



Appeal Decision

Site visit made on 18 October 2022

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 November 2022

Appeal Ref: APP/C2741/W/22/3300013

5 Whip-Ma-Whop-Ma-Gate, York YO1 8BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr M Simsek of Trio Patisserie against the decision of City of York Council.
 - The application Ref 21/02508/FUL, dated 9 November 2021, was refused by notice dated 7 March 2022.
 - The application sought planning permission for change of use of barbers (use class A1) to restaurant/bar (use class A3 and A4) and formation of roof top terrace, to include increased height of enclosing wall, without complying with a condition attached to planning permission Ref 21/01832/FUL, dated 8 September 2021.
 - The condition in dispute is No 6 which states that: The external area (roof terrace) shall have tables and chairs to accommodate customers only. There shall be no other furniture installed (for example canopies/umbrellas/heaters/external lighting/screens/advertisements).
 - The reason given for the condition is: In the interests of the character and appearance of the conservation area and setting of listed buildings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading is taken from the original planning permission granted for the development in 2018¹. Since the grant of that permission, an application under section 73 of the Town and Country Planning Act 1990 was granted which altered certain conditions and condition numbers. The most recent permission is reference 21/01832/FUL. It is condition 6 from this permission that the appellant is seeking to vary. Although the condition number has changed, the requirement is the same as that on the original permission.
3. The emerging City of York Local Plan (emerging LP) is being examined. It has not yet been found sound or adopted. Consequently, I cannot accord it full weight. When referring to the emerging LP policies, I have referred to the City of York Local Plan Publication Draft 2018 (the PDLP).

¹ Application reference 18/00738/FUL

Background and Main Issue

4. Planning permission was granted in 2018 for the change of use of a barbers to restaurant/bar and formation of roof top terrace. This was subject to a condition that allowed the roof terrace to have tables and chairs to accommodate customers only, but no other furniture, in the interests of the character and appearance of the conservation area and setting of listed buildings. The appellant now wishes to install a retractable canopy over the roof terrace.
5. Given this context, the main issue is the effect that varying the condition would have on the character and appearance of the area, including the Central Historic Core Conservation Area.

Reasons

6. The appeal property is a restaurant/bar located at the end of Colliergate in a prominent position near to the junction of Fossgate, Pavement, The Stonebrow and Whip-Ma-Whop-Ma-Gate. It is located within the Central Historic Core Conservation Area (the Conservation Area). The historic core of York is renowned for its Roman, Viking and medieval elements, as well as Georgian and Victorian features and a wealth of archaeological remains. From the evidence before me and my site visit observations, the significance of the Conservation Area is in part attributed to the historic street scape and architectural detailing of individual historic buildings, resulting in a rich and varied townscape. The relationship of the Minster with the townscape is an important characteristic as are the city's roofscapes and skyline.
7. The York Central Historic Core Conservation Area Appraisal (the CA Appraisal) contains a number of character areas. The property lies within character area ten: The Medieval Streets (CA10) and close to character area fifteen: Fossgate & Walmgate (CA15). CA10 includes streets around the Minster containing a high number of medieval buildings. The CA Appraisal highlights that the area is hugely significant for the city as it contains the largest number of surviving timber framed houses and is the principal magnet for tourists. Shambles, a medieval street with many Grade II and Grade II* listed buildings to the rear of the site is specifically highlighted in this context. Fossgate and Walmgate are part of the main Roman road that approached the city from the east, and now include 18th and 19th century buildings.
8. The appeal property is more modern, dating from the 20th century. It is identified in the CA Appraisal as a building that detracts from the character or appearance of the Conservation Area. The property itself does not therefore contribute positively to the significance of the Conservation Area. Nevertheless, it is seen in the context of the historic townscape, and it sits in a prominent location within this.
9. The proposed variation of the condition is to allow the construction of a retractable canopy and associated frame across the entire width of the first floor roof terrace of the property. The aluminium frame would sit inside the existing parapet wall and would comprise uprights connected by a cross member and three cross-members extending across the terrace from the side of the property. The canopy would be retracted when the roof terrace is not in

use, with the current permission allowing the first floor external seating area to be used until 22:30².

