



Urgent Business

07 July 2015

Site	Former Steam Mill, Corn Hill, Wolverhampton
Proposal	The Steam Mill is in such a state as to be dangerous and immediate action should be taken to remove the danger. Pursuant to Section 78 of the Building Act 1984 (Dangerous building – emergency measures) it is proposed to give notice to the owner of the building of our intention to take immediate action to remove the danger. The step necessary for that purpose is the demolition of the building.
Ward	Heath Town
Cabinet Member with lead responsibility	Councillor Peter Bilson City Assets
Service Director	Nick Edwards, City Assets
Planning Officer	Name Stephen Alexander Tel 01902 555610 Email stephen.alexander@wolverhampton.gov.uk

1. Summary Recommendation

- 1.1 The Steam Mill is in such a state as to be dangerous and immediate action should be taken to remove the danger. It is recommended that pursuant to Section 78 of the Building Act 1984 (**Dangerous building – emergency measures**) the Strategic Director, Place in conjunction with the Managing Director authorise that notice be given to the owner of the Steam Mill of the Council's intention to take immediate action to remove the danger. The step necessary for that purpose is the demolition of the building.
- 1.2 This action shall have first been discussed with and approved in writing by the Chair of Planning Committee (or in the Chair's absence the Vice-Chair). The written authorisation must include details of the proposal and the justification for using the expedited procedure.
- 1.3 Any action taken under the Urgent Business rule at 6.9 of the Constitution must be reported to the next available Planning Committee which is on 21 July 2015 for information.

2. Location

- 2.1 The location of the Steam Mill building (henceforth “the building” in this report) is shown on the attached plan. The building is a nationally listed Grade II building and is located in the Interchange area, a key regeneration project for the city. It is near to Wolverhampton Railway Station and within the Union Mill Conservation Area.

3. Background

- 3.1 Interchange is being delivered in partnership by Neptune Developments Limited (“Neptune”), Centro, Network Rail, Virgin and Wolverhampton City Council (“the Interchange Partnership”). The bus station, Block 11 and Queens Building have been delivered, Block 10 is under construction, planning permission has been granted for an extension to an adjoining multi-storey car park and listed building consent has been granted for the removal of a metal clad extension to the building to facilitate a vehicular access and taxi drop-off area for a new railway station.
- 3.2 Following discussions with the then owners of the building, Gladedale, it was agreed the Interchange Partnership should acquire the building, in order to aid with the delivery of the new railway station. Neptune commissioned Curtins to carry out a structural survey as part of due diligence. Curtins are specialist structural engineers well respected for their considerable experience of inspecting listed buildings.
- 3.3 The structural engineer’s report received from Curtins (“the Curtins report”) concludes that the building is in a “very poor condition”. In addition the Curtins report states they cannot guarantee that the building will not suffer a failure at some stage in the future.
- 3.4 The report recommended the Council inspect the building and consider its structural safety in the context of the Curtins report; the Council instructed Dr Nigel Bartram from Baker Hall (the Council’s structural consultants) to consider the report and inspect the building.
- 3.5 This inspection took place a report was received from Baker Hall which described the building as “*parlous*” (which means full of danger or precarious). As a result, Corn Hill was completely closed and an exclusion zone installed around the building.
- 3.6 Given the contents of the Curtins report and the findings of our own structural consultant these were shared with the then owners of the site (Gladedale) and Historic England.
- 3.7 The reports were also shared with Network Rail and Virgin Trains. They are concerned about the safety of users of their car park (70 spaces) next to the building, due to the possibility identified in the structural engineers’ reports of debris falling from the building and any possible danger to the West Coast mainline should the building collapse. They have closed their car park.
- 3.8 A range of options has been considered to ensure that necessary and reasonable steps are taken to protect public health and safety. These have included the installation of the temporary exclusion zone around the building and the steps set out and recommended in this report.

