



Appeal Decisions

Site visit made on 8 July 2024

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 October 2024

Appeal A: APP/V2255/W/23/3333094

Faversham War Memorial, Stone Street, Faversham ME13 8PZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Faversham War Memorial Garden Committee against Swale Borough Council.
 - The application reference is 23/502500.
 - The development proposed is to carefully dismantle the Faversham War memorial and re-erect in the centre of the Memorial Garden, formation of a proposed new peace corner - interpretation boards with local reflections and raised bed for planting wooden crosses on site of existing War Memorial and associated access path within site. Removal of iron railing fence, and repair and re-laying of existing paving as depicted on proposed drawings.
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Appeal B: APP/V2255/Y/23/3333093

Faversham War Memorial, Stone Street, Faversham ME13 8PZ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Faversham War Memorial Garden Committee against Swale Borough Council.
 - The application reference is 23/502054.
 - The works proposed are to carefully dismantle the Faversham War memorial and re-erect in the centre of the Memorial Garden, formation of a proposed new peace corner - interpretation boards with local reflections and raised bed for planting wooden crosses on site of existing War Memorial and associated access path within site. Removal of iron railing fence, and repair and re-laying of existing paving as depicted on proposed drawings.
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Decision

Appeal A

1. The appeal is dismissed and planning permission is refused.

Appeal B

2. The appeal is dismissed and listed building consent is refused.

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Preliminary Matters

3. As the development is in a conservation area and relates to a listed building I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Act).
4. The Council did not issue decisions within the prescribed time period and therefore there are no decision notices. The appeals were lodged and the Council's planning committee subsequently resolved that it would have refused them due the harm caused to the designated heritage asset. Although the putative reasons for refusal do not refer to Faversham Conservation Area (the CA), the effects of the proposal on it were considered by the Council and the appellants. In view of my duty under section 72(1) of the Act I have included the effects on the CA in the main issue.
5. As one of the aims of the proposal is to improve access to the War Memorial for the elderly and those with reduced mobility it is likely that the proposal will affect those who have protected characteristics of age, disability or impairment under s149(7) of the Equality Act 2010. I have a duty to consider the three aims of the Public Sector Equality Duty (PSED) as part of my decision. If I dismiss the appeals this is likely to have negative consequences for those wishing to visit the site, in particular in terms of the aim to eliminate discrimination.
6. I have noted that the Council did not notify Historic England or the National Amenity Societies as should have been the case where a proposal includes relevant works¹ to a Listed Building (LB). However, I have concluded that the proposal should be dismissed for reasons relating to the effects on the LB and the CA. In these circumstances, little would be gained by delaying the decision to undertake that notification. However, had my decision been otherwise, I would have provided an opportunity for the notifications to take place.

Main Issues

7. The appeal property is a Grade II listed building known as "Faversham War Memorial" (Ref: 1418393) (the LB). The main issues are whether the development preserves the LB, its setting and any features of special architectural and historic interest that it possesses, and whether it preserves or enhances the character or appearance of the CA.

Reasons

Listed Building

8. The LB is a monument to the fallen of the First World War and was subsequently used to commemorate the fallen of the Second World War. It consists of three pieces of granite on a stone base. At the top is a Celtic cross with a tapering shaft set on a tall tapering base. The cross face is enriched with relief decoration and floral bosses. It sits on a square plinth with a two-stepped base with a flower holder placed in front. The monument is located on a roughly triangular area paved in bricks. It is situated at the junction of Stone Street with Roman Road with later metal railings on a stone kerb between granite piers along the frontage with the public footway.

