
Appeal Decision

Hearing held on 12 & 13 May 2021

Site visit carried out on 17 May 2021

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10/06/2021

Appeal Ref: APP/A4710/W/20/3261625

Former Dews Garage, Northgate, Halifax HX1 1XF

- 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 Richard McGawley (Hallmark Developments (North West) Limited) against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 20/00181/FUL, dated 13 February 2020, was refused by notice dated 11 May 2020.
 - The development is the demolition of buildings and the proposed erection of two drive through coffee shops or restaurants (Use Classes A3/A5) with ancillary retail sales (Use Class A1), car parking, access off Northgate and ancillary works.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Prior to the Hearing the Council advised that it was seeking to control the hours of operation of the two buildings. This was due to concerns relating to the impact on the living conditions of nearby residents from noise associated with external food ordering points for the potential 24 hour drive through operation. In addition, the Council raised issues with the method of servicing the units and the alleged consequent harmful effect on highway safety (in addition to other concerns in this respect).
3. Through discussion, the main parties agreed that the design of the food ordering points and the method of servicing the units could be appropriately controlled through the imposition of a suitably worded condition. On that basis the Council withdrew the requested condition regarding hours of operation, and its concerns regarding servicing arrangements. Based on the evidence before me and my observations on site I see no reason to disagree with that approach to both matters.

Main Issues

4. In the above context, the main issues are:
 - the effect of the proposal on highway safety; and
 - the effect of the proposal on the setting of nearby listed buildings (85-105 Northgate, 2-4 North Parade, North Bridge and drinking fountain) and the Town Centre Conservation Area.

Reasons

Highway safety

5. Northgate is a busy principal access into Halifax from the north. In the vicinity of the appeal site, a short distance to the north, is a signalised junction with Cross Hills providing access to Dean Clough (shopping, heritage and office space), a leisure centre and a large long stay car park. To the south is a further three arm traffic signal controlled junction with Winding Road. Northgate also provides direct access to the town centre and the bus station. On the opposite side of the road is North Parade, which provides the service access to the Broad Street Plaza incorporating a large cinema, gymnasium and food and drink facilities as well as the ambulance station. Outside of the appeal site is a bus stop, close to the proposed access for the appeal scheme. There is also pay and display on street parking available on the opposite side of Northgate to the appeal site.
6. I observed this to be a busy part of the highway network both within and outside of the peak period. This is confirmed by an analysis of existing traffic flows which have been taken from those used in the AECOM Environmental chapter for the 2020 Town Centre Improvement Scheme (TCIS) which shows that Northgate typically carries some 811 total vehicles two way during the evening peak period. The appellant reports anecdotal evidence that demand for car travel has significantly reduced since the current economic downturn. However, there is no substantive evidence before me on this, and any impacts due to Covid would hopefully be a short term issue. There are only three recorded personal injury collisions in the last five years, suggesting that the highway network is currently operating in a relatively safe manner with both existing accesses in place.
7. The proposed access for the appeal scheme makes use of the most southern existing access. The other would be closed. It is agreed by the parties that the most recent lawful car showroom use would have generated about 14 movements within the peak hour periods of assessment. It is also agreed that the proposed development would generate some 277 movements during the weekday peak hour (1700-1800 hours) and 356 during the Saturday peak hour (1300 -1400 hours). For the purposes of this appeal, the analysis centred on the Friday peak hour as the worst case scenario, when there would be the highest amount of existing traffic on the network creating a greater number of movements than during the Saturday peak hour. The net impact therefore would be 263 movements or about 4 per minute.
8. In addition, modelling was undertaken using the proposed highway layout included in the TCIS in the vicinity of the appeal site. This has received planning permission and is undergoing detailed design work with a view to early implementation. There is no reason to suppose that the scheme, which allows for minor junction and carriageway improvements, carriageway widening to provide cycleway and footway facilities, together with revisions to bus stop locations, would not come forward.
9. The Council has consistently raised concerns with the proposal to serve the appeal site with an all movements give-way junction as currently exists, given the large increase of vehicular traffic that would be using the access over and above that generated by the existing lawful use of the site. The Council particularly takes issue with the right hand turn out of, and turn into, the appeal site due to the position of the access in relation to existing junctions and the insufficient right turn facility.

