



## Appeal Decisions

Hearing held on 8 July 2021

Site visit made on 9 July 2021

**by JP Sargent BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4<sup>th</sup> August 2021**

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### **Appeal Ref: APP/Z0116/W/20/3260461**

#### **Public Realm adjacent to Colston Avenue, Bristol**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Interpolitan Limited against Bristol City Council.
  - The application Ref 20/03127/F, is dated 16 July 2020.
  - The development proposed is the temporary art installation for a period of 2 years entitled 'A Surge of Power (Jen Reid) 2020' on the plinth of the former slave trader Edward Colston.
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### **Appeal Ref: APP/Z0116/Y/21/3269256**

#### **Public Realm adjacent to Colston Avenue, Bristol**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
  - The appeal is made by Interpolitan Limited against Bristol City Council.
  - The application Ref 20/03128/LA is dated 16 July 2020.
  - The works proposed are the temporary art installation for a period of 2 years entitled 'A Surge of Power (Jen Reid) 2020' on the plinth of the former slave trader Edward Colston.
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## Decisions

### **Appeal Ref: APP/Z0116/W/20/3260461**

1. The appeal is dismissed.

### **Appeal Ref: APP/Z0116/Y/21/3269256**

2. The appeal is dismissed.

## Procedural matters

3. On the application forms the address for the site was given as Magpie Park. The Council though said that was a colloquial name for the area, and with the agreement of the appellant, it suggested the above address. The application forms also described the proposal as retrospective, but that was not in fact the case and so has been omitted from the description.
4. Although the local planning authority made a conscious decision to neither validated nor invalidated these applications, the parties accepted that each appeal could be considered to be against non-determination.

5. At the Hearing an application for costs was made by Interpolitan Limited against Bristol City Council, and that is the subject of a separate decision.
6. After visiting the site I also saw the statue of Edward Colston, which was on display in a public museum as part of a consultation exercise. However, it was not possible to see 'A Surge of Power (Jen Reid) 2020' (the Jen Reid Statue).
7. Following the Hearing a revised version of the *National Planning Policy Framework* (the Framework) was issued. I have considered the proposals in the light of this revised document, having first given the parties an opportunity to comment on its content.

### **Main Issues**

8. I consider the main issues in this case to be
  - a) what is the significance of the various designated heritage assets that could be affected by the works;
  - b) whether the works would fail to protect the special architectural and historic interest of the Grade II listed Statue of Edward Colston<sup>1</sup>, whether they would fail to protect the special architectural and historic interest of any other listed buildings nearby by reason of the effect on their settings, whether they would fail to preserve the character or appearance of the College Green Conservation Area, and whether they would harm the significance of any of these designated heritage assets, and
  - c) if harm would be caused to the significance of any designated heritage asset(s), whether this would be outweighed by public benefits.

### **Reasons**

#### ***Preliminary matters***

9. From when it was erected in 1895 up until June 2020, the Monument comprised the bronze Edward Colston Statue standing on a cap stone, which, in turn, rested on the plinth. Both the statue and the plinth are referred to in detail in the listing entry. However, because of his strong associations with the slave trade, the Edward Colston Statue (along with the cap stone) was pulled down by members of a crowd in June 2020. They then dropped the statue into the harbour, from where it was subsequently retrieved by the Council.
10. Although listed building consent would have been required to remove both the Edward Colston Statue and the cap stone from the plinth, unsurprisingly in the circumstances this was not obtained and so their removal was unlawful under the Act. At no time since, has the statue been put back on the plinth, and no listed building consent application or enforcement action has been pursued to authorise its removal or secure its re-instatement. I was also not told that the Council had any specific intention to re-erect the Edward Colston Statue on the plinth any time soon. Rather, it confirmed that the future of this site was one

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<sup>1</sup> Although it is called the Statue of Edward Colston in the listing description, for clarity I shall refer to the bronze portrait figure as 'the Edward Colston Statue', I shall refer to the plinth now on site as 'the plinth', and I shall refer to the 2 together, along with the cap stone that was between the Edward Colston Statue and the plinth, as 'the Monument'

of the many things being considered by the 'We Are Bristol History Commission' (the History Commission).

