



Appeal Decision

Site visit made on 28 August 2024

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2024

Appeal Ref: APP/Y2003/W/24/3343781

**Former Lincoln Imp Public House, 29 Gloucester Avenue, Scunthorpe
DN16 2EA**

- 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 Shape Land & Property (Chris Smith) against the decision of North Lincolnshire Council.
 - The application Ref PA/2023/1429, dated 14 August 2023, was refused by notice dated 6 November 2023.
 - The development proposed is demolition of public house and erection of a two-storey residential building consisting of 20 affordable homes, with associated cycle and car parking, bin storage, amenity space and landscaping.
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Decision

1. The appeal is allowed, and planning permission is granted for the demolition of public house and erection of a two-storey residential building consisting of 20 affordable homes, with associated cycle and car parking bin storage, amenity space and landscaping at the former Lincoln Imp Public House, 29 Gloucester Avenue, Scunthorpe, DN16 2EA in accordance with the terms of the application Ref PA/2023/1429 dated 14 August 2023, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Shape Land & Property (Chris Smith) against North Lincolnshire Council. This application will be the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are the loss of the public house, and the living conditions of future occupiers with particular regard to private amenity space.

Reasons

4. The appeal site is the location of the Lincoln Imp public house (the LI) which has, from the evidence provided, been closed since August 2022. At the time of my site visit, the doors and windows were covered with metal shutters to secure the building.
5. The site is located within a predominately residential area and the LI is brick built in construction. The site fronts on to Gloucester Avenue, with Beechway to the side, where a small row of shops is situated. The proposal would see the

demolition of the LI and the erection of 20 dwellings in one two storey building, effectively made up of one bedroomed apartments / flats.

Loss of public house

6. The key element of this reason for refusal relates to the loss of a community facility. Having read the evidence provided it appears that the LI has been a well-known music venue, as well as being home to community groups in addition to being a public house. I understand that it was a traditional public house, in that there was no food offer, and was reliant on "wet" sales.
7. The appellants have supplied a full viability assessment to support their position, which demonstrates that an outlay in the vicinity of three hundred thousand pounds would be required in order to open and re-ignite the LI as a going concern. I understand that a number of short-term tenants were the last occupants of the LI before its eventual closure and an opportunity was given to a previous long-term tenant to take over, but no deal could be agreed.
8. This document also outlines the recent history of the LI, in that it has been marketed for some time as a public house, with no interest. The LI has also been allocated as an Asset of Community Value, but no formal interest has been forthcoming.
9. Third parties have stated that any possible interest has been impeded by the owners, and at the time of the appeal being submitted, a community group was looking to raise funds to make an offer on the premises, but I have no further evidence for this.
10. The viability information submitted is thorough, showing the decline in trade, and fully outlines the issues facing any re-opening of the LI. I have no reason to doubt its authenticity and as such, must award it full weight in any determination. There are alternative premises within a suitable distance which are an option in the current hospitality market, as noted in the viability statement.
11. The ongoing saga of the LI seems to be an emotive one for many interested parties, as relates to any potential for its re-opening and use as a music venue. There is no doubt that the LI has a long and storied history, but it has been proven, that despite anecdotes being forwarded in support of its retention, that the LI can no longer realistically function as a public house / music venue. It would appear that no realistic counter-offer has emerged, and the premises have now been closed for in excess of two years.
12. The proposal for the re-use of the site going forward for residential development must therefore to be looked upon positively in terms of the suitable use of a site hosting a disused public house on a dilapidating site in a residential area.
13. Therefore, I find no material conflict with policy CS22 of the North Lincolnshire Local Development Framework Core Strategy (2011) which, amongst other matters, expects community facilities to be retained unless there is no longer a need for the building for any form of community use. The wishes of interested parties for the LI to be retained are admirable, but with no alternative being forwarded, then its retention in its current form is untenable and an alternative must be considered.

Private amenity space

14. The proposal would provide an area of amenity space for the use of the occupants of the dwellings. It is not unusual for flats or apartments to be provided a reduced level of amenity space, private or otherwise.
15. Given the flats / apartments are one bedroomed, they are modest in scale and would provide accommodation commensurate with flats / apartments rather than family dwellings. There would not be an expectation from occupants of a large amount of amenity space to be provided for any of the units. The amenity space would be communal rather than private, but I consider it would meet likely expectations of occupants and not harm living conditions to any material degree.
16. Policy H5 of the North Lincolnshire Local Plan (2003) does not require space for upper floor flats, which reflects the likely expectations of the potential occupiers of flats. Policy H5 does require private amenity space for other types of development, but I would not consider it likely that a ground floor resident would expect significantly different living conditions from upper floor residents that the policy does not make requirements for. However, given there is ground floor accommodation, the provision of communal amenity space results in some conflict with the requirements of Policy H5 which seeks private amenity space to be provided.
17. In conclusion on this issue, while I am satisfied there would be no material harm to the living conditions for future occupants, there would be conflict with the specific requirements of Policy H5 in terms of shared, rather than private amenity space.
18. Planning law requires applications for planning permission to be determined in accordance with the development plan unless material considerations indicate otherwise as set out in Section 38(6) of the Planning and Compulsory Purchase Act 2004.
19. In summary, the plan requires the provision of private amenity space for all dwellings other than upper floor flats. Thus, there is some limited conflict with the development plan in this regard. Nevertheless, I consider that owing to the nature of the development there would be no material harm to the living conditions of future occupants as a result of the amount and nature of amenity space provided. In this case, when considering the development as a whole, I consider material considerations exist that would indicate a decision other than in accordance with the specific requirements of Policy H5.

