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## Appeal Decision

Site visit made on 11 September 2017

**by Karen L Baker DipTP MA DipMP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 2<sup>nd</sup> October 2017**

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**Appeal Ref: APP/M2515/W/17/3171104**

**The Viewing Platform, Brayford Wharf North, Lincoln, Lincolnshire LN1 1XY**

- 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 David Rossington, on behalf of Investors in Lincoln, against the decision of City of Lincoln Council.
  - The application Ref. 2014/0808/F, dated 12 November 2014, was refused by notice dated 22 September 2016.
  - The development proposed is the removal of the existing viewing platform and the erection of a new 2 storey restaurant/bar.
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### Procedural Matters

1. Although the planning application form describes the proposed development as set out above, a revised wording has been agreed by the appellant and the Council. This is the 'erection of a 2 storey building for the purpose of A3 (Food and Drink) and refurbishment works to viewing platform. Reconsultation on revised siting and external appearance and viewing platform. (Revised Description).' This description more accurately reflects the development proposed and I therefore use it in my Decision.
2. The Council's decision notice refers to the Brayford and Glory Hole Conservation Area in its second reason for refusal. However, the appeal site is located within the City of Lincoln Conservation Area No. 6 – West Parade and Brayford. I have, therefore, considered the appeal on this basis.

### Decision

The appeal is allowed and planning permission is granted for the erection of a 2 storey building for the purpose of A3 (Food and Drink) and refurbishment works to viewing platform. Reconsultation on revised siting and external appearance and viewing platform. (Revised Description) at The Viewing Platform, Brayford Wharf North, Lincoln, Lincolnshire LN1 1XY in accordance with the terms of the application, Ref. 2014/0808/F, dated 12 November 2014, subject to the conditions in Appendix 1.

### Main Issue

3. The main issue in this appeal is whether or not the proposed development would preserve or enhance the character or appearance of the West Parade and Brayford Conservation Area, with particular reference to the open nature of Brayford Pool as a protected open water feature.

## **Planning Policy**

4. The planning application the subject of this appeal was determined by the Council on the basis of the City of Lincoln Local Plan, adopted in August 1998, which formed part of the development plan at the time of its decision. The proposed development was found to be contrary to Policies 46C and 19F of this plan. The Central Lincolnshire Local Plan, adopted in April 2017, has now superseded the City of Lincoln Local Plan. As such, this document now forms part of the development plan and it is against the policies within this document that the appeal must be determined.
5. The Council has referred me to Policies LP1, LP17, LP25, LP26 and LP29 of the Central Lincolnshire Local Plan. I consider that the following policies are particularly pertinent to my consideration of this appeal. Policy LP17 seeks to protect and enhance the intrinsic value of the landscape and townscape and says that proposals should have particular regard to maintaining and responding positively to any natural and man-made features within the landscape and townscape which positively contribute to the character of the area, including water features. With regards to views, it goes on to say that all development proposals should take account of views in to, out of and within development areas, with schemes being designed to preserve or enhance key local views and vistas, and create new public views where possible. Particular consideration should be given to views of significant buildings and views within landscapes which are more sensitive to change due to their open, exposed and extensive intervisibility from various viewpoints.
6. Policy LP25 of the Local Plan says that development within, affecting the setting of, or affecting views into or out of, a conservation area should preserve (and enhance or reinforce it, as appropriate) features that contribute positively to the area's character, appearance or setting. Policy LP26 says that all development proposals must take into consideration the character and local distinctiveness of the area (and enhance or reinforce it, as appropriate) and create a sense of place. It goes on to set out a number of criteria which proposals would be required to demonstrate, to a degree proportionate to the proposal, including that they respect the existing topography, landscape character and identity, and relate well to the site and surroundings; and, protect any important local views into, out of or through the site.
7. Policy LP29 says that proposals for development should seek to make a positive contribution to the built and natural environment and quality of life in the Lincoln area. It goes on to set out a number of key principles, which all development proposals should contribute towards the realisation of, including that they do not detract from the open character of Lincoln's Brayford Pool and waterways, protecting and enhancing them as major focal points in and through the City.

