



Appeal Decision

Site visit made on 25 June 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 September 2019

Appeal Ref: APP/C2741/W/19/3228425

8 St Sampsons Square, York YO1 8RN

- 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 Osman Doganozu on behalf of White Rose York Ltd against the decision of City of York Council.
 - The application Ref 19/00032/FUL, dated 8 January 2019, was refused by notice dated 10 April 2019.
 - The development proposed is: Installation of external strip light and planter feature above shop front, external planters and change of use of public highway to provide outdoor seating area.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development in the application form did not include reference to decorative lighting. I have therefore used the description used by the Council in the decision notice, which accurately and clearly describes the proposal.
3. The City of York Development Control Local Plan¹ (DCLP) was approved by the Council but not formally adopted as part of the development plan. The emerging local plan, the City of York Local Plan Publication Draft² (draft CYLP) has reached the submission for examination stage. Whilst these plans do not have the same status as the adopted development plan, I give them moderate weight in my decision taking account of their consistency with the Framework³.

Main Issue

4. The description of the proposal on the appeal form refers to planters and decorative lighting but not the outdoor seating area. Whilst this may indicate that the appellant no longer wishes to seek approval for the outdoor seating, I have determined the appeal on the basis of the application refused planning permission by the Council.
5. The main issues are therefore: whether the proposed seating area would cause obstruction to the highway; and the effect of the proposal on the character and appearance of the area with particular regard to the location within the Central

¹ Approved April 2005

² February 2018, schedule of minor modification May 2018

³ National Planning Policy Framework February 2019

Historic Core Conservation Area (the CA) and the setting of nearby Listed Buildings.

Reasons

6. The appeal property (the property) is located on St Sampsons Square within the central area of York. A narrow thoroughfare, Finkle Street, leads past the property towards Back Swinegate and beyond that the Minster. There is also a narrow passageway, Nether Hornpot Lane, also leading to Back Swinegate. The property is 2 storey, mainly built of brick with a pitched roof and containing a number of first floor windows in the front elevation. At ground floor there is a shopfront with modern windows and stone pillars. The stonework to the shopfront includes a projecting cornice, on top of which a line of planting boxes has been installed. The premises are in use by a bar/restaurant business. Immediately opposite the property is a public house, Listed Grade II. The building adjacent to the property, no 7 St Sampson Square, is Listed Grade II*.
7. The proposals comprise 4 main elements, the outdoor seating area; planting boxes at ground level outside the front entrance; planting boxes at high level above the cornice; and strip lighting, also above cornice.

The proposed seating area and potential for obstruction

8. Finkle Street narrows to the front of the property and is well used by pedestrians. There is a bollard within the carriageway which restricts the effective width further. As a consequence, the use of the section of footway identified on the site plan for outdoor seating would cause significant obstruction and inconvenience to pedestrians including wheelchair users. The use of the pavement for seating would also require the Council's permission under other legislation.
9. I therefore conclude that the proposed seating area would cause unreasonable obstruction and inconvenience to the public, in conflict with Policy GP1 and HE2 of the DCLP and Policy D11 of the draft CYLP which seek amongst other things to ensure that development contributes to the function of areas including accessibility, and retains or enhances urban spaces, and Policy T1 of the CYLP which seeks to ensure that development provides safe and suitable access.

The character and appearance of the area

10. The property is within the historic core of York and makes a positive contribution to the character and appearance of the CA. St Sampsons Square and Finkle Street form part of the commercial heart of the City and accordingly the facade of the bar/restaurant should reflect the vibrant nature of the area.
11. The planter boxes adjacent to the entrance would, if sited within the pavement as shown on the photographs accompanying the appeal, look out of keeping with the historic character of the area, including the setting of the adjacent listed building, no 7. I am aware from correspondence between the appellant and the Council that if these planters are sited within the doorway itself, they would not require planning permission. At the time of my site visit that is where the planters were positioned.
12. The planting boxes on top of the cornice give the appearance of the frontage a top heavy appearance and as a consequence harm the character and appearance of the building and area and the adjoining listed building. There are

other properties in the City Centre which have planting boxes at high level on street frontages, however the vast majority do not. Allowing this element of the proposal would undermine the Council's efforts to control such changes within the CA giving rise to further harm to the historic character.

13. The strip lighting is situated within or behind the planting boxes. I have no design drawings to show the lighting installation therefore it is not possible for me to judge what the effect of the lighting would be on the appearance of the property without the planting boxes in place.
14. The level of illumination could be controlled via a planning condition and the Council Public Protection Officer has no objection were that to be set at 150 lumens. However, that does not necessarily mean that the lighting would have no harmful effects on the character and appearance of the area and its status as a conservation area.
15. I acknowledge that there are other food and drink premises within the CA with external lighting at high level, including the public house opposite the property. I have no information before me on whether any of this lighting has benefited from planning permission, or whether some may be longstanding. In any event, the existence of these other installations does not in itself provide a good reason to approve that proposed in the appeal.
16. The property currently benefits from both lighting to a projecting sign at high level, and wall mounted lanterns at street level which do not form part of the appeal proposals. I therefore consider that there is an appropriate level of external lighting without that proposed to give prominence to the bar/restaurant in the locality.
17. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the CA. Under Section 66(1) of the Act 1990 there is a duty to consider whether granting planning permission for the proposal would preserve the setting of any listed buildings. For the reasons given the proposal would not satisfy these tests imposed by the Act.
18. The Framework is clear that any harm to the significance of a designated heritage asset requires clear and convincing justification. In the case of the proposal the harm would be classed as less than substantial. That does not mean that the harm would be less than significant. It is necessary to weigh the less than substantial harm against the public benefits of the proposal⁴. In view of the nature of the proposal any public benefits would be very limited and insufficient to outweigh the importance which national and local policy gives to the conservation of such designated heritage assets.
19. I therefore conclude that the proposed planting boxes and external decorative lighting would harm the character and appearance of the area, and the CA, contrary to policies HE2 of the DCLP, policies D4, D11 and D13 of the draft CYLP, and the Framework, which seek to protect heritage assets from harm, and Policy GP1 of the DCLP which includes the requirement that outdoor lighting schemes should be the minimum required, taking into account any adverse effects on the character of the area.

⁴ NPPF February 2019 paragraph 196

Conclusion

20. For the reasons given above, the appeal is dismissed.

Tim Wheeler

INSPECTOR