

## **PLANNING COMMITTEE - 5 FEBRUARY 2019**

<b>Application No:</b>	<b>18/01444/FUL</b>		
<b>Proposal:</b>	<b>Installation of a 1.8m high fence surrounding the beer garden (Retrospective)</b>		
<b>Location:</b>	<b>34 Castle Gate, Newark On Trent, NG24 1BG</b>		
<b>Applicant:</b>	<b>Mr Stuart Graham</b>		
<b>Registered:</b>	<b>30.08.18</b>	<b>Target Date:</b>	<b>25.10.18</b>
<b>Extension of time agreed 08.02.19</b>			

**This application has been referred to Planning Committee by the Business Manager for Growth and Regeneration given its sensitivity**

### The Site

The application site is located on a prominent site on the Newark riverside to the southwest of Castle Gate. The site is occupied by a public house which is a Victorian building over three floors, with an overhanging gallery window overlooking the river. There are also a linked range of outbuildings in a yard to the rear of the building which adjoin 36 & 38 Castle Gate, a Grade II Listed Building. The site is access via a vehicular entrance from Castle Gate and through a shared yard or via the footpath along the River Trent.

The site is located within the town centre and the Newark Conservation Area.

### The Proposal

This application seeks retrospective planning permission for the installation of a 1.8m high fence surrounding the beer garden. The fencing encloses an outdoor seating area and event area which is below the existing function room. The area also includes a bar/servery. Prior to the area being used as an event and seating area it provided car parking for the establishment.

For clarity the fencing to be retained is the section enclosing the beer garden along the south eastern edge up to but not including the existing fence along the south west side comprising vertical boarded timber fence in a dark stain finish as shown on Drg. No 002 RevA01.

Originally planning permission was sought for the change of use from car parking to beer garden incorporating seating area and events bar (retrospective). Following an assessment of the submitted application and a review of case law it was established that the beer garden is ancillary to the primary use as a pub and as such does not require planning permission. The bar/servery is not considered an operational development which again does not require planning permission. Therefore, only the fencing which had been erected to enclose the outdoor seating area as shown on the submitted revised drawing requires planning permission as it abounds the curtilage of a

listed building. Subsequently the description of the application has been amended and reconsultation has been undertaken.

Plans for consideration – Drg no. 002 Rev A01

The applicant has also submitted supporting information with regards to the business case for the retention of the fencing.

### Relevant Planning History

07/00049/FUL - Alterations to public house and change of use of outbuildings to offices– Permitted

00/50468/ADV - Hand painted signs and projecting signs– Permitted

00/50469/LBC - inclusion of signs and lighting to entrance arch - Permitted

### Publicity

27 Neighbours notified

Site Notice Posted 10.09.2018

Press Notice Published 06.09.18

Earliest Decision Date 04.01.2019

### Planning Policy Framework

#### The Development Plan

#### **Newark and Sherwood Core Strategy DPD (adopted March 2011)**

Core Policy 9: Sustainable design

Core Policy 14: Historic Environment

#### **Allocations & Development Management DPD (adopted July 2013)**

DM5: Design

DM9: Protecting the Historic Environment

Policy NUA/TC/1- Newark Urban Area - Newark Town Centre

### Other Material Planning Considerations

- National Planning Policy Framework (NPPF) July 2018
- Planning Practice Guidance (PPG)
- Planning Practice Guidance: Conserving and Enhancing the Historic Environment 2014
- Sections 16, 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 'Act')

## Consultations

Initial consultation was undertaken on the change of use application. Having consulted on the amended description only the consultations received in relation to the retrospective fence are reported below;

**Newark Town Council** - Newark Town Council's Planning Committee decided to retain their original objection as follows: Object to the recent fenced extension, not on loss of parking but on aesthetics within the area.

**NSDC Environmental Health** - I note the planning considerations. Whilst there remains a history of complaint, the premises appear to have been managed better recently so far as I am aware. On that basis I would not object to any consent granted

**NSDC Conservation Officer** – Original Comments - Newark CA was originally designated in 1968 and focused on the Market Place. In 1974, the CA was extended to include Millgate, Parnhams Island and the traditional residential streets up to Victoria Street. The CA was then extended in four more stages: in 1979 when a more rational boundary to the central area was defined; in 1987 when the majority of Northgate either side of the Trent was included; and in 1992 and 1995 when the London Road suburbs and the Cemetery were added.