## **Reasons**

8. Brayford Pool is an open water feature within the City of Lincoln. Formerly operated as an inland port, it has had an important role in the development and expansion of Lincoln since pre-Roman times. Brayford Pool has direct waterway links to the River Trent to the west and to the sea at Boston to the south east. It was apparent from my site visit, that its more recent history has seen the development of a modern university campus to the south for the University of Lincoln, along with cafes, restaurants, bars, hotels and a cinema

to the north, with a multi storey car park beyond. Residential uses, including student accommodation, are located on some upper floors, with office development also apparent to the east. A Sea Cadets' training yard is located beyond the north western corner. Significant landscaping exists along the southern edge of Brayford Pool, beyond which the University of Lincoln campus is sited.

9. The southern part of Brayford Pool benefits from a number of boat moorings, which extend towards the centre of the water feature, with a designated navigation channel located to the north. On the northern part of Brayford Pool, there are a number of existing structures sited adjacent to the north bank, including a 2 storey restaurant, occupied by Wagamama, which was completed in 2012 and replaced the former Harbour Master's Office building. Further to the west, is the appeal site, which includes an existing viewing platform, beyond which is The Barge restaurant, which is moored alongside the north bank. A promenade exists along the northern bank of Brayford Pool, which provides access to the Pool and the cafes, restaurants, bars, hotels, cinema and other uses along it.
10. The appeal site is located within the City of Lincoln Conservation Area No. 6 - West Parade and Brayford. Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 says that in the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
11. One of the Core Planning Principles of the National Planning Policy Framework (The Framework) is that planning should conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations (paragraph 17). Government policy on conserving and enhancing the historic environment is set out in Section 12 of The Framework. Paragraph 132 advises that great weight should be given to the designated heritage asset's conservation and that the more important the asset, the greater the weight should be. This is reflected in Local Plan Policy LP25.
12. The proposed development would include the erection of a 2 storey building over the water on the northern side of Brayford Pool for the purpose of A3 (Food and Drink) and refurbishment works to the existing viewing platform. The Council and some interested parties are concerned that the proposed development would create a feeling of enclosure and prevent unrestricted views of Brayford Pool and that by virtue of its siting and overall design, the proposal would fail to preserve the character and appearance of the conservation area.
13. Historic England considers that Brayford Pool is an important historic asset which forms a central part of the character and appearance of the conservation area. The Lincoln Townscape Assessment (LTA) notes the long history of Brayford Pool and refers to the high density development around it at the height of its commercial activity, including wharves, warehouses, maltings, mills, timber yards, iron manufacturers and boat builders. Cranes were also located alongside the Pool to facilitate the faster loading and unloading of heavier items to and from waiting watercraft. These historic buildings and