10. The appellant used LinSig modelling, the outcome of which demonstrates that the proposed use would operate safely and efficiently. While LinSig is a commonly used modelling tool, the Council has considerable concerns regarding its use to demonstrate the effective operation of the network in this particular circumstance. To substantiate this, it refers to a paper by Green Signals Consulting Ltd in 2017, the contents of which are not disputed by the appellant. The paper states that while all the characteristics that may be attributed to a complex network can be modelled and allowed for in LinSig, the input and interpretation of the results is, to a greater or lesser extent, variable and difficult.
11. The paper goes on to state that probably the most difficult feature of all to model is the effect of restricted lane lengths between junctions or nodes (as is the case here). In order to address the identified issues within LinSig, the appellant changed the default maximum flow while giving way input parameter by 45%. In reaching the value of 45% the appellant has assumed that three vehicles can queue at the stop line at the Cross Hills junction before movement out of the site access is hindered. The Council accepts the principle of manual adjustment but considers that the value should be 75% based on the time when only two vehicles would be queuing at the stop line.
12. Having viewed the situation on site and, taking into account plan ref 19/270/ATR/006, it seems to me that three vehicles could be accommodated before vehicles would be hindered turning right out of the appeal site (assuming a Passenger Car Unit length of 5.75 metres giving a queue length of 17.3 metres). Both parties agree that the distance to the stop line at the Crosshill's junction is at least 19 metres from the proposed access and therefore, three vehicles could be accommodated. It is at this point then that any further vehicles exiting the site, would be able to do so but would be positioned to effectively overhang and block the right hand turn lane into the appeal site. Therefore, I concur with the appellant that a 45% figure is the most appropriate to use.
13. This is reinforced by my observations on site. I saw that queues do form at the Crosshill's junction, back across the appeal site access such that it would hinder the free exit of movement from the appeal site waiting to turn right out of the site. While these queues were at times more than 2 or 3 vehicles in length, there were also periods of time where, due to the proximity of other traffic signals, there were no vehicles waiting at the stop line and traffic would be able to leave the site and turn right without hindering or blocking other parts of the network. Given the predicted number of right turn movements from the site of 82 at peak hour it seems to me that there would be opportunity for traffic to exit the site without having to wait for a significant period of time. However, that is without taking account of vehicles wanting to turn right into or out of the appeal site, and traffic approaching from the north, including cyclists, via the proposed dedicated cycle lane.
14. Focusing on the right turn movements into the site, there would be no separation between the right turn lane for the appeal site and that for North Parade. The right turn lane for the appeal site has capacity for two vehicles and the appellant considers this to be sufficient given that the maximum modelled queue (MMQ) is a single vehicle. Based on the predicted 85 right turns into the site during peak hour, the Council calculates that on average there would only be two right turns per green period. In my view, as traffic would not arrive at a regular rate then it is likely that, notwithstanding the outputs from the model,

there will be times when there would be more than two vehicles in the queue. The appellant was not able to advise me at the Hearing whether this situation would occur or not.

