

REPORT NO: 267/2014

DEVELOPMENT CONTROL AND LICENSING COMMITTEE

9TH DECEMBER 2014

**PLANNING APPLICATIONS TO BE DETERMINED BY THE
DEVELOPMENT CONTROL AND LICENSING COMMITTEE**

**REPORT OF THE DIRECTOR FOR PLACES
(ENVIRONMENT, PLANNING AND TRANSPORT)**

Rutland County Council

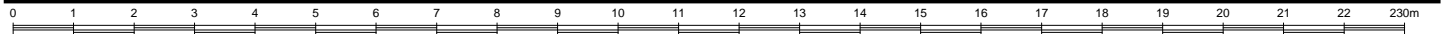
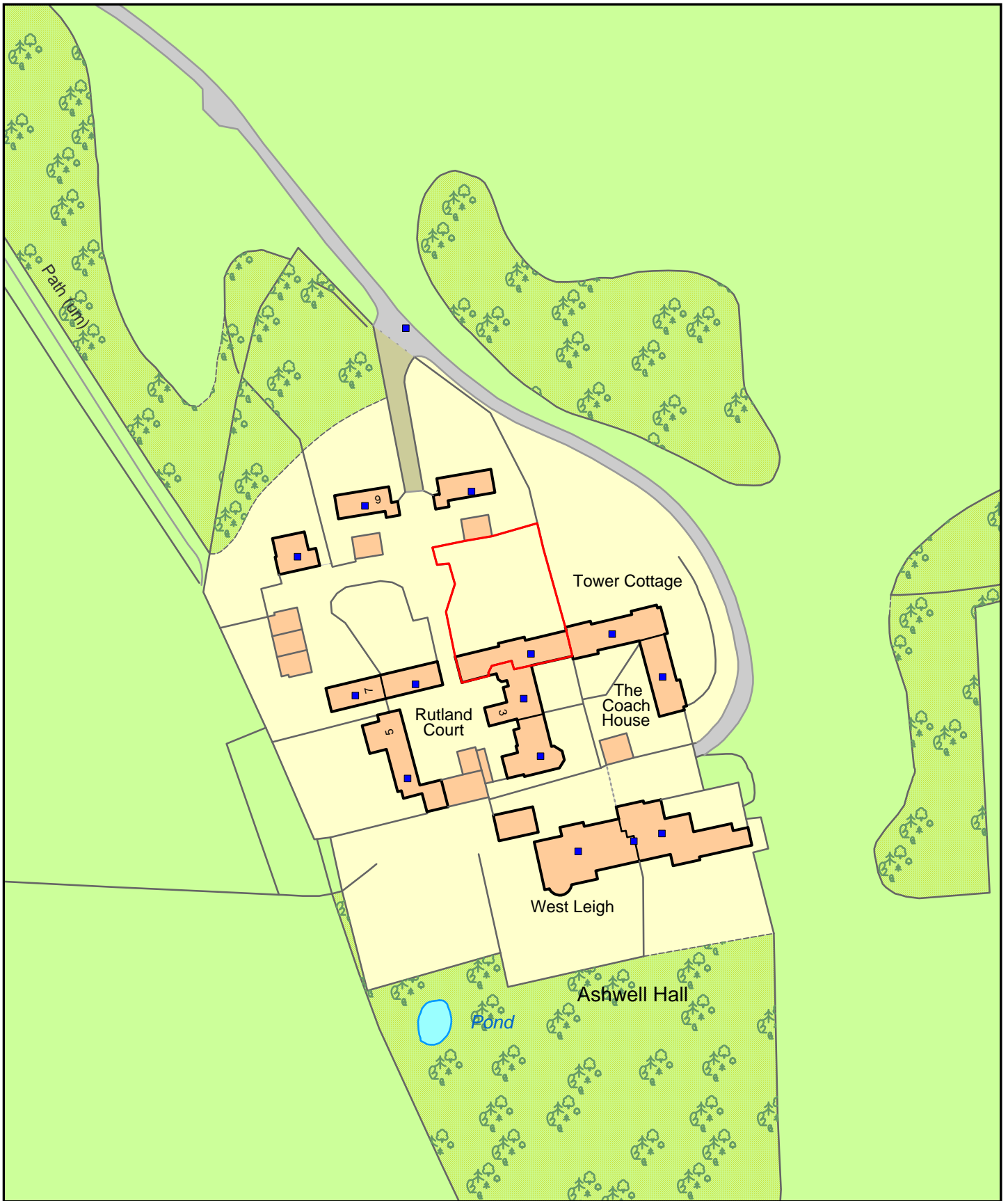
Development Control & Licensing Committee – 9th December 2014