Castle Gate is a significant thoroughfare in the town with many fine historic buildings, including the Castle. The Town Lock is also an important area of the CA due to the significance of Newark's riverside in the evolution of the town in the post-medieval era.

34 Castle Gate is a later 19th century range with historic and architectural interest. Despite modern interventions and modifications, the overall property contributes positively to the character and appearance of the CA.

## Assessment of proposals

The proposal seeks retrospective approval for the change of use of the ground floor area to a bar. The bar is enclosed on the courtyard side with timber panel fences.

Conservation has no objection to the change of use. We recognise that the existing building use contributes to the amenity of the riverside as well as the night time economy of the town.

Conservation objects to the appearance of the timber fences. The courtyard away from the riverside forms the setting to a number of historic buildings, noting the long linear service and out-buildings running perpendicular to Castle Gate. The proposal is also prominent within the setting of the Old Lock House. We feel that the timber fence enclosures are out of keeping with the historic building vernacular in this context, and due to their size and finish, unduly prominent.

Ideally, the fences would be removed and a more sympathetic means of enclosure would be considered. This might include a landscaped approach (hedges/planting), or perhaps a traditional red brick wall (with or without railings). Whilst mitigation might also be considered, including painting the timber fences in a suitable colour, this would not fully remove the harm identified above.

Please treat these comments as a holding objection pending a response from the applicant. We

would be happy to meet the client to discuss if needed.

Following the amended description; We previously met the applicant on the 23rd October to discuss Conservation concerns raised in our original comments (18th October). Our preference would have been to remove the fence and replace it with either a brick wall or a landscaping solution (perhaps involving a hedge with discreet green chain link fencing for security). However, we recognise that a masonry option would result in a significant cost to the applicant in this case, and that they have security concerns with the other option. The compromise suggested in this case was to paint the fence a mid to dark grey, including the side fence and trellis element on the water side, as well as a planting strategy against the fence on the car park side (to help soften impact). If carried out, these elements of mitigation would be (reluctantly) acceptable to Conservation. A timescale for their implementation would need to be conditioned.

**NSDC Access and Equalities Officer** – It is recommended that the developer be advised to consider easy access and manoeuvre for all to and around the proposal with particular reference to disabled people.

Unobstructed access should be considered to the proposal and carefully designed so that it easily accessible with freedom of movement throughout.

It is further advised that the developer be mindful of the provisions of the Equality Act.

**NCC Highway Authority** - This amendment is for the description of the works – installation of 1.8m high fence surrounding beer garden. This application is not expected to have a significant impact on the public highway, therefore, there are no highway objections.

**Environment Agency** - We have no comment to add further to my colleagues response dated 5th September 2018 which was no comments to make.

**Ramblers Association** - According to my records the public rights of way in this area are as follows: Newark Footpath 24 runs down from Castle Gate beside the castle and turns left as the towpath beside the river. Access to Millgate is then obtained by turning left along Newark Footpath 20. It appears, therefore, that this application does not affect any of the local rights of way and we have no objection.

**No letters of representations** have been received from local residents or other interested parties in respect of the proposed retention of the 1.8m high fence.

### Appraisal

The application building has an established use as a public house and as noted within the proposals section of this report the application relates solely to the retention of a section 1.8m high close boarded fence that has been erected surrounding an outdoor seating area/event/bar which is ancillary to an existing public house within Newark Town Centre.

The main planning considerations in the determination of this application are therefore whether the proposal has a harmful impact on the special interest of the adjoining listed building, any harmful impact upon the character and appearance of the Conservation Area or the streetscene, its impact on the amenity of the occupiers of neighbouring properties and whether it raises any highway safety issues.

## Impact on the character and appearance of the Listed Building and Conservation Area

As the application building is within the designated Conservation Area and adjoins a designated Grade II listed building, section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, as well as Core Policy 14 of the Core Strategy and Policy DM9 Allocations & Development Management DPD (ADMDDP) are also of relevance. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 'Act') requires the Local Planning Authority (LPA) to pay special regard to the desirability of preserving listed buildings, their setting and any architectural features that they possess. In addition, section 72 of the Act requires the LPA to pay special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Area. In this context, the objective of preservation is to cause no harm, and is a matter of paramount concern in the decision making process.

