
Appeal Decisions

Site visit made on 11 November 2016

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS DipTP MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 December 2016

Appeal A: APP/Q3305/W/16/3151740 **Market Place, Frome, Somerset**

- 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 Frome Town Council against the decision of Mendip District Council.
 - The application Ref 2014/1269/FUL, dated 21 June 2014, was refused by notice dated 18 December 2015.
 - The development proposed relates to the public realm improvement of the Market Place adjacent to the Boyle Cross and includes: removal of the existing street furniture and excavation of the existing parking area; resurfacing of the site to form new pavement area with demountable traffic bollards and replacement street furniture; renovation of the Boyle Cross to working fountain and with new seating area and removal of existing parking and formation of a loading bay for vehicles only.
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Appeal B: APP/Q3305/Y/16/3151845 **Market Place, Frome, Somerset**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Frome Town Council against the decision of Mendip District Council.
 - The application Ref 2014/1271/LBC, dated 21 June 2016, was refused by notice dated 18 December 2015.
 - The works proposed relate to the public realm improvement of the Market Place adjacent to the Boyle Cross and include: removal of the existing street furniture and excavation of the existing parking area; resurfacing of the site to form new pavement area with demountable traffic bollards and replacement street furniture; renovation of the Boyle Cross to working fountain and with new seating area and removal of existing parking and formation of a loading bay for vehicles only.
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Appeal C: APP/Q3305/X/16/3149306 **Market Place, Frome, Somerset**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Frome Town Council against the decision of Mendip District Council.
 - The application Ref 2015/2334/CLP, dated 24 September 2015, was refused by notice dated 18 November 2015.
 - The application was made under section [192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is a proposed development at the Market Place and the Boyle Cross.
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Procedural Matters

1. The application for the LDC arose from the planning and listed building application process where there was a suggestion made that the development/works may be permitted development. The applicant was advised that if they wished to ascertain this an LDC application should be made. This was followed. So while the description of the works in the LDC application is brief, I have taken it to be those works set out in the planning application.

Decisions

Appeal A

2. The appeal is allowed and planning permission is granted for the public realm improvement of the Market Place adjacent to the Boyle Cross and include: removal of the existing street furniture and excavation of the existing parking area; resurfacing of the site to form new pavement area with demountable traffic bollards and replacement street furniture; renovation of the Boyle Cross to working fountain and with new seating area and removal of existing parking and formation of a loading bay for vehicles only at Market Place, Frome, Somerset in accordance with the terms of the application, Ref 2014/1269/FUL, dated 21 June 2014 and the plans submitted with it, subject to the conditions listed in Annex A.

Appeal B

3. The appeal is allowed and listed building consent is granted for the public realm improvement of the Market Place adjacent to the Boyle Cross and include: removal of the existing street furniture and excavation of the existing parking area; resurfacing of the site to form new pavement area with demountable traffic bollards and replacement street furniture; renovation of the Boyle Cross to working fountain and with new seating area and removal of existing parking and formation of a loading bay for vehicles only at Market Place, Frome, Somerset in accordance with the terms of the application Ref 2014/1271/LBC, dated 21 June 2016 and the plans submitted with it, subject to the conditions listed in Annex B.

Appeal C

4. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Application for costs

5. An application for costs was made in relation to Appeal C by Frome Town Council against Mendip District Council. The application is the subject of a separate decision.

Reasons

Appeals A and B

Main Issues

6. The main issues are:

- The effect on the significance and special architectural and historic interest of the listed building and on the conservation area.
- The effect on the vitality and viability of the town centre and parking.

Policy

7. The development plan includes the Mendip District Local Plan [LP]. LP Policy DP3 relates to heritage conservation. Proposals are required demonstrate an understanding of the significance of the heritage asset and its setting and justify any harm if found against the public benefit. LP Policy DP7 relates to design and amenity of new development and high quality design which results in durable, adaptable, sustainable and attractive places will be supported.
8. LP Policy DP9 relates to the transport impact of new development. It should maximise or improve sustainable forms of transport and make safe and satisfactory provision for access by all means of travel including suitable parking. LP Policy DP10 supports new development when an appropriate level of parking is proposed. Regard will be had to the objective of reducing growth in the use of private cars and the need for on-site provision to prevent problems of highway safety and congestion.

