



Appeal Decision

Site visit made on 22 February 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 28 February 2022

Appeal Ref: APP/N2739/F/21/3284871

Mr C's Fish and Chips, 61-63 Micklegate, Selby, North Yorkshire YO8 4EA

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Mark Corbally against a listed building enforcement notice issued by Selby District Council.
 - The enforcement notice was issued on 10 September 2021.
 - The contravention of listed building control alleged in the notice is the physical attachment of 2 No. retractable awnings/canopies to the façade of the building.
 - The requirements of the notice are:
 - Step 1: Permanently remove the 2 No. retractable awnings/canopies from the front elevation of the building, including the two black fabric sheets displaying the business's name that project out from the rollers on exposed metal brackets that are bolted into both the lead-flashed projecting cornices; the supporting metal arms; and metal storm chains linked between the brackets and metal arms that control the extent of awnings/canopy projection.
 - Step 2: Make good the fabric of the building using materials to match the existing.
 - The period for compliance with the requirements is 3 calendar months.
 - The appeal is made on the grounds set out in section 39(1)(e) and (h) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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The Listed Building Enforcement Notice

1. There are two minor typographical errors in the notice as set out in the decision, below. These can be corrected without causing injustice to either of the main parties.

Decision

2. It is directed that the listed building enforcement notice be corrected by
 - a) the deletion from paragraph 1 of the word "then" and the replacement therefor of the word "them"; and
 - b) the deletion from the first line of the second paragraph of paragraph 4 of ",," between the words "to" and "date";

and varied by
 - c) the deletion from paragraph 6 of the words "3 calendar months" as the time for compliance and the replacement therefor of the words "6 calendar months".
3. Subject to these corrections and variation, the appeal is dismissed and the listed building enforcement notice is upheld, and listed building consent is

refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

The appeal on ground (e)

4. The ground of appeal is that listed building consent ought to be granted for the works and therefore 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.
5. The appeal property was first listed on 14 November 1980 and dates from either the eighteenth century, re-roofed, or mid-nineteenth 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 is also situated in the Selby Town Conservation Area (the CA).
6. It is my understanding that, historically, the property incorporated two separate commercial units at ground floor level but has been occupied as a fish and chip takeaway and restaurant for a number of years. There is internal access between the two units. The shopfront of No 61, which incorporates a wooden modillioned cornice, is stated to date from the mid-nineteenth century. Although the shopfront of No 63 appears to be of a later date, it is nonetheless traditional in form and design, reflecting the shopfront at No 61.
7. I consider the special interest and significance of the appeal site to be largely derived from its historic interest and architectural interest as a modest eighteenth or nineteenth century property which forms part of the commercial townscape within central Selby. Its age, materials and overall modest form and detailing, including its shopfronts, contribute to this significance and interest. The building and its key attributes also make a positive contribution to the character and appearance of the CA.
8. The two awnings comprise two black fabric sheets displaying the name of the business and they project out from rollers on exposed metal brackets that are bolted into both the lead-flashed projecting cornices of the shopfronts on the prominent front elevation of the building. The awnings are supported at the sides by metal arms and have painted purple timber front laths. In addition, metal storm chains linked between the brackets and metal arms control the extent of the awnings' projection.
9. The awnings are of a relatively modest traditional form, design and material and are in a dark colour which complements the shopfronts. However, as I observed at my visit, it is clear that, when extended, they are large visually prominent features on the building which extend across most of its façade. Consequently, they horizontally dissect the building's principal elevation and severely restrict views of important detailing on the shopfronts, particularly the timber modillioned cornice on No 61. From the evidence before me it is clear that even when retracted, the projection of the metal arms along with the end section of the fabric sheeting and timber front laths would cause them to appear overly bulky in profile and constitute alien additions to the shopfronts and unduly prominent in their immediate context.

