
Appeal Decision

Site visit made on 9 September 2020

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 13 October 2020

Appeal Ref: APP/C2741/C/20/3252680

Coney Street, York, YO1 9QL

- 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 Revolution Bars Group against an enforcement notice issued by City of York Council.
- The enforcement notice was issued on 8 April 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of decking which is unauthorised and would not constitute Permitted Development through the General Permitted Development Order 2015, as updated and amended.
- The requirements of the notice are (i) remove the decking in its entirety and (ii) remove from the land all waste materials resulting from compliance with (i) above.
- The period for compliance with the requirements is 9 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary matter

1. During my unaccompanied site inspection, it was not possible to see that part of the appeal site between the decking and the Guildhall because of the presence of a large timber and metal construction site fence, erected for the duration of renovation works to the Guildhall. The parties have provided what photographic and other evidence they have available to show the appearance of this area.

The appeal on ground (a) and the deemed application

2. The appeal site is in York City centre, within the Central Historic Core Conservation Area. It has a prominent frontage to the River Ouse and comprises the landscaped courtyard that sits between the Grade 1 Listed Guildhall and the City Screen complex. This latter building was itself identified as a Building of Merit in the Conservation Area Appraisal and was the recipient of a Civic Trust Award in 2001.
3. The timber decking which is the subject of the notice is installed on top of a part of this courtyard which is formed of 3 terraced levels, descending toward the river by around 200mm per level. The new decking now forms a single level which is enclosed on its SW and part of the NW side (facing the river and the Guildhall respectively) by timber planters incorporating metal framed, Perspex screens.

4. The Council takes the view that the Perspex screens and their housing comprise operational development which would require planning permission unless falling within the terms of Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015. However, I note that there is no mention of the screens in the allegation or requirements of the notice. Moreover, the Council has indicated that the notice should remain as drafted, as it intends to assess the screens on their own merit and deal with them accordingly.
5. The presence of the decking has little bearing on whether the screens would require planning permission, as any measurement of height would be taken from ground level, not decking level. Accordingly, in this decision, I have not taken account of the presence of the screens. Furthermore, the use of the site has for some time been as an outdoor drinking area for the appellants' bar and the installation of the decking has not altered this use.
6. The main issue in this case is the impact of the decking on the character and appearance of the Conservation Area and on the setting of the adjacent Guildhall.
7. The Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving the character or appearance of a Conservation Area. It also requires special attention to be paid to the desirability of preserving the setting of a Listed Building. This is amplified in the National Planning Policy Framework and Planning Practice Guidance and both the emerging and adopted development plans are consistent with this guidance. In brief, the significance of the heritage assets and their setting and the impact of the development on these assets should be assessed. Great weight should be given to the asset's conservation; the more important the asset, the greater the weight should be.
8. In this case, the Conservation Area Assessment places the appeal site within the Central Shopping Area, an area with a substantial number of Listed Buildings but also subject to considerable change, including much modern development. The Guildhall has been a very important presence in the city since the 15th century, with significant architectural, historic, civic and aesthetic value. Adjacent to this, the appeal site appears to have once been rear gardens to properties fronting Coney Street. This area remained open as the adjacent land to the SE was developed in the early 20th century as the Yorkshire Herald printing works.
9. It was from these printing works that the City Screen complex was developed at the end of the 20th century, consciously retaining the appeal site as an open space so that both the SE elevation of the Guildhall and the new development could be appreciated.
10. It is not in dispute that this river frontage contains one of the most imposing and attractive townscapes along the Ouse as it winds through the city centre. This character is created by the complexity of the historic grain, the quality of the buildings and their orientation to each other and the open spaces between them. The interrelationship between the Guildhall, the City Screen complex and the intervening appeal site clearly plays an important role in this townscape. There can be little doubt that the conservation of these heritage assets merits very significant weight.

11. The character and context of the appeal site is best appreciated from the opposite bank of the Ouse and from nearby Lendal Bridge. From these vantage points, the openness of the site and the greenery, provided by 3 Sorbus trees, appear to be the key factors. As well as providing a setting for the neighbouring buildings, they are a reflection of the former openness of the rear gardens that once stretched down to the river.
12. The new decking is not visible from the above vantage points. Whilst the modestly raised height has some bearing on the prominence of the visually intrusive Perspex screens, these do not form part of the alleged unauthorised development and, as indicated above, are not matters I can take into account.
13. Close up views of the appeal site are available from the modern walkway built along the City Screen complex river frontage. From here, the surface materials and the variation in levels across the site are additional factors which add visual interest. Although there are now two fewer terraced levels, there is still considerable variety between the lower riverside level, the decking level, the level adjacent to the Guildhall and the level alongside the City Screen. The use of timber decking to cover what appears to be the underlying concrete paving with red brick dressings is to my mind not incongruous here. The riverside walkway is itself timber surfaced and the new timber decking has weathered such that it sits comfortably into the surroundings of its illustrious neighbouring buildings.
14. To my mind, the decking does not harm the significance of any heritage assets. It preserves the character of the Conservation Area and the setting of the Guildhall and, as such, is consistent with national and local policy.
15. I note above the importance of the Sorbus trees to the character of the area. At present, the decking is cut very closely around their trunks and this could impede further growth, limit air circulation and limit their ability to resist fungal infection. This is capable of being addressed by way of a planning condition requiring appropriate measures to be installed.
16. Subject to this condition, the appeal on ground (a) succeeds and planning permission will be granted.

Formal Decision

17. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of decking on land at Coney Street, York, YO1 9QL referred to in the notice, subject to the condition that:

The decking hereby permitted shall be removed from the site within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 1 month of the date of this decision a scheme for the aeration and growth of the 3 Sorbus trees on site shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii) If within 4 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision

within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

B.S. Rogers

Inspector