

Appeal Decision

Site visit made on 19 September 2019

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 23 October 2019

Appeal Ref: APP/M2325/C/19/3221435

Bank House, 9 Dicconson Terrace, Lytham St Annes, Lancashire FY8 5JY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Olive Tree Brasserie Lytham Limited against an enforcement notice issued by Fylde Borough Council.
 - The notice was issued on 2 January 2019.
 - The breach of planning control as alleged in the notice is: without planning permission, a canopy frame enclosing the forecourt and a retractable roof have been erected on the Land, together referred to as the 'canopy structure'.
 - The requirements of the notice are:
 - 1) Dismantle and remove from the Land all elements of the canopy structure.
 - 2) Fill all holes in the front elevation of the host building formed in association with the canopy structure with an appropriate stone filling material of a colour and texture that replicates the existing surrounding wall material.
 - The period for compliance with the requirements is: twenty-eight days after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction.

The notice

2. The requirements of the notice refer to an "appropriate" stone filling. The notice should be certain as to what the recipient is required to do. Since the filling material is adequately specified in the rest of the notice, and as to do so would not cause injustice to either party, I will correct the notice by deleting the word "appropriate", using my powers under s176(1)(a) of the Act.

Ground (a) and the deemed application for planning permission

Main Issue and Reasons

3. The main issue is the effect of the development on the character and appearance of the host building, the Lytham Conservation Area (CA) and the adjacent Grade II listed building, 7 Dicconson Terrace.
 4. In accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA) I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA when considering the grant of planning permission.
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5. Section 66(1) PLBCAA also requires that in considering whether to grant permission for development affecting the setting of a listed building, special regard should be had to the desirability of preserving, among other matters its setting. Considerable importance and weight should be given to this factor.
6. Paragraph 193 of the National Planning Policy Framework (NPPF) advises that in considering the impact of development on the significance of a designated heritage asset such as the CA, great weight should be given to the asset's conservation. Where development leads to less than substantial harm to the significance of such an asset, the harm should be weighed against the public benefits of the proposal, including where appropriate securing its optimum viable use (paragraph 196). For applications that directly or indirectly affect non-designated heritage assets, a balanced judgement should assess the scale of any harm or loss and the significance of the heritage asset (paragraph 197).
7. 9 Dicconson Terrace is a substantial Edwardian property in use as a restaurant, prominently situated at the intersection of Henry Street and Dicconson Terrace, whilst also fronting Clifton Square. At four storeys it is an imposing building next to the two-storey terrace. It has an elegant façade with tall and visually dominating stone arches that provide an attractive door and window arrangement. The building has a range of positive features justifying its inclusion in the Local List of Designated Heritage Assets. It makes a strong and positive contribution to the character of Clifton Square and the CA.
8. Several forward projecting canopies can be seen in the vicinity. By and large they respect the character and appearance of their host properties and the street scene. Many such canopies are of a traditional simple form of two supports leaving the canopy open to the front and sides, but with intricate detailing in the ironwork and a small amount of glazing to the sides of the roof elements. Their design is not untypical of commercial frontages in seaside or resort towns that flourished in later Victorian and Edwardian eras.
9. Planning permission was granted in June 2018 under Ref 18/0164 to change the use of No 9 to a restaurant and construct a raised decking area with glazed balustrade around it. The scheme would retain the open character and appearance of its host and preserve its historical and architectural qualities, whilst adding some vibrancy benefitting the business. However, the balustrade is constructed in different materials and is unauthorised. The canopy also differs in appearance and materials from an earlier refused scheme, dismissed on appeal in April 2019, Ref APP/M2325/W/19/3219951.
10. The structure as now built is at least as harmful as the refused scheme. I saw that the canopy encloses the space in front of its host. Its design including its bulk dominates the façade and obscures views of the ground floor elevation of the main building and its architectural detailing. The appellant did not demur from the Council's suggestion that it is likely that the roof would be in its fixed closed position for substantial periods. Even with the roof retracted the fabric and associated structure obscure large parts of the arched windows. The canopy as a whole has a particularly incongruous effect on its host and its setting from near and far views, either directly opposite it or to the side. This results in an adverse effect on the street scene in Clifton Square which is at the heart of the town centre and an integral feature of the CA.
11. The adjoining property to the north, 84 Clifton Street is a bar/restaurant with permission for an open-fronted glass-roofed canopy with glass balustrade.

However it has been built with a fully-enclosed glass extension. An effective enforcement notice requires its removal, having been upheld on appeal, Ref APP/M2325/C/18/3206089 and APP/M2325/W/18/3206090. The compliance period ended in July 2019 and further enforcement action is being pursued.

