



Appeal Decision

Site visit made on 28 October 2019

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 14 November 2019

Appeal Ref: APP/C2741/W/19/3235333

Judge's Lodging, 9 Lendal, York YO1 8AQ

- 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 Daniel Thwaites Plc against the decision of City of York Council.
 - The application Ref 18/02490/FUL, dated 29 October 2018, was refused by notice dated 14 February 2019.
 - The development proposed is temporary change of use to hold a Christmas Market over specified dates on an annual basis.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Publication Draft Local Plan (PDLP) was submitted for examination in May 2018. Although at an early stage in its preparation, weight can be afforded to its provisions, albeit that that weight is limited. The Council adopted the Development Control Local Plan (DCLP) in 2005 for development control purposes. I am advised that the DCLP does not form part of the statutory development plan but that its policies are capable of being material considerations and can be afforded some weight in the determination of planning applications. I have determined the appeal accordingly.

Main Issue

3. The main issue is whether the proposal would preserve the setting of the grade I listed Judge's Lodging and the grade II listed building and wall, railings and gates forming a boundary to the forecourt of the Judge's Lodging.

Reasons

4. The appellant seeks permission to use the appeal site's forecourt area to host an annual Christmas market, as part of which a number of timber structures would be placed around the sweeping carriage drive and semi-circular forecourt to the front of the Judge's Lodging. The structures would be temporary timber structures; effectively six small timber 'sheds' acting as market stalls and a larger timber structure that would encircle the tree in the centre of the forecourt area.
5. The Judge's Lodging is a grade I listed building, the entrance gates, wall and railings thereto being grade II listed. The Judge's Lodging is noted in the appellant's Heritage Statement¹ (HS) as being 'an exceptionally fine'

¹ 'Heritage Statement for Judges Lodging, Lendal, York' First paragraph, section 2.1

early 18th century detached townhouse. The formal listing description notes the presence of the double flight of curved steps leading to the projecting central bay and main entrance².

6. It is common ground between the main parties that the principal building is of exceptional architectural and historic interest. The sweeping carriage drive which takes two accesses from Lendal and which serves the dual sweeping external staircases at the front of the Lodging is also noted³ as retaining its early 19th century plan-form of a carriageway encircling the semi-circular forecourt with two separate street accesses. This is visible through the iron railings from Lendal and for a considerable length between the flanks of the buildings adjoining either side of the appeal site's Lendal frontage.
7. The appellant suggests that the observer's appreciation of these features is a 'kinetic' one, and as such would be one which would still be possible through the dual entrance gates and between the timber sheds and the larger centrally located structure. That may be so, to a degree, but only to a degree. The row of four sheds on the left-hand side of the sweeping entrance would be an incongruous and conspicuously formal and regimented arrangement that would pay little regard to the sweeping curve of the carriage drive.
8. The other two sheds would effectively stand sentry to the ground floor entrance door in front of sweeping curve of the staircases. Not only would these partially obscure the staircase both entrance gate aspects, they would, when added to the other structures, significantly impinge upon views, and a full understanding and appreciation of, the carriage drive's form and function, and the form of the staircase itself.
9. Equally harmful would be the larger and bulky structure encircling the tree located centrally within the forecourt. This structure would narrow the viewing angle through the entrance gates and completely obscure any views of the symmetrical position of the front steps within the building's façade. The positioning of the Lodging within the site is noted to be a good, if rare, example of a city centre townhouse with a generous forecourt. This generous forecourt allows the building, its proportions and its setting to be fully understood and appreciated.
10. The bulky and dominant timber structure encircling the tree would however render these features, and indeed the building's façade and the sweeping drive and steps, largely unintelligible for an extended period of time at a busy time of the year. The appellant's Heritage Statement⁴ (HS) notes that the forecourt accommodates paraphernalia associated with the use of the Lodging as a licensed premises which impinges upon the setting of the building. The forecourt tree, which I am advised is protected by a Tree Preservation Order, is also noted as somewhat spoiling the full-on view of the Lodgings from Lendal on a permanent basis⁵. However, the former are less obtrusive, transient features such as chairs and tables, whilst the tree contributes positively to the character and setting of the surrounding listed buildings.
11. The appreciation of the building is not time or season specific. Indeed, the site's location in the centre of York and the period for which the use and

² Attached as Appendix 1 to the appellant's 'Heritage Statement for Judges Lodging, Lendal, York'

³ P.31 - appellant's 'Heritage Statement for Judges Lodging, Lendal, York'

⁴ Heritage Statement for Judges Lodging, Lendal, York

⁵ Paragraph 8.3.3(c) - *Heritage Statement for Judges Lodging, Lendal, York'*

structures are sought during the busy festive season are such that the full appreciation and understanding of the building would be harmed for a large number of people. Nor would the 'kinetic' appreciation of the building's setting that would result from the proposal provide a suitable alternative, even on a temporary basis, to a full contextual understanding of the building and its setting offered by largely unfettered views through, over and across the forecourt area.

