

APPEAL BY MODULTEC INTERNATIONAL LIMITED AGAINST THE DECISION OF THE BOROUGH COUNCIL TO REFUSE TO GRANT PLANNING PERMISSION FOR THE DEMOLITION OF THE FORMER SAVOY CINEMA/METROPOLIS NIGHTCLUB AND ERECTION OF A 13 STOREY STUDENT ACCOMMODATION BUILDING AT THE SITE ON THE MIDWAY, NEWCASTLE-UNDER-LYME AND APPLICATION FOR AN AWARD OF APPEAL COSTS AGAINST THE BOROUGH COUNCIL

<u>Application Number</u>	17/00174/FUL
<u>Recommendation</u>	Approval subject to securing of a planning obligation
<u>LPA's Decision</u>	Refused by Planning Committee 9th May 2017
<u>Appeal Decision</u>	Appeal allowed and planning permission granted
<u>Costs Decision</u>	An application for an award of costs against the Council refused
<u>Date of Appeal & Cost Decisions</u>	23rd February 2018

The Appeal Decision

The Inspector identifies the main issues to be:

- i. Whether the proposal would preserve or enhance the character or appearance of the Newcastle Town Centre Conservation Area and the effect on the setting of listed buildings in the Conservation Area. In the event of harm in these respects whether any harm identified to the significance of the heritage asset is outweighed by public benefits; and
- ii. The effect on highway safety resulting from additional demand for on-street parking.

In allowing the appeal the Inspector makes the following comments, after reviewing the policy position:-

With respect to the first reason for refusal

- The building is vacant and has been so for several years and as such has fallen into a state of disrepair. The Heritage Statement submitted with the application recognises that the building is a non-designated asset which is of no particular importance in the Conservation Area but nonetheless acknowledges the significance of the building by stating that the proposal would have some adverse effect on the significance of the Conservation Area.
- The clock tower and cupola of the Grade II listed Guildhall and the tower on St Giles Church are prominent and important features in the skyline of the town centre. The Guildhall dominates views up the High Street which is a positive characteristic of this part of the Conservation Area. The proposed development would be visible from some views within the town centre and from locations such as Friars Street would be highly prominent. There is some concern that the proposed building would compete with the Guildhall, market square setting of the Guildhall and the overall character and appearance of the Town Centre Conservation Area. In particular there is concern that the overall massing and scale of the proposal would be an incongruous and inappropriate visual feature and would result in there being substantive harm to the significance of the Conservation Area and the Listed Building.
- However, it was observed that in its town centre location the views of the new development would largely be screened by existing buildings and it would be seen in the context of existing buildings around the Midway including the cinema, the car park and Keele House (former Blackburn House). The effect on key views from the High Street area has been mitigated by stepping down the building towards the High Street which would help to integrate the building into its sensitive surroundings. Therefore, the overall scale and massing of the building as evidenced by the appellant's Visual

Impact Assessment, would not over-dominate views towards the town centre and its sky line.

- The building would have some adverse impacts on longer distance views towards the Town Centre but the most important buildings in the locality, the Guildhall and St Giles Church, would retain their status as particularly prominent, important and distinctive buildings and their profiles and character would not be compromised or lost against the proposed development.
- Along Midway the proposed development would have a positive impact on the character and appearance of the Conservation Area.
- The materials to be used could be secured by a suitably worded condition but those identified are considered to be suitable for the building's setting.
- The limited impact of the proposal would cause "less than substantial" harm to the character and appearance of the Conservation Area and other heritage assets. In accordance with paragraph 134 of the Framework, the harm must be weighed against the public benefits of the proposal.
- The appellant has demonstrated that there would be a number of benefits from the development in the improvements to the character and appearance of part of the Conservation Area immediately to the site and a number of financial contributions would also be gained. In addition, there may be some economic and social benefits associated with construction activity and the provision of a large number of student accommodation units. These benefits are considered to outweigh the harm that has been found.
- In balancing these issues, significant importance has been attached to the desirability of preserving the Conservation Area and historic assets. Although the proposal would fail to preserve or enhance the character or appearance of the Conservation Area and associated heritage assets, there are clear benefits that weigh in favour of the proposal. These include that there would be some improvements to the character and appearance of part of the Conservation Area immediately adjacent to the site, a number of financial contributions, that there may be some economic and social benefits associated with construction activity and the provision of a large number of student accommodation units. These amount to public benefits which outweigh the less than substantial harm to the character and appearance of the Conservation Area and any harm to the setting of Listed Buildings.

With respect to the Council's second reason for refusal

- It relates to the absence of parking and significant additional on-street demand which would be created by the development and resultant exacerbation of congestion in the area. The Council suggest that saved Local Plan Policy T17 (which indicates that development within the ring road will not be permitted to provide any new private parking) is not intended to apply to residential development but there is no evidence that this is the case and had it done so then surely it would have contained specific requirements to that effect.
- The Written Ministerial Statement of March 2015 states that local planning authorities should only impose local parking standards where there is clear and compelling justification that it is necessary to manage their local road network. There is no compelling evidence which justifies the application of car parking standards in this particular case.
- Furthermore, Keele University has measures to discourage students from driving to campus and parking their vehicles and this will have some effect of discouraging students bringing their cars to their place of study. Furthermore, measures can be secured through conditions and the Section 106 agreement which will encourage the use of more sustainable methods of transport.
- It is inevitable that some students will wish to use their own vehicles and may wish to park in unrestricted residential streets. Whilst there have been discussions between the Council and the appellant regarding the use of the Midway car park, no agreement has been finalised and as such it has no weight in the determination of the current appeal.
- Given the provisions of the Framework in the light of the Written Ministerial Statement and the package of measures that can be put in place to encourage the use of more sustainable means of transport, there is insufficient evidence that the proposal would

be likely to have a harmful effect on highway safety resulting from additional demand for on-street parking.

