
Appeal Decision

Site visit made on 22 February 2017

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 28 February 2017

Appeal Ref: APP/G2435/Z/16/3157105

Rose of Bengal, 42 Borough Street, Castle Donington, Derby DE74 2LB

- 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 Hana Miah against the decision of North West Leicestershire District Council.
 - The application Ref 16/00160/FUL, dated 2 February 2016, was refused by notice dated 13 July 2016.
 - The development proposed is installation of new shop front and air conditioning unit.
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Decision

1. The appeal is allowed and planning permission is granted for installation of new shop front and air conditioning unit at the Rose of Bengal, 42 Borough Street, Castle Donington, Derby DE74 2LB in accordance with the terms of the application, Ref 16/00160/FUL, dated 2 February 2016, subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1:1250 Plan (Site Location Plan);
 - 1:500 Plan (Site/Block Plan);
 - Proposed Ground Floor Plan (1:100); and
 - Proposed Elevations (1:100);

As received by the local planning authority on the 22 April 2016.

Procedural Matter

2. The appellant seeks to retain a development that has already occurred and I shall therefore consider the proposal as being for retrospective planning permission.

Main Issue

3. The main issue is the effect of the proposed development on the character or appearance of the Castle Donington Conservation Area.

Reasons

4. Castle Donington Conservation Area broadly corresponds to the original linear settlement form including a traditional high street, Borough Street, which has evolved over the years and displays a wide variety of shop fronts, some which evoke the era of the original buildings and others which are of more recent origin and design, including larger windows and glazing to maximise display.

5. The conservation area appraisal of 2001 singles out the previous window at the 42 Borough Street, i.e. 'The Rose of Bengal' restaurant as a modern shop front of poor visual quality. It was a timber framed shop front arranged around a broadly central door matching the windows to either side which were sub-divided into square panes by mullions and transoms. This approach was presumably intended to harmonise with the traditional design and appearance of the upper floors which feature multi-paned windows. However, the window was set in a modern projection from the host building with an overhanging canopy within which this style of window in my view appeared, from the photographs available, to be incongruous, imitating poorly and out of immediate context the upper floor windows in the older part of the building.
6. The shop front to the restaurant is served by an elevated blind-ended footway separate from the main pavement. This terminates just beyond what is now the door and the proposed air conditioning unit would effectively be concealed in the space between the host building and its neighbour which contains 44a (funeral director) and 44b (hairdresser) and appears to be of more recent origin but designed to broadly emulate No 42. Both enterprises are characterised by what might be described as modern shop windows, as is the fish bar at No 40. No 41 opposite does have a more traditional shop front but the host building is more complex and has little in common with the appeal site at 42 or its immediate neighbours.
7. All in all the Rose of Bengal is situated at a point on Borough Road, at its junction with Church Lane, where the building line deviates from the greater rigidity of the street to the south and the grain of the urban fabric is a little looser and more modern. Consequently there is a subtle change in character and appearance of the conservation area which has less of a 'traditional' high street ambience at this specific location. The appeal site is perhaps the prime example of this tendency.
8. I am conscious that the statutory duty embodied in s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of the Castle Donington Conservation Area.
9. In my assessment the previous shopfront at the Rose of Bengal did little of either and if anything the contrasting modernity and plainness of the current proposal, much more in keeping with the modern projection within which it is set, and therefore less demanding of attention in the street scene as a whole is at worst neutral in its impact on both the character and the appearance of the conservation area as a whole; but with some positive improvement in the context of the immediate host building and its neighbour, notwithstanding the use of uPVC rather than the timber generally preferred by the Council as the appropriate material for the shopfronts.
10. In concluding thus, I am conscious also that the Council's conservation officer, although noting that a better design might have been achieved with prior consultation, raises no objection for reasons detailed in the planning officer's report. Importantly, the conservation officer's comments include "for the avoidance of doubt" the information that the shop front which has been replaced was not the 'traditional' shop front for the premises given that it was constructed on a modern extension and had design detailing which was not particularly consistent with shop fronts in the immediate area.

11. Notwithstanding the views of the Parish Council and the fact that they are rooted in guidelines and principles of general applicability concerning traditional shopfronts, I consider that in this instance, for the above reasons, it cannot be said that the proposal embodies harm, or that the significance of the heritage asset which the conservation area represents would be in any sense diminished or harmed such as to engage paragraph 134 of the National Planning Policy Framework. The balancing of harm against significance by reference to public benefits is not therefore required and it follows that the principles embodied in the various other paragraphs of the Framework cited by the Council, including those concerning design quality in general, would not be compromised either.
12. The Council's informative publication "*Shopfront Guidance - advice on traditional shop fronts and signage*" is of limited status and of questionable relevance in this instance given the non-traditional design of the containing projection and the poor quality of the previous shopfront identified in the formally adopted conservation area appraisal.
13. In conclusion, for the above reasons, and having taken all other matters raised into account, I do not consider the development which has taken place to be unacceptable in terms of its effect on the character or appearance of the conservation area or in terms of the intentions of policy E4 of the Council's local plan to have due regard to the acceptability of design in context.
14. I therefore propose to allow the appeal subject only to the condition suggested by the Council regarding compliance with the retrospectively submitted plans.

Keith Manning

Inspector