



Appeal Decisions

Site visit made on 14 May 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 October 2019

Appeal A: APP/C2741/W/19/3220541

3-7 Lord Mayor's Walk, York YO31 7HB

- 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 Chris Bird of Goodramgate Apartments Ltd against the decision of City of York Council.
 - The application Ref: 18/01602/FUL, dated 2 August 2018, was refused by notice dated 19 September 2018.
 - The development proposed is described as a change of use of the ground floor from retail (use class A1) to 3no. letting bedrooms and the application of self-adhesive window film to the ground floor windows.
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Appeal B: APP/C2741/Y/19/3220543

3-7 Lord Mayor's Walk, York YO31 7HB

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Chris Bird of Goodramgate Apartments Ltd against the decision of City of York Council.
 - The application Ref: 18/01605/LBC, dated 2 August 2018, was refused by notice dated 19 September 2018.
 - The works proposed are described as internal and external alterations associated with the change of use of ground floor from retail (use class A1) to 3no. letting bedrooms.
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Decisions

1. The appeals are dismissed.

Preliminary Matters

2. I have taken the description of the proposals from the Council's decision notices rather than the original application forms as they more accurately describe the proposals before me.
3. I have noted from the appellant's Statement of Case and my site observations that privacy film has been applied to the inside of the glass of the appeal property and as such this part of the proposals is retrospective.
4. The appellant has stated that he would be happy to consider an alternative approach to providing privacy to the ground floor windows of the appeal property. He suggests this might be similar to that which has been installed on the apartments at 1 Monkgate. However, it is important that what is considered in an appeal is essentially what was considered by the local planning authority, and on which interested parties' views were sought.

Therefore, I have determined these appeals on the basis of the drawings and details on which the applications were refused.

5. As the proposal is in a conservation area and relates to a listed building, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) as well as the provisions of section 16(2) of the Act. In addition, the development/works affect the setting of a scheduled ancient monument which is a designated heritage asset and is, by definition, of national importance. Even though the Ancient Monuments and Archaeological Areas Act 1979 (AMAA Act) does not impose a statutory duty equivalent to sections 66(1) or 72(1) of the Act the national importance of scheduled ancient monuments is a relevant consideration.

Planning Policy

6. The City of York Draft Local Plan Incorporating the 4th set of changes Development Control Local Plan (the DCLP) was approved for development control purposes in April 2005. It does not form part of the statutory development plan. The Publication Draft York Local Plan 2018 (the Draft Plan) was submitted for examination in May 2018 but does not form part of the statutory development plan because it has not yet been through the examination process. Therefore, the weight that can be attributed to these plans is limited except where they are in accordance with the National Planning Policy Framework (the Framework).
7. Policy D1 of the Draft Plan relates to placemaking and states that proposals will be supported where they improve a poor existing urban environment, enhance York's special qualities and reveal the significance of the historic environment. The approach is generally consistent with the objectives set out in the Framework and as such I have given it some weight in determining this appeal.
8. Policy D4 of the Draft Plan relates to conservation areas and states that proposals will be supported where they preserve or enhance the special character and appearance of the conservation area, among other objectives. Policy D5 of the Draft Plan states that proposals affecting a listed building or its setting will be supported where they preserve, enhance or better reveal elements which contribute to the significance of the building, help sustain a sustainable future for a building at risk and are accompanied by an appropriate heritage statement assessing the significance of the building. Harm to an element which contributes towards the significance of a listed building will be permitted only where this is outweighed by public benefits. Policy HE4 of the DCLP states that consent will only be granted for internal or external alterations to listed buildings where there is no adverse effect on the character, appearance or setting of the building.
9. Policies D4 and D5 of the Draft Plan are generally compliant with the Framework as they do allow for a balanced decision to be made. However, they have not been examined and could be subject to some changes and therefore I attribute them only limited weight in determining this appeal. Policy HE4 was adopted by the Council for development control purposes before the inception of the Framework. Since the policy does not allow for a balanced judgement to be carried out by the decision-maker, stating only that consent will be granted where there is no adverse effect, the policy does not accord with guidance within the Framework. Therefore, little weight can be given to it.

10. Policy R3 of the Draft Plan relates to York City Centre Retail and states that the vitality and viability of the city centre will be supported and enhanced. Within secondary shopping frontages changes to non-retail use at ground floor will be considered favourably in some circumstances, including where it can be demonstrated that the proposal will not result in an over concentration of similar non-retail uses where the cumulative impact would lead to a negative impact on the character and function of the secondary frontage or the creation of a dead frontage not in use during the normal trading day, among others. Although the Framework provides a focus for economic activity in town centres, there is a general move towards a more liberal approach to non-retail uses in locations such as this. However, I find that Policy R3 is in general accordance with the overall direction of the Framework and as such give it some limited weight in this case.