Heritage Assets

9. The Boyle Cross is listed grade II and the description is 1871, former drinking fountain. It is a tall crocketed shaft, octagonal, in Devon marble, with foliate cross at top. Large moulded octagonal basin with central octagonal shaft base with floral capping. Carved by a local man, Joseph Chapman. It was designed to be a fountain/cross, but does not currently function as a fountain. There is evidence that indicates that the inscription on the fountain was worn in 1982 and that a plaque with the wording was produced in about 1977 to be placed on a wall nearby. The significance and special architectural and historic interest relates to its age, design and location in the market square where it is an important feature.
10. The significance of the conservation area and its historic interest relate in general to its form which may broadly be described as a central medieval core of narrow streets around a market place from which a number of arms radiate, following development along the historic approach roads to the town. The central core comprises the mainly 16th, 17th and 18th century developments around the town's original settlement in Market Place and St John's Church on the south side of the River Frome, with a number of listed buildings that contribute to the conservation area's significance.
11. The core of the town has a high density of development, with few open spaces. The central area is characterised by narrow streets which climb the hill in a varied and haphazard fashion. Alleys and back streets are common and rows of houses lead at right angles from the main street ('courts'), which are a feature

- of the area. The market place is a very important part of the conservation area and its significance.
12. It is acknowledged by the appellant, as identified by the conservation officer, that there would be some harm caused by the proposal because it would cover the inscription. The council indicates that would be 'less than substantial' harm as identified in the National Planning Policy Framework (The Framework) and at the lower end of the scale of harm, but should be weighed against public benefit.
 13. The Neighbourhood Plan 2014 aims to improve the public realm, including for pedestrians, reducing traffic movements and to re-order the priorities between motorised vehicles, cycles and pedestrians and provide an improved setting for the markets and enhance the character and appearance of the town centre. The proposal would make significant contribution to all these aims.
 14. Currently most of the area is used for parking cars. These have a substantial visual impact, impeding views within the Market Square, including to and from the fountain/cross. To my mind these cause major harm to the cross/fountain and significantly compromise its presence as an important feature of the square or town, as historically intended.
 15. I acknowledge that the ground level would be made up on one side of the Boyle Cross, but I consider that this would improve the appearance of the Cross in the Market Square by levelling the base around it. There is an inscription on the lower stone that would be covered over. This is unfortunate, but as is noted above the inscription is not prominent, but worn, and in the past has been repeated in a sign on the wall adjacent. In addition, the inscription would be protected by the raised ground level and this would be reversible in the future. I consider the cross itself would be preserved. I also note the intention to reinstate the fountain. To my mind, providing that the actual detailed works proposed are the subject of a separate listed building consent, the reinstatement of the fountain would be a considerable benefit.
 16. Removal of the current car parking would be a major improvement and, while noting a little harm in relation to covering the inscription, I consider as it would be preserved below ground that overall the works would substantially improve the listed building and its setting. I conclude that it would overall preserve and enhance the significance and special architectural and historic interest of the asset. Even accepting some harm, which in terms of the National Planning Policy Framework would be 'less than substantial' this would be far outweighed by the benefits of improving the market place and setting of the Boyle Cross. It would also preserve the setting of the buildings around the square and enhance the conservation area as a whole. It would accord with LP Policies DP3 and DP7.

Vitality, Viability and Parking

17. The reason for refusal notes that the site is in the public realm and currently has an important function of providing parking spaces in a central and convenient location for local shops. It is considered that the parking spaces encourage through traffic and locals from the wider area to stop in Frome town centre, generating footfall for local shops and services, which is particularly important at the less busy times of day. The removal of the spaces is

considered detrimental to the vitality and viability of the town centre. However, the District Council provides little direct evidence of the impact.

