



Appeal Decision

Site visit made on [Event Date]

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/Z1510/W/22/3291529

The Fox Inn, The Green, Finchingfield CM7 4JX

- 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 K Johnson against the decision of Braintree District Council.
 - The application Ref 21/00675/FUL, dated 26 February 2021, was refused by notice dated 28 July 2021.
 - The development proposed is two gazebos to front of public house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Braintree District Local Plan 2013–2033 (2022) was adopted by the Council on 25th July 2022. Policies of the new plan replace those of the Braintree District Local Plan Review 2005 and the Braintree District Draft Section 2 Local Plan (2017). I have determined the appeal on this basis.

Background and Main Issues

3. The gazebos have been erected and were in place at the time of my site visit. They stand on the public highway in front of the Grade II Listed Building, The Fox Inn.
4. The main issues are therefore the effect of the development on: (i) the setting of the Grade II Listed Building; (ii) the character and appearance of the area, with particular regard to the Finchingfield Conservation Area (FCA); and (iii) highway safety.

Reasons

The setting of the Listed Building

5. I am required, by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), to have special regard to the desirability of preserving the setting of the listed building.
6. The Grade II Listed Building, The Fox Inn, is a timber framed, plastered building, roofed with handmade red clay tiles. The 'hall house' building with two crosswings facing south, an axial stack in the right bay of the hall, and an external stack on the left return wall was originally erected as a dwelling around 1500 and altered in the 17th and 20th centuries. For the purposes of this appeal, I consider its significance to be associated with its historic and architectural interest.

7. The two gazebos are steel framed lightweight structures with polycarbonate roofs. They are sited on the highway immediately outside the public house, in front of two south-facing windows. The structures have shallow roofs, dark in colour, with eaves heights just below the upper parts of the windows, and ridge heights just below the entrance porch feature.
8. The slim profiles of the frames, shallow roofs, and overall scale in relation to the building, meant that at my site visit I was able to view much of the façade of the listed building from the roads and green spaces in the centre of the village. Nevertheless, the reflective roofing materials conflict with the traditional character and materials of the listed building.
9. As a result, less than substantial harm results to the setting of the listed building, and the development conflicts with Braintree District Local Plan (2022) policies LPP1, LPP47, LPP52 and LPP57, which seek development which respects existing character and historic interest, including in respect of appropriate materials and finishes.
10. This harm must be weighed against the public benefits of the development in accordance with paragraph 202 of the National Planning Policy Framework (the Framework). See Planning Balance and Conclusion below.

Character and appearance

11. The appeal site is located within the FCA and I am therefore required, by Section 72(1) of the Act, to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
12. The FCA was designated in 1979 and covers much of the village. Neither the appellant nor the Council have set out the significance of the FCA. However, from the information before me, including my site visit, it appears to be associated with its traditional and historic character as a rural village which has developed over several centuries around an historic street pattern. Its central green spaces divided by Finchingfield Brook appear to play a significant function in its character.
13. The Fox Inn is in a central and visually prominent part of the village. It is one of several buildings of historic character facing open public spaces and the war memorial, being central in the FCA and its central green spaces, and close to Finchingfield Brook. The wide, open spaces mean that buildings and structures around the green spaces are generally seen within a wide angle of view.
14. The appeal site is located in a particularly prominent location, also being in alignment with the B1057 running towards it in one direction, and alongside it in the other direction. As seen from the south, and other parts of the green space in front of the building, the gazebos are seen as a small part of a much wider perspective. At the same time, they are seen against more traditional elements such as the canvas awnings of the Winners Tearooms and Antiques Centre and, despite being a small part of this vista, the polycarbonate roofs introduce modern materials into a particularly traditional rural scene. From the bridge, the gazebos also appear unduly prominent, and appear to be structures in the highway, and incongruous in their setting.
15. The development therefore results in less than substantial harm to the character and appearance of the area, and conflicts with Braintree District Local Plan (2022) policies LPP1, LPP47, LPP52, LPP53 and LPP57, which require

development which respects existing character and historic interest and preserves or enhances the character and appearance of conservation areas.

