

Application Number:	2024/0264	Application Type:	Listed Building Consent
Proposal:	Listed Building Consent for painting the bricked-up entrance to the Waterfoot railway tunnels with a mural	Location:	Entrance to Railway Tunnels, Newchurch Road, Waterfoot. Rossendale.
Report of:	Head of Planning and Building Control	Status:	For publication
Report to:	Development Control Committee	Date:	15/10/2024
Applicant:	Ms Leah Armitage	Determination Expiry Date:	10/09/2024 Ext of Time:- 11/10/2024
Agent:	Ms Leah Armitage		

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REASON FOR REPORTING	
Outside Officer Scheme of Delegation	Yes (Council Application)
Member Call-In Name of Member: Reason for Call-In:	No
3 or more objections received	Yes
Other (please state):	No

HUMAN RIGHTS

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights:

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right of peaceful enjoyment of possessions and protection of property.

1. RECOMMENDATION

That Listed Building Consent be granted.

2. **SITE**

Waterfoot Railway Tunnels (there are two) are grade II listed and are located to the immediate south east of the Waterfoot Local Shopping Centre and some 320 metres south east of the junction of Newchurch Road and Burnley Road East. They are no longer used as railway tunnels with one of them 'blocked up' and the other currently used as part of the East Lancashire Cycleway. The tunnel entrances themselves are constructed of regular coursed natural stone.

3. **RELEVANT PLANNING HISTORY**

The tunnels themselves have not been the subject of any recent relevant planning history. However, planning permission was granted on 8th October 2020, under planning approval number 2020/0270, allowing for a freestanding memorial depicting the image of a person to be erected near to the north western entrances. This has since been erected.

4. **PROPOSAL**

Listed Building Consent is sought to paint a mural on the stone blocks that have been used to infill one of the tunnel mouths at the north western entrance. For clarification the scheme has been amended since the application was first submitted and the mural now identified as the 'Amended Plan–Proposed Elevation' on the Council's website, and as 'Proposed Elevation' in this report, is the one that is now proposed.

5. **POLICY CONTEXT**

National

National Planning Policy Framework

Section 16 Conserving and Enhancing the Historic Environment

Development Plan Policies

Rossendale Local Plan 2019 to 2036

Policy ENV2 Historic Environment

Other Material Planning Considerations

National Design Guide

National Planning Practice Guidance

6. CONSULTATION RESPONSES

Consultee	Summary of Comments received
Growth Lancashire (Conservation)	Raised no objections to the original scheme provided that the mural did not encroach onto the tunnel arch itself. Have similarly raised no objections to the revised proposal subject to the same requirement. NB:- For clarity, whilst Growth Lancashire did not have sight of the submitted Heritage Statement when making their initial comments, they did when commenting on the revised scheme.

7. REPRESENTATIONS

The application was originally advertised by posting a site notice outside of the site (close to a public footway and a cycleway) and by inserting an advertisement in a local newspaper. These were posted/inserted on 19th July and 9th August 2024 respectively. Two objections were subsequently received from the Rossendale Civic Trust and 25 from local residents, the objections being:-

- a) that the application lacked the information required for the determination of a Listed Building Application and should therefore either be refused on those grounds or withdrawn,
- b) that it would not be possible to add the mural shown because it would not relate in a satisfactory manner in practice to the three-dimensional surface of the tunnel mouth.
- c) that the mural would relate in an unsatisfactory manner to the tunnel mouth because it would overlap the tunnel arches. As such it would harm the appearance of this listed structure.
- d) that the mural would detract from the historic character of this listed structure and the surrounding area in general. It would not appear subservient to the tunnel because of the colours to be used to paint it and would also dominate its surroundings.
- e) that local residents should have been consulted on the proposal.
- f) that some of the information about the proposal was missing from the Council's website.
- g) that the mural would encourage more graffiti in the area.
- h) that the money would be better spent on other projects in the area, and
- i) that a decision on this application would be premature pending the outcome of a decision on the Waterfoot Master Plan which is still subject to public consultation.

The application has recently been amended and has been further advertised for a period of 14 days by way of another site notice and newspaper advertisement. The Rossendale Civic Trust and people who have previously made representations in respect of the scheme have also been formally notified giving them an additional 14 days to comment. The revised publicity period expired on 23rd September 2024 and a further ten (10) representations have since been received as a result. These re-iterate the concerns outlined in (d) (e) (g) and (h) above.

The applicant has also submitted Design, Access and Heritage Statements in support of their application in which they state:

- a) that the 'blocked up' tunnel has no aesthetic value,
- b) that the mural will enhance the appearance of the tunnel entrance and the appearance of the surrounding area,
- c) that the proposal will create a piece of large-scale public art that will positively contribute to the emerging Waterfoot Arts Town concept.

8. **ASSESSMENT**

Impact of the proposed mural on the character of the listed tunnel

Paragraph 203 of the National Planning Policy Framework requires that when determining applications affecting heritage assets local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of those assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that the 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.

Paragraph 205 adds that when considering the impact of a proposed development on a designated heritage asset, great weight should be given to the asset's conservation (the more important the asset the greater that weight should be).