¹ As defined and set out in the Arrangements for Handling Heritage Applications – Notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2021

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9. There are no names recorded on the monument but there is a memorial panel at the Church of St Mary of Charity and a book of remembrance for those who fell in The First World War and a separate book for the names of those who fell in the Second World War. There is a further memorial of The First World War in Faversham Borough cemetery to the men and boys killed by an explosion at the Faversham Gunpowder Works in 1916.
10. Faversham lost a significant number of men in the First World War, and this was amplified by the heavy civilian losses at the gunpowder works. In order to provide a physical place at which families could express their grief, temporary war memorials were erected in the town, whilst funds were raised to erect a permanent memorial. After the war, the Cottage Hospital opposite the appeal site on Stone Street needed to expand and a war memorial wing and operating theatre were added. An application was made to the Cottage Hospital Trust for permission to erect a cross on the appeal site, which was on land that had been given to the hospital. I understand that a portion of the funds raised for the War Memorial were donated to the Cottage Hospital to support its expansion. A special ceremony marked the unveiling of the War Memorial by Vice Admiral Sir Hugh Evan-Thomas and the opening of the extension to the Cottage Hospital on 3 November 1922.
11. To the rear of the LB is a Memorial Garden separated from the appeal site by metal railings and a mature holly tree. The tree has in places grown around the railings and provides shade to the LB. These elements combine to provide an attractive setting to the monument and are important to the atmosphere within which the LB is experienced.
12. Insofar as it relates to the appeals, the special interest of the LB lies in its historic interest as a memorial to those lost in the two World Wars. It has architectural interest for the quality of the design and craftsmanship which has resulted in a simple and dignified monument and therefore has aesthetic value. Being in a prominent position at the junction of two roads and opposite the Cottage Hospital with which it was associated, the LB is a focus of commemoration of those who were lost in the two World Wars and the location of the annual Remembrance Day parades. This gives it a further layer of interest and as such, it has communal value.
13. The proposal would involve the dismantling of the LB, including the tapered base, plinth and stepped base, and its removal from the site. Part of the railings would also be removed. Only the surfaced area with the remaining railings and granite piers would remain on the site of the LB. There would be an almost total loss of historic fabric from the site, such that LB would cease to exist.
14. The LB was deliberately located in a prominent location at the junction of two streets and opposite the Cottage Hospital with which it was associated. Its physical and visual connection with the adjacent roads and the Cottage Hospital would be severed and removing it would seriously undermine its historic and communal value. The removal of the railings, while a later addition, would remove the separation between the LB and the adjacent Memorial Garden.
15. The Memorial Garden was remodelled in 2017 with commemorative stones inscribed with the names of those who lost their lives in the two World Wars, and it was rededicated by the Bishop of Dover in 2018. There is a central path

leading to a vertical slab where it is proposed to re-erect the memorial. The site of the LB would be turned into a 'peace corner' with the railings removed to the sides and rear, so that only the railings alongside the road frontages would remain. This would further obfuscate the distinction between the War Memorial and the rest of the gardens, eroding its special interest as a LB. A new pedestrian access would be formed from the appeal site leading into the Memorial Gardens, with interpretation boards and raised beds for the placing of wooden Remembrance crosses.

16. The proposal to re-erect the dismantled memorial some 16 metres away in the main part of the Memorial Garden would give the memorial a new location and setting within a space that has been deliberately designed to accommodate it. It would no longer be a Listed Building, as identified by the War Memorials Trust. The gardens have been recently laid out with eight freestanding commemorative stone tablets engraved with the names of the men who lost their lives during the two World Wars. Relocating the monument would make it the focus of the garden and would give it a grandiose setting which would be at odds with the modest and understated design and scale of the monument. It would have the appearance of architectural salvage or a relic, disconnected from its original location. Due to its location at the back of the Memorial Gardens, it would be less prominent in the street scene and less visible to passersby. The proposed location would still have a visual link with the Cottage Hospital, albeit set further away and in a less conspicuous location.
17. Overall, the proposal would result in significant harm to the historic, aesthetic and communal value of the LB, thereby causing an almost total loss of its special interest as a LB. It follows that the works would fail to preserve the Grade II listed building, its setting, and any features of special architectural or historic interest it possesses. This runs counter to the statutory presumption under sections 16(1) and 66(1) of the Act and is a matter of considerable importance and weight.