- structures have since been lost and the area around Brayford Pool has seen a large scale redevelopment, which the LTA acknowledges has resulted in a markedly different character with the loss of much of the earlier townscape.
14. Brayford Pool is currently predominantly open in character, with only limited development upon it. Historic England considers that development within the Pool itself along Brayford Wharf North which obscured large sections of the former wharf and appreciably eroded its character as an open waterfront would have a significant negative impact on the significance of the conservation area. However, it says that the impact of the appeal proposal, taken in conjunction with the existing Wagamama restaurant is more limited as the development is restricted to 2 buildings of the scale proposed.
  15. Although much of the historic character and appearance of this part of the conservation area has been lost both in terms of the built fabric and its functionality, it was apparent from my site visit that the open nature of the Brayford Pool remains an intrinsic part of the character and appearance of the conservation area and should be preserved. Nevertheless, I note the extensive openness of the Pool along the north bank, which the appellant states has an overall length of around 470m between The Brayford Way Bridge and The Wigford Way Bridge. The Barge and Wagamama restaurants are around 41m and 35m respectively in length, with the latter being 2 storeys in height. The length of the proposed new restaurant building would be around 34m and it would also be 2 storeys in height.
  16. Although the proposed development would increase the built development on Brayford Pool along its northern bank and there would be some impact on the views from the commercial premises immediately to the north, on the other side of the promenade, given the scale and mass of the proposal, along with the extent of the openness of Brayford Pool, the northern bank would remain predominantly open. Furthermore, the overall design of the proposed restaurant building, which would be predominantly glazed at ground floor level, would allow glimpsed views through the building from the promenade to the north, to the open water beyond, and its siting, to the west of the existing viewing platform would retain the outlook from the student residences at Brayford Keys. As such, it would not unduly harm the open nature of the Pool or materially restrict views across the Pool from the north. Furthermore, given the length of the proposed building, along with the significant extent of the open waterfront which would remain along the northern side of the Brayford Pool, it would not lead to a sense of enclosure.
  17. The design of the proposed building would reflect the scale, height, mass, siting, colour palette and architectural details of existing buildings along the northern side of Brayford Pool, including the former Lincolnshire Motor Company showrooms and garage and the more recent Wagamama restaurant. As such the proposal would preserve the character and appearance of this part of the conservation area.
  18. I conclude, therefore, that the proposed development would not harm the character and appearance of the West Parade and Brayford Conservation Area. As such, it would accord with Policies LP17, LP25, LP26 and LP29 of the Local Plan and the policies in The Framework.

### *Other Matters*

19. It is apparent from the evidence before me that the proposed development would not unduly harm the navigable channel through Brayford Pool, given that, as currently used, it would be sited around 14m to the south of the proposed development.
20. I have considered the other matters raised by the Council and interested parties, including the impact of the proposal on the provision of new moorings; local wildlife, including the swans; the student population; light, privacy and outlook of commercial premises; tourism; noise pollution; the problem of silting; and, the lack of demand for a new restaurant, but none changes my overall conclusion that the appeal should be allowed.

### **Conditions**

21. In addition to the standard time limit condition, the Council has suggested 15 conditions. I have had regard to the advice in the Planning Practice Guidance (The Practice Guidance) when considering these conditions. A condition requiring that the development be carried out with the approved plans would be necessary for the avoidance of doubt and in the interests of proper planning. Samples of the external materials to be used would be necessary to safeguard the character and appearance of the area. A requirement that the ground floor levels of the proposed building be set 300mm above the existing ground level of the viewing platform would be necessary to safeguard the development from flooding. However, a condition requiring the development to be carried out in accordance with the Design and Access Statement and to be a minimum of 2 storeys would not be necessary given the detailed nature of the permission.
22. A scheme for the extraction, filtration and abatement of cooking odours; a noise impact assessment report prior to the installation of any stationary external plant or machinery; and hours of construction works, would be necessary to safeguard the living conditions of neighbouring residents. Conditions requiring the submission and approval of a scheme of repair and refurbishment of the viewing platform, a requirement that it be carried out and open to the public prior to the use of the restaurant building and the submission of a maintenance strategy, along with being retained thereafter for that use, would be reasonable to ensure its successful refurbishment and maintenance.
23. Details of the green roof and a lighting plan would be necessary to safeguard the ecology of the area and foraging bats. The submission and approval of schemes of proposed construction works and of protective fendering would be reasonable to ensure that the development is carried out in a safe and appropriate manner. A scheme for the external lighting for the development would be necessary to ensure that the development is clearly visible to boats using the navigation channel through Brayford Pool. Details of the design and construction of the balustrading to the balcony areas would be necessary to reduce the risk of objects being dropped or thrown into the Brayford Pool. Finally, the provision of fish refuges and soft engineering would be necessary to enhance the local water environment. However, this should be in accordance with a scheme to be submitted and approved in order that the condition is sufficiently precise.

