which affects the character of the market as a building of special architectural or historic interest?

With regard to the first question, it should be noted that, if it is a fixture, then an object or structure will form part of a listed building irrespective of its merits and irrespective of when it was added. This may be contrasted with section 1(5)(b) where there is a post 1948 exclusion for curtilage structures.

There is a corpus of case law relating to the legal tests which must be applied in order to determine whether an object or structure is a fixture and thus subject to listed building control. In essence, the relevant tests are the degree and purpose of annexation to the listed building. The cases suggest that the more important test is the purpose of annexation.

Stall 36 is clearly a large structure which could not be removed without substantial works taking place. The degree to which it is physically attached to the market building is not established, however an object resting on the ground by its weight alone can be a fixture if it is so heavy that there is no need to tie it into a foundation. Therefore, even if the stall were entirely freestanding, it is considered that by virtue of its size, weight and the difficulty that would be involved in removing it, that the degree of annexation test is satisfied. With regard to the purpose of annexation test, it is considered that the stall is intended to form part of the listed market and to be a permanent facility from which trade can take place and therefore the purpose of annexation test is also satisfied. For those reasons it is considered that stall 36 is a fixture and subject to listed building control.

It is then necessary to consider whether the works carried out to the stall constitute works of alteration which affect the character of the market as a building of special architectural or historic interest.

With regard to whether the works amount to an alteration, the stall holder states that he has not made any structural changes to the stall or attached anything to it and has simply inserted free standing units between the existing posts. One of the Council's surveyors has assessed the works and concluded that, whilst there was no evidence of physical fixing to the stall such as screws or glue, it is impossible to be certain about attachment without opening up the whole structure. However, the surveyor did conclude that the combined weight of the works to stall 36, excluding stock, was 544kg and that it would take two people 1.5 eight hour days to remove them. On that basis it is considered that, even if the works are indeed freestanding (which is not clear), the works can reasonably be said to constitute an alteration to the stall.

With regard to the effect of the works on the character of the listed market, it is considered that the character of the interior of the market is derived from the form and appearance of the stalls and the way in which they operate. Consequently, significant works to the stalls affect the character of the building. As noted above, most of the stalls are open sided with goods being laid out on counters. In this case what was formally an open sided market stall has been enclosed in the manner of a shop which is more what one might expect to find in an arcade. It is considered that the enclosure of stall 36 affects the character of the listed market and consent is therefore required.

OUTLINE OF UNAUTHORISED DEVELOPMENT

Prior to the unauthorised work stall 36 consisted of modern fabric in the form of a series of upright posts supporting the canopy roof with a decorative scalloped edge. Business was transacted over the counter and there was no formal entrance into the stall for customers. The stall owner was advised through pre-application enquiry that there was scope to alter and improve upon the appearance of the stall subject to submission of an application for listed building consent with a satisfactory design. The stall owner nevertheless constructed an enclosed shop-style structure around the stall without permission.

The appearance and character of the market has already been mentioned above. The majority of the existing stalls around the perimeter of the market are of post and canopy design or comprise a combination of enclosed space and unenclosed display area. Overall the character of the market stalls is simple and open with trading over the counters. In this context, the rather formal shop-style arrangement constructed at Stall 36 is not considered to preserve the special architectural and historic interest of the Guildhall Market.

RELEVANT PLANNING HISTORY

Application 10/00564/LBA proposed the replacement of the post and canopy structure with a much more enclosed shop front style arrangement, comprising a door opening with sash windows either side over a stall riser to the east and two sash windows over a stall riser to the north. (This application differed slightly from the unauthorised implemented development in that there is a narrower door and fewer windows on the east elevation of the proposal.) The application also included metal roller security shutters.

The application was refused consent for the following reason: "The proposed market stall by reason of its relatively enclosed shop front style design and security shutters would not preserve the special architectural and historic interest of the listed undercover market and its established character contrary to the Planning (Listed Buildings and Conservation Areas) Act 1990 and Planning Policy Statement 5 (Planning for the Historic Environment)."

An appeal in relation to this decision was dismissed. The inspector notes that "although there is considerable variation in the details of the open style stalls, they are the dominant type of units and stand out as significant and distinctive features of the market as it is today. Planning Policy Statement 5 (Planning for the Historic Environment) (*this decision pre-dates the NPPF*) aims to conserve listed buildings in a manner appropriate to their significance by ensuring that, among other things, the positive contribution they make to local character and sense of place is recognised and valued. The proposed structure would not meet this objective, appearing too solid and formal for the site and its setting, and more appropriate to an arcade than a market of this nature."

LEGAL AND POLICY CONTEXT

Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that when considering whether it is expedient to issue a listed building enforcement notice, LPAs must have regard to the effect of the works on the character of the building as one of special architectural or historic interest. In discharging this duty, members are advised that the comments of the planning inspector referred to above are of particular importance.

The NPPF requires 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. Here it is considered that the form and appearance of the stalls is fundamental to the conservation of the character of the Guildhall Market.

The NPPF also requires that local planning authorities should act proportionately in responding to suspected breaches of planning/listed building control.

EXPEDIENCY OF ENFORCEMENT ACTION

The structure at Stall 36 is unauthorised and contrary to the legislation and policy set out above. The inappropriate nature of the works carried out is substantiated by the inspector's decision to dismiss the appeal in respect of application 10/00564LBA for substantially similar works. There is concern that accepting the enclosure of one of the stalls by not proceeding with enforcement action sets a precedent for similar works to be undertaken to other stalls. The cumulative impact of this could be a significant change to the character of the Guildhall Market.

Measures to regularise this matter without the use of enforcement action have been sought. There has been extensive discussion and correspondence with the stall holder. This has included explanation of the reasons and need for listed building consent as well as the Council's concerns with the scheme as implemented.

In addition, officers have met with the stall holder and advised that Stall 36 could be brought into compliance by undertaking some relatively limited, and therefore proportionate works, which would essentially comprise the permanent removal of the two sliding sash windows either side of the entrance door. This would serve to reinstate the open style character of the stall which is a distinctive feature of the majority of the units in the Guildhall Market. It would address the planning inspector's view that the scheme as proposed in application 10/00564/LBA, and substantially as built, appears "too solid and formal for the site". The stall holder has therefore been invited, but has declined to submit an application for the scheme as built with the sliding sash windows omitted.

Enforcement action against the unauthorised works is therefore considered expedient.

HUMAN RIGHTS AND EQUALITIES

It is considered that Article 1 of Protocol 1 (peaceful enjoyment of possessions) and Article 6 (right to a fair hearing) of the European Convention on Human Rights may apply in this case. However, it is considered that, for the reasons given above, it is in the public interest to take enforcement action to protect the historic character of the listed market.

Consideration has also been given to the Equality Act 2010 and in particular to the Council's public sector equality duty. Officers have carried out an equalities impact assessment and there were no adverse findings.

RECOMMENDATION

That the Group Manager, Development is authorised to take any necessary enforcement action on behalf of the Local Planning Authority in respect of the listed building contravention outlined above, by exercising the powers and duties of the Authority (as applicable) under Chapter IV of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.