
Appeal Decision

Site visit made on 8 June 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th June 2021

Appeal Ref: APP/D4635/W/21/3270090

**Warehouse Buildings adjacent to S J Dixon & Son Ltd
Cleveland Road WV2 1BX**

- 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 Tim Dixon against the decision of Wolverhampton City Council.
 - The application Ref 20/00832/FUL, dated 29 July 2020, was refused by notice dated 19 November 2020.
 - The development proposed is demolition of existing warehouse buildings and construction of Costa Coffee Drive-Through (use class A1/A3) and retail unit (use class A1) with associated parking, access, and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The site visit was undertaken unaccompanied, wherein the buildings were observed in their local context and from the public realm. An internal inspection of the buildings to be demolished was not undertaken. This was on the basis that the condition of the buildings is not in dispute between the parties and the findings within the submitted condition survey and report can be relied upon without the need for a confirmatory internal inspection. An internal inspection would only likely have been useful in order to help clarify any potential dispute about the buildings' condition, one way or the other. The appeal has been dealt with accordingly.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area in relation to designated and non-designated heritage assets, including any countervailing public benefits that may exist.

Reasons

4. The site is located within Cleveland Road Conservation Area, which is a designated heritage asset and among other things derives its heritage significance from a strongly defined layout informed by the nineteenth century east-west alignment of streets and industrial buildings therein. This included Baker's Shoe Factory, which is a Grade II listed building and also a designated heritage asset directly to the west of the site, and the Dixons Building which is a locally listed non-designated heritage asset directly adjoining the site to the east.

5. Historically, this created a pattern of development comprising strong building lines that framed and constrained views of the Royal Hospital, which is also a Grade II listed building and designated heritage asset directly south of the site. Consequently, the pattern of development intrinsic to the heritage significance of the conservation area, also contributes to the setting and heritage significance of the Royal Hospital, Baker's Shoe Factory and the Dixons Building as heritage assets in their own right.
6. It is acknowledged that few buildings reflecting the industrial character of the conservation area remain. However, notwithstanding the largely brownfield and vacant nature of the immediate locality, it is highly likely that this historical pattern of development will be regenerated by emerging development.
7. For example, such development has recently been approved by the Council on land associated with the former bus garage¹, which is currently under construction. Its acceptability was not necessarily predicated on limited views through the site towards the Royal Hospital, but a strong perimeter and scale that would reinforce historical patterns of development. In addition, another example of regenerative emerging development is on land associated with the Royal Hospital², which although relatively low rise will reintroduce strong building lines back into the area and has been commended by Historic England.
8. Consequently, there is clear intent by the Council to regenerate the area in a coherent manner, and it is important that other development proposals explore opportunities to further regenerate and reinforce the historic pattern of development and heritage significance of the conservation area, including the setting of the Royal Hospital, Baker's Shoe Factory and the Dixons Building.
9. Further underlining the point about the importance of regenerating the historical pattern of development and heritage significance of the area is the fact that the conservation area is included on Historic England's at risk register, with a high vulnerability rating. Clearly, therefore, it is important that action is taken to reverse any decline, and not compound it.
10. In terms of Figure 33 under Policy CA11 of the Wolverhampton City Centre Area Action Plan 2016, it has not been fully articulated how such evidence would reinforce the historical pattern of development and heritage significance of the area. In any event, it would appear to relate to the bus garage site, not the site in this case, and therefore carries limited weight.
11. The site itself comprises warehouse buildings, which sit directly adjacent to the locally listed non-designated heritage asset of the Dixons Building. Together, these buildings provide remnant evidence of the industrial past and are reflective of the character and appearance on which the conservation area was founded, and the setting within which the listed buildings nearby are appreciated, and their heritage significance revealed.
12. Acknowledging that the warehouse buildings are in a state of disrepair to the extent argued by the appellant, when considered in a vacuum their loss may be regarded as insignificant. However, when considered in a full and proper context, together with the Dixons Building adjacent, and the Baker's Shoe Factory opposite, they provide important links to the past and help reveal the heritage significance of the area.