- 3.9 A meeting took place between the structural engineer from Curtins and Historic England's own structural engineer on 24th June 2015. Also in attendance were representatives from the Council, Neptune and Historic England. All parties were concerned by the dangerous state of the building. The only outstanding matter for clarification was the appropriate remedy as the building is nationally listed. It was explained by the structural surveyor from Curtins that any steps to make the building safe so that part of the building might be retained and repaired would be likely to be dangerous. It was agreed that Curtins would provide an addendum report to explain this advice in writing.
- 3.10 The Curtin's addendum report was received on 1st July 2015 and shared with Historic England. This concluded that the building would be extremely difficult to safely access and repair.
- 3.11 The building has now been acquired by Neptune on behalf of the Interchange Partnership. Turley Heritage have been instructed by Neptune to advise on the potential impact on the heritage significance of implementing the works set out in the Curtins addendum report and have submitted a Heritage briefing report ("the Turley's report").

4. Public Safety

- 4.1 This is first and foremost a matter of public safety. The structural engineers' reports are clear that the building is dangerous. They are concerned that the building is in a "very poor condition" and they cannot guarantee that the building will not suffer a failure at some stage in the future. There is a danger of debris falling from the building and there is a possible danger to users of the railway station should the building collapse.
- 4.2 The interior of the building and the roof were mostly destroyed by fire in 2008. Since then, with no roof to protect the building from the elements, it has deteriorated further. The building has deteriorated to such an extent that the Curtins' report concludes that "this building is in a very poor condition and probably the worst the author has seen in the last thirty years". The Curtins' report also advises that the removal of the roof and damage to the upper floors have reduced the ability of the building to resist lateral loads and exposed the building to on-going deterioration. Added to this "the vaulted floors have been modified with total disregard to the effect on the remaining structure".
- 4.3 The Turley report states "the Curtins report advised that the cross walls of the engine house and canal inlet structure, that runs under the building, provide some lateral support, however they are connected to heavy beams that are supported by a single isolated pier which will be vulnerable to overloading and settlement."
- 4.4 The Curtins' report concludes "we cannot guarantee that the building will not suffer such a failure at some stage in the future and we would strongly recommend that the Wolverhampton City Council Building Surveyor inspects the building and considers its structural safety in the context of this report."
- 4.5 Baker Hall Ltd, on behalf of the City Council, inspected the building and found that:

“The effective removal of the interior structure of the building and the roof has rendered the remaining brickwork in a parlous state. The photographic record of the interior shows a mass of debris, twisted and corroded ironwork and rotten timber joists. The extent of this deterioration is considered to be too severe for the restoration of the building to be possible.

There is a strong likelihood of elements of the building, bricks, copings etc, falling to the ground, which poses a clear risk to people within the immediate vicinity. It is not possible to give an assessment as to the probability of a catastrophic collapse, but given the condition of the building and that it is open to the elements the rate of deterioration and hence risk can only increase.”

4.6 The building is clearly in a very poor condition and could suffer an immediate and dangerous failure such as to pose a danger to neighbouring land users and uses. As the building is dangerous the Council should take reasonable steps to safeguard the public. In deciding what those reasonable steps should be, the Curtins’ addendum report concludes that this is an extremely difficult building to safely access and repair. It states “the following items are most significant in restricting the access:

- The poor condition of the structure.
- The absence of fire damaged structure.
- The damage caused by the past alterations which makes this a vulnerable structure that has the potential for sudden collapse. Any steps required to avoid demolition which would make the building safe so that part of the building might be retained and repaired, in order to preserve the special architectural or historic interest of the building would be likely to be prohibitively dangerous.”

4.7 Based on the evidence from the structural engineers’ reports, it is considered highly likely that any attempts to access the building to carry out repairs would expose the operatives and the public to unacceptable levels of danger. Therefore, for overriding reasons of public safety, the only reasonable solution to remedy the danger is demolition of the building. The Council has powers under the Building Act 1984 to demolish the building. Section 78 provides that if it appears to a local authority that a building is in such a state as to be dangerous and immediate action should be taken to remove the danger, they make take such steps as may be necessary to remedy the danger.

