



Appeal Decisions

Site visit made on 25 September 2023

by E Worthington BA (Hons) MTP MUED MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 16 November 2023

Appeal A: APP/C2741/W/23/3319893

9 Castlegate, York, YO1 9RN

- 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 Burgsy's Ltd against the decision of City of York Council.
 - The application Ref 22/01721/FUL, dated 11 August 2022, was refused by notice dated 18 October 2022.
 - The development proposed is described as 'proposed drop down awning width 4.15m, projection when open 0.9m'.
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Appeal B: APP/C2741/Y/23/3319892

9 Castlegate, York, YO1 9RN

- 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 Burgsy's Ltd against the decision of City of York Council.
 - The application Ref 22/01722/LBC, dated 11 August 2022, was refused by notice dated 18 October 2022.
 - The works proposed are described as 'proposed drop down awning width 4.15m, projection when open 0.9m'.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Procedural Matters

3. The appellant's Final Comments to the appeal include new evidence in the form of a letter dated 2 September 2023 from Geoff Clifton. In accordance with the Procedural Guide: Planning appeals – England (updated 5 October 2023) this letter has not been accepted (although the rest of the Final Comments document has been taken into account). In any event, I confirm that the matters raised in Geoff Clifton's letter in support of the appeal scheme, have been raised by other parties and are considered in these appeal decisions. Additionally, late correspondence¹ in relation to the appeals has been received from both the main parties. This has not been accepted either.

¹ Email from the appellant dated 10 November 2023 and the Council's response dated 13 November 2023.

4. Since the proposal is in a conservation area and relates to a listed building, I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

5. The main issues are: whether the proposal would preserve a Grade II listed building, 9 and 11, Castlegate (Ref: 1259333) and any of the features of special architectural or historic interest that it possesses; and whether it would preserve or enhance the character or appearance of the York Central Historic Core Conservation Area.

Reasons

The listed building and the conservation area

6. Nos 9 and 11 were constructed as a single house in 1766. The building was subdivided into two properties and a staircase wing added in 1795. It was extended to the rear in around 1840 and has seen further 20th century alterations. Built of orange brown brick in Flemish bond over three storeys, the building's upper floor windows are arranged with a vertical emphasis, below a timber cornice and low parapet wall. It has a central decorative stone doorcase with round arched architrave and open pediment hood and a bold moulded stone cornice above the large 20th century window at No 9.
7. I appreciate that the building has been altered, including when it was subdivided and when the ground floor façade of No 9 was altered in the 1960s. These works included the introduction of a wide tripartite window with small pane glazing and the adjacent double doors (along with a new brick face and the replacement of the cornice). This has altered the historic design of the ground floor of No 9 and resulted in the loss of some historic fabric. The appellant also refers to changes in the historic form, dimensions and pattern of the fenestration to the front of the building on the upper floors.
8. Despite these alterations and the fact that Nos 9 and 11 are in separate ownership, their historic relationship remains legible and the listed building retains its overall appearance as a fine Georgian townhouse. This being so, I find the special interest of the listed building, insofar as it relates to these appeals, to comprise its elegant scale and proportions along with its distinctive yet understated architectural design and traditional features, all of which tell of its historic role and status as an attractive Georgian dwelling of some standing.
9. The appeal building is in the York Central Historic Core Conservation Area, and within Character Area 12 Kings Staith and Coppergate Centre. An area hugely varied in its architecture, it is generally characterised by brick buildings and includes a high concentration of listed buildings. The conservation area's historic and architectural significance is derived from York's long history as a settlement and its development over time.
10. The Conservation Area Appraisal indicates that prior to the building of Clifford Street in 1881, Castlegate was a main route into York's central area. Its genteel character has been maintained by the absence of traffic and the survival of the fine architecture of the 18th and 19th century buildings there. These provide a pleasing sense of enclosure along its relatively short and slightly curved length. As a substantial and pleasing Georgian building towards the northern end of Castlegate which sits within a cluster of listed buildings,

the appeal building at Nos 9 and 11 contributes positively to the character and appearance of the conservation area and its significance as a heritage asset in relation to these appeals.

