



Appeal Decision

Site visit made on 15 December 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 January 2021

Appeal Ref: APP/N2739/Y/20/3257825

Fish and Chips, 61-63 Micklegate, Selby YO8 4EA

- 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 Mark Corbally, Mister C's Fish and Chips, against the decision of Selby District Council.
 - The application Ref: 2019/0998/LBC, dated 27 September 2019, was refused by notice dated 24 April 2020.
 - The works proposed are 2 No retractable awnings/canopies, 6 No large window sticker advertisements and the installation of 1 No externally illuminated hung double sided sign.
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Decision

1. The appeal is dismissed in so far as it relates to 2 No retractable awnings/canopies. The appeal is allowed in so far as it relates to 6 No large window sticker advertisements and the installation of 1 No externally illuminated hung double sided sign, and listed building consent is granted for 6 No large window sticker advertisements and the installation of 1 No externally illuminated hung double sided sign, at Fish and Chips, 61-63 Micklegate, Selby YO8 4EA in accordance with the terms of the application, Ref: 2019/0998/LBC, dated 27 September 2019 so far as relevant to that part of the works hereby permitted and subject to the following conditions:
 - 1) The works hereby permitted shall begin not later than three years from the date of this decision.
 - 2) No works shall take place until large scale details (1:5) of the bracket and fixing of the hung double sided sign has been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.

Procedural Matters

2. The proposal was amended during the determination of the application, following which, revised drawings were submitted¹ and the description of works proposed was changed. I have therefore used the description of works proposed as stated in the Council's decision notice and the appellant's planning appeal form in the banner heading and formal decision above.

¹ Revised Drawings: 1872.2 Rev A Elevations; 1872.3 Rev A Elevation awning out; 1872.4 Rev A Elevation awning in; and 1081.23 Proposed shop front – signage (detail of hanging sign - amended drawing).

3. The application for listed building consent was accompanied by an application for advertisement consent² which the Council determined, issuing a split decision which granted advertisement consent for the window stickers and externally illuminated hung double sided sign. Having regard to the revised drawings and submitted evidence, I have no reason to disagree with the Council that these elements of the scheme are acceptable. Therefore, my deliberations and decision are focused solely upon the 2 No retractable awnings/canopies (the awnings).
4. Section 22(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) provides the Secretary of State with the power to split a decision in respect of listed building consent appeals made under section 20 of that Act. Given the above, and the fact that the window stickers and hanging sign are clearly separate, both physically and functionally, from the awnings, I am able to issue a split decision.
5. The appellant's statement of case refers to an associated appeal submitted in relation to the split decision of the aforementioned application for advertisement consent. However, this appeal was turned away by the Planning Inspectorate as being out of time. Therefore, my decision solely concerns this appeal under section 20 of the Act.
6. On my site visit I observed that awnings, window stickers and a hanging sign were already in-situ on the appeal property. However, the details of the existing window stickers and hanging sign do not match those as illustrated on the submitted revised drawings, namely there are additional window stickers installed and the hanging sign is not externally illuminated and is of a different design. Therefore and for the avoidance of doubt, I have determined the appeal on the basis that the works have, in part, already occurred, having regard to the revised drawings submitted with the application.

Main Issue

7. The main issue is whether the works comprising two retractable awnings/canopies preserve the Grade II listed building, 61 and 63 Micklegate, or any features of special architectural or historic interest which it possesses.

Reasons

Special interest and significance

8. The appeal property, Nos 61 and 63 Micklegate (Nos 61 and 63), is stated to date from either the 18th century, re-roofed, or mid-19th century. It is a two-storey, six-bay building, constructed of brown brick with a pitched natural slate roof. The building is Grade II listed and located within the Selby Town Conservation Area (the CA).
9. Historically, the property incorporated two separate commercial units at ground floor level but, for a number of years, both units have been occupied by the appellant's business, a fish and chip restaurant and takeaway, with internal access between the two units. The shopfront of No 61, which incorporates a wooden modillioned cornice, is stated to date from the mid-19th century. Although the shopfront of No 63 appears to be of a later date, it is traditional in form and design, reflecting the shopfront of No 61.

² Application for Advertisement Consent Ref: 2019/1002/ADV.

10. From the evidence available to me, I consider the special interest and significance of Nos 61 and 63, to be largely derived from its historic interest and architectural interest as a modest 18th/19th century property which forms part of the commercial townscape within this part of Selby. The building's age, traditional materials and modest architectural form, including its shopfronts, all make important contributions in these regards. These aspects of Nos 61 and 63 contribute positively to the character and appearance of the CA.