15. If there were to be more than two vehicles waiting to turn right into the appeal site the right hand turn into North Parade would be blocked, which would in turn block the southbound ahead lane. This could be further complicated by the presence of the bus stop in the vicinity of the appeal site. Alternatively, if the right turn facility into North Parade was occupied and more than two vehicles wished to turn right into the appeal site, then Northgate ahead movements would be obstructed. Furthermore, if vehicles were waiting to turn right into the appeal site then this would effectively prevent right turning movements out of the site, however many cars were queuing at the Crosshill's junction. As the Council suggests, it is not clear that the modelling work accounts for such interactions. In addition, North Parade would be accessed by larger vehicles, as it provides the service access for Broad Street Plaza and the ambulance station. As a result, given the likely level of traffic at peak hour, conditions would exist that could cause material harm to the safe and efficient operation in the highway network in the vicinity of the appeal site. This may increase driver frustration and lead to them attempting to leave or enter the appeal site when circumstances may not be safe for all road users.
16. Drawing all of this together, while I accept that 45% is a reasonable adjustment factor, given the many other variables on the local highway network I have outlined above, creating a complex local situation, I have significant concerns regarding the reliance that can be placed on the modelling work submitted in support of the appeal scheme as a means of judging the likely impact of the development.
17. For the reasons above therefore, I conclude that it has not been robustly demonstrated that there would be no harm to highway safety. Consequently, this brings the proposal into conflict with Policy BE5 of the CUDP which requires that development should ensure the safe and free flow of traffic (including provision for cyclists) in the interests of highway safety.

Heritage assets

Significance of listed buildings

18. Nos 85-105 Northgate and 2-4 North Parade comprise a terrace of buildings forming a row of shops and offices incorporating a house, built around 1800 and having Grade II listed status.
19. Building of the terrace commenced in 1845 and finished within a couple of years. It is an early example of commercial activity outside large cities, marking the beginning of the major expansion of Halifax in the nineteenth century, linking the industrial mill workings to the north with commercial areas to the south of the town. The combination of functions built into the development is of interest which still continues. It has an impressive front elevation, unified mostly by its materials palette with variations in detailing. There is little evidence of alteration other than modern fenestration detail and some unsympathetic shop front additions and signage at ground floor.

20. Historic interest is added through its development by Jonathan Akroyd, who was one of the major mill owners of the town. The Council also advised that the earliest part of the building at 2-4 North Parade was where Akroyd lived.
21. The North Bridge and drinking fountain is an impressive cast iron feature which was constructed in mid to late nineteenth century and spans the valley replacing an earlier stone bridge. It has a central pier and abutments of rough stone, the latter rising as four castellated turrets. Primarily built and designed to carry traffic it has historic and social interest in forming part of the historic gateway into the town as a representation of civic pride. The memorial drinking fountain is attached to the south west turret and dated 1871. Although no longer working it gives an indication of an historic function of the bridge.
22. Given the above, the age and high level of surviving fabric contributes greatly to the architectural and historic significance of these buildings. In addition, the historic associations and roles in the development of Halifax contribute to their significance. In my view given the level of surviving fabric and the history of each building they have high significance.
23. The setting of a heritage asset, which can contribute to its significance, is defined in the glossary to the Framework as the surroundings in which a heritage asset is experienced.
24. The parties agree that there is no functional or historic link between the appeal site and the listed buildings of concern. The historic maps provided by the appellant show that it primarily accommodated rows of terraced properties fronting and perpendicular to Northgate. Over time these have been demolished and sometime between 1933 and 1973, the buildings that were most recently on the appeal site were constructed. Therefore, while quite an ordinary relationship, the southern side of Northgate formed part of an important route into the town at that time. However, that historic gateway has been considerably eroded by modern development on the southern side of Northgate where there are very limited examples of historic development in between the leisure centre, the appeal site and its neighbour, the bus station, an electricity sub-station and Northgate House. This, combined with the large cinema building on the north side of the road to the south-west of the appeal site, means that the historic buildings around the Dean Clough complex, including the listed buildings of concern here, are somewhat isolated from the historic core in the town centre.
25. Nevertheless, the appearance of the listed structures can still be appreciated and experienced, particularly along the Northgate frontage. From photographs submitted by the appellant, it is apparent that the low level nature of the buildings most recently on the appeal site, and those around it, allowed longer views of the listed buildings to also be appreciated.
26. Given the above, I find that the setting of these buildings, insofar as it relates to this appeal, is informed by the area to the south from where they can be seen and an appreciation of their role in understanding the historic development of Halifax. The appeal site is located directly opposite Nos 85-105 Northgate and 2-4 North Parade. It has a more oblique relationship with North Bridge and fountain. Nevertheless there is some intervisibility and therefore the appeal site contributes to the significance of the buildings, albeit in a small way, given the large extent of Northgate and the wider area over which they is visible and that

the views currently available from the appeal site are no more important than any other.