Other Matters

20. Interested party representations have focussed on the retention of the LI, its history as a music venue and the loss of that aspect. As shown above, whilst I have some empathy toward that position, one has to be objective, and when faced with the evidence that the LI can no longer operate in a viable manner and that has been clearly demonstrated, then in the absence of alternatives, we are left with a derelict building, a dilapidated site and no realistic options other than the appeal proposal.

Conditions

21. I have taken into consideration the conditions suggested by the Council and find they are fair and reasonable in all cases, have accepted them all and they are included in the Schedule at the end of this report.
22. I have added a condition to ensure that no form of development commences until the Section 106 agreement is completed and signed. At the time of writing, I was in receipt of a draft agreement and made aware that the completed document is close to completion. Adding this condition ensures that the agreement is completed and signed by the parties to avoid any doubt before any works commence on site.
23. Conditions 1 and 2 are in the interests of proper planning. Condition 3 relates to the character and appearance of the locality. Conditions 4, 18 and 19 relate to biodiversity. Condition 5 is in the interests of protection from contamination. Conditions 6 and 7 are in the interests of the protection of residential amenities.
24. Protection of highway safety relates to conditions 8, 9, 10, 12 and 13. Ensuring cycle space provision concerns condition 11. Effective drainage is dealt with by conditions 14 to 17, whilst the aforementioned Section 106 agreement is dealt with by Condition 20.

Conclusion

25. For the reasons given above I conclude that the appeal should be allowed.

Paul Cooper

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development must be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Site location plan - 1353-JDA-ZZ-XX-DR-A-0000
Proposed Plans - 1353-JDA-ZZ-ZZ-DR-A-0001 Rev C01
Proposed Elevations - 1353-JDA-ZZ-ZZ-DR-A-0002 Rev C01
Proposed Street Elevations - 1353-JDA-ZZ-ZZ-DR-A-0003 Rev C01
Boundary Treatment Plan - 1353-JDA-ZZ-XX-DR-A-0003 Rev C01
Proposed Site Plan - 1353 - JDA-ZZ-XX-DR-A-0002 Rev C01
Planting Plan - D216.002
General Arrangement - D216.001
S50 Street Works Plan 20/10/2021 Rev P04.
- 3) Prior to any works above slab level, details of the roof tiles to be used in the construction of the dwellings shall be submitted to and agreed in writing with the local planning authority and only the approved materials shall be used.
- 4) If, within a period of five years from the date of planting, any tree (or any tree planted in replacement for it) is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree within two months of being requested to do so by the local planning authority.
- 5) Unless otherwise agreed by the local planning authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until parts 1 to 4 below have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing until part 4 has been complied with in relation to that contamination.

Part 1: Site Characteristics

A Phase 1 desk study shall be carried out to identify and evaluate all potential sources of contamination and the impacts on land and/or controlled waters, relevant to the site. The desk study shall establish a 'conceptual model' of the site and identify all plausible pollutant linkages. Furthermore, the assessment shall set objectives for intrusive site investigation works/Quantitative Risk Assessment (or state if none required). Two full copies of the desk study and a non-technical summary shall be submitted to the local planning authority for approval prior to proceeding to further site investigation. An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The

contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority.

The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland, and service lines and pipes;
 - adjoining land;
 - groundwaters and surface waters;
 - ecological systems;
 - archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and a proposal of the preferred option(s). This must be conducted in accordance with Environment Agency's Land Contamination Risk Management (LCRM) guidance October 2020.

Part 2: Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Part 3: Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks' written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (referred to in PPS23 as a validation report) that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the local planning authority.

Part 4: Reporting of Unexpected Contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Part 1, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Part 2, which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification

report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with Part 3.

- 6) Construction, demolition and site clearance operations shall be limited to the following days and hours:
- 8am to 6pm Monday to Friday
 - 8am to 1pm on Saturdays.

No construction, demolition or site clearance operations shall take place on Sundays or public holidays.

HGV movements shall not be permitted outside these hours during the construction phase without prior written approval from the local planning authority. Installation of equipment on site shall not be permitted outside these hours without prior written approval from the local planning authority.

- 7) No stage of the development hereby permitted shall commence until a construction environmental management plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:

Noise and vibration

The CEMP shall set out the particulars of:

- (a) the works, and the method by which they are to be carried out;
- (b) the noise and vibration attenuation measures to be taken to minimise noise and vibration resulting from the works, including any noise limits; and
- (c) a scheme for monitoring the noise and vibration during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.

