



Appeal Decision

Site visit made on 7 May 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th June 2024

Appeal Ref: APP/M2515/W/23/3334099

18A-20 High Street, Lincoln, Lincolnshire LN5 8BD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Matt Pang of Henley Place (Lincoln) Limited against the decision of the City of Lincoln Council.
 - The application Ref is 2023/0344/FUL.
 - The development proposed is the conversion and extension of the existing restaurant to form 1no commercial/retail unit at ground floor and 9no residential apartments with associated amenity space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was submitted, a revised National Planning Policy Framework ('the Framework') has been published. This has not raised any new matters which are determinative to the outcome of this appeal. However, I have referenced the revised paragraph numbers where necessary.

Main Issues

3. Interested parties have raised concern regarding the effect of the proposal on the users of the public house from a loss of light. The appellant has had the opportunity to comment on this matter during the appeal process and therefore, they would not be prejudiced if this was included within one of the main issues.
4. Accordingly, the main issues are the effect of the proposal on:
 - a) the character and appearance of the surrounding area, including the significance of the St. Catherine's Conservation Area No 4 (CA); and
 - b) the conditions of the occupiers/users of neighbouring properties, with particular reference to privacy, light, and parking.

Reasons

Character and Appearance, including the CA

5. The appeal site is within the CA. I therefore have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. The CA encompasses a C-

shaped area including Canwick Road Old Cemetery to the east, the area surrounding St Catherines Church to the west, and the developments either side of the classified roads of South Park, Cross o'Cliff Hill and High Street.

6. The appeal site is in the northernmost part of the CA, on the corner of Henley Street and High Street. High Street is mixed in appearance but predominantly comprises two and three-storey buildings constructed of brick abutting the back edge of the pavement with ground floor commercial uses and residential/office accommodation above. Roofs tend to be pitched, but eaves and ridge heights vary. Henley Street comprises two-storey terraced dwellings abutting the pavement which fall outside the CA. The significance of the CA is derived from its historic and aesthetic values.
7. The appeal site is occupied by a three-storey building that abuts the pavement on High Street and reduces in height as it returns around the corner of Henley Street. The building has a ground floor restaurant with residential accommodation above and has been extended and altered. The appeal building does not positively contribute to the character and appearance of the surrounding area or the CA due to its flat roofs, the unsympathetic materials and horizontal proportions of the shop front, and the mismatch of windows facing High Street. To the rear of the building, fronting onto Henley Street, is a single storey flat roofed garage block of limited architectural merit. The demolition of the rearmost part of the existing building would therefore not harm the significance of the CA.
8. The replacement shop front would be of a traditional design and materials, and the replacement windows to the front elevation would have a vertical emphasis which would replicate the predominant fenestration within building's in the surrounding area. These alterations would enhance the character and appearance of the surrounding area. The eaves of the proposed building would match those of the attached public house, while the ridge would be higher. However, the eaves and ridge heights of surrounding buildings vary and therefore these alterations would not harm the character, appearance or significance of the surrounding area or CA.
9. The rear contemporary three-storey flat roofed extension would abut Henley Street's pavement, reflecting the existing building's in the surrounding area. The third storey would be set back behind the façade and would be constructed of different materials to the ground and first floors which would reduce its overall scale and bulk. While the extension would have a greater height than the adjacent two-storey terraced dwellings, it would 'step down' from the three-storey building fronting High Street. I observed similar transitions on corner plots in the surrounding area, including a recently constructed three-storey commercial/residential building on the corner of High Street and Tealby Street, also within the CA. Consequently, I do not find that the extension's scale or massing would conflict with the buildings in the surrounding area.
10. In reference to the first main issue, the proposal would not harm the character and appearance of the surrounding area, including the significance of the CA. As I have not found harm to the CA, it is not necessary for me to undertake a balancing exercise in respect of the public benefits of the proposal. It would comply with Policies S53 and S57 of the Central Lincolnshire Local Plan, adopted 2023 (LP) which, amongst other things, seek to ensure that all development must contribute positively to local character and townscape and

should protect, conserve and seek opportunities to enhance the historic environment. It would also comply with paragraphs 135 and 203 of the Framework that seek to ensure developments add to the overall quality of an area; are sympathetic to local character and history including the surrounding built environment; and sustains and enhances the significance of heritage assets.