The importance of considering the impact of new development on the significance of designated heritage assets, furthermore, is expressed in section 16 of the National Planning Policy Framework (NPPF). Paragraph 190 of the NPPF advises that LPA should identify and assess the particular significance of any heritage asset that may be affected by a proposal and take this into account when considering the impact of a proposal on a heritage asset. Paragraph 192 states that LPA should take into account the desirability of sustaining and enhancing the significant of heritage assets and putting them to viable uses consistent with their conservation, the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality and the desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 193 of the NPPF, advises that when considering the impact of a proposed development on the significance of a designated heritage assets, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Core Policy 14 of the Core Strategy and Policy DM9 of the ADMDDP reflect the NPPF and amongst other things, seek to protect the historic environment and ensure that heritage assets are managed in a way that best sustains their significance. Key issues to consider in proposals for additions to heritage assets, including new development in conservation areas, are proportion, height, massing, bulk, use of materials, use, relationship with adjacent assets, alignment and treatment of setting.

The application relates to No. 34 Castle Gate which is not a Listed Building but a linked range of outbuilding adjoin the application site to No. 36 & 38 Castle Gate which is are grade II Listed. Therefore, the setting of this listed building is required to be considered as part of the determination of the application. The building, to which the application relates, also lies within the designated Newark Conservation Area and is in close proximity to the Town Lock, an important area of the Conservation Area due to the significance of Newark's riverside in the evolution of the town in the post-medieval era. The site lies to the south west of Castle Gate which is a significant thoroughfare in the town with many fine historic buildings, including the Castle.

Number 34 Castle Gate is a later 19th century range with historic and architectural interest. Despite modern interventions and modifications, the overall property contributes positively to the character and appearance of the Conservation Area.

I note the comments of the Conservation Officer and their initial concerns that timber fence enclosures are out of keeping with the historic building vernacular in this context. Whilst a wall or alternative landscaping solution would have been preferable, following ongoing discussions, Conservation have acknowledged the business case put forward by the applicant in terms of the significant cost of alternative boundary treatments. The applicant has also put forward that the fencing provides privacy for customers and security for the business. This comments that without the fencing enclosing the outdoor seating area it area would be open to theft, vandalism and potential unlawful use which would impact on the continued operation of the business and consequently on local employment.

I am mindful that although the applicant has been unwilling to consider alternate solutions they have been receptive to potential mitigation in which the fence could be painted a mid to dark grey, along with the side fence on the water side, as well as a robust planting strategy set against the fencing on the car park side as suggested by the Conservation Officer. If carried out, these elements of mitigation would soften the impact of the fencing and would reduce the level of the harm to the setting of adjacent Listed Building and the character and appearance of the Conservation Area albeit they would not fully remove it. If Members were minded to approve, these mitigation measures could be controlled by means of a condition.

It is therefore accepted that there is a business argument in favour of an enclosure in this location in order to provide security and privacy for the public house users and this together with the agreed mitigation measures should be weighed in the planning balance.

In assessing the proposal there is a legal presumption against harm to designated heritage assets, and whilst the harm to the historic environment of this part of the Conservation Area caused by the siting, scale, design and appearance of the fencing in this case is relatively moderate and less than substantial, harm does exist.

In accordance with paragraph 196 of the NPPF, less than substantial harm can be weighed against the public benefit. In this case the public benefit is taken to mean the socio economic benefits of improving and expanding the business as well as safety and security considerations. Paragraph 194 of the NPPF reminds us that any harm, irrespective of its level, requires a clear and convincing justification. In this instance and on balance it is considered that the business case put forward by the applicant does justify the retention of the fencing providing the mitigation measures are put in place within a reasonable time scale.

It is noted that the fencing to which this application relates is immediately adjoined by existing vertical boarded timber fencing along the south western boundary which extends along a side boundary and although this together with its dark stain finish does slightly reduce its impact officers consider that this fencing does result in harm to the historic environment. However investigations show that this existing fencing has been in situ in excess of 4 years and is therefore immune from enforcement action under the provisions of 171B of the Town and Country Planning Act 1990.

