



Appeal Decisions

Site visit made on 10 October 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08th December 2023

Appeal A Ref: APP/R2520/C/22/3307059

Appeal B Ref: APP/R2520/C/22/3307062

Southgate Car Park, 24-26 Southgate, Sleaford, Lincolnshire, NG34 7RY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by NJA Property Management Ltd against an enforcement notice issued by North Kesteven District Council. Appeal B is made by RJW Property Management Ltd.
- The notice was issued on 17 August 2022.
- The breach of planning control as alleged in the notice is 'Without planning permission, the making of a material change of use of the land, from a vacant site with extant planning permission for a mixed use development comprising retail use, office accommodation and eight apartments, to use as a car park'.
- The requirements of the notice are to:
 - (a) Cease the use of the land for car parking;
 - (b) Remove all parking bay markings, pay and display machines and car park signage from the Land;
 - (c) Install secure gates across all entrances to the site, to a height not exceeding one metre from ground level, to prevent the site being accessed by any person for the unauthorised use described in paragraph 3 of this notice; and
 - (d) Maintain all secure gates described in 5(c) above in a good state of repair and, in the event any part of the gates are damaged, stolen or otherwise inoperable, repair and replace them within 48 hours to prevent the site being accessed by any person for the unauthorised use described in paragraph 3 of this notice.
- The period for compliance with the requirements is: 12 weeks after the date the notice takes effect.
- The appeals are proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since appeals have been brought on ground (a), applications for planning permission are deemed to have been made under section 177(5) of the Act.

Appeal C Ref: APP/R2520/W/22/3305016

Car Park, 24-26 Southgate, Sleaford, NG34 7RY

- 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 NJA Property Management Ltd and RJW Property Management Ltd against the decision of North Kesteven District Council.
- The application Ref 21/1294/FUL, dated 26 August 2021, was refused by notice dated 27 July 2022.
- The development proposed is 'Continuation of use of land for Public Pay and Display Car Park'.

Decisions

1. It is directed that the enforcement notice (the Notice) is corrected as follows:

Section 1 is corrected by the deletion of 'paragraph (a) of section 171(A)(1) of the above Act' and replaced with 'paragraph (b) of section 171A (1) of the above Act'.

2. Section 3 – THE BREACH OF PLANNING CONTROL ALLEGED

The text is deleted in its entirety and substituted with the following:

Planning permission ref. 17/1689/FUL was granted on 5 March 2018 for 'Retrospective application in respect of continued use of land for Public Pay and Display Car Park'.

Condition 1 of that planning permission has not been complied with. The Condition states:

This planning permission is granted for a limited period only expiring on 1st October 2020. On or before that date, all buildings, works, uses of land or other development hereby permitted shall be removed or discontinued (as the case may be) and the land restored in accordance with a scheme of work submitted to and agreed in writing by the district planning authority.

Reason: In the opinion of the District Planning Authority the temporary use to which this permission relates will by the said date have fulfilled its required purpose.

3. Section 5 – WHAT YOU ARE REQUIRED TO DO

The requirements in steps 5(c) and 5(d) are deleted.

4. Section 6 – TIME FOR COMPLIANCE

The reference to '12 (TWELVE) weeks' is deleted and replaced with '6 months'.

APPEALS A and B - Subject to the corrections and variation of the Notice, the appeals are dismissed, the Notice is upheld and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

APPEAL C – the appeal under s78 of the Act is dismissed.

Preliminary Matters

5. As above, there are 3 linked appeals. They relate to the same town centre pay and display car park and the use of the site for that purpose. Since 2009 the site has benefitted from several temporary planning permissions for its use as a car park. The most recent expired in October 2020. From that time the site has continued to be used as a pay and display car park.
6. After the refusal of planning application Ref. 21/1294/FUL for the continued use of the site as a car park, the Council served an Enforcement Notice on parties with an interest in the Land. There is variation between the descriptions used in the Notice and the planning application. Furthermore, my correction of the Notice leads to an additional alternative description of the alleged breach of planning controls. Nevertheless, the development in each appeal is the same. Moreover, the reasons given for serving the Notice reflect the substance of the reasons for the refusal of planning permission stated in the Council's Decision Notice. Accordingly, to avoid repetition, I have dealt with the appeals concurrently unless otherwise stated.

