



Appeal Decision

Site visit made on 23 November 2021

by E Worthington BA (Hons) MTP MUED MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 March 2022

Appeal Ref: APP/N2535/W/21/3270518

Land at the corner of Spital Street and North Street

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Steven Ralff against the decision of West Lindsay District Council.
 - The application Ref 141017, dated 3 May 2020, was refused by notice dated 7 January 2021.
 - The development proposed is described as 'Change of use of land to Park. Stationing of vehicle for hot and cold foods. Provision of seating. Provision of raised area for seating, activities and entertainment. Provision of seating benches. Provision of wooden picket fencing at 1.5 metres height. Provision of metal storage shed. Provision of wheelie bin womery'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the proposal is in a conservation area and relates to the setting of a number of listed buildings, I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
 3. The appellant's name is spelt as Ralff on the planning application form, but as Ralf on the Certificate B and the Council's decision notice. However, since Ralff is also used on the appeal form, I have used this spelling in my heading above.
 4. At the time of my visit the use of the site as a park had commenced and some of the development referred to in the application and shown on the plans had taken place. However, since it has not been implemented in its entirety (the storage unit for example was not in place), I will continue to refer to the scheme overall as a proposal.
 5. The decision notice refers to the effect of the proposal on nearby listed buildings and non-designated heritage assets. Whilst the County Court Building and 12 North Street are specifically mentioned, no other buildings are identified. Additionally the Conservation Officer's comments refer to other listed buildings in close proximity the site. The Council has clarified which these are, and in the interests of fairness the appellant has been given the opportunity to provide further comments in relation to them. These buildings are therefore also considered in my decision.
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Application for Costs

6. An application for costs has been made by Mr Steven Ralff against West Lindsay District Council. The application is the subject of a separate Decision.

Main Issues

7. The main issues are whether the proposal would preserve or enhance the character or appearance of the Gainsborough Britannia Conservation Area, and whether it would preserve the settings of nearby listed buildings and non-designated heritage assets.

Reasons

Conservation Area

8. The appeal site is an open area of land in a prominent location on the corner of North Street and Spital Terrace in the centre of Gainsborough. It is within the Gainsborough Britannia Conservation Area which covers part of the central area of the town. This includes a mix of residential, commercial and industrial uses and is centred on the Britannia Works, a substantial Grade II listed former industrial building.
9. The character and appearance of the conservation area includes a variety of high quality historic buildings in a formal urban setting with some open spaces at key junctures and reflects the prosperity and growth of Gainsborough in the 19th century. I consider that the significance of the conservation area, in so far as it relates to this appeal, is mainly derived from the quality and variety of the historic buildings, the use of high quality local materials and traditional detailing, and the relationship of the buildings to each other and the spaces around them that make up the distinctive and cohesive townscape. As an open green space in a key and prominent roadside position at an important road junction which is recognised as a primary entrance/gateway to the town centre, the appeal site contributes positively to the historic character and appearance of this part of the conservation area.
10. Whilst I note that the Conservation Area Appraisal (CAA) identifies the appeal site as a negative factor within the conservation area (it is described as a weak corner and poor open space and is identified on the accompanying plan as a negative influence and lost corner), I consider that these findings relate predominantly to the condition and maintenance of the site.

Settings of the listed buildings and non-designated heritage assets

11. There are a number of listed buildings nearby, as well as other buildings which the Council identifies as non-designated heritage assets. The County Court Buildings, Market Street, is a Grade II* listed building (Ref:1063525) to the south west of the appeal site. Built in 1759 it is a grand and elegant civic building of some stature, and as a Grade II* building it is particularly important and of more than special interest.
12. 14 Spital Terrace is a Grade II listed building (Ref: 1063492) and is an early 19th century two storey grey brick house on the south side of Spital Terrace to the east of the appeal site. Cleveland House at 16 Spital Terrace adjoins No 14 on its eastern flank and is also Grade II listed (Ref: 1168458). This is an