Main Issues

11. With respect to Appeal A the main issues are:

- i. whether the principle of a change of use of the ground floor from retail to 3 no. letting bedrooms is acceptable having regard to the commercial function of the street;
- ii. whether the proposal would preserve a Grade II listed building, 3, 5 and 7 Lord Mayors Walk, and any of the features of special architectural or historic interest that it possesses,
- iii. the effect on the setting of the nearby Monkgate Bar and the attached city walls, Grade I listed buildings and a scheduled ancient monument; and
- iv. whether or not the proposed development/works would preserve or enhance the character or appearance of the York Central Historic Core Conservation Area.

12. With respect to Appeal B the main issues are:

- i. whether the proposal would preserve a Grade II listed building, 3, 5 and 7 Lord Mayors Walk, and any of the features of special architectural or historic interest that it possesses,
- ii. the effect on the setting of the nearby Monkgate Bar and the attached city walls, Grade I listed buildings and a scheduled ancient monument; and
- iii. whether or not the proposed development/works would preserve or enhance the character or appearance of the York Central Historic Core Conservation Area.

Reasons

Appeal A: Principle

13. The policy context for this site is clear that proposals for non-retail uses in the city centre will only be supported where they complement the existing retail function, make a positive contribution to the vitality and viability of the city centre and have active frontages that would not have a harmful effect on the character and function of the secondary shopping frontage.

14. The current proposal would result in the loss of a retail unit and indeed the loss of a commercial unit which would certainly dilute the retail and wider commercial functioning of the street and have a harmful effect on general activity levels and footfall. In addition, the proposed treatment to the window would obscure views into the property and therefore create a dead frontage during normal trading hours by eliminating visible ground floor activity along this part of the street.
15. I have taken account of the appellant's evidence with respect to national retail trends and the number of empty retail properties in York. I have also considered the appellant's comments regarding the footfall of this and other streets in the city centre and the attractiveness of the site to potential retail tenants, but there is insufficient evidence before me that the appellant has marketed the property for alternative A1 retail uses. As such, it has not been satisfactorily demonstrated that the proposed use is the only potentially viable alternative use or that an alternative use which secures ground floor activity or an alternative retail or commercial use cannot be found.
16. My attention has been drawn to the grant of permission of 1 and 3 Monkgate from retail to holiday apartments and that it was considered that the proposal accorded with planning policies and the Framework. I do not have the specific details of that case, including the length of time the property was vacant and whether it had been marketed for alternative uses. Therefore, I cannot be certain that it represents a direct parallel to the appeal proposal before me. In any case, I have determined the appeal on its own merits.
17. For the reasons above I conclude on this issue that the principle of a change of use of the ground floor from retail to 3 no. letting bedrooms is not acceptable having regard to the commercial function of the street. As such, it is contrary to the Framework and Policy R3 of the Draft Plan.

Appeals A and B: Historic Environment

18. The appeal site was listed in 1983 and dates from the mid-nineteenth century. I understand that it was formerly used as one shop and it is constructed of brick with a slate roof. On the ground floor the shopfronts are of a traditional design, each with large display windows over stall risers with cornices above the fascia and with flanking pilasters. Each of the shopfronts has a recessed doorway to the left of the shop window. I find that the special interest of the listed building, insofar as it relates to these appeals, is primarily associated with the quality of the traditional shopfronts, their function in relation to the historic use of the property and their communal value within the context of other nearby shopfronts and listed buildings.
19. The appeal site is situated in the York Central Historic Core Conservation Area which covers an extensive and complex townscape that creates the unique character of the City's historic core. It encompasses a compact and densely developed place based on the street plan which combines Roman, Viking and medieval elements with later Georgian and Victorian development. The appeal site is within Character Area 10: The Medieval Streets which is identified as being the dense historic commercial core of the city. Within this area there is a high number of surviving Medieval buildings and other key features such as the city wall.