18. There would be the loss of about 11 parking spaces in the Market Place and evidence from the appellant indicates that these are well used, with up to 450 movements in a day. However, there are about 10 car parks in Frome providing about 700 spaces and three within about 5 minutes' walk of the town centre. The appellant indicates that there would be plenty of space in these car parks. This was demonstrated in some photographs and at the time of my visit. Disabled parking spaces are provided opposite the Market Place and would not be affected by the proposal.
19. While there would be a loss of eleven spaces, I am satisfied that there is sufficient other car parking for it to remain relatively easy to find parking in the town. I accept that it would not be as convenient as those in the Market Square for through traffic. However, there is insufficient evidence to demonstrate that this would result in a material effect on vitality and viability. I conclude that the proposal would not have an unacceptable effect on the vitality and viability of the area.
20. I have also taken into account highway considerations. In my view the proposal would be more likely to lead to improvements in highway safety, removing spaces where cars have to back into or reverse out of spaces directly onto the highway, which was seen to be relatively busy. As noted above there is plenty of parking nearby, so the loss of the spaces would not result in parking shortages. As I have found that there is adequate parking elsewhere there should be little effect on use of private cars. However, if anything, the reduction in parking spaces would help towards encouraging the use of more sustainable forms of transport. I conclude that the proposal would accord with LP Policy DP9 and DP10.

Conditions

21. In the interests of planning control it is reasonable to require the development/works to be undertaken in accordance with the drawings submitted with the applications. While it is necessary to have the vehicle spaces as shown on the plans, the details of these are set out on the drawings. It is reasonable that there should be conditions controlling the materials to be used for these spaces and the other works, including bollards and seating in the interest of the character and appearance of the area. However, as I have found that there is a reasonable level of alternative parking I do not see a reason to have a condition requiring alternative parking spaces to be specifically identified. It is also reasonable in the interests of preserving the listed Boyle Cross that a full specification for recording and protection of the plaque is submitted to and approved in writing by the local planning authority. For the same reason it is reasonable that a specification for the repair works to the Boyle Cross are submitted to and approved in writing by the local planning authority.

Appeal C

22. The Town and Country Planning (General Permitted Development) Order 2015, Part 12, Development by local authorities Class A notes that permitted development is the erection or construction and the maintenance, improvement or other alteration by a local authority or by an urban

- development corporation of (a) any small ancillary building, works or equipment on land belonging to or maintained by them required for the purposes of any function exercised by them on that land otherwise than as statutory undertakers; (b) lamp standards, information kiosks, passenger shelters, public shelters and seats, telephone boxes, fire alarms, public drinking fountains, horse troughs, refuse bins or baskets, barriers for the control of people waiting to enter public service vehicles, electric vehicle charging points and any associated infrastructure, and similar structures or works required in connection with the operation of any public service administered by them.
23. The reference to any small ancillary building, works or equipment is a reference to any ancillary building, works or equipment not exceeding 4m high or 200 cubic metres in capacity.
24. The development proposed, new paving materials, alterations of levels and provision of steps and street furniture are all works that would come within the description of Part 12. None of it would be over 4m high and the appellant has calculated the change to ground levels associated with the alterations would be less than 200 cubic metres.
25. The council argues that because the appellant is not in a position to undertake the works, the development would not be 'by a local authority' for the purpose of the permitted development and consequently would not be permitted development. I do not accept this. It is common knowledge that planning permission runs with the land and it is not uncommon for applicants to make planning applications on land they do not own and are not in a position to develop at that time. Section 192 is not a grant of planning permission, but is a means of looking at a future or proposed position, and ascertain whether if it were constructed the development would be lawful. It is acceptable for an authority or anyone else to make an application which would either notify the current authority that the development would be lawful, or the applicant, should it gain appropriate control of the land in the future. The LDC would not give 'permission' or indicate that someone that is not the appropriate authority can do the work.
26. I also note that there are some proposals that may involve the listed building. Permitted development would not give authority to do work to the listed building that would affect its significance and special architectural and historic interest. That would need a separate application for listed building consent. I have therefore excluded the works to the fountain from the certificate.
27. For the reasons given above I conclude, on the evidence now available, that the council's refusal to grant a certificate of lawful use or development was not well-founded and that the appeal should succeed in respect of works to the public realm in the market place intended to enhance and optimise the trading space, introducing new paving materials and street furniture. A new seated area to the upper western end of the square will be created. The level difference around the Boyle Cross will be adjusted with new kerbs and steps. The extent of the works will be maintained within the existing site boundary. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Graham Dudley

