



Appeal Decision

Site visit made on 29 April 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14/06/2022

Appeal Ref: APP/T2405/W/21/3288862

26 High Street, Enderby LE19 4AG

- 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 A Paduano (Cini Restaurant and Hotel) against the decision of Blaby District Council.
 - The application Ref 21/0863/FUL, dated 5 July 2021, was refused by notice dated 1 September 2021.
 - The development proposed was originally described as "Retrospective planning application for retention of timber framed gazebo constructed on existing restaurant & hotel patio/amenity area."
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The gazebo to which the appeal relates has been constructed on the site. The Council assessed the proposal on a retrospective basis, as have I.

Main Issue

3. The main issue is the effect of the development on the significance of designated heritage assets, with particular reference to the character and appearance of the Enderby Conservation Area (ECA) and the settings of nearby listed buildings.

Reasons

4. The appeal site is a restaurant and hotel within the centre of Enderby occupying a late-Victorian former public house. The site includes a surface car park to the rear, to the side of which, and at a significantly higher ground level, are two longstanding outbuildings used for storage by the business and a patio area. Between these outbuildings, a timber framed gazebo has been erected. It is rectangular in shape, with a dual pitched roof and clad in a canvas covering with clear plastic window panels.
5. The site lies within the ECA, the significance of which derives from its tight, enclosed and organic street pattern with predominantly red brick terraced housing interspersed with larger townhouses at the intersections of main streets. The irregularity of the built form reflects the historic development of the ECA over a long period. The appeal site and its surroundings form part of this historic built form and contribute positively to the significance of the ECA.
6. The surroundings also include a number of listed buildings to the rear of the site, including The Hollies, a residential property at 6 The Cross which is Grade

- II listed. Together with 40 High Street and 2 and 4 The Cross, these buildings are listed for their group value as surviving 18th and 19th century townhouses.
7. The gazebo is located to the interior of the site, and is subject to limited views from the public realm, such as a glimpse of the apex of its roof from the driveway of 6 The Cross to the west. However, the gazebo stands prominently above the restaurant car park and is also visible from buildings to the east and south of the appeal site. Whilst I accept the appellant's point that the car park is private, it is still accessed by patrons of the restaurant and in this sense is subject to regular public views. Moreover, the effect of a development on the significance of a heritage asset is not solely based on the extent to which it is publicly visible.
 8. The gazebo is solidly constructed of substantial timber posts, but its felt roof and plastic sheeting to the sides lend the structure a rather temporary appearance. This contrasts with the permanent, longstanding appearance of the white rendered outbuildings to either side. The appellant draws attention to the use of timber panelling to the rear elevation of the main restaurant building, and to the approval by the Council of a timber extension to a listed public house a short distance away. However, these examples relate to permanent alterations to existing buildings, purposely designed and, in the case of the listed building, indicated to have been an improvement over previous structures. I draw a distinction between these examples and a standalone outbuilding where the timber frame is concealed by soft facing materials that do not reflect the prevailing materials of the conservation area.
 9. The appellant points out that the gazebo is lower in height than the outbuildings. However, its presence is exacerbated by it standing conspicuously in front of the more recessed position of the other structures and significantly above the height of the car park and the main ground floor entrance to the restaurant. Therefore, I do not agree that it forms a subservient feature within the appeal site, but rather an unduly prominent structure that draws the eye as much as the main building.
 10. In addition, whilst I note the appellant's evidence that the area has been used for outdoor seating in the past, the indications are that this has been small scale and occasional. The use of the patio as a regular part of the restaurant's dining area for up to 30 guests at a time represents a stark change in its character from an ancillary use as a patio/storage space to a busier commercial restaurant environment. This conflicts with the functional nature of this and other backland parts of the ECA away from the public realm. In this respect, I also draw a distinction between the proposal and other outbuildings in the surrounding area referred to by the appellant which appear to serve more ancillary purposes. These other outbuildings also appear to be permanent structures in materials which reflect the prevailing palate of the conservation area. Therefore, I do not regard them as comparable to the more temporary appearance and intended use of the gazebo.
 11. In terms of the setting of the adjacent listed buildings, I accept that, viewed from the street, only the apex of the roof of the gazebo can be glimpsed, and in this respect the appeal scheme has little effect on the appreciation of the listed buildings as a group within the street scene. There also appeared to be limited intervisibility or other connection between the gazebo and Nos 40 High Street and 2 and 4 The Cross. However, the gazebo is visible from the rear

garden and parking area of The Hollies directly to the rear. The occupant of this property refers to the loss of the view through to St John the Baptist Church. Whilst specific views are not protected in planning terms, the vista in this case provides a visual link to a landmark building within the village and so contributes to the setting of the heritage asset.

12. The gazebo interrupts this vista and as a result creates a more enclosed environment to the rear of the listed building. The appellant refers to historic OS plans showing outbuildings in this area; however, it is not wholly clear from the plans whether these outbuildings existed at the level of the gazebo, or lower down in what is now the car park. Nor is there evidence of their size or appearance. As such, I do not accept that the appeal scheme is effectively a replacement for a past structure.
13. Moreover, it is suggested in evidence that the patio where the gazebo is located was formerly part of The Hollies before the site was split. The historic OS plans provided by the appellant appear to show this was the case. The addition of the gazebo in this area, together with the change to a commercial character, has an adverse effect on how the listed building is experienced in terms of understanding its past use, historic layout and relationship with surrounding development.
14. For these reasons, I conclude that the appeal scheme harms the character and appearance of the ECA, and its heritage significance. There would also be harm to the significance of the listed building at 6 The Cross through an adverse effect on its setting. This would result in conflict with Policies CS2 and CS20 of the Blaby Core Strategy (2013) and Policies DM1 and DM12 of the Blaby Local Plan Development Plan Document (2019), which together require developments to respect distinctive local character and contribute to creating places of high architectural and urban design quality; and to ensure that designated heritage assets are conserved and enhanced in a manner appropriate to their significance and contribution to the historic environment.

