



Appeal Decision

Site visit made on 6 September 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th April 2023

Appeal Ref: APP/W4325/W/22/3296884
47 Argyle Street, Birkenhead CH41 6AB

- 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 K Hasan of Grand Property Asset against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/20/00216, dated 13 February 2021, was refused by notice dated 13 October 2021.
 - The development proposed is the use of the site as a pay and display/contract permit car park for a temporary period of 5 years with associated works including fencing and lighting/CCTV column.
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Decision

1. The appeal is allowed and planning permission is granted for the use of the site as a pay and display/contract permit car park for a temporary period of 5 years with associated works including fencing and lighting/CCTV column at 47 Argyle Street, Birkenhead CH41 6AB in accordance with the terms of the application, Ref APP/20/00216, dated 13 February 2021, subject to the following conditions:

- 1) The use hereby permitted shall be for a limited period being the period of 5 years from the date of this decision. The use hereby permitted shall be discontinued and the land restored to its former condition on or before the expiration of a period not exceeding 5 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plan: Ref 11/20-01 Rev C.
- 3) Unless within 3 months of the date of this decision the 10x redwood timber planters shown on approved drawing no. Ref 11/20-01 Rev C are fully installed, the use of the site as a car park hereby approved shall cease, and it shall not be brought back into use until the planters have been fully installed.

The planters shall be retained thereafter in good repair for the duration of the car park use hereby permitted.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) The planting scheme shown on approved drawing Ref 11/20-01 Rev C shall be implemented in the first planting season following the installation of the planters referred to in Condition 3.

Any trees or plants which during the period specified in Condition 1 die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Procedural Matters

2. The description of development in the banner heading and my formal decision above is taken from the appeal form. I have used it in preference to the description on the planning application form as it provides a more comprehensive description of the scheme; the original wording did not include reference to the "associated works". I have omitted the word "retrospective" from the wording as is not descriptive of the scheme. Nevertheless, at the time of my visit the site was in use as a pay and display car park, and paladin fencing had been erected (though not all in the position for which permission is sought).
3. The proposal appears to have developed somewhat as it was being considered by the Council, and the appellant put forward amended plans as part of their appeal submission. This "final" version of the scheme included two electric vehicle charging points and motorcycle and scooter parking bays within the car park area, as well as two "Sheffield" bicycle stands on the Argyle Street frontage.
4. In deciding whether or not to accept the revised plans, I have given consideration to the "Wheatcroft Principles"¹ and whether any prejudice would occur. In this case, the changes put forward are relatively minor and do not change the overall nature of the scheme; I am satisfied that no party would be prejudiced by my accepting these plans and have determined the appeal accordingly.

Main Issues

5. The main issues are:
- The effect of the use of the appeal site as a car park and the associated works on the character and appearance of the Hamilton Square Conservation Area; and
 - Whether or not the proposal would promote the use of the private car in preference to other, more sustainable, modes of transport.

Reasons

6. The appeal site is a car park on the east side of Argyle Street, extending to Henry Street. It was previously occupied by a building most recently used as a snooker hall and gym; planning permission was granted in 2017 for the demolition of that building and the erection of a three-storey retail and office development with surface car parking². The previous building was damaged by fire in 2017 and demolished in 2019, although the replacement retail and office scheme has not been built.

¹ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

² LPA Ref: APP/17/00097

7. The appellant owns and operates a pay and display car park on the land immediately south of the appeal site, adjoining No 63 Argyle Street. Permission is now sought to operate the appeal site as a pay and display car park (as an extension to the existing operation) as well as for fencing, lighting and other associated works.

Hamilton Square Conservation Area

8. The appeal site is within the Hamilton Square Conservation Area ("the HSCA"). I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. As heritage assets are irreplaceable, the National Planning Policy Framework ("the Framework") states that they should be conserved in a manner appropriate to their significance (paragraph 189). It goes on to advise that any harm or loss requires clear and convincing justification (paragraph 200) and that any harm that is less than substantial must be weighed against the public benefit of the proposal (paragraph 202).
9. The HSCA is based on a formal Georgian street grid within the central part of Birkenhead. It is focussed, as its name suggests, on Hamilton Square itself which is dominated by the imposing Birkenhead Town Hall. The long streets which lead to the square, including Argyle Street, provide long vistas into and through the HSCA. Among other things, the Council's 2006 *HSCA Appraisal* identifies the key characteristics of Argyle Street as being its "seemingly endless" vistas and the terraced three- and four-storey buildings mirroring the neo-classical design of Hamilton Square. It states that these factors give the street a uniformity which sets its own character, while also contributing to the special interest of the HSCA as a whole.
10. Based on all the evidence before me, and my observations on site, I consider that the significance of the HSCA is derived primarily from the grand scale and quality of Hamilton Square itself, and the retained Georgian buildings and street layout elsewhere within the area. I note also from the Council's statement that the HSCA is on Historic England's *Heritage at Risk* register, where its condition is categorised as "very bad"³. The appeal site is at the very southern edge of the HSCA; the pre-existing part of the car park to which the appeal site is connected is outside the Conservation Area.
11. Under the appeal scheme, the car park would be bounded to Argyle Street and Henry Street with green powder-coated paladin fencing. This has already been installed, although under the appeal scheme it would be moved inwards on the Argyle Street frontage to make space for timber planters. I note the comments of the Council's Heritage Adviser as summarised in the Council's evidence, that the boundary treatment "does not positively contribute [to the HSCA] in any manner", and that within the site there should be "some sort of greenery added".
12. I saw that the paladin fencing which has been installed is functional rather than beautiful; it contrasts unfavourably with the grand form of the town centre buildings to the north. The use of road planings for the car park surface has given it a somewhat "rough and ready" appearance. While the proposed installation of timber planters would alleviate in a very small way the visual

³ <https://historicengland.org.uk/images-books/publications/har-2022-registers/nw-har-register2022/>

- impact of the fencing, the overall effect of the use of the site as a car park would not preserve or enhance the character or appearance of the HSCA.
13. The Council laments the loss of the building previously on the appeal site without the replacement granted planning permission in 2017 having been erected, and the clear gap which this has left within the Argyle Street streetscene. It is of the view that allowing a car park would provide an "alternative viable use" which "lessens the likelihood of [another] development coming forward".
 14. The open expanse of the appeal site contrasts with the character and appearance of the surrounding HSCA, and as a gap site it detracts from the contribution which Argyle Street and its buildings make to the HSCA as I have described in paragraph 9 above. However, this would be the case whether or not the site was to be used as a car park or left undeveloped.
 15. The contrast between the open space of the appeal site and the grand built form of the HSCA would be perpetuated by the permanent use of the appeal site as a car park. The proposed use for a temporary period would have much the same effect on the HSCA, but the harm arising from the failure to preserve or enhance its character and appearance would be significantly limited by the shorter duration.
 16. I am sympathetic to the Council's aim to see a permanent sympathetic redevelopment of the site. However, that is not a matter for this appeal; the demolition of the previous building on the site is not part of this appeal scheme, nor is it open to me to compel the appellant to implement or complete a previous planning permission, or to bring forward another scheme which might better reflect changes in the economic climate since the previous grant of planning permission. I also note that the appellant has reasserted the intention to redevelop the site more fully "when market conditions allow", a factor which (I infer) has informed their decision to seek a temporary permission for the car park use.
 17. The Planning Practice Guidance ("the PPG") advises that a temporary planning permission may be appropriate "to enable the temporary use of vacant land or buildings prior to any longer-term proposals coming forward" or "where planning circumstances will change in a particular way at the end of that period"⁴. The temporary nature of the use sought would allow the plans for the permanent redevelopment of the site in a way which would preserve or enhance the character or appearance of the HSCA to be reconsidered in the light of changes in the development market since 2017. There is therefore a clear distinction between the effects arising from a temporary and permanent use of the appeal site as a car park.
 18. I consider that the harm to the HSCA would, in the Framework's terms, be less than substantial. Weighed against this, bringing the site into some form of productive use which would also support its management and maintenance while reviewing the longer-term redevelopment of the site (in a way which would preserve or enhance the character or appearance of the HSCA) would be a significant public benefit. In my view, this would clearly outweigh the limited harm which would arise from the use of the site as a car park for a temporary

⁴ Paragraph: 014 Reference ID: 21a-014-20140306

period. The Council would have the opportunity to review the situation, and the site's longer-term future, at the end of that period.

