



Appeal Decision

Site visit made on 22 August 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2023

Appeal Ref: APP/W1850/W/22/3299963

The Coffee Cart Co Ltd, High Town, Hereford HR1 2AA

- 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 Gardner of The Coffee Cart Co Ltd against the decision of Herefordshire Council.
 - The application Ref P204210, dated 30 November 2020, was refused by notice dated 8 December 2021.
 - The development proposed was originally described as "Part retrospective planning permission for Coffee Cart Co Ltd and 3 no. seasonal pergolas."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description above is taken from the application form, although 'part retrospective' is not a definition of development.
3. The appellant explains that the appeal embraces the entire Coffee Cart development i.e., the use of the land for the siting of the kiosk and seating area and the seasonal erection of pergolas to cover the seating area between 1 October and 21 March. I am informed there has been a kiosk selling refreshments since 1999 which has traded with the requisite licenses but has never benefited from planning permission. Therefore, I find the Council's description on the refusal notice, which includes the kiosk but without reference to the development being retrospective, is more accurate.
4. The appellant has submitted photographs of the old parasols (royal blue in colour) and the new pergolas in his Appendices 2 and 3 and other street scene photographs in Appendix 8, although not all of the pergolas had been erected in the photos. However, on my site visit the pergolas had been removed. In their place were large grey parasols over the outdoor seating area. Notwithstanding what was in place at the time of my visit, I am required to consider and determine the appeal development based on the submitted plans which were before the Council when it made its decision, and which are the subject of this appeal.

Main Issue

5. The main issue in this appeal is the effect of the proposed development on the character and appearance of the Hereford Central Conservation Area (the CA) and on the setting of nearby listed buildings.

Reasons

6. The appeal site occupies part of the wide pedestrianised area to the western end of High Town, which is a significant area of public realm in the centre of Hereford's historic retail and commercial area. From the submitted evidence this area formed the commercial hub of medieval Hereford following the establishment of a market at the end of the 11th century, and remains so today.
7. The appeal site and the historic centre of Hereford are also located within the CA. This covers a sizeable area extending out beyond the historic core in all directions and includes the Cathedral and the River Wye to the south. I saw on my visit the town centre and High Town comprise a compact arrangement of old buildings of various ages and designs, with no unified style of building. The heritage significance of the CA, in so far as it relates to this appeal, is derived principally from its architectural and historic interest reflecting the economic and social development and growth of Hereford.
8. High Town and the area around the appeal site are also bordered by a number of Grade II listed buildings, including the large and imposing Lloyds Bank and the decorative clock tower entrance to the old market, and the Grade I listed "black and white house" to the east of the pedestrianised area, now a museum. High Town can be approached from a number of directions, offering vistas that open out to reveal the pedestrianised open public space, with views towards the "black and white house" and statue of a Hereford Bull to the west and the spire of All Saint's church to the east.
9. Whilst the individual buildings have their own specific historic and architectural interest, they also share a group value as part of the overall historic commercial hub of the city and street scene. In the context of this appeal, the setting of the various buildings is primarily associated with their visibility as part of the commercial street setting and wider street scape. Hence High Town and the appeal site contribute to their significance and special interest. The open pedestrianised area of High Town, in which the appeal site sits, provides the space in which to experience and appreciate the setting of the listed buildings and historic centre of Hereford as well as the character and appearance of the CA.
10. I see from the appellant's photographs that High Town and the pedestrianised open space is also used for holding markets with temporary street stalls, as well as other seasonal events. On my visit, which was not a market day, I saw a number of other catering kiosks along High Town, each with their own demarcated outdoor seating areas under parasols, which were of varying colours and quality. However, these outlets together with the appeal kiosk and its parasol outdoor seating area, give High Town and the city centre a vibrancy that positively contributes to the general hustle and bustle of the centre of Hereford. The Council has not raised any concerns regarding the kiosk which currently exists at the appeal site. Given the other nearby kiosks being of a similar size and scale, together with outdoor seating areas and parasols, I see no reason to disagree.
11. The proposed pergolas would be a large hard-lined structure, albeit removable, with uprights and horizontal beams of substantial dimensions, with a flat louvred roof. This would introduce a substantial permanent-looking structure, akin to a building, into a flexible public space that is overtly temporary and

transient. I understand that clear plastic sides could be let down in inclement weather. This would further detract from any attempt of openness, particularly at night when light would reflect on the plastic sheeting, which would have some crinkle effect compared to plain glass. This would reduce the quality and visual appearance of the structure.