The appeal proposal

11. The two awnings comprise two black fabric sheets displaying the business's name that project out from rollers on exposed metal brackets that are bolted into both the lead-flashed projecting cornices of the shopfronts and the front elevation of the building. The awnings are supported at the sides by metal arms and have painted purple wooden front laths. Although not illustrated in the revised drawings, metal storm chains linked between the brackets and metal arms control the extent of the awnings' projection.

The effect of the appeal proposal

12. I acknowledge that the awnings are of a fairly traditional form, design and material and are in a muted colour which complements the shopfronts. Nevertheless, it is evident that, when extended, they are large features on the building which stretch across a significant proportion of its façade. As a result, they horizontally dissect the building's principal elevation and severely restrict views of the detail of the shopfronts, particularly the notable wooden modillioned cornice present on No 61.
13. Whilst at the time of my site visit the awnings were extended, having regard to the submitted revised drawings, even when retracted, the projection of the metal arms along with the end section of the fabric sheets and wooden front laths would cause them to appear overly bulky in profile and not at all integral to the shopfronts.
14. Furthermore, either extended or retracted, the uncovered and very rudimentary fixed metal brackets are unduly obvious modern additions which are crudely appended on top of the shopfronts to hold the rollers and fabric sheets in place. These adversely jar with, and have caused physical damage to, the building's historic fabric.
15. The prominent location of the appeal property in Micklegate causes the awnings and associated fixings to be excessively conspicuous on the building and in the street scene when viewed from adjacent public routes, exacerbating their harmful impact. Consequently, I find that the awnings appear as visually dominant features that detrimentally erode the architectural and historic integrity of the listed building.
16. I acknowledge that awnings are common and appropriate features on retail premises in traditional high streets. In addition, I have given consideration to the appellant's assertions that awnings have been sited on the appeal building almost continuously throughout its history, that they were present when they purchased the property 30 years ago and that the current awnings are like-for-like replacements which utilised existing fixing positions. In these respects, the appellant submits that the awnings form an important part of the historic fabric of the listed building and the CA at this part of Micklegate.

17. Nevertheless, in my judgement, the very limited archive evidence provided by the appellant is insufficient to confirm with any certainty that awnings have been present on both shop units for a significant proportion of the building's history. Moreover, even if I were to accept the historic presence of awnings on the property, I am not satisfied that the appeal awnings, particularly the associated fixings, are of a quality which is befitting of a listed building.
18. Drawing the above points together, and mindful of the duty arising from section 16(2) of the Act, I find that the works comprising two retractable awnings/canopies fail to preserve the Grade II listed building, 61 and 63 Micklegate, or any features of special architectural or historic interest which it possesses. In doing so, the works harm the special interest and significance of this designated heritage asset.

Public benefits and heritage balance

19. Paragraph 193 of the National Planning Policy Framework 2019 (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 194 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets and that this should have clear and convincing justification.
20. With reference to paragraphs 195 and 196 of the Framework, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given the fairly limited extent and localised nature of the works, I find the harm to the listed building to be 'less than substantial' in this instance. However, this level of harm should not be equated with a less than substantial planning objection and is of considerable importance and weight. Under such circumstances, paragraph 196 advises that this harm should be weighed against the public benefits of the proposal, which includes securing the optimum viable use of the building.
21. The appellant submits that the awnings are vitally important for the business, providing shade to the internal produce and patrons within the restaurant, as well as shading or shelter to any customers having to queue externally, particularly at present when observing social distancing requirements. This, in turn, supports the continued safe operation of the business and the optimum viable use of the building.
22. Nevertheless, no substantive evidence has been provided which confirms that the viability of the business and the continued use of the listed building would be jeopardised or would cease if the appeal were to fail and the proposal was not implemented; or that there are not other, less harmful, options that would provide shade and shelter. Therefore, the harm that is caused to the special interest and significance of the listed building by the continued presence and use of the awnings is not justified.
23. Consequently, in attributing considerable importance and weight to the harm I have found to the special interest and significance of Nos 61 and 63, I find that this is not outweighed by the limited public benefits of the awnings.
24. Given the above and in the absence of sufficient public benefits that outweigh the harm found, I conclude that the works comprising two retractable awnings/canopies fail to preserve the Grade II listed building,