11. The appeals are not expressly seeking planning permission or listed building consent for the removal of the Edward Colston Statue, apart from for the 2 years that the Jen Reid Statue would be in place. However, the appellant noted the Edward Colston statue has not been on the plinth for some time and, given the circumstances of its removal, there is little likelihood of it being put back. Therefore, it contended it was unreasonable and unjustified to consider the Edward Colston Statue to be present when assessing the merits of these appeals. Rather, when considering the impact of the works on the historic environment, the listed building should be taken as the plinth alone and not the Monument as a whole.
12. To my mind though, in the absence of any consent to authorise its removal, the fact that the Edward Colston Statue has now been absent for some 14 months does not mean it is no longer a lawful part of this designated heritage asset under the Act. Indeed, when an element of a listed building has been unlawfully removed the expectation is it could be put back without needing listed building consent. Rather, under the Act the Monument must still, lawfully, include the full description of the listing, encompassing both the Edward Colston Statue and the plinth, and so the proposal should be assessed accordingly. With regard to the likelihood of its return, when or if the Edward Colston Statue is to be reinstated on the plinth are not matters for me to determine as part of these appeals but will, no doubt, be for others to consider in due course. It would therefore be inappropriate for me to prejudge those considerations, and so the likelihood of its reinstatement is not something to which I can afford significant weight in addressing this point.
13. Consequently, when assessing the impact of the proposal on this listed building, I must consider it in relation to the Monument as a whole as described in the full description of the listing, and not just in relation to the plinth.

### ***The significance of designated heritage assets***

#### *The Monument*

14. The full description of the listing for the Monument highlights 2 principal elements, namely the Edward Colston Statue and the plinth (with cap stone). Putting aside the considerable issue of his involvement in the slave trade, Edward Colston was a significant philanthropist in the city, who gave much money to help various worthy causes and needs. The statue was erected apparently in recognition of this philanthropy, and is a striking and attractive bronze portrait of him by a notable sculptor of the time, John Cassidy, at what appears to be a scale slightly larger than life size.
15. The plinth is made of Portland Stone and is of a Baroque style, with bronze relief tablets on each face. One of the tablets explains why the statue was erected by the citizens of Bristol, while the other 3 feature scenes reflecting aspects of Edward Colston's life, with the bronze dolphins at each corner alluding to his family crest. The quality of its design and detailing mean the plinth has a heritage value in its own right. However, it also very much enhances the statue, by elevating it and assisting in its visual presence in the public realm, by its general design complementing that of the statue, by its use of bronze for the decoration reflecting the statue's material, and by its

reference in a limited way to selected aspects of the life and works of Edward Colston.

16. The Monument's special architectural and historic interest is therefore focussed partly on the design detailing of the Edward Colston statue and the plinth, and partly on the depiction of a citizen who has been remembered by some for his philanthropic acts in Bristol. As such, its significance is artistic and historic.

*Nearby listed buildings*

17. In its submissions Historic England drew attention to 4 other listed buildings nearby, all of which are Grade II listed, and are aligned with the Monument along the wide pedestrian walkway that forms the central spine of this linear piece of public realm in Colston Avenue.
18. To the south-west is the statue of Edmund Burke (erected 1894), which is a further statue of a notable Bristolian standing on a plinth. Like the Monument, its special architectural and historic interest lies in the design detailing of the statue and the plinth, and the record it offers of the person displayed. Its significance is therefore also artistic and historic.
19. To the north-east of the Monument is a drinking fountain (the fountain), which, accordingly to the listing entry, was erected in 1901 to commemorate the Industrial and Fine Art Exhibition held on the site in 1893/4. This is a pleasing mix of granites, with a water basin on each face. Once more, this has an artistic and historic significance with special architectural and historic interest being drawn from its detailing and the record it offers of the Exhibition.
20. Further beyond the drinking fountain is the listed Cenotaph that dates from 1932 and is in turn surrounded by 4 lamps (listed together but separately to the Cenotaph itself). The Cenotaph is a massive sculptured block of artistic, architectural and historic significance, with its special architectural and historic interest lying in its detailing, its design and the events and lives it commemorates. The significance of the lamp posts and their special architectural and historic interest rests principally in their artistic value.

*Conservation Area*

21. The Conservation Area covers a large portion of the city centre, from the Council House and the Cathedral round to the areas of Colston Avenue that used to be part of the harbour until it was culverted in the late 19<sup>th</sup> Century. The linear area of public realm on Colston Avenue that contains the Monument, along with the varied and strong built form lining each side, reflect the quayside that was here, while the historic statues and features along the public realm reinforce elements of the City's history.
22. The Conservation Area's significance is therefore partly found in the manner in which it reflects the historic growth and development of the civic, religious, maritime and mercantile heart of the city over many years, and this is shown in its character and appearance.