Light

The CEMP shall set out the particulars of:

- (a) specified locations for contractors' compounds and materials storage areas;
- (b) areas where lighting will be required for health and safety purposes;
- (c) the location of potential temporary floodlights;
- (d) the identification of sensitive receptors likely to be impacted upon by light nuisance;
- (e) proposed methods of mitigation against potential light nuisance, including potential glare and light spill, on sensitive receptors.

Dust

The CEMP shall set out the particulars of:

- (a) site dust monitoring, recording and complaint investigation procedures;
- (b) the identification of receptors and the related risk of dust impact at all phases of the development, including when buildings and properties start to be occupied;
- (c) the provision of water to the site;
- (d) dust mitigation techniques at all stages of development;
- (e) the prevention of dust trackout;
- (f) communication with residents and other receptors;
- (g) a commitment to cease the relevant operation if dust emissions are identified either by regular site monitoring or by the local authority;
- (h) a 'no burning of waste' policy.

- 8) Within three months of the completion of the new access, any redundant access to the site shall be removed and the area reinstated to footway/verge

(including the provision of full height kerbs) in accordance with details to be submitted to and approved in writing by the local planning authority.

- 9) No dwelling on the site shall be occupied until the vehicular access to it and the vehicle parking spaces serving it have been completed and, once provided, the vehicle parking spaces shall be retained.
- 10) Works shall not commence on site until wheel cleaning facilities, in accordance with details to be submitted to and approved in writing by the local planning authority, have been provided within the curtilage of the site, and this facility shall be retained for the duration of the works.
- 11) Prior to the occupation of the first dwelling, the cycle parking facilities serving the development shall have been completed and shall thereafter be retained.
- 12) The proposed boundary features, including any foundations, shall be constructed as per the approved details and shall not be constructed within the limits of the adopted highway.
- 13) No development shall take place until a construction phase traffic management plan showing details of:
 - (i) a pre/post construction condition survey of the carriageway to identify any defects and how they will be rectified;
 - (ii) all associated traffic movements, including delivery vehicles and staff/construction movements;
 - (iii) any abnormal load movements;
 - (iv) contractor parking and welfare facilities;
 - (v) storage of materials; and
 - (vi) traffic management requirements, including the means of controlling the deposition of mud onto the adjacent highway, along with appropriate methods of cleaning the highway, as may be required;has been submitted to and approved in writing by the local planning authority. Once approved the plan shall be implemented, reviewed and updated as necessary.
- 14) No development shall take place until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development. The drainage scheme shall demonstrate that surface water run-off generated up to and including the 1 in 100-year critical storm (including an allowance for climate change which should be based on current national guidance) will not exceed the run-off from the existing site. It shall also include details of how the resulting completed scheme is to be maintained and managed for the lifetime of the development so that flood risk, both on and off the site, is not increased. SuDS must be considered. Reference should be made to North Lincolnshire Council's SuDS and Flood Risk Guidance Document. Should infiltration not be feasible at the site, alternative sustainable drainage should be used, focusing on above-ground solutions.

- 15) The drainage scheme shall be implemented in accordance with the approved submitted details required by condition 14 above, completed prior to the occupation of any dwelling or building within each phase or sub-phase of the development on site, and thereafter retained and maintained in accordance with the scheme for the life of the development unless otherwise agreed in writing with the local planning authority.
- 16) No development shall take place until details showing an effective method of preventing surface water run-off from the highway onto the developed site have been submitted to and approved in writing by the local planning authority. These facilities shall be implemented prior to the access and parking facilities being brought into use and thereafter so retained.
- 17) No development shall take place until details showing an effective method of preventing surface water run-off from hard paved areas within the site onto the highway have been approved in writing by the local planning authority. These facilities shall be implemented in accordance with the approved details at all times.
- 18) Within three months of the commencement of development, the applicant or their successor in title shall submit a biodiversity metric assessment and biodiversity management plan to the local planning authority for approval in writing. The document shall include:
 - (a) an assessment of biodiversity loss based on the submitted existing site plan;
 - (b) details of measures required to provide at least 1% biodiversity net gain in accordance with the Defra Small Sites metric;
 - (c) details of swift bricks and starling boxes to be installed;
 - (d) restrictions on lighting to avoid impacts on bird nesting sites and sensitive habitats;
 - (e) prescriptions for the planting and aftercare of trees and shrubs of high biodiversity value;
 - (f) proposed timings for the above works in relation to the completion of the dwellings.
- 19) The biodiversity management plan shall be carried out in accordance with the approved details and timings, and the approved features shall be retained thereafter, unless otherwise approved in writing by the local planning authority. Prior to the occupation of the 15th dwelling, the applicant or their successor in title shall submit a report to the local planning authority, providing evidence of compliance with the biodiversity management plan.
- 20) No development, site clearance or demolition of any type shall commence until a formal agreement under Section 106 of the Town and Country Planning Act 1990 providing for affordable housing and the maintenance and management of open space on the site is completed, signed by all parties confirmed, and a sealed copy supplied to all parties confirmed.