
Appeal Decision

Site visit made on 20 August 2019

by Matthew Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2019

Appeal Ref: APP/M2515/W/19/3230041
431-434 High Street, Lincoln LN5 8HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Charlie Creane against the decision of Lincoln City Council.
 - The application Ref 2019/0035/OUT, dated 14 January 2019, was refused by notice dated 25 April 2019.
 - The development proposed is the demolition of existing public house and the erection of a three storey building to accommodate 47 bedrooms with en-suite bathrooms for use as student accommodation with associated access, car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing public house and the erection of a three storey building to accommodate 47 bedrooms with en-suite bathrooms for use as student accommodation with associated access, car parking and landscaping at 431-434 High Street, Lincoln, LN5 8HZ in accordance with the terms of the application, Ref 2019/0035/OUT, dated 14 January 2019, subject to the conditions in the attached Schedule.

Procedural Matters and Background

2. The application was submitted in outline form with all matters reserved for future consideration, apart from access. The appellant submitted a range of plans with the application which show the potential layout, scale and appearance of the proposal. Given the nature of the outline proposal, I have treated any details relating to the reserved matters as being indicative only.
3. A completed and signed section 106 unilateral undertaking (UU) was submitted by the appellant during consideration of this appeal. This seeks to offer a monetary contribution towards local health infrastructure. The Council have had the opportunity to comment on it and I am satisfied that interested parties have not been prejudiced by the late submission of evidence. I discuss this within my decision.

Main Issues

4. Having regard to the above, the main issues are:
 - Whether or not the development would preserve or enhance the character or appearance of the Gowts Bridge Conservation Area.

- The effect of the development on the living conditions of existing occupiers of nearby properties.

Reasons

Character and appearance

5. The appeal site comprises a roughly rectangular parcel of land which fronts High Street and Queen Street, with the proposed access to be taken from the latter. It lies within the Gowts Bridge Conservation Area (CA), which is a linear designation encompassing a number of buildings located on either side of High Street and small sections of the side streets which adjoin High Street.
6. A conservation area appraisal for the CA has not been submitted to me but I have based my assessment of the significance of the CA on my site visit and the evidence before me. High Street is made up of an assortment of properties of varied height, appearance and age. The presence of numerous shop fronts and other commercial uses at ground floor level give the area a commercial character. The width and straightness of High Street provides a sense of openness to an otherwise dense urban form, offering long views along High Street. There are several architecturally and historically notable buildings present along High Street. It is these elements combined which contribute to the significance of the CA.
7. According to the Council, the Golden Cross public house dates from the mid-20th Century, but there is nothing in the evidence before me to suggest that the building has anything more than limited historical significance. Whilst the building displays some architectural interest in terms of its fenestration pattern and symmetrical understated design, it is not as ornate and distinguished as some of the other building examples on the street. It lies amidst a run of properties, each of which vary in terms of their age and appearance, and it is positioned further along the street and distinctly separate from a terraced row of two storey properties which are more regimented and defined in terms of their appearance and relationship with the street. Having regard to the foregoing, I do not find the building to be of notable architectural, historic or townscape significance. Consequently, it makes a neutral contribution to the character and appearance of the CA.
8. The indicative plans submitted with this appeal, and upon which the Council's planning committee considered the planning application, represent amendments to an original indicative scheme. In comparison with the original iteration, they reduce the proposed building height and incorporate relatively substantial design alterations in order to address the concerns raised by officers and other interested parties during the planning application process.
9. The details on the indicative plans show a three-storey building. The upper most floor would be partially accommodated within the roof space and the rooms at this level would be naturally illuminated by 'box' style front facing dormer windows. The proposed materials, fenestration pattern and detailing would take on a more traditional approach, showing empathy with properties within the CA, whilst a number of contemporary design features are proposed to give the building its own identity. Whilst I appreciate that the submitted details could be subject to change at reserved matters stage, the appellant has amended the indicative proposal to take into account the concerns raised by Council officers in respect of heritage impacts, thus they have been through a

fairly stringent design process. Furthermore, based on the size of the site, the scale of the building indicated on the submitted plans represents a realistic extent of built form necessary to accommodate the 47 bedrooms proposed.

10. Based on the indicative layout and design, the proposed development would be much taller and wider than the public house it would replace, and the height of it aside the existing two-storey properties would make it conspicuous in views from the street. However, on my site visit I saw several examples of three storey buildings, some of which also fronted narrow side streets. Furthermore, the position of the proposed building adjacent to the pavement edge would not be out of step with the prominent position of many other large buildings in the street.
11. Whilst the proposed building would face part of Queen Street, it would lie on the opposite side of the street to an existing two storey property and several single-storey elements associated with 430 High Street. These built elements are less regimented in layout and appearance than the two storey terraced properties that lie detached from the appeal site further along Queen Street. The indicative elevations include a façade along Queen Street which would be broken by a stepped roof line and elevational variations. As a result, I am satisfied that whilst the proposed building would be prominent in views along Queen Street, a feasible design response exists so as to ensure it would not overwhelm the street to the detriment of the character and appearance of the area.
12. Overall, the indicative details provide me with the assurance necessary to conclude that the development would represent an effective transition between the more uniform and modest terraced properties which lie further along the street generally to the south, and the disparate and larger scale of built form present within the street generally to the north and on the opposite side of High Street.
13. Accepting that the submitted plans showing the appearance of the proposal are indicative, whatever the final form of the development, it would be capable of being designed so as to respect the appearance of Queen Street and High Street. Traditional, locally distinctive materials and design features, which are shown on the indicative plans, are examples of features that would assist in assimilating the proposal with the prevailing character and appearance of the area. Consequently, I am satisfied that the replacement of the public house with the development proposed would preserve the character and appearance of the CA.
14. I understand that heritage assets are an irreplaceable resource, and therefore any harm requires clear and convincing justification. In accordance with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 I am obliged to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA, which I have done in reaching my decision, but I find no harm to the character or appearance of the CA in this case.
15. For the foregoing reasons I conclude that the development would preserve the character and appearance of the Gowts Bridge Conservation Area. It would comply with Policies LP25, LP26 and LP35 of the Central Lincolnshire Local Plan April 2017 (the Local Plan) which require, amongst other matters, that development preserves or enhances heritage assets, makes effective and

efficient use of land and comprises high quality sustainable design which has regard to local distinctiveness and character, respecting local street patterns. In accordance with paragraph 192 of the National Planning Policy Framework (the Framework) the development would contribute to local character and distinctiveness.

Living conditions

16. Policy LP26 of the Local Plan requires, amongst other things, that the amenities of all existing and future occupiers of neighbouring land and buildings must not be unduly harmed. Furthermore, the Framework seeks, amongst other things, to secure a good standard of amenity for all existing occupants of buildings. It is not clear from the reason for refusal, or the minutes of the planning committee meeting, specifically how the Council considers the proposal would adversely affect the amenity of nearby residents. Nevertheless, I recognise that student accommodation can have potential negative impacts in neighbourhoods, particularly during the evening and night time, given the more fluid nature of student comings and goings. Furthermore, I appreciate that the scale of the building proposed is much larger than the one to be replaced and would lie close to several other properties.
17. The properties to the immediate north, south and east of the appeal site are two storeys in height. Even though the building would be much larger than the public house it would replace, based on its orientation, position within the site, and the location of windows shown on the indicative plans, it would not result in unacceptable overlooking or loss of outlook for occupiers of neighbouring properties. It has been demonstrated that windows within the proposed building could be provided in the elevations in positions no closer to the nearest property to the south than the existing, and the built form would not project significantly beyond the rear elevation of the adjoining property to the south, which would ensure no unacceptable overlooking, overshadowing or loss of light for occupiers of this property.
18. The building would also face properties on the opposite side of Queen Street. Given the dense urban character of the area, close relationships between existing street facing properties, particularly along the narrower side streets, are a common feature of the area and in this regard, the proposal could be designed in a way which would respect the living conditions of existing occupiers on Queen Street.
19. A funeral director business lies to the rear of the appeal site and there are concerns from the proprietors of the business that the reception area and other spaces within the building would be the subject of overlooking and receive a reduced level of light, which is a particularly pertinent issue given the sensitive use of the building, which at times is visited by the bereaved. Unlike residential dwellings, which are primarily places of relaxation and enjoyment where occupiers might expect a reasonable degree of protection from proposals affecting their living conditions, I would not expect the same level of amenity standards to be afforded to the occupiers of, or visitors to, local businesses. This is reinforced by the fact I have not been presented with a specific development plan policy relating to amenity standards for occupiers of non-residential uses. In any event, the indicative details show that windows in the proposed building would be set back within the appeal site and set away from the boundary with the existing business. Whilst I am unclear how any increase

in overlooking would practically affect the ability of the existing business to operate effectively, nevertheless, I am satisfied that the proposal could be designed to ensure no unacceptable overlooking and loss of light as part of any subsequent reserved matters submissions.

20. The site lies on an overtly commercial street and I have no reason to conclude that the use of the proposed building as student accommodation would lead to excessive noise or disturbance, particularly as the Council's Pollution Control officer raised no objections to the use.
21. Vehicular access to the development would be taken from Queen Street, thus resulting in vehicular movements and potential noise and disturbance from engines and the shutting of car doors. However, the indicative layout shows only a small number of car parking spaces thus limiting daily vehicular movements. A communal pedestrian access would also be located on Queen Street but it is positioned centrally within the development footprint and not adjacent to any existing properties. There is nothing in the evidence before me to suggest that the aforementioned would lead to a significant increase in noise and disturbance so as to adversely affect the living conditions of occupants nearby.
22. Notwithstanding my foregoing observations, I am conscious that the appeal before me has been submitted in outline and that reserved matters may well comprise a different development form. However, I am satisfied, based on the evidence before me, that the proposed development could be satisfactorily accommodated on the appeal site without unduly affecting the living conditions of the nearest occupiers.
23. Consequently, taking all the above into account, I conclude that the proposal would not harm the living conditions of the occupiers of nearby properties and would comply with Policy LP26 of the Local Plan and paragraph 127 of the Framework which requires development to ensure a high standard of amenity for existing users.

Other Matters

24. The planning application was presented to the Council's planning committee for determination. The planning committee refused planning permission against the advice of the Council's officers. I have been provided with a copy of the minutes of the planning committee meeting. Neither Council officers nor the planning committee objected to the loss of the public house on the basis that it would not represent the unnecessary loss of a valued facility as required by paragraph 92 of the Framework. Having observed the presence of other public houses in the local area on my site visit, and based on the evidence before me, I have no reason to take a contrary view. Moreover, like the main parties, I agree that the principle of student accommodation would be acceptable in this location in line with several policies contained in the Local Plan.
25. Whilst the Council refused planning permission on the basis of insufficient information, when dealing with an outline planning application, the Development Management Procedure Order¹ provides a mechanism for determining authorities to request any of the reserved matters to be considered at the same time. Such a request must be made in writing within

¹ Article 5(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015

one month of the date the planning application was received. There is no evidence to suggest any such request was forthcoming. Therefore, I have determined this appeal on the basis of its outline submission and I am satisfied that the level of information submitted with the appeal has allowed me to make a determination on it.

26. Furthermore, notwithstanding the indicative drawings submitted with the application, consideration of appearance, landscaping, layout and scale have been reserved for future consideration and the Council retains control over these elements to be determined as and when they are sought. Should a proposal be submitted at reserved matters stage then the Council retains the power to refuse it, should they find any reserved matters proposal unacceptable. Allowing this appeal would not prejudice the Council's position with regard to the reserved matters.
27. I am aware of third-party concerns relating to excessive parking stress that could arise from the proposed development, and highway safety concerns relating to a general increase in traffic. Details of access are also before me as part of this appeal. However, the limited number of parking spaces indicated suggests that occupiers of the building would not be reliant on the private car, thus limiting vehicular movements. Furthermore, the appeal site lies in a predominantly urban area and within reasonable walking distance of the University of Lincoln campus and a range of other services and amenities which are connected to the site by roadside footpaths and several safe road crossing points. High Street is also a bus route. Consequently, I am satisfied that a range of sustainable transport options exist which would negate the need for students to have significant car parking requirements. There is nothing in the evidence before me to suggest that the limited number of parking spaces proposed would give rise to unacceptable highway safety impacts.
28. The scale of the building may reduce views of the existing commercial business to the rear of the site, thus reducing its visible presence from High Street. However, I have applied only a limited amount of weight to this as a material consideration and it has not been demonstrated that the proposal would adversely affect the viability of this business.
29. The proposal would represent the development of brownfield land in an area of the city where student accommodation is acceptable in principle. Furthermore, I have not been presented with any policies or substantive evidence to suggest that it would unacceptably unbalance the existing mix of housing types in the area.
30. Other issues raised by third parties include the potential for anti-social behaviour, litter and the crowded layout of the proposal but many of these issues would be considered as part of any subsequent reserved matters submissions. Moreover, I have considered all other matters raised and find that they afford only limited weight against the appeal and so do not outweigh my findings on the main issues.

Conditions and Planning Obligation

31. The Council have provided me with a brief summary of suggested planning conditions in the event I was minded to allow the appeal, which I have considered against the relevant guidance contained within the Planning Practice Guidance (the PPG).