It is also noted that similar fencing has been erected along the boundary with Lock Keepers Cottage. Should Members be minded to grant permission to retain the fencing to which this application relates this would not automatically set a precedent for permission to be granted at adjoining sites. Any consideration of similar developments on other sites would need to be assessed on their own merits.

Taking the above into account in this particular case officers find that the socio economic benefits of the retained fencing enclosing the beer garden along the south eastern edge of the beer garden together with the mitigation measures outlined above on balance outweigh the less than substantial harm to the historic environment contrary to Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Policies CP14 and DM9 of the Council's LDF DPDs and the NPPF.

### Amenity

Criterion 3 of policy DM5 outlines that regard should be given to the impact of proposals on amenity or surrounding land uses and should not cause unacceptable loss of amenity.

The application site is surrounded by commercial and residential properties. The fencing, which is proposed to be retained, surrounds the undercroft seating area and part of the yard to the rear. To the rear is the access and yard serving a number of properties and units on Castle Gate. The access and parking yard separates the fence from any adjoining property and as such the fencing would assist in preventing the overspill of customers into the yard. Taking this into account it is considered that its retention would not have any undue impact upon the amenity of the occupiers or users of nearby properties to justify refusal on these grounds.

### Highways

The area to be enclosed by the fencing was previously used as parking for the establishment. This area has been changed to an outdoor seating/events area with a bar. The change of use is ancillary to the main use of the public house and did not require planning permission and therefore the Council had no control over the loss of parking.

The site is accessed via Castle Gate through a shared yard which includes some parking, albeit some private parking, and a parking area for the public house. The fencing does not restrict access and parking within the yard and the Highway Authority has raised no objection to the proposed fence.

I am satisfied that given the scale of the development and the location of the site within the town centre the proposal would not raise any significant highway issues.

### Planning Balance and Conclusion

Taking the above into account in this particular case officers acknowledge that this is a finely balanced recommendation. However it is found that the socio economic benefits of the retention of the fencing with trellis along the south eastern edge of the outdoor area together with the mitigation measures outlined above outweigh the harm to the historic environment in accordance with Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, Core Policy 14 of the Core Strategy and Policy DM9 Allocations & Development Management DPD (ADMDDPD) and the NPPF.

The proposals would not raise any highways or amenity issues.

### **RECOMMENDATION**

**Grant Planning Permission subject to the following conditions:**

01

Within 56 days of the date of this permission the fencing including the trellis to be retained along the south eastern edge of the outdoor area as shown on drawing no. 002 Rev AO1 deposited on the 23<sup>rd</sup> January 2019 shall be stained a mid grey colour.

Reason: In the interests of visual amenity and to preserve or enhance the setting of the Listed Buildings and the character and appearance of the conservation area.

02

Within 6 months of the date of this permission precise details of planting to be provided to the front of the fencing to be retained shall be submitted to and approved in writing by the local planning authority. This shall include details of planting containers and species, size and approximate date of planting.

The planting scheme shall be completed in accordance with the approved details during the first planting season from the date of this decision. Any planting which within a period of five years of being planted dies, is removed or becomes seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless otherwise agreed in writing by the local planning authority.

Reason: In order to preserve or enhance the setting of the Listed Buildings and the character and appearance of the conservation area.

### **Note to Applicant**

01

The applicant is advised that all planning permissions granted on or after the 1st December 2011 may be subject to the Community Infrastructure Levy (CIL). Full details of CIL are available on the Council's website at [www.newark-sherwooddc.gov.uk/cil/](http://www.newark-sherwooddc.gov.uk/cil/)

The proposed development has been assessed and it is the Council's view that CIL is not payable on the development hereby approved as the development type proposed is zero rated in this location

02

This application has been the subject of discussions during the application process. The District Planning Authority has accordingly worked positively and pro-actively, seeking solutions to problems arising in coming to its decision. This is fully in accordance with Town and Country Planning (Development Management Procedure) Order 2010 (as amended).

### **BACKGROUND PAPERS**

#### **Application case file.**

For further information, please contact Jennifer Wallis on ext **5419**.

All submission documents relating to this planning application can be found on the following website [www.newark-sherwooddc.gov.uk](http://www.newark-sherwooddc.gov.uk).

**Matt Lamb**

**Business Manager – Growth and Regeneration**



Committee Plan - 18/01444/FUL