7. Since the date of the Council's refusal of planning application Ref. 21/1294/FUL and the issue of the Notice, it has adopted the Central Lincolnshire Local Plan [April 2023] (the CLLP). The policies referenced in the Notice and planning Decision Notice are therefore now superseded. The Council have subsequently directed me to Policy S38 of the CLLP as the relevant replacement policy and I have had regard to it in coming to my decision.
8. On 5 September 2023, the Government published a revised version of the National Planning Policy Framework (the Framework). However, the policies that are relevant to this appeal have not changed and there was no need, therefore, to invite the parties to make further submissions in response to the revisions.
9. The site lies within Sleaford Conservation Area and close to a number of listed buildings. There is no dispute between the main parties that the use of the site does not have an adverse effect on the character and appearance of the Conservation Area or the setting of nearby listed buildings. Pursuant to the duties under s72(1) and s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, having considered the development and visited the site, I concur with that view. This is because the proposals are for a continuation of the existing use of the Land. Accordingly, it is my view that the development would preserve the character and appearance of the designated area and the settings of the listed buildings, and I shall make no further reference to this matter.

The Notice

10. The allegation in the Notice refers to a material change of use of the Land. The use of the Land as a public pay and display car park was last granted planning permission on 5 March 2018 (ref. 17/1689/FUL). That permission was subject of a condition limiting its lifespan. It expired on 1 October 2020. However, there is no dispute between the main parties that the car park use of the Land has continued since that time. Accordingly, the allegation in the Notice referring to a material change of use has not occurred. The continuation of the use, however, is in conflict with the requirement in Condition 1 to discontinue the use of the Land as a car park and to restore the Land.
11. Although my rewording of the allegation in the Notice re-defines the nature of the breach as one under paragraph (b) of s171A (1), the substance of the breach is the same, as are the relevant planning policy considerations under the s78 and ground (a) appeals. I have consulted the main parties on this.
12. The appellant raised concerns over the potential lawfulness of some operational development associated with the use of the site. However, as such development is bound up by conditions in the successive grants of temporary planning permission since 2009, it is subject of a 10-year enforcement period under the terms of s171B of the TCPA 1990. Accordingly, on expiry of each successive temporary permission the clock would restart the period for immunity and no 10-year period exists between the dates of those permissions.
13. Subject to allowing the appellants to air their concerns in relation to grounds (f) and (g), I cannot find that injustice would arise from my subsequent correction of the allegation in the Notice. The Council's reasons for seeking to

resolve the breach of planning control and the measures it considers necessary to achieve it remained unchanged.

Appeals A and B: Ground (a) - the deemed applications for planning permission and Appeal C - the refusal of planning application
Ref. 21/1294/FUL

Main Issue

14. The main issue in the appeals is the effect of the development on maintaining or enhancing the vitality and viability of Sleaford town centre.

Reasons

15. The site is a surface car park located to the west of Southgate, part of the main road and one-way circulatory system through the Primary Shopping Area of Sleaford Town Centre. The site is accessed via a driveway alongside a watercourse which together form a gap in the commercial frontages set immediately to the back of the pavements on Southgate.
16. The car park accommodates up to 40 vehicles. Parking is permitted at all times with charges extending from 1 to 24 hours. The site also provides informal access to a footbridge over the watercourse which provides a link to other commercial areas set back or extending from the main shopping street. This includes Millstream Square and the Riverside Retail Precinct.
17. Policy S38 of the CLLP relates to Sleaford Town Centre. It refers explicitly to the appeal site as an opportunity site where residential development, uses falling within Class E of the Town and Country Planning (Use Classes) Order 1987 as amended, or a mix of those uses would be acceptable in principle.
18. For other proposed uses, Policy S38 requires development to meet a number of specified criteria applicable to the Primary Shopping Area and Sleaford Town Centre. Additionally, proposals are expected to meet wider regeneration and investment objectives for Sleaford, including those in the Sleaford Masterplan and other documents directly referenced in the policy. Within the Policy S38 requirements, development must have no demonstrable impact on the vitality and viability of the centre as a whole.
19. In conjunction with the recently updated Sleaford Masterplan [2022], the Sleaford Transport Strategy and the Sleaford Strategic Delivery Plan 2018 identify the amount of vehicular traffic and levels of congestion passing through the centre as a major detractor of its environment. This creates a vehicle dominated area. The policy pre-text recognises this as a barrier to the enhancement of the retail core. It is identified as causing delays to public transport, adversely affecting pedestrian movement, deters cycle use, causes poor air quality, and fails to promote a mode shift away from the use of private motor vehicles.
20. To reduce the adverse effects on the vitality and viability of the Town Centre, the combined strategies seek, amongst other things, to promote perimeter car parking along radial routes into the town centre and facilitate pedestrian access. The Masterplan envisages the redevelopment, in whole or part, of some existing car parks that rely on the town centre circulatory route, including the appeal site.