Living Conditions – Parking, Privacy, Light

11. On-street parking occurs along both sides of Henley Street. There is no residential parking scheme or parking restrictions in place. High Street is a busy thoroughfare with bus stops within walking distance of the appeal site that provide access to and from central Lincoln. Parking bays are located along both sides of High Street with parking restrictions in place Monday to Saturday 8am - 6pm that limit parking to two hours.
12. No parking is proposed as part of the development. The proposal would result in the removal of three existing garages. However, the information before me suggests that these are not used for vehicle parking and therefore the proposal would not result in a loss of existing parking spaces. A Class E Use¹ would be retained to part of the building's ground floor, while the proposal would result in an increase of 7 apartments.
13. Future tenants of the proposed apartments would be aware of the parking restrictions in place on High Street and the potential parking difficulties faced by those who own a private vehicle. They would also be aware that the appeal site is in walking distance of Lincoln town centre, Lincoln train station, and services, facilities and bus stops on High Street. Furthermore, the proposed development includes the provision of secure cycle storage whose retention could be conditioned. Therefore, future occupiers of the proposal would have access to a range of services, facilities and sustainable modes of transport without reliance on the private car. Consequently, the above measures would ensure that the proposal would not result in an intensification of parking in the surrounding area that would harm the living conditions of occupiers of neighbouring properties, particularly on Henley Street.
14. The first and second floor windows in the northern elevation of the proposed building would face towards the public house's upstairs flat (Flat 21 High Street). These windows would be obscure glazed to prevent overlooking. I support the obscure glazing of the hallway/corridor windows to preserve the privacy of the occupiers of the neighbouring flat. However, to prevent any actual or perceived loss of privacy, these windows should also be non-opening.
15. A first floor bedroom window within the northern elevation of proposed Flat 3 would also be obscure glazed. This would result in unacceptable living conditions for future occupiers from a lack of outlook from this room. However, this window would not directly face any of the windows in the public house's first floor flat or within the side elevation of the public house. Consequently, I do not find that this window should be obscure glazed to prevent overlooking.
16. The appellant has provided a cross-section drawing² to demonstrate the proposal would comply with the 25-degree guideline³ (BRE) when measured

¹ Use Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended)

² Figure 1 of the appellant's letter dated 21 May 2024, titled 'Response to third party representations'

³ Site layout planning for daylight and sunlight, produced by The Building Research Establishment (BRE)

from a first floor south facing window within the Flat 21 High Street. However, the appellant states that the drawing was produced without the benefit of survey data and therefore, is indicative. Furthermore, the cross-section excludes the stairwell closest to the flat, and it is clear if it was included, it would breach the 25-degree guideline. Consequently, I attach limited weight to this drawing.

17. There is a first floor window within the western elevation of Flat 21 High Street. From the information before me, this window serves a living room which would be frequently occupied. The increase in the height of the eaves and ridge of the existing building in proximity to this window and the siting, scale and massing of the proposed rear extension would likely affect light levels to this room to an unacceptable degree.
18. Concern is also raised regarding the proposal's effect on light levels to the ground floor south facing windows of the public house. These windows serve a commercial rather than residential premises, however, a reduction in both daylight and sunlight to these windows could affect both employees and patrons in creating a less attractive place to work or frequent. Therefore, this is a material consideration and I do not have any substantive evidence to demonstrate that the proposal would not harm the public house's light levels.
19. I acknowledge that the Council does not have any detailed guidance on how an effect on light should be measured and that the 25-degree guideline is guidance. However, BRE provides a useful tool in determining potential effects on light levels to existing windows in the absence of a daylight and sunlight survey. Furthermore, the appellant's inclusion of a drawing displaying the 25-degree guideline demonstrates that they also consider it an effective tool. While I acknowledge that the officer's Committee Report states the proposal would unlikely impact on the windows of the flat and the public house to an unacceptable degree, this is a subjective view in the absence of a daylight and sunlight survey.
20. The appellant has directed me to paragraph 129 of the Framework that states, *"where there is an existing or anticipated shortage of land for meeting identified housing needs, it is especially important that planning policies and decisions avoid homes being built at low densities, and ensure that development make optimal use of the potential of each site. In these circumstances: (c)...when considering applications for housing, authorities should take a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site..."*. However, the Council does not have an existing shortage of land for meeting identified housing needs nor has evidence been provided that demonstrates the Council would have an anticipated shortage. Furthermore, I am not persuaded from the information before me, that an increase in density could not be achieved by less harmful means of extending and altering the existing building.
21. The Planning Practice Guidance⁴ states, *"assessing appropriate levels of sunlight and daylight, will depend to some extent on the context for the development as well as its detailed design. For example, in areas of high-density historic buildings, or city centre locations where tall modern buildings predominate, lower daylight and sunlight levels at some windows may be*

⁴ Paragraph 007 of Effective use of land chapter

unavoidable if new developments are to be in keeping with the general form of their surroundings". However, this would not apply to the appeal site as the surrounding area is mixed in character and appearance and although it has a high density with terraced properties, the overall height of buildings is limited. Therefore, I do not consider that a relaxation in sunlight or daylight would be appropriate in this instance.

22. Consequently, I am not satisfied from the information before me that the proposal, due to its height and proximity to the neighbouring property's windows, would not harm the living conditions of occupiers of Flat 21 High Street or the users of the public house.
23. In respect of the second main issue, the proposal would not adversely affect the living conditions of the occupiers of neighbouring properties, with particular reference to privacy and parking. However, it would adversely affect the living conditions of the occupiers of Flat 21 High Street and the users of the public house, with particular reference to light. It would therefore conflict with Policies S49 and S53 of the LP which, amongst other things, seek to ensure that developments are compatible with neighbouring land uses and not result in harm to people's amenity through overshadowing or loss of light.

Other Matters

24. On the opposite side of High Street from the appeal site is the Greek Orthodox Church of St Basil and St Paisios, which is a Grade II listed building. The significance of the listed building derives from its historic and aesthetic value. The appeal site falls within the setting of the listed building and accordingly, I have a statutory duty under Section 66(1) of the Act to pay special regard to the desirability of preserving its setting. I have found that the proposal would conserve and enhance the CA and therefore, it would not harm the setting of this listed building.

Conclusion

25. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR