



Appeal Decision

Site visit made on 3 August 2020

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 August 2020

Appeal Ref: APP/P3040/C/19/3242804

Wharf Building Adjacent Wharf House

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Christopher Grice against an enforcement notice issued by Rushcliffe Borough Council.
 - The enforcement notice was issued on 30 September 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, carrying out a building, engineering or other operation by placing a metal storage container on the land which, by virtue of the length of time it has been in situ, its size and weight, has a degree of permanence.
 - The requirement of the notice is to remove the metal storage container from the land.
 - The period for compliance with the requirement is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice be corrected by deleting all wording at section 2 (the land affected) and replacing it with 'Land at *Wharf Building Adjacent to Wharf House, Main Street, Hickling, Melton Mowbray LE14 3AH, shown edged red on the attached plan*' and varied by deleting the word 'three' in section 5 (what you are required to do) and replacing it with the word 'six'. Subject to these changes the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matter

2. The address on the enforcement notice is incomplete. However, the plan attached to the notice makes the site clear. Accordingly, I am able to add the details of the address set out in the appeal form without causing injustice to any party.

The appeal on ground (a)

Main issue

3. The main issue is whether the development preserves or enhances the character or appearance of the Hickling Conservation Area, within which the site lies, and whether it preserves the setting of the Grade II listed Old Wharf Building.

Reasons

4. The Old Wharf Building, also referred to as a canal warehouse, is a 2 storey brick building with a pantiled roof, dating from the late 18th or early 19th Century according to the description in the statutory list. It is located next to the Grantham Canal and is now in use as a tearoom. The setting of the building has clearly changed much over the years, not least due to the car park that is now adjacent to it. Nevertheless, the setting of the building, in particular its relationship to the canal, is important to its significance.
5. The Council carried out an appraisal of Hickling Conservation Area in 2008. This highlights the linear form of the village and the strong rural character, with numerous views of the surrounding countryside from Main Street. It also advises that the canal with canal basin and warehouse create a key focal point, a view I share. The warehouse is highly prominent and contributes positively to the significance of the conservation area.
6. With its metal, pre-fabricated construction, flat roof and absence of windows, the storage container has a contemporary, basic, utilitarian appearance, which contrasts markedly with the red brick listed building. As a result, it appears out of place so close to the listed building and, as the appellant accepts, harms its setting.
7. Moreover, the container is in clear public view from Main Street and from the canal towpath. It clearly contrasts with the traditionally-constructed buildings, largely of brick, which characterise the conservation area. Moreover, as I have highlighted, the canal basin and warehouse building are identified as key focal points of the conservation area. Accordingly, introducing such an incongruous feature has harmed the character and appearance of the conservation area. Both the listed building and the conservation area are 'heritage assets', as defined within the National Planning Policy Framework (the Framework).
8. Some features limit the extent of the harm to these heritage assets. The storage container is modest in scale in comparison to the canal warehouse, is painted green and is set against a substantial, evergreen hedge. As a result, it is less noticeable than it might otherwise be. Moreover, it is seen in the context of the car park and outdoor tables associated with the warehouse, which have plainly already changed its setting. Consequently, the overall harm to the conservation area and the setting of the listed building is quite limited, falling well within the 'less than substantial' category referred to in the Framework.
9. Nevertheless, the harm I have found gives rise to conflict with the aims for the historic environment in Policy 11 of the *Rushcliffe Local Plan Part 1: Core Strategy* (LP1). There is conflict too with LP1 Policy 10, which seeks to ensure that developments make a positive contribution to the public realm and reinforce valued local characteristics, and with Policy 28 of the *Rushcliffe Local Plan Part 2: Land and Planning Policies*, which seeks to conserve and enhance heritage assets.
10. I have considered the appellant's suggestion of timber screening to hide the building. However, the screen proposed would itself require planning permission and is not part of the alleged breach of planning control. Consequently, the powers conferred to me to grant planning permission in respect of 'the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of

those matters' under s177 of the Act do not extend to the proposed screen. Since planning permission is not in place for the screen, I am unable to give weight to any benefits it might bring and it does not alter my assessment of the harm arising from the development.

11. At Paragraph 196 the Framework states: *Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.*
12. In this case it is argued that there is insufficient space within the former warehouse for the storage of non-perishable items connected with the tearoom use and that the storage container is consequently needed to ensure the continued viability of the business. I accept that it is beneficial for the listed building to have a viable, commercial use, in the interest of the building and for the social and economic benefits the use provides. I am also mindful of the current difficult trading conditions arising from the Covid-19 pandemic. These matters weigh in the appellant's favour.
13. However, while the storage provided in the building is no doubt beneficial to the business, there is insufficient information to demonstrate that it is genuinely essential to its viability. Nor is it clear that this is the only option available for storage at the site. Indeed, the Council says that it is possible that a more sympathetically designed structure would be acceptable in the current location. Consequently, I give this consideration only limited weight.
14. The Framework advises at paragraph 193 that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. In this case I have found that there would be harm to the character and appearance of the conservation area and to the setting of a listed building. Having considered the public benefits of the storage container I conclude that they do not outweigh the harm to heritage assets. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

15. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case the Council has not stated specifically which of these purposes it seeks to achieve. However, since the notice requires the removal of the storage container, the purpose must be to remedy the breach of planning control in accordance with (s173(4)(a)).
16. The appellant suggests that the harm could be addressed by screening the building. However, this would not remedy the breach of planning control as the building would remain. In any event, as I have already explained in relation to the ground (a) appeal, the screen the appellant proposes would need planning permission in its own right. Consequently, I cannot be sure it could be implemented, and it is not a genuine option for me to impose as a requirement of the notice.
17. For these reasons, the appeal on ground (f) fails.

The appeal on ground (g)

18. The appellant seeks a 9 month period of compliance to allow alternative storage provisions to be put in place. I accept that it is beneficial to allow time for an alternative to be put in place in order to minimise disruption to the business. I also accept that there is a degree of complexity because of the need to consider the effect of any alternative storage provision on heritage assets. On the other hand, it is desirable for the breach of planning control to be addressed without undue delay. In my view a 6 month compliance period strikes the appropriate balance and I will vary the notice accordingly. To that extent, the appeal on ground (g) succeeds.

Peter Willows

INSPECTOR