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Appeals Report

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Ordnance Survey [100018056]

Scale - 1:1250
Time of plot: 11:05
Date of plot: 27/11/2014



Rutland County Council

Catmose,
Oakham,
Rutland
LE15 6HP

Application:	2014/0976/FUL & 2014/0977/LBA	ITEM 1	
Proposal:	Retrospective consent for balcony extension to listed building.		
Address:	Gallery House, 2 Ashwell Hall Stables, Ashwell, OAKHAM, Rutland, LE15 7LH		
Applicant:	Mr & Mrs C Morton	Parish	ASHWELL
Agent:	Mr A Bussetil	Ward	Exton
Reason for presenting to Committee:	Enforcement Action recommended		
Committee Date:	9th December 2014		

EXECUTIVE SUMMARY

The applicant is applying retrospectively for the retention of a balcony extension to a grade II listed building. The Conservation Officer has objected.

The extended balcony adversely affects the character and significance of the listed building, appearing as an incongruous addition that causes harm to the heritage asset, which, although less than substantial, is not outweighed by a wider public benefit.

The application is recommended for refusal. Enforcement action for the extended balcony to be removed is also proposed.

RECOMMENDATIONS

- A. 2014/0976/FUL - REFUSE PLANNING PERMISSION**, for the following reason:
The extended balcony, by virtue of its location, scale and bulk, appears as an incongruous addition, adversely affecting the character and significance of the listed building. Although the harm is less than substantial, it is not outweighed by a wider public benefit. As such, the proposal is contrary to planning policies CS19 and CS22 of the adopted Core Strategy (2011), SP15 and SP20 of the Site Allocations and Policies Development Plan Document (2014), and paragraph 134 of the National Planning Policy Framework.
- B. 2014/0977/LBA - REFUSE LISTED BUILDING CONSENT**, for the following reason:
The extended balcony, by virtue of its location, scale and bulk, appears as an incongruous addition, adversely affecting the character and significance of the listed building. Although the harm is less than substantial, it is not outweighed by a wider public benefit. As such, the proposal is contrary to planning policies CS19 and CS22 of the adopted Core Strategy (2011), SP15 and SP20 of the Site Allocations and Policies Development Plan Document (2014), and paragraph 134 of the National Planning Policy Framework.
- C. TAKE ENFORCEMENT ACTION**
Subject to the Council's solicitor being satisfied as to the evidence, that enforcement action be taken, including through the Courts if necessary, to ensure the removal of the balcony on the front elevation of Gallery House, 2 Ashwell Hall Stables, Ashwell.

Site & Surroundings

1. Gallery House (grade II listed) is a former stable building of Ashwell Hall that was converted to a dwelling (along with the other stables) in 1997. These surrounding buildings are also grade II listed.

2. The site is within the open countryside to the south of Ashwell. The former stables are not visible from the main road into Ashwell, as they are accessed from a long private drive, and surrounded by trees, creating a small enclosed residential development.

Proposal

3. The applicant is retrospectively seeking planning permission and listed building consent for the retention of a 4m x 4m x4m first floor balcony. The breach came to our attention following an anonymous complaint. The balcony is steel framed and painted black, with a steel balustrade. It is attached to the listed building via brackets, and supported by four steel posts.
4. The 1997 permission for conversion of the stables to residential included a smaller 1.5m protruding balcony. This was constructed at the time of conversion, albeit the posts were installed at the corners of the balcony rather than near the middle as shown on the approved plans.
5. Plans and images of the original balcony are attached as **Appendix 1**, along with a photograph of the extended balcony subject to this application.