16. This harm must also be weighed against the public benefits of the development in accordance with paragraph 202 of the Framework. See Planning Balance and Conclusion below.

Highway safety

17. The area immediately outside The Fox Inn is part of a minor road, close to the B1057, although at the time of my visit the road markings were very faint. It is also located at a bend in the road, leading to and from the bridge over Finchingfield Brook.
18. The Highway Authority have objected on the basis that the development encroaches on, and obstructs, an area of publicly maintainable highway, and sets a precedent for similar developments to the detriment of the safety of all highway users.
19. At the time of my visit, I noted that the Winners Tearooms, along the same stretch of road, also had tables and chairs on the highway below its awning. In that case the road was very minor, traffic was likely to move very slowly in that area, and there would be less likelihood of a traffic collision in that location.
20. I also note that both parties agree that there have previously been tables, chairs, and parasols for several years in a similar location to the gazebos. Nevertheless, the change from tables with parasols to gazebos affixed to the ground denotes a change likely to result in a different character of use. Despite the proposal being for a temporary period, the gazebos indicate more intensive use beyond the fair-weather use that might have been expected from outdoor tables with parasols. With the curvature of the road, and the area standing beyond the face of all buildings in a location just beyond the bridge, I consider there would be a risk to highway safety associated with a permanent (even if time limited) use of the highway in this location.
21. The development would therefore give rise to harm to highway safety, and conflicts with Essex County Council Development Management Policies (2011) policy DM1, which seeks to protect the highway network for the safe and efficient movement of people and goods, and not create a significant potential risk or be detrimental to safety.

Other Matters

22. The appellant advises that the hospitality trade has been hit hard by the limitations associated with the COVID-19 pandemic over the last 2 years. Although I have seen no figures, they advise that trading figures over the last two years for The Fox Inn make challenging reading, and the business went from a thriving establishment to a struggling one adapting to try to mitigate the impact. They state that without the business the long-term living future of the listed building may fall into disrepair.
23. Internally the public house is relatively small, and the appellant advises that business is improving slowly, but needs assistance to provide opportunities to encourage people to return. They consider there is limited opportunity to alter the listed building internally, extending into the rear car park would cause noise and disturbance to neighbours, and that the gazebos would be temporary

structures which could be easily removed, located in an area previously occupied by tables and chairs with parasols. They therefore sought retention of the gazebos for a time limited 5 year period, reduced to 3 years, and reduced further to 2 years.

24. The Fox Inn is a community facility in the centre of the village, and considered by some to be a valuable asset to the village as well as a visitor attraction. Seating at the front overlooking the village centre is an attractive location for users of the facilities, but there is also additional seating at the rear. Paragraph 197 of the Framework states that account should be taken of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. There is also support in paragraph 84 of the Framework for sustainable rural tourism and leisure developments which respect the character of the countryside and the retention and development of accessible local services and community facilities, such as public houses.
25. Schedule 2, Part 4, Class BB of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants "Permitted Development" rights, for a moveable structure within the curtilage of a listed building. However, those provisions are subject to an application for prior approval, and do not apply to development that has already been carried out.

Planning Balance and Conclusion

26. Considering the statutory duties of the Act, and paragraph 199 of the Framework, which requires great weight to be given to the conservation of heritage assets, I attach significant weight against the development to the less than substantial harm to the setting of the Grade II listed building and to the less than substantial harm to the FCA.
27. In favour of the development, I attach moderate weight to the support in the Framework for sustainable rural tourism and leisure developments, accessible local services and community facilities, and putting heritage assets to viable uses. In doing so I have considered that the gazebos have been in place for around 2 years¹, and I have not seen technical information relating to viability.
28. The identified harm to designated heritage assets is therefore not outweighed by the public benefits of the proposal. I also attach further moderate weight against the development in relation to the harm to highway safety.
29. For the reasons above, I therefore conclude the development would conflict with the development plan as a whole and the approach in the Framework. There are no other material considerations that suggest a decision should be made other than in accordance with the development plan, and the appeal should therefore be dismissed.

Peter White

INSPECTOR

¹ On the basis that the application was submitted as a retrospective application in February 2021