21. In the context of the development plan and the associated local strategies, the use of Condition 1 allowed a degree of pragmatic flexibility for a non-policy compliant land use. It allowed for a review of the balance of benefits to the town centre. In so doing, I find the condition was sound and consistent with both the legal tests and Paragraph 56 of the revised Framework in relation to the use of conditions. It was reasonable, necessary and appropriate in all other respects.
22. As a facility described by the appellant as intensively used in conjunction with short-stay parking, the parking use of the site will generate a relatively high number of daily vehicle trips compared to uses supported under Policy S38. With a capacity of 40 spaces and changeovers occurring throughout the day, it will invariably contribute to the level of traffic and congestion in the town centre. In contrast to most other parking facilities, it is dependent on access along Southgate where the main retail frontages exist. The use of the Land for parking therefore remains contrary to Policy S38 and the aims of associated strategies for the enhancement of the town centre.
23. In support of the development the appellant highlights that the continued use of the site for car parking purposes would meet a parking need and provide for convenient access to the facilities in the centre thereby providing some support to its vitality and viability. This could assist those with more limited mobility.
24. However, there is limited evidence presented by the appellant to demonstrate such a need. The Sleaford Masterplan [2022] identifies excess capacities in parking requirements. Even when accounting for some recent losses arising from the alternative use of former parking areas, there is little to indicate a shortfall in parking facilities about the town centre.
25. As a site located closer than other car parks, it might be more attractive to those with poor mobility. However, as a facility designed to accommodate general use with limited mobility spaces, I find this an argument of limited weight.
26. The appellant highlights that the active use of the site provides for its maintenance and enhances pedestrian permeability in the area. Closure of a bridge across the adjacent watercourse would reduce the option to walk or cycle through the site. It would potentially reduce footfall for some businesses at Millstream Square. Although access to that area is not exclusively dependent on the appeal site, such that footfall along the pedestrian route to the north of Riverside Church would likely increase, some businesses could be adversely affected.
27. Furthermore, as a business providing income for the operators and associated employment, it provides some economic benefits of its own. However, in the context of the town centre as a whole, when measured against the renewed impetus of the recently adopted policy as supported by the Masterplan review and the weight of evidence provided by the Council's various strategies for the area, I find those effects and benefits do not outweigh the identified harm arising to the town centre environment and failure to encourage more sustainable forms of transport.

28. Following a refusal of planning permission¹ for the permanent use of the site as a car park, the appellants' direct me to the past pragmatic approach of the Council in allowing successive temporary use of the site. This has resulted in short term 'wins' and helped sustain the centre after the 2008 economic downturn, through rapidly changing retail habits (with attendant challenges for the high street), and recovery since the Covid-19 pandemic.
29. However, since the first temporary permission, the period of use now extends to some 14 years. The Planning Practice Guidance² suggests repetitive temporary permissions should be avoided except where changing circumstances provide a clear rationale. It states that '*A temporary planning permission may also be appropriate to enable the temporary use of vacant land or buildings prior to any longer-term proposals coming forward (a 'meanwhile use')*'.
30. In this respect the appellant has submitted that a further temporary period would potentially allow time for the economic conditions to improve and facilitate the viable implementation of an extant scheme originally approved for the redevelopment of the site in 2007, prior to the 2008 economic downturn.
31. In support of that proposition, details of a 6-month site marketing exercise starting in late 2021 was shown to attract limited interest. However, this was based on a site value accounting only for the approved redevelopment scheme. Whilst I acknowledge that demands for commercial space lettings might remain subdued, as a scheme devised during different economic, high street and retail climates, it falls short of demonstrating that a beneficial policy-compliant scheme could not be delivered on the site.
32. Moreover, if credence were given to that claim, it would more likely than not result in a cyclical argument and set an undesirable precedent on the site. That would undermine the ability of the Council to deliver its recently renewed town centre strategies.
33. Furthermore, there is little before me to indicate that the appellants have sought to progress either the approved, or another scheme during the extended period of successive temporary permissions. Given the extensive period of parking use, it can no longer be considered a 'meanwhile use'. Having regard to those matters, I find the marketing exercise offers limited weight in support of the retention of the parking use for a further temporary period.
34. The appellants' contend that the progress of the Masterplan projects has been limited. Nevertheless, in the face of the recent renewal of the policy framework for securing the town centre's long-term future, this neither suggests the policy context is likely to change in support of a renewed temporary permission, nor provides a compelling argument that outweighs the harm arising from the site's contribution to traffic volumes and congestion in the town centre and their associated identified adverse effects on the shopping environment.
35. Taking all of the above together, I find the economic benefits (including those associated with access currently provided through the site) do not outweigh the identified adverse effects of the continued use of the site for parking that undermine the performance and potential improvement of the town centre area. The use of the Land thereby conflicts with Policy S38 of the CLLP as it

¹ 19/0211/VARCON

² Paragraph: 014 Reference ID: 21a-014-20140306

seeks development to support the town centre and its regeneration as a whole in the interests of maintaining or enhancing its vitality and viability. For similar reasons, it would conflict with the Council's adopted strategies for the management and improvement of the town centre area and policies in the Framework.

Appeals A and B - Ground (f)

36. To succeed on this ground the appellants must show that the steps required by the Notice to be taken exceed what is necessary to remedy the breach of planning control.
37. The requirements in steps 5(c) and (d) of Section 5 of the Notice would impose requirements that go beyond the substance of the breach of Condition 1 of planning permission 17/1689/FUL. Although installation and maintenance of measures to prevent the unauthorised use of the Land could assist in achieving the requirement in Paragraph 5(a), those requirements exceed what is necessary to remedy the alleged breach. A Notice cannot impose requirements beyond the restoration of the Land's previous condition. Accordingly, I shall delete those requirements of the Notice.
38. The requirements in steps 5(a) and (b), however, relate to the operative matters concerned in Condition 1 of planning permission 17/1689/FUL and are necessary to achieve the purpose of the Notice.
39. For the reasons above, the appeal on ground (f) succeeds in part.

Appeals A and B - Ground (g)

40. This ground of appeal is that the 12-week period for compliance specified in the Notice falls short of what should reasonably be allowed.
41. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with the Notice against the private interest bound up in the development subject of the Notice.
42. In relation to both appeals A and B, I recognise that the time for compliance with the Notice is relatively short given that it would require the cessation of the appellants' commercially beneficial activity on the Land. Furthermore, as some nearby businesses also benefit from access via the appeal site (albeit not exclusively), some additional time to forewarn customers of those premises would be appropriate to minimise any disruption to those businesses.
43. Additionally, given the Council's earlier willingness to extend the temporary permissions, an extended period to allow for transitional arrangements would be reasonable. It would also provide an opportunity to advance discussion on alternative site uses. Accordingly, I find an extension for the period of compliance to 6 months would be appropriate in the particular circumstances of the case.
44. The appeal on ground (g) therefore succeeds and the period for compliance with the Notice is extended to 6 months.

Conclusions

45. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and a variation, and

refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

R Hitchcock

INSPECTOR

Appendix 1

List of those who have appealed:

Reference	Case Reference	Appellant
Appeal A	APP/R2520/C/22/3307059	NJA Property Management Ltd
Appeal B	APP/R2520/C/22/3307062	RJW Property Management Ltd
Appeal C	APP/R2520/W/22/3305016	NJA Property Management Ltd / RJW Property Management Ltd