The proposed development and works

11. The proposal seeks an awning to the front elevation of No 9. It would be of a traditional Victorian 'drop arm' design with an oiled hardwood box and front bar and a cloth/canvas cover and valance in a dark fabric. It would measure some 4.15 metres across and project around 90 cm from the face of the building when open, with a clearance height of 2.2 metres.
12. As set out above, the ground floor façade of No 9 was altered in the 1960s. The Conservation Officer indicates that these modifications, including the large 20th century opening on the ground floor and the bold cornice, are redolent of a shopfront and replaced a Victorian iteration of the building's frontage. Whilst they are not historic features or fabric, the arched window, brick lintel and detailed stone cornice do not appear unduly at odds with the overall character of the building and in my view sit comfortably there.
13. The awning box would be prominently sited in the limited space between the window's brick lintel feature and the stone cornice. When open, the awning would in part obscure both the lintel and the top section of the window in some views of the building. It would introduce a considerable and dominating addition to the frontage that would appear somewhat cramped between the window and the cornice and compete visually with those features. In my view, it would appear as a large and awkward feature at odds with the relatively refined and uncomplicated appearance of the building. It would draw attention away from its existing architectural features and detract from its traditional form and proportions. As such, I am not persuaded that the awning would be aesthetically pleasing in framing the window.
14. Whilst noting the Conservation Officer's view that it suggests a shopfront, I am mindful that the ground floor of the appeal property cannot be considered in isolation. When having regard to the listed building as a whole, I find that the proposal would result in an incongruous and unwelcome addition that would undermine its distinctive architectural form and character. It would detract from its existing features and the sense of the building's historic use as a high status dwelling and would erode further the ability to appreciate it as such. This being so, it would impair the building's historic legibility and significance and fail to preserve its special interest.
15. I appreciate that the proposal would involve minimum intervention and would not affect the building's historic fabric. It would also be reversible in that it could be removed without affecting the building's historic fabric. However these factors do not alter the identified harm that would arise from the awning whilst in place.
16. Turning to its effect on the conservation area, the awning would be prominently located and obvious in the street scene. This being so, and since I have found that the building contributes to the character and appearance of the conservation area, I therefore consider that it would cause some harm to its significance and would fail to preserve its character and appearance.

17. The appellant refers to examples of existing awnings and canopies across the city, and in the immediate vicinity of the appeal property, including those on listed buildings and in the conservation area. These include those nearby at No 2 Coppergate on the corner of Castlegate, and at Nos 1 and 3 Castlegate which form part of the same street scene as the appeal building. I acknowledge that the appellant has sought inspiration from existing awnings in the absence of any relevant design guidance from the Council.
18. However, I have seen no further details relating to these examples, including whether the host properties are listed and whether they were the subject of applications for either planning permission or listed building consent. As such, I cannot be sure that the circumstances that led to those existing developments are the same as in the case before me. Nor am I convinced that in all instances they represent development that should in any case be repeated. Accordingly, since it has not been demonstrated that they are comparable to the appeal proposal, (which I have in any event considered on its individual merits), they do not set a precedent that would justify the appeals before me.
19. Additionally, the appellant refers to the possibility of introducing commercial signage to the appeal property which would partially cover the brick header course. No further details have been provided and it has not been put to me that any such signage has been approved. I am also mindful that signage would not serve the same purpose as the appeal scheme, and that it could in any event be controlled by the Council. Accordingly this potential fallback position does not lend any weight to the appeal proposal.
20. Taking all these factors into account, I therefore conclude that the proposal would fail to preserve the special interest of the listed building and the significance of the conservation area. I give this harm considerable importance and weight in the balance of these appeals.

Heritage balance

21. The National Planning Policy Framework (the Framework) advises at paragraph 199 that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation. I find the harm to the heritage assets to be less than substantial in this instance, but nevertheless of considerable importance and weight. Paragraph 202 requires that less than substantial harm should be weighed against the public benefits of the proposal, including where appropriate, securing its optimum viable use.
22. The appellant refers to benefits to the business of shading the property from sunlight. The front window is large and the dining room is uncomfortably hot in the summer. The appellant refers to increases in temperatures year on year and to a temporary awning erected during the pandemic that cooled the restaurant appreciably. It is also stated that the opening of windows and doors is inadequate to reduce temperatures and offers no protection from direct sunlight. The awning would allow the temperature in the dining room to be more comfortable and the room to be shaded. It would also allow the business to extend and promote its range of take home goods using a display in the window. The appellant argues that these factors would support business use and viability and secure the building's optimum viable use.

