



Appeal Decisions

Site visit made on 5 November 2019

by Sarah Colebourne MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th November 2019

Appeal A Ref: APP/W4325/W/18/3227960

Hillbark Hotel, Hill Bark Road, Frankby, Wirral, CH48 1NP

- 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 Contessa Hotels against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/18/00362, dated 16 February 2018, was refused by notice dated 4 April 2019.
 - The development proposed is described as the renewal of planning / listed building consent application APP/10/00214 & LBC/10/00215 for retention of marquee and link extension.
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Appeal B Ref: APP/W4325/Y/19/3227969

Hillbark Hotel, Hill Bark Road, Frankby, Wirral, CH48 1NP

- 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 Contessa Hotels against the decision of Wirral Metropolitan Borough Council.
 - The application Ref LBC/18/00361, dated 16 February 2018, was refused by notice dated 4 April 2019.
 - The works proposed are described as *'the renewal of planning / listed building consent application APP/10/00214 & LBC/10/00215 for retention of marquee and link extension'*.
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Decisions

1. Both appeals are dismissed.

Procedural matters

2. It is clear from the submitted documents and the Council's decision that the proposals also include the retention of a terrace and storage containers. Although the previous permission and consent were for five years, the appellant's statement says that the proposals are sought for 3 years and I have determined the appeals on this basis.
3. I have noted from third party representations that the Council has issued an enforcement notice in respect of the existing marquee but the enforcement notice is not the subject of this appeal.

Main Issues

4. The main issues are:-
 - whether the proposals would preserve the listed building or its setting or any features of its special architectural or historic interest.

- whether the proposed development would amount to inappropriate development in the Green Belt; its effect on the openness of the Green Belt and its purposes; and if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, including the effect on the listed building and the area, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Listed building (both appeals)

5. In considering proposals for planning permission, the statutory duty imposed by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended requires that special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The Act also has the same requirement under section 16(2) for proposals for listed building consent. Paragraph 193 of the National Planning Policy Framework 2019 (the Framework) states that when considering the impact of new development on the significance of a designated heritage asset, great weight should be given to its conservation. Paragraph 194 goes on to say that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Paragraph 196 requires that where the harm is less than substantial, it should be weighed against the public benefits of the proposal including, where appropriate, securing its optimal viable use.
6. The development plan includes policy CH1 in the Wirral Unitary Development Plan (2000) (UDP) which seeks to protect heritage assets and broadly reflects the statutory duty. It accords broadly with the Framework although it fails to acknowledge the need to weigh any less than substantial harm against the public benefits of the proposal as sought in the Framework. The emerging Wirral Local Plan carries limited weight given its stage in the local plan process.
7. Hillbark Hotel is a large, Grade II* listed building which was built in 1891 on another site on the Wirral and removed and rebuilt on the appeal site in 1929-1931. Its historic significance derives from its connections with the wealthy Liverpool industrialists and shipowners for whom it served as a residence. Its architectural significance derives from its half-timbered Tudor Revival style which was inspired by Little Moreton Hall. Approached from a long drive, it is set within extensive landscaped gardens and the wider surroundings of Royden Country Park and this setting also contributes to its significance.
8. In 2009 a proposal for a temporary marquee for up to 12 weeks a year was dismissed on appeal. In 2010, permission was granted for a five year period for a shorter marquee than the current proposal, draped in fabric material and sited a greater distance from the listed building. That proposal was accompanied by a Section 106 Agreement (S106) for a detailed programme of essential repairs to the listed building which the Council says formed the very special circumstances that justified the permission. The permission expired in 2015. In 2016 proposals were submitted to retain the structure although it differed significantly from the 2010 permission in that it was larger, 5m closer to the building, made reference to a temporary marquee adjacent to the