*Karen L Baker*

INSPECTOR

## Appendix 1 – Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 0001 Rev. A; 0000 Rev. C; 0500 Rev. A; 1000 Rev. E; 2100 Rev. E; 8100 Rev. E; and 1211 Rev. B.
- 3) No development shall commence until details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details/samples.
- 4) The ground floor finished floor level of the development hereby permitted shall be set 300mm above the existing ground level of the viewing platform.
- 5) Prior to the use commencing, a scheme for the extraction, filtration and abatement of cooking odours shall be submitted to and approved in writing by the local planning authority. The submitted scheme shall include details of the methods to be employed to control noise and odour from the system. The approved scheme shall be implemented prior to the commencement of the use and the system shall be operated and maintained thereafter in accordance with the manufacturer's instructions.
- 6) Prior to the installation of any stationary external plant or machinery, a noise impact assessment report shall be submitted to and approved in writing by the local planning authority. The report shall identify any mitigation measures that are necessary to minimise the impact of noise from the stationary external plant or machinery. The approved mitigation measures shall be implemented prior to the commissioning of the plant or machinery and shall be retained thereafter.
- 7) Construction works, including deliveries, shall take place only between 0730hrs and 1800hrs on Mondays to Fridays; and 0800hrs and 1300hrs on Saturdays. Construction works shall not take place at any time on Sundays or on Bank or Public Holidays.
- 8) Prior to the first use of the restaurant building hereby permitted, a schedule of works, including details of materials for the proposed repair and refurbishment of the viewing platform shall be submitted to and approved in writing by the local planning authority.
- 9) The restaurant building hereby permitted shall not be brought into use until the agreed repair and refurbishment works to the viewing platform are completed and the viewing platform is available for public use.
- 10) Prior to the first use of the restaurant building hereby permitted, a maintenance strategy for the on-going up keep of the viewing platform shall be submitted to and approved in writing by the local planning authority. The viewing platform shall be maintained in accordance with the approved strategy and retained thereafter for such use.



- 11) Prior to the first use of the restaurant building hereby permitted, details of a green roof and a lighting plan detailing the proposed lighting scheme at the site and the measures taken to protect foraging bats and light spill onto the Brayford Pool, shall be submitted to and approved in writing by the local planning authority. The green roof and lighting scheme shall be implemented in accordance with the approved details prior to the first use of the restaurant building.
- 12) No development shall take place until a scheme of proposed construction works (including all works and repairs required to facilitate re-use of the viewing platform) has first been submitted to and approved in writing by the local planning authority. The scheme shall include a bed level survey of the site (including a minimum 10m offset from the footprint of the proposed structure and details of the existing water levels, soft bed levels and hard bed levels around those areas where supporting piles are proposed) and details of all piling works, including details of piling spacings, proposed depth to be sunk into bed level, corresponding depth of piles to be exposed above hard bed level and details of how the piles are to be installed. The development shall be carried out in accordance with the approved scheme.
- 13) No development shall take place until a scheme for the provision of protective fendering for the development hereby permitted has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the design, construction, location and means of installation of all protective fendering. The development shall be carried out in accordance with the approved details.
- 14) No development shall take place until a scheme for the external lighting of the development hereby permitted has been submitted to and approved in writing by the local planning authority. The scheme shall including details of the design, location and luminance of warning lights on the perimeter of the development. The development shall be undertaken in accordance with the approved lighting details.
- 15) No development shall take place until full details of the design and construction of all balustrading to the balcony areas adjacent to the water's edge has first been submitted to and approved in writing by the local planning authority. The balustrade shall be installed in accordance with the approved details prior to the first use of the development hereby permitted and retained thereafter.
- 16) Prior to the first use of the restaurant building hereby permitted fish refuges and soft engineering shall be installed in accordance with a scheme which has first been submitted to and approved in writing by the local planning authority.

--- END OF CONDITIONS---