Conservation Area

18. Much of the centre of Faversham is designated as CA. The town has Saxon origins and has been subject to successive waves of development. It prospered with an abbey in the 12th century, while the use of Faversham Creek for navigation made it an important port with several industries flourishing, including gunpowder manufacturing. In the 19th century the railway led to far reaching change, including large new areas of rectilinear housing, which contrast with the historic core of the town. The appeal site is located in an area of high-density Victorian houses built on a former brickfield, between the station and the town centre, generally in terraces with some larger villas in more spacious grounds. The area around the appeal site has a distinctive character due to the predominance of Victorian housing in a grid layout, with its high degree of uniformity.
19. The LB and the Memorial Garden form a notable open space in this otherwise built-up part of the CA. On the opposite side of the road is the Cottage Hospital, built in 1887, which forms a local focal point with the War Memorial and garden opposite. As the Cottage Hospital was built on the site of clay pits the ground floor is set below the road level and it appears as a single storey building, giving the area a sense of openness, enhanced by the holly tree, War Memorial and garden. Insofar as it is relevant to the appeals, the significance

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of the CA lies in its early origins and subsequent development, with the War Memorial, railings and tree making a positive contribution to the significance of the CA.

20. The removal of the LB and the railings would result in the loss of the focal point on the site, highly visible to passersby, and the erosion of the visual connection with the Cottage Hospital and the wider street scene. The positive contribution made by the LB to the street scene and distinctive character of the CA would thereby be lost. The jarring juxtaposition of the modest design and scale of the memorial with the grandiose setting in the Memorial Gardens would detract from the character of the CA. This would run counter to the statutory presumption under s72(1) of the Act.

Public benefits

21. Paragraph 205 of the National Planning Policy Framework (NPPF) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. I am also mindful of the guidance in paragraph 204 of the NPPF, which advises decision makers to have regard to the importance of the retention of memorials in situ. A joint publication by Historic England and the War Memorials Trust² advises that relocation of memorials should only be considered if the current position is putting the memorial at risk or it has become inaccessible to the public. If relocation is considered the only viable alternative, then it can be a high-risk process as the true condition of the memorial and its internal fixings may remain unknown until the work begins.
22. Significance can be lost through the alteration or destruction of those assets (para 206). Any harm to or loss of the significance of designated heritage assets should require clear and convincing justification. Substantial harm to or loss of grade II listed buildings should be exceptional. Due to the extent of the effect of the proposal on the LB and the almost total loss of its special interest, I find that it would amount to substantial harm.
23. Under such circumstances, paragraph 207 of the NPPF advises that consent should be refused, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh the harm or loss, or that all four tests set out in a)-d) of the paragraph are met.
24. The appellant considers that the relocation of the memorial would bring various benefits. In accordance with NPPF paragraph 207, it is necessary to consider whether the substantial harm to the designated heritage asset is necessary to achieve substantial public benefits to outweigh the harm or loss.
25. The LB is generally considered to be in good condition, although the thin mortar joints between the stones are identified as needing repair. The cross is said to be leaning front to back and side to side by a small amount and it was asserted by an arboricultural specialist³ in 2021 that this is caused by the roots of the holly tree, and that it will worsen over time. It was not noticeable on site. Furthermore, a structural survey⁴ subsequently submitted by the appellant's representative in response to the appeal, explains that a visual inspection indicated it is in a reasonable condition and that the cross was

² Conserving War Memorials: Structural Problems and Repairs June 2017 (HEAG169)

³ Technical Note Aspect Arboriculture 2 June 2021

⁴ Letter from Hockley & Dawson Consulting Engineers dated 27 March 2024

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vertical, and the base profile had a consistent 6-7 degree angle on all sides, indicating no significant structural movement over the past 100 years. No cracks or defects were noted and the decorative stonework on the Celtic cross was clear and showed no significant signs of decay. The structural survey did not identify that the LB is at risk if left in situ nor were any roots of the holly tree identified as causing subsidence in the arboricultural report. The Council's tree officer did not observe any significant displacing or lifting to any of the surrounding paving or the memorial itself. There is therefore conflicting evidence as to whether the holly tree is destabilising the LB. Moreover, there is no explanation as to whether the LB could be stabilised in situ if necessary, and whether there is a viable alternative to dismantling it.