Inspector

Annex A

Planning Application

28. The development hereby permitted shall be begun before the expiration of three years from the date of the permission.
29. The development hereby approved shall be carried out in accordance with drawing numbers 000, 001C, 002B, 003, 005A, 010H, 011B, 014A, 200, 700F, 1200D, 1300C, IMA/0/000, SP-01, TR-01, TR-02 10755_600/P02, 10755_601/P05, 10755 (NPA-Frome Market Cross – Photomontage View East), PUPS01 – Pop-up Electrical Power Unit, WE-EF Lighting Design, NPA-Bollard and Stone Paving Section Note, Design and Access Statement E, received on 24th August 2015 only.
30. No external facing materials in respect of the walling to the stone seating and paving of the development hereby approved shall be constructed or installed unless a schedule of materials, finishes and samples of the materials to be used in the construction of the external surfaces has been submitted to and approved in writing by the local planning authority. The development hereby approved shall be carried out in accordance with the approved details.
31. No bollards shall be installed or undertaken unless full details of the bollards have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
32. No development shall be undertaken for the seating area unless full details of the seating area have been first submitted to and approved in writing by the local planning authority. Such details shall include cross-sections, profiles, materials, finish and colour. The development shall thereafter be carried out in accordance with the approved details.
33. No development shall be undertaken to the 'Boyle Cross' unless a full specification of the repair works to the 'Boyle Cross' has been first submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
34. No development shall be undertaken to the 'Boyle Cross' unless a full specification of the recording and protection measures for the plaque attached to the 'Boyle Cross' have been submitted to and approved in writing by the local planning authority. Such details shall contain the specification of the replacement plaque, including materials, location and inscription. The development shall thereafter be carried out in accordance with the approved details.

Annex B

Listed Building

35. The works hereby permitted shall be begun before the expiration of three years from the date of the consent.
36. The works hereby approved shall be carried out in accordance with drawing numbers 000, 001C, 002B, 003, 005A, 010H, 011B, 014A, 200, 700F, 1200D, 1300C, IMA/0/000, SP-01, TR-01, TR-02 10755_600/P02, 10755_601/P05,

10755 (NPA-Frome Market Cross – Photomontage View East), PUPS01 – Pop-up Electrical Power Unit, WE-EF Lighting Design, NPA-Bollard and Stone Paving Section Note, Design and Access Statement E, received on 24th August 2015 only.

37. No works shall be undertaken to the 'Boyle Cross' unless a full specification of the repair works to the 'Boyle Cross' have been first submitted to and approved in writing by the local planning authority. The works shall thereafter be carried out in accordance with the approved details.
38. No works shall be undertaken to the 'Boyle Cross' unless a full specification of the recording and protection measures for the plaque attached to the 'Boyle Cross' have been submitted to and approved in writing by the local planning authority. Such details shall contain the specification of the replacement plaque, including materials, location and inscription. The works shall thereafter be carried out in accordance with the approved details.

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on date of application the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and outlined in bold black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development proposed, if undertaken by the relevant local authority, would be permitted development, as the works and equipment proposed would be the erection or construction and the maintenance, improvement or other alterations of the land provided that it belonged to or was maintained by that authority and required for the purposes of a function exercised by them on the land.

(Note: Any works to the listed building would also be likely to require listed building consent)

Signed

Graham Dudley

Inspector

Date : **15 December 2016**

Reference: APP/Q3305/X/16/3149306

First Schedule

Works to the public realm in the market place as identified in planning application reference 2014/1269/FUL.

Second Schedule

Land at Market Place, Frome, Somerset

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: **15 December 2016**

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS DipTP MRTPI

Land at: Market Place, Frome, Somerset

Reference: APP/Q3305/X/16/3149306

Scale: NTS