Significance of Conservation Area

27. The Town Centre Conservation Area (CA) was designated in 1974 and encompasses a large area of the town centre and its immediate environs. The Council's Halifax Town Centre Conservation Area publication (HTCCA) describes Halifax as a prime example of a Victorian/Edwardian civic and commercial centre with an abundance of nineteenth and early twentieth century buildings which reflect the industrial and commercial confidence of that time. I saw this to be the case at my site visit. The numerous examples of historic buildings, many listed constructed from local stone give a cohesive materials palette and reflect the historical development of the town. The surrounding landscape enables views of the town from approach roads, as well as the steep hills giving a green back drop to the CA.
28. The significance of the CA, for the purposes of this appeal, is largely derived from the number of high quality historic buildings, together with the use of traditional local materials. In addition, the siting of the buildings and their relationship to each other as well as the connection to the surrounding topography enabling views into and out of the historic town contributes to the significance.
29. The HTCCA states that sites or areas which affect views in or out of the town centre are included within the CA designation. While the appeal site lies outside the CA, I observed at my site visit that there are many locations outside of the CA from where there are views of the historic town. The boundary has to be drawn at some point and here it lies along the middle of Northgate.
30. The appeal site is located to the east of that line and therefore is not covered by the CA designation. However, both parties agree that it lies within the setting of the CA. I see no reason to disagree. The area around the CA allows views and glimpses into the historic core both from the street and, due to local topography, from further afield. Therefore, its setting plays a part in visually understanding and appreciating the significance of the CA. Within the vicinity of the appeal site, the area to the east of the CA, including the appeal site, allows views towards the Dean Clough complex, against a green backdrop, within an outlying limb of the designated area.
31. The appeal site is currently used as a car park. Views and an appreciation of the heritage assets are though still available across the car park to the listed buildings and CA, and hence it makes a neutral contribution to their significance.
32. The previous use was a car sales showroom with a modest two storey building on the site which, from the photographic evidence before me, also had a neutral effect on the significance of the heritage assets.

Effect on significance

33. The proposed development is the erection of two single storey buildings to be used as a coffee shop or restaurant, together with car parking. The Council considers that the proposal would cause substantial harm to the significance of the heritage assets due to the poor form, scale, siting, design and materials which would inappropriately alter the way in which they would be experienced.