26. I appreciate that the proposed new location for the monument would be further from passing traffic. However, the LB is set behind a public footway on residential roads behind granite piers and metal railings, and therefore has some considerable physical protection from passing traffic. It is not unusual for war memorials to be close to roads. Stone Street is a bus route, giving access to the town centre facilities and car parks. However, it is in a residential area where traffic speeds are relatively low and restricted by parked cars. It is not the only route to town centre facilities. I have seen no evidence that the LB is at particular risk of damage from traffic.
27. It has also been asserted that relocation of the monument would protect it from damage through pollution from road traffic. An air quality report⁵ has been provided, indicating that the current Air Quality Management Area (AQMA) in Faversham along the A2 should be extended. AQMAs relate to the effects of air quality on humans. There is no substantiated evidence that road traffic pollution is damaging or is likely to damage the monument.
28. Therefore, there is no clear evidence that the LB is at risk in its current location. Even if it that were to be the case, no investigation has been carried out as to whether the LB could be made safe or repaired without the need to dismantle it. It has not therefore been shown that there is no viable alternative to the loss of the LB.
29. Rather than securing its future, the process of dismantling, moving and reassembling the Memorial would expose it to risks of damage. Experienced stonemasons have advised that it could be safely moved but acknowledge that it is not possible to fully determine the condition of the internal fixings until the Memorial is taken apart, therefore the risk that the historic fabric might be damaged by the works can never be fully eliminated. As it has not been demonstrated that the LB will be at risk of damage if it remains in place, there is no justification for exposing it to risks of damage through dismantling and moving it.
30. In its current position there is restricted space around the LB and I understand that Remembrance Day services take place in the Memorial Garden rather than in front of the War Memorial, as would traditionally have been the case. The adjacent roads are closed to allow the Remembrance Day parade to take place. It is not unusual to close roads for a short period on Remembrance Day, and any disruption and inconvenience is short-lived. In any event it has not been argued that relocating the memorial would avoid the need for road closures on Remembrance Day.

⁵ Air quality report for the Faversham Society 27 August 2019

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31. There would be public benefits in terms of improving accessibility to the War Memorial. The previous works to the Memorial Garden have created level access to the intended position of the War Memorial, which would facilitate access for all to pay their respects and to attend Remembrance Day services. It has a wider gateway from Stone Street with no step, and a wide level path leading to the proposed location. The relocation would potentially allow Remembrance Day services to take place in a more inclusive manner in a less physically restrictive space.
32. However, no information has been provided to indicate that other means of improving access to the LB have been explored. I do not therefore consider that it has been demonstrated satisfactorily that there are no other means of improving accessibility that would avoid the need to dismantle and relocate the LB. Moreover, there is a clear alternative and inclusive focus for those wishing to remember the fallen in the Memorial Garden.
33. The appellant asserts that the new location would be beneficial because it would be more publicly visible and not overshadowed by the holly tree. However, the holly tree makes a positive contribution to the special interest as it is within the setting of the LB. If it were considered that it overshadows the War Memorial to an excessive extent, there are arguably other less drastic means of mitigating that effect that do not involve dismantling and removing the LB.
34. I acknowledge the desire to locate the War Memorial closer to the recently installed stone tablets in the Memorial Garden which list the names of the fallen during the two World Wars. However, the Memorial is already close to the stone tablets and has a visual connection with them. They were designed and located on the basis that the Memorial would be relocated, even though listed building consent and planning permission had not been granted. I therefore afford limited weight to this as a public benefit.
35. The existing site of the LB would be resurfaced and would become a 'peace corner', with local reflections, an interpretation board and a new raised bed. This would become a space for all faiths to reflect and also provide educational opportunities for local schools. This is a positive aspect of the proposal, but it has not been shown that it could not be accommodated elsewhere within the Memorial Garden and it therefore attracts limited weight as a public benefit.
36. There is no clear evidence that the War Memorial is at risk of damage in its current location, and moving it brings its own risks. Although public benefits have been identified, it has not been demonstrated that there are no alternative less drastic means of providing them, which limits the weight I afford them. Consequently, I do not consider that the public benefits of the proposal are substantial enough to outweigh the substantial harm that would be caused to the heritage asset.
37. Turning to the specific tests set out in paragraph 207, the first is whether the nature of the heritage asset prevents all reasonable uses of the site. Although there would be improvements to the accessibility of the War Memorial in the proposed new location, there is no evidence that it is not able to function as a War Memorial in its current position. It is not therefore the case that the nature of the heritage asset prevents all reasonable uses of the site.