Other Material Considerations

Effect of Covid-19

15. The appellant sets out at length the circumstances surrounding the construction of the gazebo as a result of the Covid-19 pandemic. It is indicated that the gazebo provides for 30 covers to offset the seating lost internally as a result of having to abide by government guidance on social distancing and ventilation during the pandemic. The appellant further points out that the threat from Covid-19 remains, and that the seating provided by the gazebo is central for the long term viability of the appellant's business. It is argued that this represents a significant public benefit that outweighs any less than substantial harm to the significance of the designated heritage assets.
16. I appreciate the circumstances set out by the appellant, and do not doubt that various measures were required to ensure the business was able to continue trading during the pandemic. However, whilst I accept that Covid-19 has not been eradicated completely, there are no longer any legal restrictions in place with respect to social distancing for the operation of hospitality services, and life in general continues to return towards pre-Covid conditions. Therefore, so far as I can see, there is nothing compelling the appellant to maintain a lower seating capacity internally.

17. I recognise that the gazebo provides an additional facility for the restaurant, but it is located some distance from the main kitchen, up a long flight of steps and its lightweight canvas walls suggest it is most likely to be used in the warmer months of the year. Whilst the appellant refers to the gazebo restoring the seating capacity of the restaurant, there is no evidence before me relating to the level to which this capacity has actually been used, and thus what contribution the gazebo has made to the overall restaurant operation, particularly during colder months.
18. Moreover, although the appellant stresses the threat to the long term viability of the restaurant, I am not provided with any financial or other evidence to support this assertion. There is also no evidence of any attempts by the appellant to provide a more sympathetic form of development, nor is there any indication of any consultation with the Council before work was undertaken, or that other locations within the wider site were considered.
19. Given these factors, I am not persuaded that the gazebo is essential in providing the necessary seating capacity to ensure the viability of the business. Nevertheless, I acknowledge that additional revenue generated from the use of the gazebo would provide economic benefits in terms of hiring and retaining staff and doing business with suppliers, to which I afford moderate weight.

Permitted Development Rights

20. Reference is also made to permitted development (PD) rights introduced during the pandemic to give flexibility to hospitality operators to erect temporary structures that would allow them to continue trading during restrictions on indoor dining. These rights have since been made permanent, but they apply to movable structures, which the gazebo is not.
21. The appellant could erect a larger structure within the grounds under PD, but this is subject to the moveable structure being more than two metres away from the curtilage of any adjacent land that is used for residential purposes. Based on the plans before me, there is considerable doubt as to whether a structure could be located in the same area as the gazebo, as it would stand immediately next to the boundary of the dwelling at 6A The Cross.
22. The appellant indicates a structure could be erected within two metres of the boundary with The Hollies at the rear that would be more intrusive than the gazebo. However, the placement of a structure of usable size and shape may be constrained by the gap between the outbuildings narrowing to the rear, and also by the potential for the structure to impede access to the outbuildings. The alternative option would be a structure located at lower level within the car park area, which would not have the same effect on the setting of the adjacent listed building.
23. Therefore, I am not persuaded that a realistic fall-back position exists which would be demonstrably more harmful than the appeal scheme and I afford this limited weight as a material consideration.

Neighbours' Living Conditions

24. The Council has not opposed the proposal on the basis of harm to neighbours' living conditions. I have noted the concerns of the neighbouring occupant and the comments of the Council's Environmental Health Team. The evidence before me suggests that use of the gazebo has not led to significant noise and

disturbance that would harm neighbours' living conditions, though I am cautious that the capacity of the gazebo is such that its use late into the evening for dining or other functions could nevertheless give rise to harmful levels of noise. However, were the appeal to be allowed, a condition could be considered to address this, such as limiting the hours of use of the gazebo. Therefore, this is not a matter which weighs against the appeal scheme.

Planning Balance

25. The harm to the designated heritage assets in this case would be less than substantial, in the language of the Framework. Paragraph 202 directs that this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
26. Taken cumulatively, the identified public benefits in this case would attract moderate weight at most, and would be insufficient to outweigh the less than substantial harm to the significance of the identified designated heritage assets, to which the Framework directs I must give great weight.
27. The appellant's view is that Policy CS20 is not entirely consistent with the Framework in that it does not allow for consideration of public benefits as set out in Paragraph 202. However, Policy DM12 is consistent with the Framework in this respect and therefore, taken as a whole, I am satisfied that the policies most important for determining the application are not out-of-date and should be afforded significant weight.
28. This aside, the 'tilted balance' of Paragraph 11 of the Framework is not engaged where the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Designated heritage assets are one such area or asset, as made clear by Footnote 7. In view of the harm identified to the significance of designated heritage assets, Paragraph 11 does not indicate a presumption in favour of development, but rather points to the refusal of permission.

Conclusion

29. For the reasons set out, the proposal results in conflict with the development plan, taken as a whole, to which I afford significant weight. Material considerations in this case do not indicate that permission should be forthcoming in spite of this conflict. Therefore, the appeal should be dismissed.

K Savage

INSPECTOR