34. However, the buildings would be low level, set well back within the appeal site. There is no doubt that views of the listed buildings and into the CA would change but, due to the modest scale, siting and form of the proposed buildings, the ability to appreciate the listed buildings from the street would be preserved and views into the CA from the street little altered. There would be also be no change to the appreciation of the functional or historic values of the heritage assets.
35. I appreciate that there would be no street frontage provided by the development. Instead there would be car parking associated with the two units. However, from the photographic evidence provided this would be little different from how the appeal site appeared when previously occupied by a car showroom, with external parking of vehicles along the front of the site, and indeed the existing situation and the current use of the site as a car park, albeit that that use was, at the time of the Hearing, unlawful.
36. The proposed materials for the buildings include white render, red aluminium, artificial timber cladding, blue and grey bricks and stone effect cladding panels. This is a modern materials palette and some aspects, particularly the render and darker colours would, in my view, jar with the muted material of the listed building directly opposite. As a consequence, the proposed buildings would compete with the listed building and wider views of the CA, detracting from an appreciation of them in long range views. However, it was agreed at the Hearing that this is a matter that could be addressed through the imposition of an appropriately worded condition.
37. With that in mind, the development would sit within a more modern part of the town and would integrate satisfactorily within that context when viewed from further afield. I understand the Council's concern that a new form of development should not necessarily repeat undesirable features from earlier development. However, the statutory test for listed buildings is to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Paragraph 200 of the National Planning Policy Framework (the Framework) states that proposals that preserve those elements of the setting that make a positive contribution to the asset should be treated favourably. Given the above, and my finding that the previous buildings on the site made a neutral contribution to the heritage assets then I am firmly of the view that the setting of the heritage assets would at least be preserved. As a result, the development would not adversely affect the ability of the public to interpret the heritage significance of the assets which are best appreciated from Northgate and in longer distance views from the east.
38. For the reasons above, I conclude that the setting of nearby listed buildings (85-105 Northgate, 2-4 North Parade, North Bridge and drinking fountain) and the Town Centre Conservation Area would not be harmed. There would therefore be no conflict with Policies BE1 and BE15 of the Replacement Calderdale Unitary Development Plan adopted 2006 and amended 2009 (CUDP). These require that development should respect or enhance the established character and appearance of existing buildings and the surroundings and should not harm the setting of a listed building.
39. Although Policy BE1 is a policy regarding general design criteria, it is clear from the Statement of Common Ground that the matters at issue between the parties

in this regard are confined to the impact of the proposal on the setting of nearby listed buildings and the CA.¹

Planning Balance and Conclusion

40. The improvement in the appearance of the appeal site without causing harm to the significance of heritage assets, together with its location in the town centre giving an accessible location by foot and public transport would be environmental benefits of the scheme, as would the closure of the vehicle access close to the Crosshill's junction.
41. The town centre location would complement existing uses in the locality, increasing spend in the local economy as well as creating 90 new jobs. Even if some of the jobs were to be part time there would still be considerable economic benefits of the scheme.
42. The development would be on previously developed land and the appellant's viability study demonstrates that there is, at present, little prospect of a viable alternative use. Although the Council suggested that the CIL viability assumptions that have been used in the viability study are no longer up to date, having been replaced as part of the local plan update, it offered no substantive evidence to refute the findings of the viability study.
43. There is no doubt that the economic and environmental benefits of this proposal are considerable, and in that respect the proposal would broadly accord with many policies of the CUDP and the Framework. However, the harm to highway safety brings it into fundamental conflict with Policy BE5 and therefore the development plan as a whole. Whilst I was advised that there are other options available for access to the appeal site, including a left in and left out option only, the appeal scheme was not promoted on that basis. Therefore, in the overall planning balance, although considerable, the benefits of the proposal are not sufficient in this case to outweigh the harm I have identified and the conflict with the development plan.
44. Therefore, for the reasons set out above, and having had regard to all other matters raised, I conclude, on balance, that the appeal should be dismissed.

Zoe Raygen

INSPECTOR

¹ Paragraph 31 of the Statement of Common Ground 19 March 2021

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Mr Piers Riley-Smith of Counsel

Kings Chambers

Ms Kate Peach

Principal Conservation Officer,
Calderdale Metropolitan Borough
Council

Mr Andrew Dmoch

Highways Development Control
Manager, Calderdale
Metropolitan Borough Council

Ms Anita Seymour

Senior Planning Officer,
Calderdale Metropolitan Borough
Council

FOR THE APPELLANT

Ms Sarah Reid of Counsel

Kings Chambers

Mr Anthony Martin

Director, Nexus Heritage

Mr Andrew Cooper

Associate Bryan G Hall,
Consulting Civil and
Transportation Planning
Engineers

Mr Alyn Nicholls

Chartered Town Planner

DOCUMENTS SUBMITTED AT THE HEARING

1 Statement by Mr Cooper re highway safety

DOCUMENTS SUBMITTED AFTER THE HEARING

A Statement by Mr Dmoch re highway safety

B Statement by Mr Cooper re highway safety