Section 106 Planning Obligation

- A Unilateral Undertaking (UU) has been submitted which has a mechanism which provides for obligations which if found not to pass the statutory tests will have no effect. The following provisions are made for in the UU and each will be dealt with below:
 - A. The provision of a free bus pass for students;
 - B. A financial contribution of £2,200 towards travel plan monitoring;
 - C. A financial contribution of £8,000 towards ongoing maintenance of the Real Time Passenger Information (RTPI) system for bus services;
 - D. A financial contribution of £11,600 towards improvements to the cycle route from Newcastle to Keele University;
 - E. A financial contribution of £220,871 towards the enhancement of public open space; and
 - F. A financial contribution of £47,000 towards public realm improvements in the vicinity of the site.
- With regard to items A, B and E there is no dispute between main parties and these are considered to be necessary, directly related to the development and fairly and reasonably related in scale and kind to the development.
- Although with reference to C the appellant claims that the RTPI apparatus has already been installed, there is no evidence that this is the case. Given the nature of the current proposal and the reliance on public transport facilities that future occupants will have, it is considered necessary to ensure that the real time information is one way to ensure that use of public transport facilities in the area is optimised. The figure of £8,000 has been clearly justified and C is found to meet the relevant tests.
- It is clear that there is an aspiration to improve the cycle route between Newcastle Town Centre and Keele University. However, the overall cost of the project provided by the Council is just an estimate and there is no evidence of how the figure per cycle space relates to the delivery of the cycle route improvements. Therefore, there is no evidence to justify how contribution D is related in scale and kind to the development.
- With reference to sum F there is no dispute between parties regarding the sum required for landscaping the area adjacent to the site and 10 years of associated maintenance. However the remaining contributions towards missing dropped kerbs on Midway, improving lighting under a nearby underpass and preparation for paint treatment of the subway on Lower Street are disputed by the appellant.
- The paving requirements are not attributable to the current proposal and are not reasonably related to it nor are they required to make the development acceptable in planning terms. Furthermore the works proposed relating to painting the nearby subway seem to be part of a general maintenance programme rather than relating to the proposal or being reasonably related in scale or kind to the appeal proposal. Finally, while lighting to the subway may be desirable, it is not considered necessary to make the development acceptable in planning terms. Therefore, with regard to sum F the only contribution considered necessary is £5,000 which relates to landscaping the area adjacent to the site and 10 years of associated maintenance.

Conclusion

- For the reasons given above and taking into account other matters raised, the proposal does not conflict with the development plan taken as a whole and the appeal should be allowed.

The Costs Decision

- Other than stating that the local planning authority has failed to exercise their responsibilities in refusing to grant permission and has acted unreasonably the appellant has provided no further details of why they find this to be so.
- Although the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council must clearly demonstrate on material planning grounds why a proposed development is unacceptable and must provide clear evidence to substantiate that reasoning. The Council refused to grant permission against officer advice however although the Inspector disagreed with that decision, the decision Members arrived at was based on their consideration under the development plan, the National Planning Policy Framework and other material considerations.
- In arriving at a conclusion regarding whether the proposal preserves or enhances the character or appearance of the Conservation Area and the effect on the setting of listed buildings, it has been concluded that the proposal would result in 'less than substantial' harm and that the overall public benefits of the proposal would outweigh the harm found. While the Council considered the harm to be 'substantial', it is clear that this is a finely balanced decision and the Council in the execution of its duties was entitled to make the decision it did in light of the development plan and other considerations without having behaved unreasonably.
- Members also came to a different view to their Officers regarding the highways impact of the proposal. The Council presented a coherent and reasonable case as to why it arrived at its conclusion. Although in allowing the appeal, a different conclusion was reached, based on the most up to date policies and guidance as well as other considerations including the mitigation package which will be secured through the completed unilateral undertaking which would make a significant contribution to sustainable transport measures and reducing the likelihood of private measures being required by future occupants of the development, it is not considered that the Council behaved unreasonably.

Your Officer's comments

Upon receipt of the appeal decision consideration has been given to whether or not there are grounds for a challenge in the Courts to the decision – on the basis of it being an unreasonable one. Whilst issue could be taken with the inclusion by the Inspector (in his consideration of the benefits of the scheme) of the financial contributions secured by the planning obligation – these are arguably not benefits per se but rather represent the required mitigation of the impacts of the development – the Inspector does identify other benefits in his weighing up of the position, and it is considered that he has signalled his reasoning (for example in paragraphs 21 and 22 of the decision letter) to a sufficient extent to render any challenge very unlikely to succeed.

The attention of the Highway Authority has been drawn to the comments of the Inspector on the cycle path improvements contribution element. Whilst the Inspector did not consider that he could support the wider public realm improvements that were sought by your officer, and this is disappointing, he did consider the immediate environment around the scheme needed to be improved.

Recommendation

That the appeal and costs decisions be noted