- building, included the retention of containers below the existing decking and did not include fabric draping. The Council found that no satisfactory very special circumstances were provided to justify approval given the similarity to the previously dismissed appeal proposal and the proposals were refused.
9. The current proposals, which have been largely implemented, are similar to the 2016 proposals and include a 5m glazed link with the north wing of the listed building. The appellant's Design and Access Statement addendum says that although the proposals include an additional 5m extension to the length of the marquee above the original approval, they have the same floor area as the originally approved marquee because the smaller temporary marquee to the north-east is omitted as is part of the infill service area. The marquee is sited on the lawn to the north-west of the building. It is constructed of solid sealed polycarbonate units with glazed uPVC windows and a canvas roof. The plans show a decorative entrance feature on the western elevation but this does not appear to have been implemented. The timber deck terrace is sited at the far northern end with steel storage containers below.
 10. The appellant's Historic Heritage Statement appears to refer to the 2010 proposal and is selective in the photographs used. Whilst I have noted its findings and those of the later Heritage Statement (2018) and the Landscape and Visual Assessment (LVIA), I have also based my findings on my own observations from my site visit. Although the marquee is much lower in height than the listed building, at 30m long by 15m wide it is nonetheless a large structure whose length is not significantly less than that of the main building. Its size and proximity to the building harms its setting, particularly when seen from the lawn to the rear of the building. I accept that from within the building and from other points within the grounds and the country park, the impact of the proposals is much less given the screening afforded by the surrounding vegetation to the north and beyond the lawn to the south-west and by a garage building close to the eastern elevation. Despite being a lightweight structure, the size of the marquee is emphasised by its modern and light-coloured materials. As such it is not sufficiently subordinate to the building and has a somewhat stark and incongruous appearance. Despite its siting adjacent to the north wing of the building which has a different, more modest type and quality of architectural detailing to its elevations from the rest of the building and may be the most appropriate siting for such a structure, the structure detracts significantly from the building's rear elevation. Even if the entrance feature were implemented and the appellant's suggestion that fabric drapes could be incorporated were the subject of a condition of any approval, this would not sufficiently overcome the harm to the setting and significance of the listed building caused by the large size of the marquee and its proximity to the building.
 11. Therefore, by reason of the size, siting and materials of the marquee, the proposals would fail to preserve the special architectural and historic interest of the listed building and its setting.
 12. Whilst the harm would be less than substantial, it carries considerable weight and this is particularly so given the grade of listing. It is necessary to consider whether or not there are any public benefits that would outweigh the harm that would be caused as required in paragraph 196 of the Framework.

13. The appellant says that the marquee is required to provide banqueting facilities and that if the facility is lost, the revenue required to maintain the listed building and complete the essential works in the S106 would be lost. The company maintains that the business was unable to achieve the expected revenues necessary to fulfil the agreement during the initial five year period due to the economic downturn in 2008-2012 and increased competition from other larger venues outside the Liverpool City Region. However, it also says that since 2015, it has continued to carry out works to fulfil the S106. The proposals would also allow the owners to further consider and shape their medium-long term strategy for the hotel.
14. The appellant's appeal statement says that during the five year period of the S106, £1.187 million had been spent and as of March 2017, £1.391 million had been spent, with an additional £292,000 spent between March 2017 and February 2018. It goes on to say that as of February 2018, there were a considerable amount of costs that were required for the repair of the building. However, I note from the appellant's Viability Report (December 2018) that some of that spending related to works outside the S106. I saw at my visit that much work has already been done, whilst some is on-going and other repairs are needed. Whilst the remaining balance of works (which has increased with a more recent estimate) amounts to nearly £600,000, the report concludes that *'if the Local Authority was to seek additional s106 contributions over and above the outstanding balance of Works Programme Expenditure agreed as part of the previous planning approval, the applicant would face a significant viability concern and delivery of these essential repairs and upgrade works and wider benefits of the hotel's continued operation on the scale required would be put at risk.'* However, that conclusion does not state that the marquee is necessary for the completion of any outstanding repairs under the previous S106 and refers to future contributions which were not sought by the Council in any case.
15. Furthermore and crucially, a third party has submitted a copy of a letter dated 9 May 2017 from the Council stating that the obligations in the S106 as set out in the works programme have been complied with to the satisfaction of the Council. The appellant has not responded to this matter in its further comments. It says that the outstanding repairs include repairing the roof and the timber frame, replacing windows, treating the internal timbers, restoring panelling and replacing carpets. I saw that there are repairs needed that fall into those categories. However, bearing in mind the Council's letter, it is unclear to me whether or not all of the further repairs referred to by the appellant are those outlined in the S106 or if some may be reasonably expected as part of the ongoing maintenance of a historic building. The inspector in the 2009 appeal made it clear that the marquee should not be an open-ended source of income for repairs.
16. However, even if the S106 works have not been completed, the appellant has provided insufficient information regarding its accounts for me to conclude that the proposal is necessary to fund those works. The appellant says that the hotel generates GVA of around £904,000 per annum for the region, or £7.8 million over the next 10 years (present value), and that without the marquee, it is estimated that £289,000 of this GVA will be lost per annum, or just under £2.5 million over the next 10 years (present value). However, I have not been provided with any detailed accounts for the hotel or the marquee and I am therefore unable to conclude that there is any evidence of financial difficulties

that may indicate the necessity of the marquee in contributing to essential repairs and maintenance. Furthermore, the Viability Report provides estimated costs of outstanding works but those are from one company only and it is therefore difficult to judge how accurate those are. Given the lack of sufficiently detailed and relevant information from the appellant on the matter of viability, I find that the need for the proposals to fund essential repairs and maintenance carries limited weight.

17. The Thornton Manor case differs significantly from this case in that it was granted on the basis of a historic park and garden which had been identified as at risk and as I have limited information regarding the detailed circumstances of that case I am unable to conclude that it is directly comparable.
18. The appellant also says that the loss of the marquee would also result in the hotel being forced to make redundancies for the first time, in respect of 8 full-time and 6 part-time positions. That would certainly be regrettable but there is no indication that the existing use as a hotel would be unviable or that the existing functions that take place in the marquee would not be provided for elsewhere in the region with increased employment there. Furthermore, I have no compelling evidence, despite support from the Wirral Chamber of Commerce, that the hotel's five star rating is dependent on the marquee or that its loss would definitely lead to the removal of this rating. For these reasons and despite the significant weight attached to economic and tourism growth in the Framework and the regional economic and local growth strategies, the economic and tourism considerations put forward by the appellant carry little weight.
19. Whilst the 'Temporary Structures in Historic Places' guidance by Historic England refers to the benefits that can arise from temporary structures, I am not persuaded that in this case the optimum viable use of the heritage asset or its long-term conservation would be threatened by the loss of the marquee.
20. I conclude then that the proposals would not result in public benefits sufficient to outweigh the harm that is caused. The proposals fail to preserve the setting and significance of this important Grade II* listed building and are contrary to the development plan policy CH1 and to the Framework.

Green Belt (Appeal A only)

21. The appeal site lies within the Green Belt. The Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and advises that one of the essential characteristics of the Green Belt is its openness. It says that new buildings in the Green Belt are inappropriate with some exceptions, which include the extension of a building provided that it does not result in disproportionate additions over and above the size of the original building. UDP policy GB2 seeks to restrain development in the Green Belt and its objective accords with the Framework.
22. Even if it were considered as an extension rather than a new building, the size and scale of the proposal as referred to earlier has resulted in a disproportionate addition to the original building. The marquee does not therefore fall within any of the exceptions referred to in the Framework and is therefore inappropriate development, contrary to policy GB2.

23. Openness has both a visual and a spatial dimension. As the land was previously open and generally free from buildings prior to a marquee and decking being erected on the site, by reason of the siting of both the marquee and the decking together with the volume of the marquee, it reduces the spatial aspect of the site. Although the appellant considers that the proposal has minimal visual impact on the landscape, the marquee can be clearly seen from the rear lawn and, albeit to a lesser degree and partially screened by vegetation, from the public footpath in the country park beyond the grounds. It therefore also harms the openness of the Green Belt and this would continue for a significant period of time despite its temporary and reversible nature.
24. Regarding the other examples of development permitted in the Green Belt, I am not satisfied that the circumstances of those cases are directly comparable with this as each site has unique characteristics and each proposal is different (the Casa Hotel case, for example, was significantly smaller in terms of floorspace). I am unaware of the detailed circumstances under which permission was granted for those and they do not provide justification for this proposal. I conclude then that the harm to the openness of the Green Belt adds to the substantial harm by reason of inappropriateness and the proposal would conflict with policy GB2 and the Framework.
25. The Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I must attach substantial weight to this harm. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The substantial harm caused by reason of inappropriateness and the harm to openness, together with the harm to the setting and significance of the listed building, carries substantial weight against the proposal. The other considerations as referred to earlier, the repair and maintenance of the listed building, the contribution of the marquee to the local and regional economy and employment and the examples referred to of developments permitted elsewhere, when taken together and for the reasons given earlier, do not amount to the very special circumstances necessary to justify the development in Green Belt terms.

Other matter (*Appeal A only*)

26. I have noted a number of representations from local residents regarding noise issues from the marquee. However, as the Council has not referred to this and no noise assessment has been provided by the appellant, I am unable to reach any conclusions on this matter. Nonetheless, given my conclusions regarding the listed building and the Green Belt, it is not determinative in this case.

Conclusions

27. The proposals fail to meet the statutory duty in regard to the listed building and conflict with the development plan and the Framework as a whole in terms of both the listed building (both appeals) and the Green Belt (appeal A only). There are no other material considerations that warrant determining the appeals otherwise. Both appeals should be dismissed.

Sarah Colebourne

Inspector