20. The appeal site is situated close to the junction of Lord Mayor's Walk and Monkgate, which is one of the main historic approaches to the city. Along with other Grade II listed buildings in the immediate vicinity to the south east side of the junction, this group frames important views of Monkgate and the attached city walls as well as the historic streetscape within the walls. The bar itself is an historic gateway into the City through the City walls and forms a significant access into the City. The appeal site is outside the City walls and is one of a group of subservient buildings on the route into the City; the large display windows on the appeal building are a means of seeking to attract passing trade. Therefore, the site, as part of the setting to Monkgate Bar, has an important role in enhancing the function of Monkgate as a key access point and so contributes to the significance of this heritage asset.
21. With respect to the historic environment the Council's concern appears to be restricted to the effect of the application of self-adhesive window film. The appellant describes the proposal as involving the application of state of the art media to the windows and glazed parts of the shopfront to advertise the accommodation that would be available in the building. The adhesive film allows natural light into the building and views out of the building as well as providing privacy for occupants.
22. However, the film entirely obscures the shop windows and as such compromises the character of the shopfront by being highly visible, distracting and incongruous additions that are at odds with the character and appearance of the historic building frontage and draw attention away from important historic features of the buildings. The film is visually obtrusive and incorporates bold designs and by blocking the shop windows undermines their intended historic function as display areas and a means of observing the activity taking place within the building. Furthermore, the proposed obscuring of the shopfronts erodes their architectural and historic integrity by creating a new visual focus for the building.
23. The appellant has suggested that with the film being already in place the appeal site does not look out of place or incongruous because the original proportions, materials and fenestration are unaffected. Although it is acknowledged that original features are not removed that does not mean to say that the overall integrity of the shopfronts and therefore the listed building is not materially harmed by the proposal. On the contrary, the film is visually intrusive and an incongruous addition to the building which is unsympathetic to its overall historic integrity.
24. The loss of the active shopfront would diminish the role of the appeal site and its relationship with Monkgate and the nearby City wall and their role as an important historic access into the City centre. In particular, the proposal harms the function of the previously active shopfront as a means of attracting passing trade. Therefore, part of the historical role and function of the bar (and I acknowledge its role and functions have changed over time), which is recognised to be of national significance, is harmed.
25. In addition, the appeal site is located adjacent to an important historic approach to the city centre and consequently the harm to the frontage of the appeal building by unacceptably eroding the historic shopfronts also fails to preserve or enhance the character or appearance of the York Central Historic

Core Conservation Area given that such shopfronts are part of the character of the Conservation Area.

26. The appellant has suggested that the proposal is acceptable because there are other examples of film being applied to buildings throughout York on occupied and vacant units. I noted some of these examples at my site visit and conclude that these other examples serve to illustrate the harm that can result from the unsympathetic treatment of shopfronts and in particular those within an historic townscape setting. I do not have the details of the circumstances that led to these other examples being accepted, and indeed whether they benefit from the necessary permissions/consents. In any case, I have determined these appeals on their own merits.
27. Given the above, I find that the works fail to preserve the Grade II listed building, it fails to preserve or enhance the character or appearance of the conservation area and has a harmful effect on the character and appearance of the local area including the setting of nearby Monkgate Bar and the attached city walls, which are Grade I Listed and a scheduled ancient monument. Consequently, I give this harm considerable importance and great weight in the planning balance of these appeals.
28. Paragraph 193 of the Framework advises that when considering the impact on the significance of designated heritage assets, great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through the alteration of those assets. Given the degree of harm I have identified to the heritage assets I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
29. Under such circumstances, paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the proposal. The appellant is of the opinion that the proposal will provide a new viable use to the vacant properties and will attract visitors to the city with additional spin-off benefits to the local economy. This includes visitor spend, income from renting the accommodation and employment generation. However, those benefits should also be balanced against those which may be lost as a consequence of the loss of a ground floor commercial unit in this location. Therefore, in the overall planning balance I find that the public benefits are limited.
30. Given the above and in the absence of significant public benefits I conclude that the scheme harms the Grade II listed building and features of special architectural or historic interest that it possesses, it fails to preserve or enhance the character or appearance of the York Central Historic Core Conservation Area and has a harmful effect on the character and appearance of the local area particularly when bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Monkgate Bar and the attached city walls which are Grade I listed buildings and a scheduled ancient monument. This fails to satisfy the requirements of the Act, the AMAA Act, paragraph 192 of the Framework and also conflicts with Policies D1, D4 and D5 of the Draft Plan and Policies HE3 and HE4 of the DCLP.

Other Matters

31. My attention has been drawn to a wide range of policies in the DCLP and the Draft Plan, and also Policies of the Draft Plan. Although I can see that some are relevant to these appeals and may provide some support for the proposals,

the matters and policies at dispute are those identified in the Council's decision notices. Furthermore, as previously stated there is currently no adopted development plan and as such those policies identified in the decision notice or otherwise have only limited weight in these cases. In any case, in weighing the planning balance in this case I have had regard to matters relevant to the appeals, including the benefits of commercial, leisure and economic activity, sustainability and visitor-related development.

Conclusion

32. For the above reasons and having regard to other matters I conclude that the appeals should be dismissed.

A A Phillips

INSPECTOR