23. I appreciate that Burgsy's is a popular award winning family run business that uses locally sourced products and contributes to the local economy and vibrancy of Castlegate. I also acknowledge that the current economic climate is challenging and understand that other restaurants nearby have closed.
24. That said, whilst I note that customers can't be seated in the window when temperatures are high, I have seen no substantiated evidence to indicate that the business is unviable in the absence of the awning, or that it would cease trading in the summer months if the appeals were not to succeed. Nor has it been explained or quantified how displaying goods in the window would enable a wider product range to be offered or lead to an increase in sales. Thus there is nothing to demonstrate to what extent the proposal would lead to increased customer demand for either dining or goods as suggested. Furthermore, it has not been explained what the financial effect of this would be in the context of the operation of the business overall.
25. I appreciate that the awning would be a low carbon approach to mitigating and adapting to climate change. It would provide a response to overheating and improve the resilience of the building (both for the appellant and future occupiers). It would also support the aims of national and local policy concerning climate change and resilience as well as reductions in carbon and greenhouse gas emissions.
26. However, I am not satisfied that other solutions that would have less impact on the heritage assets have been fully explored in the specific context of the appeal property. Whilst shutters are not favoured as they block daylight and limit trade, air conditioning has also been discounted on the basis of the Council's perceived resistance to air conditioning units at neighbouring properties. Notwithstanding this situation, the Council indicates that air conditioning units should not necessarily be ruled out at the appeal building simply on the grounds of its listed status.
27. Thus, whilst I accept that some benefits to the business would arise, they are limited by the factors set out above. Furthermore, on the basis of the evidence before me, I am not persuaded that the proposal is necessary in securing the optimum viable use of the heritage asset in support of its long term conservation. Accordingly, it has not been demonstrated that the continued viable use of the appeal property as a restaurant is dependent on the proposal. It remains that the appeal building has an ongoing commercial use, and I have seen no robust evidence to demonstrate that this would cease in the absence of the awning.
28. The appellant also refers to the benefits of reducing fire risk in terms of public safety and the fabric of the building. Despite the enclosed nature of the street and the tall buildings in Castlegate the appellant indicates that the sun shines down Friargate straight into the ground floor window of the appeal property during the hottest part of the day. Reference is made to a fire at No 7 Castlegate which was caused by intense sunlight that was deflected and focussed through glazing onto rubbish/waste/recycling including paper and cardboard. I am aware that this property also faces west and gets the afternoon sun, and have seen the evidence provided in this regard including the fire incident report. I also note the appellant's reference to a similar fire in East Dulwich and the other press articles that have been submitted in relation to this matter.

29. Nevertheless, I am conscious that not all of the examples given are directly comparable to the particular circumstances at play in these appeals. Notably, the fire at No 7 was in a store room on an upper floor. Whilst I acknowledge the effect of sunlight in terms of discolouring restaurant fittings and items in the window, in practical terms the presence of ignition sources would be less likely in a dining room. Thus, although a reduction in fire risk would be a public benefit of the proposal, I am also mindful that other precautions, including the avoidance of the presence of ignition sources, could be taken in this regard.
30. Taking all these factors into account, I find that the public benefits in this case are insufficient to outweigh the harm to the heritage assets that I have identified.
31. For these reasons the proposal would fail to satisfy the requirements of the Act and paragraph 197 of the Framework. It would be contrary to Policy D4 of the emerging Publication Draft York Local Plan (Emerging Local Plan) 2018 which concerns listed buildings and indicates that harm to an element which contributes to the significance of a listed building or its setting will be permitted only where this is outweighed by the public benefits of the proposal. The proposal would also conflict with Emerging Local Plan Policy D5 which is supportive of proposals where they preserve the special architectural or historic interest of listed buildings. However, the weight I afford to these emerging policies is limited by the fact that they remain in examination.
32. Furthermore the proposal would fail to support Policies GP1 and HE2 of the Development Control Draft York Local Plan 2005 (which is not formally adopted but has been approved by the Council for development management purposes). These policies respectively require proposals to be of a design that is compatible with neighbouring buildings and the character of the area, and in conservation areas to respect adjacent buildings and be of a design that is compatible with the character of the area and neighbouring buildings.

Other matters

33. The appellant refers to pre-application advice received from the Council which advised that Victorian style arm awnings were favoured. The appellant indicates that the applications were refused without discussion or the opportunity to provide detailed design drawings. That is a matter between the Council and the appellant. I confirm that I have determined the appeals based on the evidence submitted, and considered the proposal on its own individual merits, and made my own assessment of its impact.

Conclusion

34. For the above reasons, and taking all other matters raised into consideration, I conclude that both appeals should be dismissed.

E Worthington

INSPECTOR