19. I conclude that the proposal would not comply with Saved Policies CH2 and CH5 of the 2000 Wirral Unitary Development Plan ("the UDP") which, among other things, seek to ensure that heritage assets including Conservation Areas are preserved or enhanced. However, as I have set out in the preceding paragraph, the temporary nature of the development is a significant material consideration which, on this matter, justifies a decision other than in accordance with the development plan.

Sustainable transport

20. Policy TR9 of the UDP sets out the development plan considerations when assessing proposal for, or including, off-street car parking. The supporting text explains that this is in the context of trying to reduce travel by (and reliance on) the private car, though the policy does not seek to prevent outright the creation of new car parks. I also note the Council's comment that it has introduced car parking pricing policies in the town centre to discourage long stay and commuter parking, though there is nothing before me which demonstrates what the impact of those policies has been.
21. The appeal site provides parking space for around 70 cars (the figure is approximate as it does not have marked bays); the appellant states that around half of the spaces are normally used by long-term contract holders. My site visit was carried out early in the afternoon on a weekday, and there were many parking spaces available within the appeal site. There was also plenty of space in the nearby Council-run car parks at William Street/Hinson Street and Duncan Street, and on-street on Argyle Street, Market Street and at Hamilton Square. I also saw numerous other off-street car parks in the surrounding area; some of these are only for the private use of businesses or institutions, but there are others which are available to for the paying public. Based on what I saw there appears to be no shortage of car parking provision in and around Birkenhead town centre and it is doubtful that there is any real "need" for additional parking space.
22. The site is reasonably close to Birkenhead Bus Station, and to railway stations at Conway Park, Birkenhead Central, and Hamilton Square. The appellant suggests that the car park would be an attractive option for people wishing to transfer to more sustainable modes of transport from those places. There is no substantive evidence before me which indicates whether the car park is in fact used in that way, or whether it encourages people who might otherwise have transferred to public transport further out of the town to drive into central Birkenhead. In any event, however, in view of the large number of spaces which already appear to be available within central Birkenhead, the appeal scheme would make a limited difference to the overall provision. The use of the appeal site as a car park for a temporary period would be unlikely to have a significant impact either in terms of promoting the use of the private car, or by undermining broader efforts to encourage the use of more sustainable means of transport.
23. I therefore conclude that the development would not conflict with Saved Policy TR9 of the UDP, which I have summarised above. I also find that there would be no conflict with the provisions of Chapter 9 of the Framework, which seek to promote sustainable transport.

Conclusion

24. I have found that the development would not preserve or enhance the character or appearance of the Hamilton Square Conservation Area, and as such it conflicts with the development plan read as a whole. However, the material considerations I have identified, including those of the Framework, indicate that a decision other than in accordance with the development plan is appropriate.
25. I therefore conclude that the appeal should be allowed, and planning permission granted for a temporary period.

Conditions

26. I have considered the conditions suggested by the Council, and comments by the appellant, having regard to the tests in the Framework and the advice in the Planning Practice Guidance. The Council suggested a condition relating to the approval of reserved matters, which I have not imposed as the application was for full, rather than outline, planning permission. I also sought the views of both main parties on further conditions relating to the fencing and landscaping.
27. A condition defining the duration of the planning permission (1) is necessary both to define the development and, for the reasons which I have set out in paragraphs 13 to 19 above, because the permanent use of the site as a car park would not be acceptable in terms of its effects on the character and appearance of the HSCA. A condition specifying the approved plan (2) is necessary to provide certainty.
28. Conditions requiring the installation of the proposed planters (3) and their ongoing planting and maintenance for the lifetime of the permission (4) are necessary to protect the character and appearance of the area.
29. There is a strict timetable for compliance with Condition 3 because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the installation of the planters before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

M Cryan

Inspector