

## Appeal Decision

Site visit made on 12 September 2016

**by Jonathan Hockley BA(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 19 October 2016**

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**Appeal Ref: APP/F4410/W/16/3146851**

**Frenchgate Centre, St Sepulchre Gate, Doncaster DN1 1SZ**

- 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 J Byrne against the decision of Doncaster Metropolitan Borough Council.
  - The application Ref 14/02936/FULM, dated 15 December 2014, was refused by notice dated 22 September 2015.
  - The development proposed is the creation of multiplex cinema and Class A3/A4/A5 units.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The decision that is the subject of this appeal was based on a design known as 'Scheme D'. As part of the appeal the appellant has submitted a revision to the proposal, 'Scheme E'. The Council have had chance to comment on this variation in the design, and the appellant has written to relevant third parties. Scheme E reduces the height of one element of the cinema block by around 2m, and amends some external materials, including those on the existing road bridge. These changes have been incorporated in an attempt to overcome some objections of the Council.
3. I have considered this matter carefully. I consider that the changes proposed are not so substantial that it would deprive those who should have been consulted on the changed development of the opportunity of such consultation. In coming to this view I have also taken into account the fact that the Council and other parties have been made aware in good time of Scheme E, and that the Council are content for the revisions to be accepted. The appellant has requested that I treat Scheme E as forming part of the appeal submission as an alternative to Scheme D, and this I have done.

### Main Issue

4. The main issue in this case is the effect of the proposed development on the character and appearance of the area and on the setting of adjacent listed buildings.
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## Reasons

5. The Frenchgate Centre (the Centre) is a large shopping centre located on the western edge of Doncaster town centre. The Centre is integrated with the town's bus station, being directly above it and linked through to it. The bus station is in turn directly adjacent and linked to the town's train station. The south western aspect of the Centre is built over Trafford Way, a major road linking Doncaster to the M18 to the south, and to the A1(M) to the west. When approaching the Centre from this direction, the glazed façade of the Centre over the road is noticeable, together with a red brick curved tower on the left hand side, with further glazing angled to the side. A larger building to the rear of the Centre, described as the Trade & Labour Club, is also noticeable. However, this building is set considerably further back from the Centre façade and tower. Closer to the Centre the station, and then the Grand Theatre, come into view.
6. The train station booking hall and offices is a Grade II listed building. The listing notes that the hall was constructed in 1933, in red brick with stone dressings and clay tile roofs. Visually the building has three main parts, with a central block taller than two flanking two storey structures. The central block has a five bay window set in the middle of the façade, with a round clock face set above. On either side is set a three bay window, with single windows in the flanking wings. The outer two storey structures have four bays. Roofs are hipped/pyramidal in design. The building as a whole has a pleasing symmetry and harmony, clearly showing the importance of the central block and the subsidiarity of the two flanking structures. The red brickwork of the whole building is set off and enlivened by white decorative bands.
7. On the opposite side of the road to the station lies the Grand Theatre. This painted stucco building dates from 1899. The side of the building lies adjacent to Trafford Way, with the detailed and elaborate façade facing towards the south east. This façade includes an ornate iron railed projecting balcony at first floor level, with the upper stories articulated with paired ionic pilasters. The whole façade is topped by a deep entablature with balustraded parapet. Evidence submitted indicates that the façade has been altered during the lifetime of the building and that certain elements may not be original.
8. The proposal seeks to construct a multiplex cinema and restaurant/public house/café units in a two storey formation on top of an existing irregular shaped area at roof level on the south western part of the centre. Section 66(1) of the Planning (Listed Building and Conservation Areas Act) 1990 states that when considering whether to grant planning permission for development which affects the setting of a listed building, special regard should be had to the desirability of preserving this setting.
9. Paragraph 132 of the National Planning Policy Framework (the Framework) says when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Significance can be harmed by development within its setting. The Framework defines setting as the surroundings in which the asset is experienced. Elements of setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.