10. Furthermore, the uncovered and very rudimentary fixed metal brackets are unduly obvious modern additions which are crudely attached to the shopfronts to hold the rollers and fabric sheets in place. These are at odds with the building's historic fabric and have caused unwarranted physical damage to the shopfronts.
11. The highly prominent town centre location of the appeal site results in the works being highly conspicuous on the building and within the wider street scene when viewed from adjacent public routes, exacerbating their harmful impact. As a result, the awnings appear as visually dominant features that erode the architectural and historic integrity of the listed building.
12. I acknowledge that awnings are common and can be appropriate features on retail and other commercial premises in traditional high streets. I have also given weight to the appellant's comments that awnings have been sited on the appeal building throughout its history and that they were present when he purchased the property 30 years ago. It is also stated that the existing awnings are like-for-like replacements which used previous fixing positions. However, there is little evidence to confirm that awnings have been present on both shopfronts for a significant part of the building's history. In any case, even if I were to accept the historic presence of awnings on the property, I am not satisfied that the awnings that are now present and their associated fixtures and fittings are of a quality which is suitable for of a listed building.
13. In the light of the above and having consideration 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, 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.
14. Paragraph 199 of the National Planning Policy Framework (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 200 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.
15. With reference to paragraphs 201 and 202 of the Framework, in finding harm to the significance of designated heritage assets, the magnitude of that harm should be assessed. Given the relatively 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 should not be equated with a less than substantial planning objection and is of considerable importance and weight. Under such circumstances, paragraph 202 advises that this harm should be weighed against the public benefits of the proposal, which includes securing the optimum viable use of the building.
16. 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. This, in turn, supports the continued safe operation of the business and the optimum viable use of the building. However, there is a lack of clear substantive evidence which confirms that the viability of the business depends on the awnings/canopies and the continued use of the building would be jeopardised

or cease if the appeal were to fail and the awnings/canopies were required to be removed. Furthermore, there is little evidence that alternative, less harmful, options that would provide shade and shelter have been considered by the appellant. Therefore, the harm to the special interest and significance of the listed building by the continued presence and use of the awnings is not justified.

17. 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.
18. Given the above and in the absence of public benefits that outweigh the harm found, I conclude that the physical attachment of 2 No. retractable awnings/canopies to the façade of the building fails to preserve the Grade II listed building, or any features of special architectural or historic interest which it possesses. Therefore, the works are contrary to the requirements of section 16(2) of the Act and paragraphs 199, 200 and 201 of the Framework.
19. Although in its reasons for issuing the notice the Council makes no specific reference to the effect on the character and appearance of the CA, as a statutory consideration under section 72(1) of the Act, I am required to have regard to this matter when determining the current appeal.
20. 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 ecclesiastical and other related structures as well as more modest retail and domestic properties, which stem from the multi-faceted religious, commercial and industrial history of the town. 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.
21. Having regard to the prominence of the appeal property 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. The scale of harm is modest and certainly less than substantial, but in the context of the CA as a whole, it nevertheless fails to preserve or enhance its identified character and appearance. In my judgement the public benefits of the scheme, as set out 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 199, 200 and 201 of the Framework and compounds the harm which I have identified in respect of the listed building.
22. I am aware that applications for listed building consent, including deemed applications, 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, the awnings fail to comply with Policy ENV24 of the Selby District Local Plan – Part 1 General Policies Adopted February 2005, which seeks to ensure 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 Adopted Version 22 October 2013 which, amongst other objectives, 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.

23. The appellant highlights that there are other awnings on commercial properties along Micklegate and they are an appropriate feature. However, there is no evidence that they required 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. Furthermore, the presence of existence of other awnings in the area is not a reason to allow unacceptable works. In any case, I have determined the current appeal on its own merits and found that it causes harm.
24. I have also noted 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.

The appeal on ground (h)

25. The ground of appeal is that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed. Three calendar months would be sufficient to carry out the requirements of the notice. The one year compliance period suggested by the appellant would be excessive having regard to the ongoing harm caused by the works. However, given the specialist works that are required I consider that the period should be increased to enable sufficient time for the appellant to obtain quotes, appoint a suitable contractor and carry out the necessary works carefully to ensure the building is made good. In this respect, I consider six months would strike the appropriate balance and would not place a disproportionate burden on the appellant. To this limited extent the appeal on ground (h) succeeds.

A A Phillips

INSPECTOR