4.8 If the recommendations of this report are agreed, a Section 78 notice will be served on the owners and the Council will immediately progress with the demolition process. The Interchange project partners, including the Council, will instruct Balfour Beatty to start the demolition process. A method statement for demolition is currently being finalised and a programme expected shortly.

4.9 As the building is considered to be dangerous listed building consent is not needed. Section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that it is an offence to undertake works affecting the special interest of a listed building without consent and sets out the following defence:

“a. That works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;

b. That it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;

c. That the works carried out were limited to the minimum measures immediately necessary;”

- 4.10 Section 78 of the Building Act provides the means of making the above defence. It is considered that the structural engineers’ reports provide sufficient evidence to demonstrate that the works undertaken to remove the danger are the minimum necessary in the interests of safety and health and that it is not practicable to secure safety and health by means of support or shelter.

5. The Nationally Listed Building

- 5.1 The building was Grade II listed by the Secretary of State in 1991 as a building of special architectural and historic interest. It is also within the Union Mill Conservation Area. In considering whether or not to serve a “dangerous notice – emergency measures” notice under Section 78 of the Building Act, the relevant consideration is public safety. The loss of the nationally listed building is not a material consideration in deciding whether or not to serve a Section 78 notice. However, given the very high level of legal protection afforded statutory listed buildings, for the sake of completeness and for the record, considerations relating to the loss of the listed building in a conservation area are set out below.
- 5.2 If a nationally listed building is not an immediate danger the legal route for a developer wishing to demolish the building would be to make an application under Section 54 of the Listed Building Act. Listed Building Consent will not be required if the building is demolished under Section 78 of the Building Act. Public Safety is the most important aspect. However it is worth rehearsing the considerations that would apply if such a listed building application were to be made for demolition.

Listed Buildings and Conservation Area Law

- 5.3 Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 makes it a statutory duty for a local planning authority, in considering whether to grant listed building consent or planning permission for development which affects a listed building or its setting, 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*”.
- 5.4 Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that, in the exercise of planning functions, “*with respect to any buildings or other land in a conservation area ... special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area*”.
- 5.5 A Court of Appeal judgement (*Barnwell Manor Wind Energy Ltd v. East Northamptonshire District Council, English Heritage, the National Trust and the Secretary of State for Communities and Local Government 2014*) has clarified the application of

section 66(1). The judgment notes that it is common ground that “...‘preserving’ means *doing no harm*” and establishes that, where a proposal would cause some harm, the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker, but should be given “*considerable importance and weight*” when the decision-maker carries out the balancing exercise.

- 5.6 A related High Court case of *The Forge Field Society et al v Sevenoaks District Council et al (2014)* considered the duties under sections 66 and 72 and stated that a finding of harm to the setting of a listed building or to the character or appearance of a conservation area “*gives rise to a strong presumption against planning permission being granted (and that) the presumption is a statutory one.*”. The judgment clarified that the presumption “*is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. But an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering.*”.

Planning Policy

- 5.7 The City Centre Area Action Publication Plan (“the AAP”) Policy CA3 seeks to “enhance the setting of important heritage assets, including the canal, Old Steam Mill, Chubb Building, Prince Albert Public House and conservation areas” and the “protection and enhancement of public spaces and local heritage/townscape features”.

- 5.8 Steam Mill is within the Interchange masterplan area. The AAP identifies the area for a public transport hub with a new railway station and around 1,000 square metres of retail and leisure development. The AAP describes Interchange as a strategically important development opportunity to create a new railway station with associated infrastructure. The Interchange policy aims for:

“Exemplary standard of design to reflect gateway location, create new civic spaces, maximise canalside location and enhance the conservation areas covering parts of the site and the setting of the Old Steam Mill Grade II listed building.”

Architectural & Historic Interest and the Character & Appearance of the Conservation Area

- 5.9 The legal tests set out in paragraphs 5.3, 5.4, 5.5 and 5.6 above set a very high bar to overcome and mean that there is a strong presumption in planning law in favour of preserving a Grade II statutorily listed building in a conservation area.