Relevant Planning History

Planning Number	Description	Decision
97/0254(FUL) & 97/0255 (LBA)	Retention of 2 existing houses, conversion of existing stable buildings to form 5 houses; two new lodge houses, new driveway and landscaping. Minor alterations to existing buildings	Approved

Planning Guidance and Policy

Development Plan

The Rutland Core Strategy (2011)

CS19 – Promoting Good Design

CS22 – Historic Environment

Site Allocations and Policies Development Plan Document (2014)

SP6 – Housing in the countryside

SP15 – Design & Amenity

SP20 – The Historic Environment

National Planning Policy Framework (NPPF)

Part 12: Conserving and enhancing the historic environment

Paragraph 207 - Enforcement

Consultations

6. Ashwell Parish Council - 'Ashwell Parish Council has no objection in principle to this application, providing that neighbours have been consulted and do not object. The final decision should rest with the Conservation Officer.'
7. Conservation Officer - 'I object to the impact of the balcony on the character and significance of the listed building. Although a Juliette-type balcony was permitted as part of the conversion scheme, the structure now erected is considerably larger in area and more intrusive on the building. I consider it to be an incongruous addition that causes harm to the listed building which, although less than substantial, is not outweighed by wider public benefit, thereby contrary to paragraph 134 of the NPPF.'

Neighbour Representations

8. None received

Planning Assessment

9. The main issues are the impact on the listed building, impact on residential amenity, and the potential need for enforcement action.

Impact on the listed building

10. The objection from the Conservation Officer is noted, and has been given due consideration.
11. The balcony is highly prominent from the shared driveway, obscuring the view of the front elevation of the former stables. However even if it were not visible from outside the site, it is important to note that buildings are listed for their intrinsic value.
12. The extended balcony adversely affects the character and significance of the listed building. Its bulk and scale, as well as its location on the front elevation, results in it appearing as an incongruous addition that causes harm to the listed building. Though this harm is less than substantial (paragraph 133 of the NPPF), in that it does not involve works that would result in the near or total loss of significance of the heritage asset, it is not outweighed by any wider public benefit (paragraph 134 of the NPPF).
13. The term 'less than substantial harm' is set out in the NPPF, which only gives the option of 'substantial harm' or 'less than substantial harm'. The former means where the building or structure would be so damaged as to lose its important qualities, i.e. almost akin to demolition. The impact of any other development on a listed structure is therefore 'less than substantial'. There is recent case law (*Barnwell Manor Wind Energy v East Northants DC, in the Court of Appeal - 2014*), that sets out clearly that 'less than substantial harm', as set out in the NPPF, is not to be equated with a less than substantial objection to the grant of planning permission or listed building consent.
14. As such, the proposal is contrary to planning policies CS19 and CS22 of the adopted Core Strategy (2011), SP15 and SP20 of the Site Allocations and Policies

Development Plan Document (2014), and paragraph 134 of the National Planning Policy Framework.

Residential Amenity

15. The balcony extends an additional 2.5m further out from the building than was approved in 1997, and it is possible to look into neighbouring gardens from the platform. However, the existing balcony would also have resulted in partial loss of privacy to these properties. The increase in the level of overlooking beyond that of the previously approved balcony would not be significant enough to include as a second reason for refusal on the planning application. This is not a consideration on the listed building application.

Enforcement action

16. If Members are minded to accept the recommendation for refusal of the current application, it would be expedient to take enforcement action to secure removal of the balcony in view of the harm identified. It is recommended that three months should allow enough time for compliance.
17. As stated in paragraph 4 of this report, the posts of the original balcony were installed at the corners of the platform rather than near the middle as shown on the approved plans (appendix 1).
18. Given that the 1.5m protruding balcony was not built in accordance with the approved plans in 1997, its re-instatement as such would require planning permission/listed building consent in its own right. The enforcement notice could not therefore require the applicant to reinstate the previous balcony to a design that does not have permission/consent.
19. Consequently, it is recommended that the enforcement notice covers the removal of the balcony only. If the applicant then wished to apply for the 1.5m balcony again, this would be assessed on its merits.
20. Members are also asked to note the following information regarding enforcement action.

FINANCIAL IMPLICATIONS

21. Legal costs will be incurred if this matter is pursued, although this cost will be kept to a minimum. Should prosecution in the Courts become necessary, an application for costs will be made if the Council is successful. Any works carried out in default would allow the Council to demand payment from the landowner. If the Council is unsuccessful through the Courts, cost would fall to be met from current budgets.