- attractive early 19th century two storey house in pale brick. The listings for Nos 14 and 16 also indicate that numbers 10 to 24 (even) Spital Terrace form a group of which Nos 10 and 12, and 18 to 24 (even), are of local interest. This group which form a cohesive collection of two storey properties constructed of pale brick and historically occupied as houses.
13. Turning to the non-designated heritage assets, the former Post Office Building at 12 North Street, now the Heritage/Welcome centre is an imposing, three storey red brick and ashlar building which turns the corner into Spital Terrace and dates to 1904. It is a strong corner feature built up to the back edge of the pavement in a prominent position highly visible at the busy road junction. Further to the east, 11 Spital Terrace is on the north side of Spital Street and is the former temperance hall built in the late 19th century.
 14. Despite their different ages and architectural styles and types, and accepting that they all have their own particular features of interest and significance, there is nevertheless a cohesiveness to this impressive concentration of town centre buildings. Thus, this grouping of heritage assets has a shared significance. Insofar as relating to this appeal, this common significance is derived from their historic interest as town centre buildings which collectively provide evidence of the role and status of the town and its historic development.
 15. The settings of these buildings, and the contribution they make to the significance of those assets, in so far as they relate to this appeal, is derived from the rich historic character of the urban townscape and its buildings, streets and spaces.
 16. The Framework defines setting as the surroundings in which a heritage asset is experienced. The appeal site is an open corner site in a prominent position which has a presence in North Street and Spital Terrace. Whilst it is screened by buildings in longer range views on approach from the south on North Street and from the east along Spital Terrace, the appeal site is highly visible on approach from the north along North Street including at its junction with Roseway. From here more open views of the site are possible despite the slight curve of North Street and the existing buildings there. It is also prominent on approach from the west along the initial section of Spital Street when leaving the roundabout.
 17. The County Court Buildings are located to the south west of the appeal site, on a prominent junction at the corner of Market Street and Beaumont Street. Whilst it is not in particularly close proximity to the appeal site, this important building is seen as a strong terminating feature when looking south down North Street with the appeal site in the foreground. Whilst Cleveland House at 16 Spital Street is separated from the appeal site by 14 Spital Terrace, the appeal site adjoins the flank wall of Nos 10 and 12 Spital Terrace and is directly at the western end of this group which includes the listed buildings at Nos 14 and 16. Views of the flank of this grouping from the west are taken with the appeal site in the foreground.
 18. The former Post Office Building at 12 North Street occupies the corner opposite the appeal site and has a direct and facing relationship with it with high levels of intervisibility. The former Temperance Hall is also on the other side of Spital Terrace opposite the appeal site a little to the east, but more oblique views between that building and the appeal site are still possible.

19. This being so, the collection of buildings are close to the appeal site, some over-look it or border it, and others form part of the back drop to it. Overall I consider that there is inter-visibility to varying extents between all the identified buildings (or groups of buildings) and the appeal site, and that some contextual views of the buildings include the appeal site. Thus the appeal site has a visual relationship with the buildings and the urban townscape, and therefore contributes to their settings. I have had special regard to this matter in considering the appeal.

The effect of the proposal

20. The proposal seeks the use of the site as a pocket park and the siting of a catering vehicle which will serve hot and cold food and drink. It also includes seating, raised areas, fencing, raised planters and a storage shed. I understand that the site was previously unkempt and overgrown and that the proposal would result in improvements to the appearance of the site and the public realm whilst for the most part retaining the site's open nature.
21. That said, in placing the catering vehicle and the storage shed on the site, the proposal would introduce two sizeable units to what was an open area. The catering vehicle would be a significant moveable trailer measuring around 7.5 metres by 2.1 metres that would have a wood effect external finish and corrugated metal roof. The description of development refers to a metal storage shed and the proposed site plan indicates a metal shed in the area immediately adjacent to the catering vehicle measuring 5.18 metres by 3.6 metres. However, the photos submitted with the application show a timber storage shed, and the graphic in the appeal statement refers to a timber clad container.
22. In any event, both of these proposed units would be considerable in size and have a modern and somewhat rudimentary appearance and makeshift feel. Due to their functional design, utilitarian pre-fabricated nature and use of basic low quality materials, they would not be appreciated as development with any architectural quality or merit. They would fail to replicate the high quality materials, detailing and materials that characterise the conservation area, and as a result would stand out as incongruous and jarring additions to the site.
23. I have had regard to the nearby highway infrastructure including the pedestrian/traffic control paraphernalia such as railings, street lights, traffic lights close to the site, along with the noise from vehicles, as well as the other development nearby referred to by the appellant, including the Methodist church on North Street and the KFC on Roseway. However, even in this context, I consider that the proposal would appear unduly discordant and intrusive.
24. I have also considered the appellant's suggestion that the colour of the catering vehicle could be changed and controlled via a planning condition, but have seen no evidence to suggest what alternative finish is intended or to explain what specific mitigation this measure would provide. I also note the suggestion that landscaping could be provided, but have seen no details as to what is proposed in this regard or where it would be provided. Thus, I am not persuaded that these factors would lessen the proposal's unsatisfactory appearance to any meaningful extent.