- 61 and 63 Micklegate, or any features of special architectural or historic interest which it possesses. As such, the works are contrary to the requirements of section 16(2) of the Act and paragraphs 192, 193 and 194 of the Framework.
25. Although the Council makes no specific reference in its reason for refusal to any effect of the awnings on the character and appearance of the CA, I am mindful that, as a statutory consideration under section 72(1) of the Act, I am required to have regard to this matter when determining the appeal.
26. The special interest and significance of the CA is largely derived from the preservation of its historic core and street pattern, along with the architectural richness and variety of its historic buildings, comprising imposing landmark structures as well as modest retail and domestic properties, which stem from its multi-faceted religious, commercial and industrial history. These elements positively contribute to the character and appearance of the CA as a whole and thereby to its significance as a designated heritage asset.
27. Having regard to the prominence of Nos 61 and 63 and the detail of the awnings, I consider that the harm to the listed building which I have set out above, also detracts from the high quality of the CA. Whilst the magnitude of this harm is modest and certainly less than substantial, in the context of the CA as a whole, it nevertheless fails to preserve or enhance its identified character and appearance. I consider that the public benefits of the scheme, outlined above, do not outweigh that harm. In this respect, the proposal fails to satisfy the requirements of section 72(1) of the Act as well as paragraphs 192, 193 and 194 of the Framework and compounds the harm which I have identified in respect of the listed building.
28. Applications for listed building consent are not subject to section 38(6) of the Planning and Compulsory Purchase Act 2004 and therefore development plan policies do not carry the same weight as when considering planning applications. Nevertheless, I note that the awnings do not comply with Policy ENV24 of the Selby District Local Plan – Part 1 General Policies 2005, in so far as it seeks that alterations to listed buildings would not have any adverse effect on the architectural and historic character of the building, are appropriate in terms of design and detailing and would not harm the historic fabric of the building. In addition, the awnings conflict with Policies SP18 and SP19 of the Selby District Core Strategy Local Plan 2013 which, amongst other things, require that development protects and enhances the environment, including conserving those historic assets which contribute most to the distinct character of the District; and achieves high quality design, having regard to the local character, identity and context of its surroundings.

Other Matters

29. The appellant highlights the presence of awnings on other commercial properties along Micklegate. However, no information has been provided as to whether any of the adjacent awnings required and/or obtained listed building consent for their installation. As such, I am unable to comment on their presence in comparison to the appeal before me.
30. Moreover, the existence of other, apparently similar, awnings on other buildings in the area is not, in itself, a reason to allow unacceptable works. I have considered the appeal proposal on its own merits, having regard to the

significance and specific context of the appeal building, and found that it causes harm.

31. I accept that the appellant has removed the unauthorised banner signs on the property. Nevertheless, this is not a factor which weighs in favour of the appeal.
32. I note the appellant's comments regarding the Council's actions in allegedly targeting his small business in a time of economic uncertainty. However, this matter is not one for me to consider in the context of an appeal under section 20 of the Act.
33. I am aware that no objections to the awnings, subject to conditions, were raised by Selby Town Council or the Local Highway Authority and note that no representations were made by any owners or occupiers of neighbouring properties. Nonetheless, these are neutral considerations in the balance and do not alter my conclusion on the main issue.

Conditions

34. The Council has not submitted any suggested conditions were I minded to allow the appeal in whole or in part. Having regard to the submitted evidence and advice set out in both the Framework and the Planning Practice Guidance, I have attached conditions which I deem necessary.
35. A standard time limit condition is necessary. However, a condition specifying relevant plans has not been imposed as progressing the works in accordance with the submitted plans is part of the formal decision above.
36. In the interests of the preservation of the listed building, a condition requiring the submission of details of the bracket and fixing of the hung double sided sign is necessary.
37. In the interests of the safety of pedestrians and other highway users, the Local Highway Authority recommended the imposition of a condition regarding the height and projection of all signage and objects on elevations of the building adjacent to the existing highway. However, the imposition of conditions on listed building consents must be exercised in the light of the general duty, 'to have regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses'. Therefore, I have not imposed this recommended condition.

Conclusion

38. For the reasons given above, I conclude that the appeal should be dismissed in so far as it relates to 2 No retractable awnings/canopies, and that it should be allowed in so far as it relates to 6 No large window sticker advertisements and the installation of 1 No externally illuminated hung double sided sign.

F Cullen

INSPECTOR