- 5.10 When the building was statutory listed it was described as:

“Rebuilt after fire of 1851 by William Fairbairn and Sons of Manchester. Built of brick with stone keystones and parapetted slate roof. Open rectangular plan. 3 storeys with basement; 9-window range. Keyed segmental-arched basement windows. Recessed bays articulated by piers rising to stepped course and dentilled cornice. Keyed segmental-arches over doors and windows, the latter with centre and top-hung casements. Interior noted as having cast-iron framework, maple floors, staircases and iron roof trusses. The original mill was built c1800 on the site of a former windmill. This is

an early example marking the second phase of building fireproof structures, by an important Manchester engineering firm/ The former steam engine drove 18 stones.”

- 5.11 Curtins take issue with the description of the building as a “fireproof” mill structure for technical reasons set out in their addendum report. The Curtins report also advises that multiple voids had previously been cut through areas of the vaulted masonry to accommodate the manufacturing processes. The Turley’s report states that:
- “This has not only weakened the structural integrity of the building but, based on the available information, can also be considered to have eroded the heritage significance of the listed building.”
- 5.12 Due to the poor state of the building and the great difficulties in accessing the building Curtins have not been able to propose a safe method for repairing the building. The Turleys report advises that even if an alternative to full demolition could have been safely identified “the special interest of the building would be further harmed by the need to partially dismantle key parts of the east gable and front elevation”.
- 5.13 The interior of the building and the roof was mostly destroyed in the 2008 fire. From the evidence contained in the detailed and thorough Curtins reports it is reasonable to conclude there is limited historical interest in the remaining structure and little merit in preserving the building. It is considered that the building is in such poor condition that there is little left of the special architectural historic merit which made it worthy of protection in order to provide justification for its retention. This is particularly relevant in this case in the context of other material considerations, including public safety. However, what is still left, including some of the external features mentioned in the listed building description should according to planning law still be given considerable importance and weight in the planning balance.
- 5.14 The building is an imposing, albeit currently derelict, structure in the Union Mill Conservation Area. Before the fire of 2008 and its subsequent deterioration, or if the building was restored, it would have a positive impact on the appearance of the conservation area. Its current derelict and negative appearance is not considered to be due to wilful neglect; this is a difficult site with its redevelopment potential constrained by poor access and its proximity to the west coast mainline. Attempts have been made in the past to progress schemes for residential conversion, however, there were doubts cast on the future of the building by previous proposed metro routes and the recession deepened viability issues. In its current state the removal of the building would not have a detrimental impact on the appearance of the conservation area.
- 5.15 Three listed building consents obtained prior to the Curtins’ report show that reasonable efforts were made to establish a partial demolition and stabilisation of the building:
- 14/00102/LBC Demolition of steel clad section (expires 12.03.17). Consent allows railway station access and taxi run-around to be created. But only if remaining structure could be safely supported.
 - 14/00580/LBC Dismantle lower centre east gable (enabling access) and rebuild (expires 31.10.17). Consent allows access to the damaged material within the building, but due to the condition of the building human safety would not be guaranteed.

- 14/01388/LBC Partial demolition to enable removal of fire damaged material and essential stabilising works (expires 30.01.18). Consent allows access via the north west and west elevations to undertake stabilisation works. However human safety would not be guaranteed.

5.16 When the Union Mill Conservation Area was designated in 1985, part of the identified character was the collection of former mill buildings and factories in one area either side of the Birmingham Canal. The Union Mill building has since been demolished and the Albion Mill building has been successfully restored and converted to residential use. The loss of another Mill building will not preserve or enhance this historical character of the area and this consideration should according to planning law be given considerable importance and weight.