25. The appeal site is in a prominent position on an important road junction at a primary entrance/gateway to the town centre. It is also within a sensitive historic townscape and has a visual relationship with a number of heritage assets as described. I accept that the catering vehicle and the shed would not take up all of the site, the majority of which would remain open and landscaped. Whilst I have seen nothing to suggest that they would not be permanently sited there, I also acknowledge that given their pre-fabricated nature the units could be readily removed from the site and that the development would be easily reversible.
26. Nevertheless, in introducing built form into an otherwise open green space and creating a crude utilitarian collection of buildings of an unsympathetic design within the settings of the nearby historic buildings, the proposal would unacceptably detract from the open space and historic townscape and diminish the contribution of the settings of those buildings to their significance. For these reasons I find that the proposal would fail to preserve the settings of the nearby listed buildings and non-designated heritage assets.
27. In undermining the settings, which also contribute to the historic significance of the conservation area, the proposal would also detrimentally affect how the conservation area is experienced. I therefore consider that the proposal would cause harm to the significance of the conservation area and would fail to preserve its character and appearance.

Heritage Balance

28. I therefore conclude on the main issues that the proposal would fail to preserve or enhance the character or appearance of the Gainsborough Britannia Conservation Area and would not preserve the settings of the nearby listed buildings and non-designated heritage assets. I give this harm considerable importance and weight in the balance of this appeal.
29. The Framework considers non-designated heritage assets at paragraph 203 and indicates that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing 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.
30. The Framework advises at paragraph 199 that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification. I find the harm to be less than substantial in this instance, but nevertheless of considerable importance and weight. Paragraph 202 requires that less than substantial harm should be weighed against the public benefits of the proposal, including where appropriate, securing its optimum viable use.
31. The site was previously overgrown and fenced off. It has been cleared and tidied, the metal security fence removed, and the Council acknowledges that visual improvements to the public realm arising from the proposal would enhance the site which is recognised as a negative factor in the CAA. The use