The above is essentially echoed in Policy ENV2 of the Council's adopted Local Plan.

In this case the main issue for consideration is whether or not the introduction of the proposed mural will meet these aims by reasonably preserving and enhancing the character, appearance and setting of this grade II listed structure. In this case it is considered that it will provided that it is painted wholly on the blockwork that has been used to infill the tunnel mouth and not on any part of the surrounding stone arch itself. A condition to ensure this can reasonably be imposed and is therefore recommended.

The proposal has been considered by the Council's Conservation Consultant who supports this view agreeing that the mural will cause no discernible level of harm or loss of significance to this heritage asset provided the above limitation is imposed.

In view of the above, and subject to the imposition of a condition of the type described, it is considered that the proposal will be acceptable in heritage terms reasonably meeting the requirements of Section 16 of the National Planning Policy Framework and Policy ENV2 of the adopted Local Plan in this regard.

Other Issues

The concerns raised by the objectors to the application, as set out in the 'Representations' section above, have been assessed. Those identified as (c) and (d) are not considered to represent justifiable reasons for refusing the scheme in this instance for reasons given earlier in the report. In response to the other concerns:-

Concern (a) - Sufficient information is considered to be available to enable an informed decision to be made on the application. The scheme has been considered by Growth Lancashire (the Council's Heritage Consultants) on the basis of the information available and they have raised no objections to it subject to the proviso that the mural does not encroach onto the tunnel arch itself. A condition is recommended to ensure this.

Concern (b) – It is considered that it would be technically possible to paint the proposed mural onto the prescribed area inside the tunnel mouth.

Concern (c) – Addressed earlier in the report.

Concern (d) – Addressed earlier in the report.

Concern (e) - The application has been advertised, in both its original and amended forms, in the manner described in the 'Representations' section above. This is in accordance with the requirements of the current planning legislation. For the record nos. 670 to 680 Bacup Road are the properties that directly face the tunnel mouth and in both cases the site notice was posted diagonally opposite 680. It is considered that it was therefore reasonably visible to nearby properties.

Consultation carried out prior to the submission of an application would normally be the responsibility of the applicant and/or their agent. However, there is no formal requirement in the current planning legislation for applicants or their agents to carry out consultation with the general public prior to submitting applications of this nature.

Concern (f) - The Heritage Statement and some of the submitted Supporting Information was originally missing from the Council's website. However, all documents that are relevant to the consideration of the application in its revised form are now available to view 'on-line' and have been since 4th September 2024.

Concern (g) – This is not a matter that can be considered as part of the determination of a listed building application. It would not represent a justifiable reason for refusing the application if it sought planning permission either. Issues of graffiti, should they subsequently occur, could reasonably be addressed by other agencies.

Concern (h) – This is not a matter that can be considered as part of the determination of a listed building application. It would not represent a justifiable reason for refusing the application if it sought planning permission either. The issue of how money should be spent is not material to the consideration of a planning application.

Concern (i) – It is considered that the proposal will accord with the general aims of the Draft Waterfoot Master Plan with respect to proposals for public art. These are *‘to collaborate with Waterfoot’s talented artists to create distinctive public art throughout the town. This will include murals, innovative street furniture, and creative public realm designs’*.

Conclusion

It is considered that the proposed works will reasonably preserve and enhance the character, appearance and setting of this Grade II listed structure. The proposal is therefore considered to be in accordance with the requirements of Policy ENV2 of the Council’s adopted Rossendale Local Plan 2019 to 2036 and Section 16 of the National Planning Policy Framework.

9. RECOMMENDATION

That Listed Building Consent be granted subject to the following conditions:-

1. The works to which this consent relates shall be begun before the expiration of three years from the date of this consent.

Reason: To comply with the requirements of Section 18 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following drawings, unless otherwise required by the conditions below:

<u>Drawing Title</u>	<u>Draw No</u>	<u>Date Rec’d</u>
Location Plan	100023294	16/07/2024
Proposed Elevation		03/09/2024

Reason: For the avoidance of doubt and to ensure a satisfactory standard of development, in accordance with the requirements of Policy ENV2 of the Council’s adopted Rossendale Local Plan 2019 to 2036 and Section 16 of the National Planning Policy Framework.

3. Notwithstanding any details given on the approved plans, the mural shall be painted wholly on the blocks that have been used to infill the tunnel mouth and shall not, at any time, encroach onto the adjoining stone arch.

Reason: For the avoidance of doubt and so as to preserve the character, appearance and setting of this heritage asset, in accordance with the requirements of Policy ENV2 of the Council’s adopted Rossendale Local Plan 2019 to 2036 and Section 16 of the National Planning Policy Framework.

10. INFORMATIVE

1. The proposal complies with the development plan and would improve the economic, social and environmental conditions of the area. It therefore comprises sustainable development and the Local Planning Authority has worked proactively and positively to issue the decision without delay. The Local Planning Authority has therefore implemented the requirement as set out in Paragraph 38 of the National Planning Policy Framework.