Interchange Project

- 5.17 Wolverhampton is a principle railway station on the West Coast Mainline handling over 4.75 million passengers per annum, a figure which has more than doubled since 2005. It is pivotally located and is a major and unique strategic opportunity for the Black Country, serving the whole one million sub-regional population in terms of jobs, business and services. The existing station facilities and capacity are not fit for purpose.
- 5.18 The vision for the Interchange is the area will be a modern integrated public transport interchange and a hub for high grade commercial development. The area will provide a vital gateway for visitors to Wolverhampton and the Black Country and will benefit from a transformed railway station and Midland Metro line extension.
- 5.19 The AAP identifies the City Interchange & Commercial Gateway quarter as crucial to the vitality and viability of the city centre. The area provides a vibrant mixture of uses and important heritage assets. The Interchange scheme will transform perceptions of the City due to a vastly improved visitor experience at the railway station and its environs.
- 5.20 The strategy for this important area is to strengthen its role as a gateway into the city, improving public transport linkages and creating a new multi-modal transport hub. The Interchange redevelopment is being coordinated by the Interchange Partnership and is recognised as a key project within the Black Country Growth Plan.
- 5.21 The centrepiece for phase two will be a new railway station and a Metro extension that will branch from the current terminus near to the Bilston Street / Pipers Row junction, pass along Pipers Row to the Lichfield Street Junction and then through the heart of the new commercial development to the station.
- 5.22 Policy CA3 of the AAP states:

“The City Interchange & Commercial Gateway will be an area of comprehensive regeneration providing a fully integrated multi-modal transport hub, deliver new commercial floorspace for high value jobs and improve the strategic gateway to Wolverhampton and the Black Country. The key priorities are a multi-modal transport hub with a redeveloped railway station and Midland Metro line extension at its core”.

- 5.23 Interchange is a priority of the Local Economic Partnership (LEP) and is supported by £13.5M of LEP funding, comprising £4.5M of Local Growth Funding and £9M of Local Transport Board funding. The Department for Transport has supported an innovative funding model using the expected station assets to generate an income stream. This project is a key gateway scheme for the Black Country and beyond and will generate economic growth and growing passenger numbers. Interchange will make a significant contribution to the growth of the city; it will unblock potential investment on the back of greater accessibility provided by the integration of transport nodes.
- 5.24 The Interchange project is strategically vital to the future regeneration of the city. The delivery of the project is dependent on the removal of the danger identified by the Curtins report. Unless the situation is resolved, the access to the new station, the extension to the multi-storey and the new station itself will not be able to progress. The building is a very serious and significant impediment to realising the substantial regeneration outputs in terms of job creation and a substantially improved environment. The new railway station is hugely significant in improving the image of the city and the experience for visitors and residents, particularly as the existing station building is so poor. The condition of the building is stopping public money from being invested on the Interchange and hampers much needed investment in a key regeneration project.
- 5.25 Removing the building will also allow opportunities for the public realm to be improved. If the building is removed the proposed approach to the new station could be amended to allow a more generous area for the main drop off and taxi area, significantly improving the public realm in the area, and creating opportunities for significant improvements to the local environment through hard and soft landscaping.
- 5.26 Wolverhampton Interchange is identified as a project of strategic importance in the Strategic Economic Plan for the Black Country. It will deliver a multi-modal transport hub comprising a new train station, multi-storey car park extension and an extended tram connecting to the railway station through a new stop at the bus station. It will deliver 30,000 square metres of office, retail and leisure floorspace, £80m of private sector funding and 2000 jobs. This project is critically important for Wolverhampton and the Black Country. The benefits of removing the building to the Interchange project and the regeneration of the city are highly significant material considerations which strongly mitigate against the loss of the listed building.

Other Material Considerations

- 5.27 The public safety issues as set out in section 4 above are of course highly relevant to any consideration of whether the building should be retained and is also a highly significant material consideration in this exercise.
- 5.28 Estimated costs involved in repairing or demolition the building are set out in the following table from the Turley's report:

Option 1: Temporary structural stabilisation, temporary repairs and indicative structural repairs	£10,554,000 - £13,150,000
Option 2: Partial demolition including stabilisation prior to demolition, and façade retention including	£5,000,000 - £5,330,000

strengthening or replacing existing, removing sections of the top wall and rebuilding the north east corner.	
Option 3: Full demolition, including site clearance and hoardings.	£1,160,000 - £1,580,000

The costs of repair are likely to be so high that they would seriously undermine the delivery of the whole project rendering it unviable.