¹ 18/01240/REM

² 17/01902/FUL & 20/01358/FUL

13. Their importance in this regard is enhanced by the fact that such few buildings of this nature still survive in the area. Consequently, especially in relation to the appeal site, the buildings are important because of their past use and scale rather than intricate architectural detailing or quality.
14. The proposal would demolish the warehouse buildings and therefore at a fundamental level, links to the past heritage significance of the area would be lost. This would create principal harmful effects on the character and appearance of the conservation area and the setting of adjacent heritage assets. There would be further harmful effects insofar as the design of the proposal would be low rise and would not replicate the strong and imposing building lines and historical pattern of development associated with the conservation area, further diminishing links to the past.
15. It is acknowledged that the proposal would incorporate chimney elements using appropriate materials detailing, among other things, in an attempt to respond to the character and appearance of the conservation area. However, even if the materials and finer detailing of the proposal were acceptable, there would still be fundamental discordance. Ultimately, the low rise nature of the proposal, including wide open spaces associated with the car parking area, among other things, would be at odds with the objective of restoring strong and imposing building lines and the historic pattern of development.
16. The proposal would harm a relatively small part of the wider conservation area and the settings of other heritage assets. The site is not a designated or non-designated heritage asset in and of itself, which is representative of the lesser significance it holds as a component of the wider area. Consequently, the scope for potential harmful effects is reduced. In this context, it would not substantially erode or lead to a total loss of heritage significance for those heritage assets concerned and would generate less than substantial harm.
17. Nonetheless, Paragraph 193 of the National Planning Policy Framework (the Framework) is clear that great weight should be given to a heritage asset's conservation. Importantly, this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Thereafter, Paragraph 196 of the Framework is clear that less than substantial harm should be weighed against the public benefits of the proposal.
18. In this context, the proposal would create more open views of the Royal Hospital, and this does not appear to be disputed between the parties. However, these open views are not necessarily reflective of the heritage significance of the Royal Hospital, insofar as the historical pattern of development is predicated on constrained views mainly along Cleveland Road, and not necessarily through perimeter blocks and established building lines.
19. Consequently, open views through the site cannot be regarded as a genuine public benefit as it does not reveal the significance of the Royal Hospital in a manner consistent with its history, or other heritage assets therein. It would therefore carry limited weight in the balance.
20. Putting a dilapidated site to beneficial use would give rise to socio-economic benefits pursuant to Paragraphs 80 and 118 of the Framework, with the drive through and retail unit occupying a well located site with access to significant opportunities for passing trade both from emerging residential development in the immediate vicinity and in conjunction with city centre activity nearby.

21. However, the significance of these socio-economic benefits needs to be tempered by a number of factors. Firstly, based on the information in front of me there is no evidence that the socio-economic activity generated by the proposal is of a scale greater or more significant than comparable operations elsewhere in the region, or is an otherwise exceptional opportunity that would mean it is of enhanced benefit. Consequently, at a basic level there is no evidence that the proposal should carry any more than moderate weight in this regard.
22. In addition, based on the evidence submitted by the Council and prepared by Bruton Knowles, the potential for a residential led mixed use development with perhaps more significant socio-economic benefits due to latent demand and additional funding opportunities to mitigate viability, has not been definitively discounted. Lastly, even if the socio-economic position of the appellant was uncontested by the Council's evidence and it was agreed that a full and proper marketing exercise had been carried out, there can be no doubt that the pandemic has had a drastic effect on the socio-economic position of the country.
23. Consequently, it remains to be seen whether the socio-economic position presented by the appellant would still be representative, and therefore whether all other alternatives for the buildings' beneficial use and repair have been exhausted. Altogether therefore, I think it is reasonable to conclude that the socio-economic benefits would be limited to carrying moderate weight in this case.
24. There are potential benefits derived from addressing the site's ongoing dilapidation, and risk of further deterioration, including vandalism among other things and the effect this may have on character and appearance of the conservation area and other heritage assets.
25. However, due to the location of the site, it appears the Council will have the power to require the proper maintenance of the land or buildings under Section 215 of the Town and Country Planning Act 1990 (as amended). Consequently, the benefits of the proposal in guarding against ongoing dilapidation is mitigated by the Council's potential use of these powers and would therefore carry limited weight.
26. Altogether, the proposal would generate public benefits that either carry limited or moderate weight. Consequently, for the purposes of Paragraph 196 of the Framework, these public benefits would not outweigh the great weight derived from the less than substantial harm imposed by Paragraph 193 of the Framework.
27. Paragraph 197 of the Framework requires a similar balanced judgement in the context of non-designated heritage assets, in this case the Dixons Building. Consequently, the relevant parts of the forgoing assessment would lead to the same conclusion, insofar as the setting of the Dixons Building would be harmed in a similar manner to that of other designated heritage assets, and public benefits of the proposal would not outweigh these harms.
28. Overall, the proposal would harm the character and appearance of the area in relation to designated and non-designated heritage assets, without a sufficient level of countervailing public benefit to make it acceptable in planning terms.

29. Consequently, the proposal would be in conflict with saved Policies HE1, HE4, HE5, HE6, HE17, HE19, D4, D5, D6, D7, D8, D9 of the Wolverhampton Unitary Development Plan 2006; Policies CSP4, ENV2 and ENV3 of the Black Country Core Strategy 2011; Policies CC8 and CC9 of the Wolverhampton City Centre Area Action Plan 2016; and Paragraphs 196 and 197 of the Framework.
30. Among other things, these policies reflect the principles of the statutory duties set out within Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which require decision makers to give special regard to the desirability of preserving listed buildings and their setting, and pay special attention to the desirability of preserving or enhancing the character and appearance of conservation areas.

Other Matters

31. In relation to pre-application advice given by the Council, Planning Practice Guidance³ is clear that such advice is not binding and does not pre-empt the democratic decision making process or a particular outcome.
32. Even if components of the development plan were deemed to be out of date, and Paragraph 11 d) of the Framework was engaged, my conclusions pursuant to Paragraph 196 of the Framework would mean that in the context of protected areas or assets of particular importance I would have a clear reason for refusing the development proposed. Consequently, the presumption in favour of sustainable development would not be engaged.

Conclusion

33. For the reasons given, the appeal is dismissed.

Liam Page

INSPECTOR

³ Paragraph: 011 Reference ID: 20-011-20140306 Revision date: 06 03 2014