***The effect on the designated heritage assets***

*The Monument*

23. The Jen Reid Statue now before me was placed on the plinth for one day in July 2020 without planning permission or listed building consent, before being

removed by the Council. It is by a significant contemporary artist, Marc Quinn, and is a high-quality, bold portrait statue in black resin of Jen Reid with her arm raised in a Black Power salute. As a work of statuary, I do not doubt that it is commendable. It would probably not be the same height as the Edward Colston Statue, as it seems to be at a smaller scale and would not be standing on the cap stone. It would nonetheless be a dominant and pronounced feature in the public realm.

24. Although how the Jen Reid Statue would be attached to the plinth was unclear at this stage, I am satisfied it could be done in a way that caused no harm to the historic fabric.
25. However, to my mind the Edward Colston Statue is a fundamental part of the Monument, as the Monument as a whole is in recognition of Edward Colston and would not have been erected otherwise. Therefore, to replace it with a statue of someone else would appreciably undermine the Monument's historic integrity.
26. I am also aware that the plinth was designed to accommodate a statue of a specific person, as shown by the way its bronze tablets and decoration reflect the materials of the Edward Colston Statue and draw on selective aspects of his life. Therefore, without that statue the understanding of the plinth and its purpose is very much diminished. Moreover, it would sit in an uncomfortable and discordant manner beneath a depiction of a different person, as there would be a clear conflict between the tablets on the plinth and the figure it contained. The presence of the Jen Reid Statue would therefore further harm the value of the plinth in heritage terms.
27. I realise that Jen Reid has a place in the narrative of the events around the removal of the Edward Colston Statue. However, to my mind for the reasons given above the Jen Reid Statue would not assist in the wider understanding of the historic and social context of the Monument.
28. The appellant said the proposal would be to the benefit of the asset as it would be making use of a vacant plinth and filling a void in the urban fabric that has been created by the removal of the Edward Colston Statue. There was also reference to policies in the development plan that promote the improvement of the public realm. However, as I have found that the Edward Colston Statue has not been lawfully removed under the Act and should still be considered as part of the asset, that is not a contention to which I have afforded notable weight. Furthermore, whilst the Jen Reid Statue would be for a temporary period only and would be removable, to my mind it would still cause harm to this listed building whilst present.
29. For these reasons I consider the proposal would fail to preserve the Monument's special architectural and historic interest. I am also of the view that it would cause harm to the significance of the asset, but taking into account the fact that it would be for 2 years only and noting the heritage value of the plinth itself, I find this harm would be less than substantial.

*Nearby listed buildings*

30. Historic England said that the statues of Edmund Burke and Edward Colston, together with the Cenotaph, create a commemorative landscape through this area of open space, which would be disrupted by the proposal.

31. To my mind though the Edmund Burke statue is separate from the Monument, as they are a distance apart, with trees and a substantial road in between. As a result, I consider the experiencing of the Edmund Burke statue is not affected in any appreciable way by the Monument. Therefore, its significance would not be harmed by placing the Jen Reid Statue on the plinth.
32. The Cenotaph has a stronger visual relationship with the Monument. However, it is a very different piece, as it focusses on an event rather than a life, and commemorates many people and not just one. Moreover, it takes the form of massive blockwork rather than a portrait statue. I also consider that its setting is strongly defined by the public square that has been formed around it, and not so much by its position at the head of the linear walkway through the public realm. Taking these factors together, again I consider the proposal before me would not harm the significance of that listed building.
33. Between the Cenotaph and the Monument is the fountain. This though is a small structure that, with its fine detailing and its intimate functional drinking basins, is designed to be appreciated close-to. Therefore, whilst apparent with the Monument, the separation is sufficient to mean the proposal would not affect the setting or significance of this asset.
34. Finally, the setting of the 4 lamps is focussed on the Cenotaph, and so would not be harmed.

#### *Conservation Area*

35. The manner in which the public realm running along Colston Avenue reflects the presence of the former quay is in no way diminished by the proposal. Moreover, in the *College Green Conservation Area Character Appraisal* the Monument is not identified as a local landmark. However, by detracting from this listed building the proposal would erode, albeit slightly, the link with Bristol's past, especially given Edward Colston's involvement in business, politics and philanthropy. Consequently, the works would fail to preserve the character and appearance of the Conservation Area and cause harm, albeit less than substantial, to its significance.

