



Appeal Decision

Site visit made on 23 September 2020

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th October 2020

Appeal Ref: APP/N4720/W/20/3255020

179 High Street, Boston Spa, Wetherby LS23 6AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Mr Marcus Emadi against the decision of Leeds City Council.
 - The application Ref 20/00672/FU, dated 24 January 2020, was refused by notice dated 26 June 2020.
 - The development proposed is described as replacing the windows fronting High Street to match those on Bridge Street – amend hours of opening to match local businesses.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Appellant refers to the road adjacent to the appeal property as being 'Bridge Street'. I note that it is in fact Bridge Road and is referred to as such in this Decision Letter.

Main Issues

3. The main issues are:
 - Whether the proposed replacement windows preserve or enhance the character of the Boston Spa Conservation Area; and
 - The effect of the proposed extended opening hours on the living conditions of the occupants of nearby residential dwellings.

Reasons

Character of the Conservation Area

4. The appeal property is a café bar called Tom Foolery located in a highly attractive, traditional building on the corner of High Street and Bridge Road in Boston Spa. It has large windows facing onto the High Street to the front and onto Bridge Road to the side.
5. The High Street sits within the Boston Spa Conservation Area (BSCA). Under s.72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the Act') there is a duty to pay special attention to the desirability of preserving or enhancing the character and appearance of the Conservation Area. The building opposite the appeal site currently trading as a foodstore is also listed. Under

- s.16(2) there is a special duty to have regard to the need to protect the setting of a listed building.
6. The first component of the proposed development involves the removal of the existing wooden framed front window and its replacement with a UPVC-style window that opens and closes, matching the existing windows facing Bridge Road.
 7. Boston Spa's historic core was built out between 1770 and 1830. An important component of the town's fabric has been the retention of historic shop fronts and their protection from inappropriate change. The Council's policy is to ensure that new shop fronts preserve or enhance the character of the BSCA.
 8. When seen from a distance the proposed replacement window would not look any different to the existing wooden framed window. The stall riser would be retained, and the overall traditional appearance of the property would not be affected. For that reason, the proposal would not affect the setting of the listed building opposite.
 9. However, upon closer inspection it would be apparent that the new window was UPVC framed with a hinged opening mechanism. The slightly less than uniform but highly characterful appearance provided by natural wood would be replaced by the unwavering quality of consistency provided by a man-made material.
 10. I was referred to 2 nearby units which, it is contended, have new windows that are not appropriate to the BSCA. The window and door frames in Ali's Kitchen and Restaurant and Takeaway at 188A High Street opposite the appeal property are not in keeping with the BSCA.
 11. However, it was somewhat unfortunate to cite Ali's Kitchen and Restaurant and Takeaway at 188A High Street as providing a precedent in support of the appeal proposal since the new windows at that property were installed without planning permission. These changes were subject to an enforcement action which culminated in an unsuccessful appeal by Mr Ali against the Council.¹ In that appeal the Inspector held that the changes had resulted in an uncharacteristic shop front which does not reflect or respect the typical architecture or the character and the appearance of the area.
 12. A unit adjacent to the post office also has modern window frames. I am not aware of the planning history of this development. Nevertheless, rather than providing a precedent to support the appeal proposal it simply acts to reinforce the importance of ensuring that new development does not erode the character of the BSCA but instead serves to protect and enhance it in line with the requirements of the Act.
 13. What would be apparent to those visiting the area is that most of the shop fronts have retained their traditional wooden window frames. As a result, the historical character of the town centre has been retained largely intact ensuring that it continues to be a highly attractive environment in which to work and relax.
 14. For the above reasons the proposed change of window frames would harm the character of the Boston Spa Conservation Area. It would therefore fail to accord with Policies P10 and P11 of the Leeds Core Strategy 2014 which seek to

¹ APP/N4720/C/20/3246851

ensure that new development is of a high-quality design which respects local distinctiveness and which conserves and enhances designated heritage assets. Furthermore, it would fail to accord with the Saved Policies BD6 and GP5 of the Leeds Unitary Development Plan 2006 (UDP) which require that new development use materials that are in keeping with the original building and that new development does not result in loss of living conditions.

15. In addition, it would fail to accord with Policies DES1, DES2(b), H1 and H2 of the Boston Spa Neighbourhood Development Plan 2012-2028 which seek to ensure that new development reflects the dominant character of the surrounding area, is sensitive to conservation areas, in particular as regards new shop fronts, respects local character and responds to the character and setting of listed buildings.
16. Finally, it would fail to accord with the advice set out in Paragraphs 192 of the National Planning Policy Framework (the Framework) that new development should make a positive contribution to local character and distinctiveness.

Opening Hours

17. Currently the Tom Foolery café bar is permitted to open 0800-2330 Monday to Saturday and 1000-2300 on Sundays and Bank Holidays. A similar type of establishment within the neighbourhood (The Stew and Oyster) is permitted to open 0800-2330 Monday to Thursday, 0800-0030 Friday and Saturday and 0800-2300 on Sundays and Bank Holidays. I was also directed to the opening hours of the Crown Inn, but no details were provided.
18. The Appellant seeks permission to open 0800-0030 Monday to Sunday and Bank Holidays. This would provide for the same opening hours as are permitted at The Stew and Oyster on 2 nights each week (Fridays and Saturdays) but would extend beyond their permitted opening hours on the remaining 5 nights (Sunday to Thursday). In overall terms, therefore, what is being applied for represents a considerable extension of what is permitted in a similar establishment with similar considerations concerning neighbours and noise.
19. There are residential properties close to Tom Foolery on Bridge Road. Some of the properties above the shops on the High Street might also be in residential use. Such occupants would probably be adversely affected by the comings and goings of late-night customers. Although I have received no evidence to suggest that late night noise is a problem in the area, I consider that the correct balance between the needs of the night time economy and the living conditions of local residents has been struck with the current opening hour arrangements.
20. With the above points in mind there is no justification for the extension of opening hours proposed by the Appellant. The proposal would harm the living conditions of local residents by virtue of increased pedestrian and vehicular traffic leading in noise and disturbance during anti-social hours. It would therefore fail to accord with Policy GP5 of the UDP 2006 and with Paragraph 127f) of the Framework which seek to ensure that new development respects the living conditions of residential occupants.

Conclusion

21. For the above reasons the appeal should be dismissed.

William Walton

INSPECTOR