



Appeal Decision

Site visit made on 5 April 2023

by Sarah Colebourne MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th April 2023

Appeal Ref: APP/R0660/D/22/3311503

The Old Smithy Flat, Brooks Lane, Middlewich, Cheshire, CW10 0JH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mizzi against the decision of Cheshire East Council.
 - The application Ref 22/1682C, dated 25 April 2022, was refused by notice dated 7 October 2022.
 - The development proposed is a first floor balcony.
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The plans clearly show that the proposal also includes an opening from the study onto the proposed balcony and I have considered the appeal on this basis.

Reasons

3. The main issue is the whether the proposal would preserve or enhance the significance, character and appearance of the Trent and Mersey Canal Kent Green Conservation Area (CA) and the setting of the grade II listed Trent and Mersey Canal, three locks and two intermediate Basins with Dry Dock off Upper Basin.
4. As the proposal is in a conservation area and within the setting of a listed feature, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). The development plan includes policies SE1, SE7 and SD2 of the Cheshire East Local Plan Strategy 2010-2030 (CELPS) (2017) and policy PS4 of the Congleton Borough Local Plan (2005) which together seek to ensure that proposals avoid harm to heritage assets, are appropriate to the character of the area and contribute positively to their surroundings. The National Planning Policy Framework has similar objectives.
5. The appeal premises comprise a residential flat above a repair garage, located within an industrial estate and adjacent to the Trent and Mersey Canal Kent Green Conservation Area (CA) and close to the grade II listed Trent and Mersey Canal, three locks and two intermediate Basins with Dry Dock off Upper Basin, to the south east of the site. The canal and the listed features have historic significance relating to its engineering by James Brindley and its former industrial use as the country's first long distance canal. They also have visual

significance due to the attractive setting of the grass edged towpaths and the many buildings and features alongside, including the listed locks, that retain much of their traditional character despite the proximity of the nearby industrial estate. The canal is well used by boaters and walkers and the appeal building can be clearly seen from both the canal, the towpath and one of the listed locks. Little remains of the appeal site's original character and the presence of a fire escape on the side elevation, air conditioning units and a commercial sign, together with the adjacent vehicle yard and chain link fencing alongside the towpath gives it a modern industrial character which makes little contribution to the character or appearance of the CA or the setting of the listed locks.

6. Permission was granted in 2020 (ref 20/2756C) for a small balcony sited above a door and within the building's L-shaped plan form. That proposal was amended significantly following the Council's and Canals and Rivers Trust's concerns regarding a larger original submission which projected around the corner of the building and forward of the side elevation. The approved balcony has not been implemented.
7. The current proposal would not project around the corner or forward of the main front wall or the side wall. However, its width across the front elevation would nearly double that of the approved balcony. Whilst the difference in size would not be clearly apparent when looking directly at the side elevation, when seen from the south east it would extend across almost the full width of that part of the building. Rather than being a small, barely noticed element of the building it would become a much more dominant feature. This would make it unduly prominent in those views and it would result in harm to the traditional character and appearance of the adjacent CA and setting of the listed locks.
8. During my visit, I saw no other buildings within the immediate area in such close proximity to the canal that have similarly large, detracting features. I have noted the appellant's reference to a larger balcony at The Big Lock public house, some distance to the north west of the appeal site. I am unaware of the planning status of that balcony but it seems to me that the circumstances are not directly comparable to this case given that building itself is larger and has a non-residential, leisure use that would attract visitors to the canal.
9. Whilst the harm in this case would be less than substantial, it carries considerable weight and the Framework requires that any harm to, or loss of, the significance of a designated heritage asset (including from development within its setting), should require clear and convincing justification. Where the harm is less than substantial, it should be weighed against the public benefits of the proposal including, where appropriate, securing its optimal viable use.
10. The appellant has said that the balcony is required to provide more private, amenity space for the residents of the flat and provide an undercover area for the washing and servicing of vehicles. A larger amenity space would be a private benefit and it does not, therefore, override the wider public harm that would be caused. Given that permission has already been granted for a smaller balcony which would provide some outside amenity space, I am not persuaded that a larger space is necessary for the viable use of the flat. Neither am I persuaded that a covered area for the washing and servicing of vehicles is necessary for the business or that it could not be provided elsewhere at the site with a lesser impact on the heritage assets.

11. I conclude then that the proposal would not result in public benefits sufficient to outweigh the harm that would be caused. It would fail to preserve or enhance the significance, character and appearance of the Trent and Mersey Canal Kent Green Conservation Area (CA) and the grade II listed Trent and Mersey Canal, three locks and two intermediate Basins with Dry Dock off Upper Basin.

Conclusion

12. For the reasons given above, I conclude that by reason of its size and scale, the proposal is contrary to the development plan policies referred to earlier and there are no material considerations that would outweigh this. The appeal should be dismissed.

Sarah Colebourne

Inspector