12. For these reasons, I conclude that the proposal would cause harm to the setting of the grade I listed Judge's Lodging and the grade II entrance gates and wall. I am statutorily required⁶ to have special regard to the desirability of preserving the listed building or, as in this case, its setting. The National Planning Policy Framework (the Framework) states that great weight should be given to the [heritage] asset's conservation, irrespective of the degree of any harm. Any harm should require clear and convincing justification and should, in the case of that harm being less than substantial, be weighed against the public benefits of the proposal.
13. The HS describes the harmful impacts as being low or very low, and the proposal having a very low level of harm. The Framework however refers to substantial harm, less than substantial harm or no harm at all. It is agreed that the proposal would result in harm to the setting of the Judges Lodging, and to the walls, railings and gates. It would not, however, result in substantial harm and so it follows that the proposal would result in less than substantial harm.
14. Christmas markets in historic environments are not uncommon. The appellant has cited a number of examples in cities elsewhere as well as the St Nicholas Fair in York. In all instances, it is suggested, those fairs feature temporary market stalls or structures similar to those proposed in this instance in a variety of historic settings. I do not have the full details of those examples, their settings or the significance of the surroundings before me and so I cannot be certain that they are directly comparable. In any event, I have to consider the proposal before me and the context, and setting, in which it lies.
15. The Christmas market that the proposal supports is aimed at small business traders, run jointly between the appellant and 'Make it York', and provides a basis for locally produced crafts and goods to supplement those offered elsewhere during the St Nicholas Fair. The bar, housed within the larger structure, would generate income for the hotel which it is stated assists in the maintenance and repair of the heritage asset. However, the hotel is described as a viable and sustainable use⁷ and, as the income derived from the market and its structure is limited to the takings from the bar⁸, I give only moderate weight to any benefits that might arise in this respect.
16. I accept that the proposal would contribute to local distinctiveness and seasonal festivities and that these would amount to social, economic and cultural public benefits. However, the stalls provided by the proposal would be limited in their number in the context of city centre-wide festive activities which include the St Nicholas Fair. That is not to say that they would not provide a benefit – indeed, it is agreed that the support given to small and start-up

⁶ Section 66(1) Planning (Listed Buildings and Conservation Areas) Act 1990

⁷ Paragraph 4.31 – Appeal Statement, Rural Solutions

⁸ Paragraph 4.28

businesses would provide a contribution. However, these and other benefits set out by the appellant, and carefully considered above, do not outweigh the less than significant harm to the significance of the designated heritage assets, in this instance, the grade I listed Judges Lodging and the grade II listed walls, railings and gates.

17. For the reasons set out therefore, the proposal would fail to preserve the setting of the Judges Lodging or the walls, railings and gates at the front of 9 Lendal. The harm that would arise from this failure to preserve the setting would be less than substantial. I have carefully considered the public benefits put forward by the appellant against which this harm should be weighed. I give moderate weight to the benefits set out. However, as I am required to give great weight to the heritage asset's conservation, these public benefits do not outweigh the less than substantial harm that I have concluded would arise. In reaching this conclusion, I have also carefully considered the temporary nature of the proposal, both in terms of the structures for which permission is sought, but also the period of time during which they would be in situ.
18. PDLP policy D5 is a more up to date expression of policy and is consistent with the Framework but is at an early stage of preparation and so the weight than I can give it is limited. However, for the reasons that I have set out above, the proposal would be contrary to national planning policy with regard to conserving and enhancing the historic environment and, whilst not determinative, also contrary to PDLP policy D5. DCLP policies HE2 and HE4 predate the National Planning Policy Framework (the Framework) and as they do not fully align with the Framework's provisions regarding the historic environment the weight which I can ascribe to them is limited, as it is because the DCLP is not part of the statutory development plan.

Other Matters

19. The presence of a number of other listed buildings in the vicinity of the appeal site are noted, and agreed upon, by the main parties. The Council's reason for refusal does not set out harm to the setting of those listed buildings and I have not been presented with any further submissions that would lead me to conclude otherwise.

Conclusion

20. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Graeme Robbie

INSPECTOR