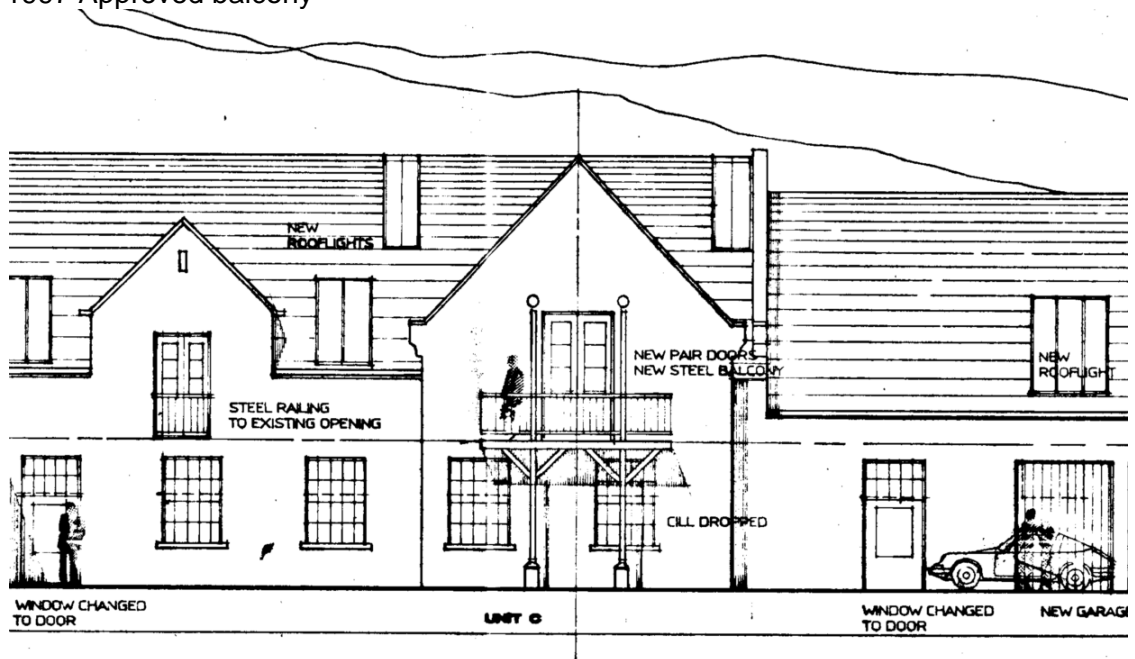
LEGAL IMPLICATIONS

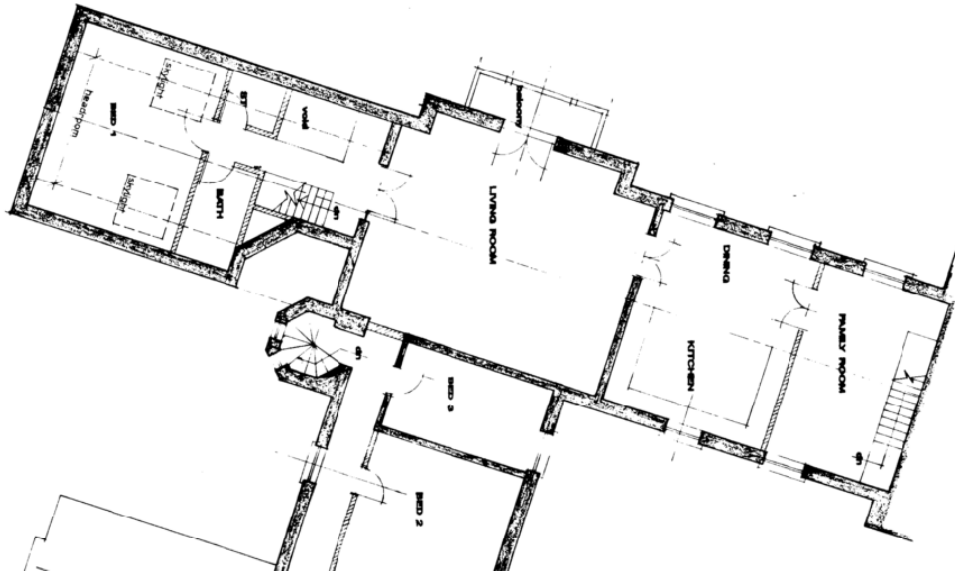
22. Under Section 172 of the Town and Country Planning Act 1990, the Council may serve an Enforcement Notice if Members are satisfied that:
 - a. There has been a breach of planning control and,
 - b. It is expedient to issue the Notice having regard to the provisions of the Development Plan and any other material considerations.

23. To the extent that the Human Rights Act may be engaged, it is considered that the enforcement action proposed is proportionate and justified response to the harm caused to legitimate public interests by the unauthorised development.

Appendix 1

1997 Approved balcony





Originally constructed balcony



Current Unauthorised balcony