10. Policies ENV34, ENV53 & ENV54 of the saved Doncaster Unitary Development Plan, 1998 (the UDP), together state that permission will not normally be granted for development which would adversely affect the setting of a listed building, that the scale and appearance of new development must have regard to its wider visual impact, and extensions to existing buildings should be sympathetic in scale, materials and general design. The appellant considers that ENV34 should be given reduced weight as it is not consistent with the Framework. However, I note the wording within the policy that permission "will not normally be granted". To my mind this allows the decision taker to apply the provisions of paragraphs 128-134 of the Framework, and consider harm versus public benefit when considering proposals against the policy. I therefore continue to place material weight to this policy.
11. Policies CS14 and CS15(A) of the Doncaster Core Strategy 2011-2028, 2012 (the CS) together state that all proposals must be of high quality design that contribute to local distinctiveness, reinforce the character of local building traditions and respond positively to existing site features, integrating well with their immediate and surrounding area, and that proposals will be supported which preserve their heritage significance and setting of the Borough's heritage assets. In the case of policy CS15(A) in this instance I agree with the appellant, that the policy does not reflect the criteria embodied in the Framework concerning the assessment of impacts upon heritage assets, and in accordance with paragraph 215 of the Framework, this reduces the weight I can provide to this specific policy.
12. The setting of the station booking hall is affected by the prominence and width of Trafford Way, as well as an array of street furniture and signage around and on the concourse set in front of the building, including car parking and taxi drop off areas and so on. The angle of the buildings to the road allows clear views of the attractive structures from the busy Trafford Way. The existing Centre serves to effectively cut off the setting of the train station to the north. However, the Centre in this respect is reasonably well designed; the tower in red brick with banding clearly references the station buildings and the intervening glazed area, and the angle of its construction, allows the dominance of the station to remain.
13. A key design feature of the booking hall and offices is its symmetry and graduated heights. The two flanking buildings are both lower than the main building, with the banding, tops of windows and the parapet design of the main building all taking prominence over the flanking buildings, as well as the roof eaves and ridge height. The height of the existing Centre, whilst substantial, pays heed to this symmetry and graduated height, by also stepping up via the glazed section adjacent to the station to the circulation tower prior to the over road bridge element. Whilst there are negative aspects to the setting of the booking hall therefore, the whole contains various elements of visual harmony, and these contribute to the significance of the heritage asset.
14. The setting of the Grand Theatre has been denuded significantly in the years since the building was constructed. The location of the road to the side flank of the building and the proximity of the 1960s red brick Sainsbury's building in front of the façade dramatically affects the setting of the theatre. Views of the façade are difficult and only really available from close up. In such a way the significance of the theatre has been compromised.

15. The design of the proposal has been altered several times through the application stage and, in Scheme E, at the appeal stage. The proposal is a significantly sized development. From Trafford Way, Scheme D aims to break down the overall bulk of the design by varying materials, designed to subdivide the building into three smaller sections. A large glazed area, with trespa panelling around the top would be located on the station side of the building. This would then step down to a 'green' wall above the centre of the bridge and down again to the restaurant level across the bridge and behind the Grand Theatre. The top of this level would be below the top of the theatre parapet.
16. In summary, Scheme E appears to have a significantly higher proportion of glazing, including the replacement of the existing bridge glazing and an area of grey cladding above with mirror glass, and the alteration from the green wall to graduated cladding to match the colours of the sky. The trespa paneling is also removed from the top of the cinema element, thereby reducing the height of this section. The replacement of the existing glazing would be secured via a Unilateral Undertaking, which has been submitted with the appeal.
17. Whilst I note that the proposal would only add 7% of floorspace to the Centre, the overall height and bulk of Scheme D would be set high above the booking hall and offices, eroding the current stepped nature of the design of this building and its careful consideration of scale and symmetry. The proposal would also, in this sense, erode the laudable design of the current Centre in its approach to the station buildings. Whilst not significant in views from the platforms, the sheer height of the cinema block and its banded top would dominate the setting of the handsome booking hall.
18. The lowered height of Scheme E would reduce this effect somewhat, although the bulk and massing would still be significantly noticeable in views from Trafford Way, and the proposal would still appear to tower above the station, despite the small set back from the edge of the Centre façade. The introduction of the sky coloured cladding and larger expanses of glass would also to my mind reduce the effect that Scheme D has in breaking down the overall design, creating a wall and expanse of glass and similarly coloured cladding in views from Trafford Way.
19. The design of Scheme D includes various material and fenestration changes close to the edge of the Grand Theatre. Despite a gap between the rear of the Theatre and the edge of the Centre, this would have the potential to somewhat confuse the limited views of the Theatre available from close by. Scheme E in this respect provides a more coherent backdrop to the setting of the Theatre, and the mirrored glass presents an opportunity to reflect some views of the Theatre back into the public realm, potentially having a positive effect on the setting of the building. However, this positive effect would be slightly nullified in my view by the increased height of the Centre in such proximity to the Theatre.
20. Both proposals would remove views of various parts of rooftop plant and car parking from Trafford Way. However, such views are not prominent in the streetscene at present, where the eye is drawn when travelling along Trafford Way to the façade of the Centre, and when closer to the building, by the station buildings on the left hand side.
21. This is a key site within the town; the site is highly visible to drivers and pedestrians along Trafford Way, and to many exiting from the station, albeit

that this angle is more oblique. The design of a development affecting the setting of heritage assets plays an important part in determining its impact. The contribution of setting to the historic significance of an asset can be sustained or enhanced if new buildings are carefully designed to respect their setting. In my opinion the appeal schemes fail to achieve these objectives. For the same reasons, I consider that the design of the proposals would harm the character and appearance of the area.