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38. The LB already has a viable use and will continue to be a War Memorial if I dismiss the appeals. The second test is not therefore met.
39. I understand from the evidence that the LB is already in public ownership and I have no reason to believe that there is insufficient funding to enable its long-term conservation. The third test is not therefore met.
40. The LB is still 'in use' as a War Memorial, and it is not therefore the case that the harm is outweighed by the benefit of bringing the site back into use. The fourth test is not therefore met.
41. As none of the tests are met, and it has not been demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh the harm, in accordance with paragraph 207 of the NPPF, the appeal should be dismissed.
42. In terms of the level of harm to the CA, I find this would be less than substantial, bearing in mind the extent of the effect. Paragraph 208 of the NPPF advises that the harm should be weighed against the public benefits of the proposal. I have already considered the public benefits in relation to the harm to the LB. While some of the identified benefits are capable of amounting to public benefits they are insufficient to outweigh the less than substantial harm that would be caused to the CA.
43. Taking all this into account, it cannot be demonstrated that the substantial harm that would be caused to the LB is necessary to achieve substantial public benefits that outweigh that harm, or that the tests set out in paragraph 207 of the NPPF have been met. In accordance with paragraph 207 consent must therefore be refused. In respect of the effects on the CA, the proposal conflicts with paragraph 208 of the NPPF. The proposal therefore fails to satisfy the requirements of the Act. It would conflict with policies CP8, DM14 and DM32 of the Swale Borough Local Plan 2017 and policy FAV11 of the Faversham Neighbourhood Plan insofar as they seek to ensure that the significance of designated heritage assets is sustained and enhanced.
44. In relation to the PSED, I have had due regard to the effects of the decisions on the users of the site, including those who have protected characteristics in terms of age, disability and impairment, insofar as they are different to those without a relevant protected characteristic. Although the appeals are to be dismissed, these considerations have been at the forefront of the decision-making process. The outcome is a proportionate one.

Other Matters

45. I am aware that previous applications for listed building consent and planning permission to dismantle the War Memorial and re-erect in the centre of the memorial garden were previously recommended for approval by officers but refused at committee⁶. As permission was not granted, the positive recommendation does not indicate that the principle of moving the LB was previously found to be acceptable.
46. The appellant states that other war memorials have been moved. I am not aware of the circumstances that led to them being relocated but I understand that the memorial in Sittingbourne was not listed. The other examples do not

⁶ Ref 16/504008/LBC

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indicate that this proposal is acceptable, as each case is considered on its own circumstances and merits.

Conclusion

47. For the reasons given above, I conclude that the appeals should be dismissed.

N Thomas

INSPECTOR