- 5.29 The building is currently a derelict eyesore that creates a very poor impression of the city as visitors arrive into the railway station; it is frequently remarked upon by both visitors and local people as a blot on the landscape. Removing the building would be good for the image of the city and help attract investors who may otherwise be deterred.
- 5.30 The demolition of the building and the delivery of the Interchange project would transform the city centre around the new railway station and encourage investment in the neighbouring areas including the Canalside Quarter. This is identified in the AAP as a regeneration opportunity and includes much of the Union Mill Conservation Area and includes historic assets that would benefit from restoration. Future investment in these buildings and the area would be likely to benefit the future preservation and enhancement of the Union Mill Conservation Area.

Conclusion

- 5.31 In planning law there is a strong statutory presumption in favour of retaining the building as it is statutory listed and in a conservation area, however this presumption is not irrebuttable. In this case there is not much left of the building that is of special architectural or historic interest. Even so case law holds that what remains of value should be given considerable importance and weight in the planning balance. In this case the public safety considerations, the negative impact on the Interchange project, and the positive impact on the regeneration of the city that the Interchange will deliver as set out above amount to very powerful considerations that justify the demolition of the building.
- 5.32 On balance it is considered an application for listed building consent could have been recommended for approval if it had been necessary.

6. Financial Implications

- 6.1 The Building Act provides for provision to recover the costs of demolition from the owner. In this case as the owner is Neptune, part of the Interchange Partnership, the costs of demolition will come out of the Interchange project budget.

7. Legal Implications

- 7.1 The Council has considered its various powers to deal with the building in the most appropriate way bearing in mind the risk to the safety of the public and its listed building status.
- 7.2 The Council has powers under the Building Act 1984 to demolish the building.

Section 78 provides that:

(1) If it appears to a local authority that:

(a) a building or structure, or part of a building or structure, is in such a state, or is used to carry such loads, as to be dangerous, and

(b) immediate action should be taken to remove the danger, and they may take such steps as may be necessary for that purpose.

- 7.3 As the building is considered to be dangerous listed building consent is not needed but the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 have been taken into consideration in any event and are set out in paragraphs in 4.9, 5.3 and 5.4 above.
- 7.4 Other options such as compulsory purchase and repairs notice have been considered and are deemed not to be appropriate.
- 7.5 The options have been presented for discussion with Queens Counsel, a listed building and planning specialist. After visiting the site and discussing with employees, he advises that a Section 78 Act notice is the most appropriate way forward.

8. Conclusion

- 8.1 In this case the safety of the public supersedes all other considerations. Immediate action should be taken to make the building safe and the only reasonable means of achieving this without causing further danger is to demolish the building. The key recommendation of this report is that a Section 78 notice should be served on the owner that we intend to demolish the building and thereafter the step to be taken is demolition of the building.
- 8.2 The loss of the nationally listed building is not a material consideration in the determination of whether or not to serve a Section 78 notice. However for the sake of completeness and for the record considerations relating to the loss of the listed building have been set out above.

9. Detailed Recommendation

- 9.1 The Steam Mill is in such a state as to be dangerous and immediate action should be taken to remove the danger. It is recommended that pursuant to Section 78 of the Building Act 1984 (**Dangerous building – emergency measures**) the Strategic Director, Place in conjunction with the Managing Director authorise that notice be given to the owner of the Steam Mill of the Council's intention to take immediate action to remove the danger. The step necessary for that purpose is the demolition of the building.
- 9.2 This action shall have first been discussed with and approved in writing by the Chair of Planning Committee (or in the Chair's absence the Vice-Chair). The written authorisation must include details of the proposal and the justification for using the expedited procedure as set out in this report.

- 9.3 Any action taken under the Urgent Business rule at 6.9 of the Constitution must be reported to the next available Planning Committee which is on 21 July 2015 for information.

Background Papers

1. Report on Structural Condition (Curtins)
2. Report Following Inspection of Steam Mill (Baker Hall Ltd)
3. Addendum to the Report on Structural Condition (Curtins)
4. Heritage Report (Turleys)