22. The Framework considers harm to the significance of heritage assets in terms of substantial, or less than substantial harm. I consider that, for the reasons given above, both Schemes D and E would have adverse effects on the setting of the station booking hall and offices. In relation to the Grand Theatre, I am of the view that Scheme D would have an adverse effect on the setting of this building, but that Scheme E would have a broadly neutral effect. When combined, and having regard to the advice in planning practice guidance, I consider that both schemes would not reach the high hurdle of substantial harm (as defined in the Framework) to the significance of the heritage assets. However, though less than substantial, there would, nevertheless, be real and serious harm caused by both schemes which requires clear and convincing justification. Paragraph 134 of the Framework indicates that such harm is to be weighed against the public benefits of the proposal.
23. The public benefits of the scheme include a substantial investment into the local economy of between 10-15 million pounds, generating economic benefits both in construction, the utilisation of the proposal, and via employment, estimated at some 200 jobs including 44 full time posts. The proposal would specifically support the local evening economy, bringing life into the town centre after hours. I also note the very sustainable location of the proposal.
24. Furthermore, I note the details submitted concerning other proposed cinema development nearby, and the under provision of food and drink outlets within Doncaster, specifically family orientated restaurants, and the evidence regarding the strong need for the proposal. However, whilst I note the other cinema development as being smaller and in a less sustainable location than the proposal, cinema provision does still appear to be improving in the Borough. Fundamentally, I also note that the Council have no objections in principal to the proposal, and it therefore seems to me that it would be entirely possible for a scheme to be brought forward that would secure similar benefits, without causing the same degree of harm.
25. Consequently, whilst there are some public benefits, these are limited, and insufficient to outweigh the considerable weight that I give to the less than substantial harm that Scheme D would cause to the significance of the adjacent listed buildings or the harm that Scheme E would cause to the significance of the station booking hall and offices.

#### *Other Matters*

26. I note that the appellant has revised their designs several times and has fully engaged with the local Design Panel and Civic Trust. However, for the reasons given above I consider that both schemes put forward to me would harm the character and appearance of the area.

27. The appellant raises a recent court case<sup>1</sup> in support of their view that if consideration of heritage policies of the Framework is in favour of the development, then the presumption in favour of sustainable development in paragraph 14 of the Framework should apply. In this case however I have found that the proposal would be contrary to Chapter 12 of the Framework.
28. I note the comments of English Heritage [now Historic England], and the fact that they raised no objections to the scheme. However, these comments appear to relate solely to the effect of the proposal on the Grade I listed St George's Church, as opposed to the grade II listed buildings closer to the appeal site.
29. There is dispute between the parties over the veracity of various computer generated images (CGI) produced by the appellant to demonstrate the impact of the schemes. Whilst I have noted some occasional imperfections these have been acknowledged by the appellant. In any case, I have had the opportunity to view the existing street scene and buildings from various angles whilst on site, and compare them with the proposed plans and CGIs.
30. The appellant considers that the Council have acknowledged that they do not object to Scheme E. In response they have clarified that, whilst they consider Scheme E an improvement, they still have objections over the proposal. I note in this respect paragraphs 6.31 and 6.43 of their initial evidence.

## **Conclusion**

31. To summarise, I conclude that the proposal would fail to preserve the setting, and therefore the significance of the Grade II listed Station booking hall and offices and Grand Theatre and the character and appearance of the area. The revised Scheme E would fail to preserve the setting and significance of the booking hall and offices. Although I have concluded that the proposals would cause less than substantial harm to these heritage assets, I do not consider that the public benefits of the proposal would outweigh the clear harm caused in either scheme. Harm would also be caused to the character and appearance of the area. As such the proposal would conflict with the Framework and policy CS14 of the CS, as well as to policies ENV34, ENV53 and ENV54 of the UDP.
32. Therefore, for the reasons given above, and having regard to all other matters raised, including the letters received in support of the proposal, I conclude that the appeal should be dismissed.

*Jon Hockley*

INSPECTOR

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<sup>1</sup> Forest of Dean v Secretary of State [2016] EWHC 421 (Admin)