10. The proposed structure would be clearly visible from the surrounding area at a raised height. This would include views from Fossgate, Pavement, The Stonebrow and Whip-Ma-Whop-Ma-Gate, including in conjunction with the nearby Grade II* listed parish room of St Crux and wall, and in the foreground of views which include the upper part of the towers of the Minster (Grade I listed). While roofline views from these vantage points may not be panoramic views, or from an elevated position, nevertheless the historic roofscape and the Minster towers are clearly discernible.
11. Due to the projection of the proposed structure across the roof terrace and its elevated position, it would draw the eye, and therefore visually compete with views of the historic roofscape including the towers of the Minster. It is argued that the canopy would be retractable and would have open sides thus maintaining views through the roof terrace. However, the frame would be not insubstantial and would be prominently sited. Consequently, despite the retractable nature of the canopy and its open sides, the proposed structure would appear as a discordant addition to the property that would be at odds with the character and appearance of the wider area including the historic roofscape. It would therefore exacerbate the negative effect that the property has on the Conservation Area. The proposed colour for the aluminium frame and what the appellant describes as its high-quality nature would not adequately mitigate this.
12. I observed an extraction flue and air conditioning unit in certain views towards the property. However, these do not provide a sufficient reason to introduce further damaging development at an elevated level. I appreciate that the terrace is already in use by customers and so there will be some activity associated with it. However, I note the condition on the existing permission³ that requires all customers using the roof terrace to be seated. This will likely limit the extent of activity that is visible.
13. The appellant contends that not all views within the Conservation Area necessarily contribute to its special architectural or historic interest. The CA Appraisal identifies a number of key views which 'define the character and image of the core'. The proposed structure would be visible from key view 15 in the CA Appraisal (from Fossgate towards the Minster at Foss Bridge). However, it would not be particularly dominant in views from this point, although it would become more so further along Fossgate.
14. The appellant's evidence identifies a tree that has been planted on the pavement at the junction of Colliergate and Pavement which they identify as being in a direct line of sight from Foss Bridge. An image is provided to illustrate the screening that this may afford as it grows. However, it would take a considerable length of time for the tree to grow large enough to provide any effective screening and this would be less during winter months when the tree is not in leaf. Furthermore, the longevity of the planting cannot be secured.
15. The appellant highlights that none of the 'numerous other views of local significance' in the CA Appraisal include the property. However, while the CA

² Condition 3 of permission reference 21/01832/FUL

³ Condition 5 of permission reference 21/01832/FUL

Appraisal identifies many key and local views of significance, it is unlikely that all valued views will have been included given the rich and varied nature of the townscape. Other views are also important in terms of understanding and appreciating the significance of the Conservation Area. Furthermore, its character derives from the buildings, layout and surrounding spaces as a whole, regardless of whether particular elements are open to public view. Its significance does not therefore rely only on the elements that can readily be seen.

16. Consequently, I conclude that, given its design, scale and location, the proposal would be an incongruous addition to the property and street scape that would harm the character and appearance of the area. Accordingly, it would fail to preserve or enhance the character or appearance of the Conservation Area and would harm its significance.
17. In terms of the National Planning Policy Framework (the Framework), I assess the harm to the Conservation Area as less than substantial given that its significance would remain largely intact. Even so, paragraph 199 of the Framework directs me to give 'great weight' to the conservation of such assets; less than substantial harm does not equate to a less than substantial planning consideration. Accordingly, paragraph 200 of the Framework sets out how any harm should require 'clear and convincing justification'. Paragraph 202 of the Framework further advises that the harm should be weighed against the public benefits of the proposal.
18. It is likely that the canopy would increase the use that could be made of the roof terrace particularly during inclement weather, with the potential to generate additional income for the business which may provide some economic and employment benefits. However, I have not been provided with any clear evidence on this or any other public benefits of the proposal. Accordingly, the limited weight that is attributable to the public benefits would not represent 'clear and convincing justification' for harm to or loss of significance of the designated heritage asset, as required by paragraph 200 of the Framework.
19. Accordingly, the proposal would conflict with Policy D4 of the emerging LP which, amongst other matters, supports proposals where they are designed to preserve or enhance the special character and appearance of the conservation area, as well as paragraphs 199 and 202 of the Framework which have been summarised above. It would also conflict with the design objectives in paragraphs 130 and 134 of the Framework which seek a high standard of design that is sympathetic to local character amongst other matters. There would also be conflict with Policy D1 of the emerging LP which states that proposals that fail to take account of York's special qualities, fail to make a positive contribution to the city, or cause damage to the character and quality of an area will be refused.

Conclusion

20. For the above reasons, having taken account of all relevant material considerations, I conclude that the appeal should not succeed.

F Wilkinson

INSPECTOR