12. The photograph of the pergolas in situ shows the louvred roof slats were covered over to make the roof solid, presumably to protect seated customers from the rain. This makes the structure look even more solid and would further detract from the street.
13. By reason of its size, scale, design and position the proposed pergolas would be unduly prominent and visually disruptive and would fail to preserve or enhance the character and appearance of the CA. Furthermore, it would reduce the ability to appreciate the listed buildings in the street scene and hence diminish their setting. Conditioning the pergolas to only be in place for the winter months between October and March would not sufficiently mitigate against this harm.
14. In accordance with the statutory duties under Section 66(1) and 72(1) of the Listed Buildings and Conservation Areas Act 1990 and paragraph 199 of the Framework I attach great weight to the conservation of the heritage assets and to the harm that would be caused to them. There is no dispute between the parties that the harm caused to the significance of the heritage assets would be less than substantial. In such cases paragraph 202 of the Framework states that the harm should be weighed against the public benefits. The appellant has attempted to place the level of harm on a spectrum, however the Framework requires only the need to differentiate between "substantial" and "less than substantial" harm.
15. The appellant advances a number of public benefits. I saw that the existing kiosk and outdoor seating add vibrancy to the street, to the town centre as a whole and to the character and appearance of the historic town centre. There would likely be associated increased footfall and linked trips in and around the town centre, helping boost the economic activity in the town centre as a whole and in turn help keep buildings in use where possible to support the wider heritage assets. The outdoor café offers a place for people to meet and supports opportunities for social interaction. The business also directly employs some 12 people, with linked employment for 41. The outdoor seating also allows customers to sit and appreciate the historic surroundings. I have no doubt the existing kiosk business and outdoor seating clearly brings the above-mentioned benefits.
16. However, the covered outdoor seating area and kiosk already exist without the proposed pergolas. Customers can already sit outside beneath the parasols out of the rain. I acknowledge that the pergolas, with their plastic sides, would extend the season for customers sitting out, and I appreciate that the outdoor seating offered valuable social space for people during the COVID pandemic, and I have no doubt customers appreciated the service.
17. Apart from making the outdoor seating area more comfortable in colder months and offering the scope to separate smokers and non-smokers, the benefits listed above are already derived from the existing kiosk, outdoor seating area and parasols. Therefore, I am not persuaded that the pergolas would bring significant additional benefits to those already cited. I have not been presented

with any substantive evidence to indicate how critical it would be to the business for customers to sit under the proposed pergolas, when the appellant has operated the kiosk and outdoor parasol seating for some 20 years. I can see there is support from customers and employees for the pergolas, but this does not diminish the harm that I have identified.

18. Drawing all the above points together, I conclude that the public benefits of the proposal, alone or in combination, do not outweigh the harm that would be caused to the significance of the heritage assets of the CA and the nearby listed buildings.
19. For the reasons above I conclude that the proposal would fail to preserve the special historic interest [setting] of nearby listed buildings and preserve or enhance the character or appearance of the CA. This would fail to satisfy the requirements of the Act and would also conflict with Policies LD1 and LD4 of the Herefordshire Local Plan Core Strategy. Collectively these policies seek to ensure that development conserves or enhances heritage assets and their settings through sympathetic design and protection of the area's character.

Other Matters

20. I acknowledge the appellant's concerns with the Council's handling of the application and the length of time taken to determine it, but that is a matter between the appellant and the Council. In reaching my decision I have been concerned only with the planning merits of the case.

Conclusion

21. The proposed development would not accord with the development plan as a whole and there are no material considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should be dismissed.

K. Stephens
INSPECTOR