#### ***Benefits weighed against the harm***

36. The Framework says that when considering the significance of a designated heritage asset great weight should be given to its conservation, with any harm requiring clear and convincing justification. Where the development would lead to less than substantial harm that harm should be weighed against the proposal's public benefits.
37. I have found less than substantial harm would be caused to the significance of the Monument and also the Conservation Area. Balanced against this the appellant has identified public benefits comprising the creation of a more inclusive public realm as a result of displaying for 2 years, in the place of a slave trader, a statue of someone from a community that is under-represented in civic statuary. This, it was said, would add to the vitality of the surroundings and result in a more cohesive community.
38. I fully acknowledge that her heritage and her gender mean Jen Reid is from under-represented communities amongst civic statuary. Moreover, I fully appreciate the depth of the feelings that a proportion of the population have against Edward Colston, which no doubt came to the fore every time they saw

his statue. I also recognise that, in the eyes of some, there is an appropriateness in replacing the statue of a slave trader with that of a Black woman.

39. However, there is little to substantiate the appellant's contention that the work would make the public realm more inclusive and encourage community cohesion, and it is not supported with firm or decisive evidence. Indeed, I was told that numerous objections were lodged against the Jen Reid Statue on the day it was on the plinth last year. From this it can be assumed that, for whatever reason, there is a portion of the city's population who would not agree with the appellant's contention. Moreover, whilst civic artwork promoting women and/or people of diverse heritage backgrounds may be justified to redress any imbalance that exists in the public domain at large, such artwork could be placed elsewhere and not necessarily on this plinth.
40. The appellant proposed to supplement the presence of the Jen Reid Statue with a programme of information and education to promote a dialogue on the issues it raises, but those are not matters that can be controlled through the planning process.
41. It was also said the scheme was the optimum viable use for the plinth. However, as I have found that the Monument must still include the full description of the listing, then the Edward Colston Statue should continue to be considered under the Act as part of the listed building. Consequently, in heritage terms and in the absence of any public benefits to support a view to the contrary, carrying the Edward Colston Statue must still be treated as the plinth's most appropriate use. Even if I were to put that aside though, keeping the plinth empty may well be seen as more suitable than using it for the Jen Reid Statue.
42. I understand that the future of the appeal site is one of the matters being considered in a structured and open manner by the History Commission, and it is possible its findings may well, in time, support the appellant's position and afford its stated benefits greater weight in any future decision-making. However, in the absence of any current substantive support I find there is not clear and convincing justification for the harm to the significance of the listed building and the Conservation Area, and this harm is not outweighed by the public benefits the appellant has cited.
43. Although the Council offered no putative reasons for refusal, it requested the appeals be dismissed because they would have a prejudicial effect on the work of the History Commission. This effect, it contended, diluted the public benefits highlighted by the appellant. However, these concerns do not go to the heart of the heritage issues against which these appeals have been determined, and my findings above have been reached without the need to assess the scheme on the work of the History Commission. Notwithstanding that point though, little evidence has been put forward to show why considering and determining this proposal would have compromised the History Commission's work.

## **Conclusion**

44. Accordingly, I conclude that the proposal would fail to preserve the special architectural and historic interest of the Grade II listed Monument, would not preserve the character or appearance of the Conservation Area, and would cause less than substantial harm to the significance of each of those designated

heritage assets. In the absence of any clear and convincing justification for this harm, or any public benefits that are sufficient, on the evidence before me, to outweigh this harm, I conclude the proposal would be contrary to Section 16 of the Framework, and, insofar as they are consistent with the Framework, Policy BCS22 in the *Bristol Development Framework Core Strategy* (2011) and Policy DM31 in the *Site Allocations and Development Management Policies Local Plan* (2014), both of which seek to safeguard the significance of designated heritage assets. The appeals are therefore dismissed.

*JP Sargent*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Miss Anjoli Foster	Barrister
Gary Rice	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Gary Collins	Head of Development Management at the Council
Jon Severs	City Design Manager at the Council

### INTERESTED PERSONS:

John Neale	Head of Development Advice at Historic England
Andrew Wiseman	General Counsel & Corporate Secretary at Historic England

## **DOCUMENTS RECEIVED AFTER THE HEARING**

- 1 Email dated 23 July from the local planning authority concerning the revised Framework
- 2 Email dated 26 July from the appellant concerning the revised Framework
- 3 Email dated 2 August from Historic England concerning the revised Framework