- of the site as proposed would also bring the open space element back into active maintenance and management and help to ensure that it does not fall back into neglect.
32. The site would be run by a charitable community organisation and provide a new social community facility within the town centre. The appellant intends to run a range of family activities and events for all and create a new vibrant community space providing food, drinks and entertainment. Third parties support the proposal which they consider would bring life to this part of town, provide locally sourced produce and freshly cooked food, and create a unique experience for visitors. Additionally the proposal would lead to a diversification of the food and drink offer in the town, provide some potential employment opportunities, and contribute to the regeneration of the town centre. These are all public benefits of the proposal.
 33. However, given the proposal's limited scale in terms of business activity, the economic benefits that would arise to the vitality and viability of the town centre, job creation and regeneration would be modest. Additionally, I am mindful that the benefits outlined that would arise from the provision of a new food and drink facility/social venue on the site could be gained via an alternative less harmful scheme.
 34. Furthermore, I have seen nothing to demonstrate that improvements to the open space and use of the site as pocket park could not be provided in the absence of the appeal scheme or are necessarily dependent on the siting of the catering vehicle and the storage shed. Whilst I understand that prior to the appellant taking over the site it was derelict and fenced off with no public access, the CAA indicates that historically there always appears to have been open space at this junction. It also recognises the potential for landscaped environmental improvement and enhanced planting there. The appellant's heritage statement refers to the formalisation of the historic default use of the site as public open space in the guise of a pocket park. As such, it appears that the site has longstanding use as an accessible open space.
 35. The benefits of the proposal are thus tempered by these factors. Accordingly, I give the public benefits arising from these matters only limited weight. No other public benefits have been put forward which would outweigh the harm to the designated heritage assets I have identified. Thus, I find that overall the public benefits of the proposal would not outweigh the harm to the significance of the designated heritage assets that I have identified. That the proposal was recommended for approval by the case officer does not alter my view.
 36. The proposal would thus be contrary to Policy LP25 of the Central Lincolnshire Local Plan (Local Plan) which requires proposals to protect, conserve and seek opportunities to enhance the historic environment. It would also be at odds with Local Plan Policy LP26 which requires all development to achieve high quality sustainable design that contributes positively to local character, landscape and townscape and supports diversity, equality and access for all. Furthermore it would fail to align with Local Plan Policy LP38 which requires development to seek to make a positive contribution to the built and natural environment and quality of life in Gainsborough and to protect, conserve and where appropriate enhance the benefits of heritage assets through sensitive development and environmental improvement (a).

37. The reason for refusal also refers to Policy NPP18 of the emerging Gainsborough Neighbourhood Plan which seeks to protect and enhance the heritage assets and states that (amongst other things) development in the conservation areas should demonstrate an understanding of the history and industrial quality of the area (7) and must demonstrate that any public benefits should on balance outweigh harm to the heritage value of these heritage assets (9). The Council's statement confirms that this has now been 'made' and forms part of the development plan. The proposal would also be contrary to this policy.
38. For these reasons the proposed development and works would fail to satisfy the requirements of the Act and paragraph 197 of the Framework and would be in conflict with the development plan.

Other Matters

39. I have considered the possibility of granting a temporary planning permission (since a permission with a limited period would to some extent lessen the scheme's impact on heritage assets and reduce the amount of resultant harm). However, the Guidance indicates that circumstances where a temporary permission may be appropriate include where a trial run is necessary in order to assess the effect of the development on the area, or where it is expected that the planning circumstances will change in a particular way at the end of that period. It has not been put to me that such circumstances apply in this instance, and I am conscious that the proposed use has been in operation since 2020. On this basis I am not convinced that a temporary permission is justified.
40. Reference is made to the appeal proposal being preferable to previously proposal for flats on the site. I have seen no further details of that scheme or as to the possibility or likelihood of it being implemented and confirm in any event that I have considered the proposal on its own planning merits and made my own assessment as to its impacts. As such, this is not a reason to allow development I have found to be harmful.
41. I note the appellant's view that the catering vehicle is a non-permanent use of land and is not operational development. I also acknowledge that he considers some elements of the proposal (such as the flower beds, planters, decking and planting, and picnic tables and benches) not to require planning permission and the fence to be permitted development. Within the context of an appeal under Section 78 of the Act it is not within my remit to formally determine whether the proposed development requires planning permission.
42. In order to establish these matters the correct approach is for the appellant to make an application under section 191 or 192 of the 1990 Act for a certificate of lawful use or development. The elements highlighted by the appellant form part of the appeal proposal and so are for me to consider on their merits when looking at the scheme as a whole. In the absence of any further information that would allow a comparison to be made, or to suggest that this alleged fallback position would be more harmful than the appeal scheme, this matter adds no weight in favour of the appeal scheme.

43. The appellant refers in detail to the calling in of the planning application to planning committee and the conduct of members at the meeting. Whilst this matter is also referred to in the appellant's costs application and my Costs Decision, I confirm that this is a matter between the Council and the appellant. It has no bearing on the planning merits of the case considered in this Decision.

Conclusion

44. For the reasons set out above, and having regard to all the other matters raised, I conclude that the appeal should be dismissed.

E Worthington

INSPECTOR