12. Adjoining the appeal site to the south is 7 Dicconson Terrace, a Grade II listed building, also in use as a restaurant. The canopy in situ is the subject of an enforcement notice upheld at appeal, Ref APP/M2325/C/18/3203663. The period for compliance has also expired, in May 2019, and removal of the canopy is also being pursued. The bulk and enclosed design of the adjacent canopy at No 9 further undermines the setting of the listed building.
13. These adjacent properties are seen in the same local context in the CA and I am in agreement with the appeal decisions submitted. The canopy at the appeal premises similarly obscures views of its own host façade and its detailing, to the overall detriment of the character and appearance of the area.
14. Works to convert the premises to a restaurant improved the appearance of the ground floor elevation and the building, but the canopy has removed public views of these elements. The appellant states that the canopy provides an outdoor dining experience to sit and relax in with *"an improved opportunity for people to appreciate the conservation area and buildings within it"*.
15. That is a strange assertion as the building is an integral feature itself of the CA. Its patrons may have a comfortable vantage point but the canopy impairs appreciation of the qualities of the ground floor façade, even for them. The argument is perhaps analogous with a relational interpretation of Schrödinger's cat experiment, in that the patrons (cats) inside the canopy (the box) have a different frame of reference from those outside. It is true that the character of a conservation area can be experienced in different ways, however when the appeal premises were erected the frontage would have been intended to be appreciated by a wider class of people, ie the general public than those who merely avail themselves of the facilities within the building. This kind of problem can exist when a dual use or purpose is present, and no less so than in the case of appropriation of space that is privately owned, but is at the same time a shared space protected by planning policies where appropriate for preserving or enhancing the character and appearance of conservation areas.
16. "Al fresco" dining, as the appellant terms it, is available, but at present it seems more "al chiuso"¹ to me than al fresco. Walking around the site on a beautifully sunny market day I noted that the enclosed forecourt of the appeal property was sparsely patronised compared for example to the more open and busier terrace of the restaurant at the heritage centre opposite. Of course the development, including the retractable roof, may create a more viable use, especially during inclement weather, but such a claim is not substantiated.
17. When granting permission Ref 18/0164 the Council, according to its statement intended to *"allow a form of containment to the terrace for the benefit of customers and the vitality of the town centre, whilst leaving the overall frontage of the building as open as possible with the objective of retaining the open character and appearance of the locally listed building so as to retain its setting in the street scene."* Unfortunately what has been constructed has unacceptably deviated from that scheme and a mutually acceptable solution

¹ indoors

- has not been found. The Council is rightly concerned to take enforcement action to remedy this and similar breaches of planning control in the vicinity. A temporary permission as suggested would not be appropriate.
18. The design detail of the canopy is contrary to guidance in 'Canopies and Glazed Extensions on Commercial Forecourts – A Design Note', in that it harms the integrity of the host building which possesses important architectural features and is insensitive to the defining characteristics of lawful canopies in the vicinity. Although guidance only, it is underpinned by development plan policies in the Fylde Local Plan 2018 (LP).
 19. The LP policies cited by both parties are generally compatible with the NPPF. The appellant cited several paragraphs of the NPPF but has not explained in all cases why they are relevant. The NPPF does however require great weight to be given to conservation of a designated heritage asset such as the CA when considering the impact of development on its significance, as well as a balanced judgement on the scale of harm to the significance of a non-designated asset.
 20. A canopy structure can add to the vitality and viability of the street scene in a town centre and may benefit individual businesses. The NPPF supports the growth of town centres, LP Policy EC5 encourages restaurant uses in such areas and al fresco dining options feature in many central commercial areas. The scheme might have commercial benefits and possibly represents an optimum viable solution for the appellant; that does not provide a compelling reason to justify a dominant and incongruous addition to the building that obscures views of the ground floor frontage, including its architectural detail.
 21. Furthermore the enclosed nature of the canopy structure causes substantial harm to the building as a heritage asset as well as to views of the adjacent listed building and to the sense of openness of Clifton Square, undermining a key quality of the CA. The harm may be less than "substantial" in terms of the NPPF but is still serious and considerable importance and weight must be attached to such harm when paying special attention to the desirability of preserving or enhancing the character or appearance of a CA.
 22. The harm is contrary to Policy GD7 of the Fylde Local Plan 2018 (LP) which among other things aims to secure in a development proposal that its design, including massing, scale, materials and architectural character, relates well to the surrounding context. The development is also contrary to LP Policy ENV5 by among other matters, failing to conserve or enhance the built and historic environment in terms of the design of the canopy, including its setting, scale and physical characteristics.

Other matters

23. There is no evidence to support the appellant's claim that the only schemes the Council supports would fail to meet safety standards. The little public objection to the appeal structure is not a positive factor in support of the development. Nor does the fact that the scheme was driven by a professional architect, make it a factor in favour of the appeal, given its poor design relative to its surroundings.

Conclusion on ground (a)

24. Taking into account the above considerations and all other matters which have been put before me, the appeal on ground (a) does not succeed.

The appeal on ground (g)

25. The appeal on this ground is that the period for compliance with the requirements of the notice is too short and should be 6 or “perhaps 3” months. The erection of the canopy involved connecting its frame to the building at three points with similar connections to the floor of the roof terrace. The retractable roof is connected to the frame and main building. I note the scheduling problems that the appellant says he would be faced with, however given the short period within which it was erected, a period of 28 days to remove the canopy is reasonable. The terrace may be in constant use when the premises are open, however the sooner the notice is complied with the more quickly the appellant will be able to return to uninterrupted trade.²
26. The appellant is of the view that filling holes in the façade does not need to be done in 28 days but a period of 6 months would suffice. No major work is involved and to accede to this request would be to disregard the importance of restoring the building to its condition before the breach took place. There is no ground (f) appeal. The 28 day period is adequate to cover all requirements of the notice and therefore the appeal on ground (g) must fail.

Overall Conclusion

27. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Formal Decision

28. It is directed that the enforcement notice be corrected by the deletion, in Requirement 2) of “n appropriate”. Subject to this correction the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR

² ie all other things being equal – given that the Council is still considering the balustrade element of the scheme on which, for the avoidance of doubt, I have not expressed a view.