32. I have applied the 'Reserved Matters' details and time limit conditions, and the 'approved plans' condition, in the interests of certainty and to protect character and appearance. However, I have restricted the list of approved plans in comparison with the list provided by the appellant, as a number of the plans are indicative only and therefore are not to be approved at this outline stage. Conditions relating to cycle and refuse storage are required to ensure a sustainable form of development. A condition stipulating the hours of construction is necessary in order to safeguard existing occupiers of nearby properties from harmful construction effects.
33. A noise assessment and appropriate sound insulation measures are required in order that a suitable form of sound insulation and mitigation can be agreed with the Council to protect future occupiers of the proposed building from unacceptable external noise.
34. The Construction Management Plan condition is 'pre-commencement', required so that measures can be put in place before any development starts on site to ensure the protection of the living conditions of nearby residents. Pre-commencement conditions are also required relating to contaminated land and drainage, in the interests of adequate environmental management and flood protection, and these details would be required up front because they concern potential elements of work which would take place below ground, and prior to any significant building construction works.
35. I have omitted the Council's suggested conditions relating to the closure of the existing access, external lighting and boundary walls and fences, as they would be dealt with by any subsequent reserved matters. I have also omitted the suggested condition intended to reduce the likelihood of demolition taking place before assurances are given that a new building will be provided, as I have found no harm to the character and appearance of the CA arising from the proposed demolition aspect.
36. Whilst the Council have recommended a planning condition relating to archaeological investigation, the appellant's heritage statement concludes that further archaeological work is unjustifiable partly due to the limited significance of any previous findings nearby, and in light of this, I have no evidence from the Council or other parties to suggest why such a planning condition would be necessary. Furthermore, I do not know the reasons why, nor have I been presented with any policy basis for concluding that electric vehicle charging points would be required in this case, particularly given the limited number of parking spaces indicated. Whilst the Council have suggested a condition relating to the management of the occupation of the building, I am not clear why this condition would be necessary, nor in what way it would otherwise make the development acceptable in planning terms. Consequently, I find that conditions relating to these matters would not meet the '6 tests' contained in the PPG.
37. I have also imposed a condition concerning the use of the building as the effect of matters including, but not limited to, car parking, open space, education and affordable housing have been specifically considered in relation to the proposed use and not in relation to any other use.
38. The appellant has provided me with an executed deed in the form of a UU (version 1.2) for the purposes of section 106 of the Town and Country Planning Act 1990. It comprises a healthcare contribution and the National Health

Service, in commenting on the planning application, considers that students within the proposed accommodation would likely register for medical care with The University of Lincoln Health Service, which is currently at capacity. A monetary contribution would be required in order to increase consultation capacity and accessibility to primary care in the area.

39. I note that the appellant has questioned whether this matter could be 'conditioned' for subsequent consideration at reserved matters. However, the Planning Practice Guidance² advises that only in exceptional circumstances can a negatively worded condition requiring a planning obligation or other agreement be entered into before certain development can commence in more complex and strategically important development. I am not satisfied that the level of development proposed could be considered complex or strategically important, and therefore the required contribution would need to be delivered by a S106 legal agreement.
40. The UU has been amended by the appellant in order to take into account various comments made by the Council relating to matters of detail. However, despite the Council's concerns, there is no detailed evidence to suggest that the 'retention' period should extend beyond 5 years, which would be a reasonable time-frame in order to spend the monies which would be provided by the UU. The UU contribution has been calculated based on the proposal to provide 47 units and therefore, I have attached a condition restricting the number of units within the proposal.
41. Overall, the submitted UU satisfies the identified requirements and I find the measures contained within it necessary, related directly to the development and fairly related in scale and kind. As such the UU would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework.

Conclusion

42. Subject to the following conditions, the appeal is allowed.

Matthew Woodward

INSPECTOR

² Planning Practice Guidance Reference ID: 21a-010-20190723

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby approved shall comprise up to a maximum of 47 units.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: L-ADD-003-01, L-AAD-003-03 Revision C, L-ADD-003-02 Revision A.
- 6) No construction works shall take place until a noise impact assessment has been submitted to the local planning authority for approval. The submitted report shall include an assessment of the likely impact of existing noise levels on the proposed development, along with details of a proposed mitigation scheme. The approved noise mitigation scheme shall be implemented prior to the occupation of the residential accommodation and shall be maintained thereafter.
- 7) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment shall be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 8) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed

remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.

- 9) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 10) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) measures to control the emission of dust and dirt during construction;
 - v) a scheme for recycling/disposing of waste resulting from demolition and construction works;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 11) No development shall take place until full foul and surface water drainage details, including a scheme to reduce surface water run off discharge to at least 7.6 litres per second, and a programme of works for implementation and maintenance, have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full prior to the occupation of the development.
- 12) Prior to the first occupation of the building, provision for cycle parking/storage shall be provided in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. Once provided, such facilities shall be retained thereafter for their intended use.
- 13) Prior to the first occupation of the development, full details of the storage of recycling containers and wheeled refuse bins shall be submitted to and approved in writing by the local planning authority. Such details shall include the point of collection for refuse and recyclables. The development shall be implemented in accordance with the approved

details prior to the occupation of any residential unit and shall be retained thereafter.

- 14) Demolition or construction works shall take place only between 0800 and 1600 Monday to Friday, 0800 and 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 15) The premises shall be used for student accommodation and for no other purpose (including any other purpose in Class C2 or C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

End of conditions