



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/23/3320896

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 against the decision of City of York Council.
 - The application Ref 22/01374/FUL, dated 28 June 2022, was refused by notice dated 7 November 2022.
 - The development proposed is described as 'proposed (retrospective) glazed lightwell'.
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Appeal B: APP/C2741/Y/23/3320899

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 against the decision of City of York Council.
 - The application Ref 22/01375/LBC, dated 28 June 2022, was refused by notice dated 7 November 2022.
 - The works proposed are described as 'proposed (retrospective) glazed lightwell'.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Procedural Matters

3. The development/works have already been carried out and are the same as those which were applied for and shown on the submitted plans. I have dealt with the appeals on this basis.
4. Since the appeals relates to a listed building, I have had special regard to sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issue

5. The main issue is whether the scheme preserves 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.
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Reasons

The listed building

6. Nos 9 and 11 were constructed as a single house in 1766 and are built of orange brown brick in Flemish bond over three storeys. The building was subdivided into two properties and a staircase wing added in 1795. It was extended to the rear in around 1840 with a single storey pitched roof extension which spans the full width of the rear elevation (cross extension).
7. A further linear single storey extension was added along the northern edge of the plot in the 20th century and is likely to have replaced earlier additions there. More latterly consent was granted in 2018 for an additional single storey rear extension (orangery) which is attached to the 20th century single storey range towards the rear of the site. It was set back from the rear wall of the cross extension where there is a traditional sash window so as to maintain a small external open yard area.
8. I accept that there has been a good deal of change to the rear of the building and its floorplan. Nevertheless, the rear of the building and the juxtaposition of the various additions, including the remaining area of rear yard there, reflects its historic evolution. In particular, the 19th century cross extension is an important part of this historical layering.
9. This being so, I find the special interest of the listed building, insofar as it relates to these appeals, to comprise the form and layout of the rear of the building, as well as its architectural character including the remaining traditional features and historic fabric. These tell of its historic role and status as a Georgian building and of its adaptation over time.

The development and works

10. Whilst the description of the development and works refers to a glazed lightwell, in practical terms the scheme concerns the covering over of the appeal property's external rear yard area with a roof containing a skylight. This is already in place and has created an extension which has joined the building's historic cross extension with the later orangery. As a result the former yard area has been internalised within the building and is in use as part of the restaurant kitchen.
11. An area of flat roof (indicated on the plans to be glass reinforced plastic) has been created around a square skylight measuring 2 by 2 metres. This has a plasterboard upstand with a lead roof finish and a powder coated aluminium frame which incorporates flat double glazed safety glass. Associated roof support works have also taken place. The skylight projects some 25cm upwards from the top of the surrounding flat roof externally. Thus, rather than appearing as a discreet flat plate glass ceiling, it stands well proud of the roof and appears as a bulky and clumsy modern addition.
12. Furthermore, the scheme has infilled the only remaining open area of the rear yard. Whilst the orangery has already eroded a good deal of the historic extent of the yard, the modest area that was retained served to separate the orangery from the historic parts of the building. In doing so it allowed the legibility of the different phases of the rear additions to be understood, as well as affording an appreciation of part of the rear wall of the cross extension and its historic features and fabric.

13. As a result of the appeal scheme, any semblance of the historic yard has been lost, and the different elements at the rear of the building have been merged such that their individual identities and characters have been eroded. The remaining part of the rear wall of the cross extension has also been obscured from view externally. Whilst the scheme does not cut across or disturb the sash window, it has been internalised, as has the historic fabric of the rear elevation. Thus the cross extension and its historic features can no longer be read in conjunction with the frontage building, and the visual relationship between these elements of the building has been undermined.
14. The appellant considers the scheme to be a minimal intervention that is reversible. I appreciate that the kitchen fittings/appliances are free standing and can be removed and that the extraction system does not attach to any historic fabric. Nevertheless, I am mindful that works to support the roof have taken place, and since the roof attaches to the cross extension these are likely to have affected/obscured the building's historic fabric to some extent. Whilst these could be removed and repaired, that would not alter the harm that arises whilst the roof/skylight is in place.
15. Taking all these factors into account, I find that the scheme has undermined the building's layout as well as its architectural form and character. It has detracted from its historic features and further eroded the important sense of the building's historic layering and evolution and the ability to appreciate this. This being so, I consider that the scheme has further impaired the building's historic legibility and significance and fails to preserve its special interest. That the scheme has resulted in no changes to the street scene or important public views does not alter my conclusions. Listed buildings are safeguarded for their inherent architectural and historic interest irrespective of whether or not public views of the building can be gained.
16. The appellant refers to other glazed lightwells in York, including a Grade II listed building at 30 Coney Street. 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. Accordingly, since it has not been demonstrated that they are comparable to the appeal scheme, (which I have in any event considered on its individual merits), they do not set a precedent that would justify the appeals before me.
17. The rendering over of the rear elevation of the cross extension is also part of the reason for refusal for the scheme. The Council is concerned that the original exposed brickwork, window sill and segmental arch can no longer be appreciated. The appellant indicates that the wall had been rendered for many years before this was removed in 2008 to allow repairs, and although a new render finish was reapplied to create more hygienic surfaces for the kitchen, this has been recently removed. The appellant considers the reinstatement of the brickwork as an improvement to the heritage asset that contributes to its significance.
18. I have seen no response from the Council in relation to this matter, but am conscious that the exposure of the brickwork could have been undertaken in the absence of the appeal scheme. As such, any benefits that have arisen in this regard are insufficient to outweigh the harm to the significance of the listed building that I have identified in relation to the roof/skylight.

19. Taking all these factors into account, I therefore conclude that the scheme overall fails to preserve the special interest of the listed building. I give this harm considerable importance and weight in the balance of these appeals.

Heritage balance

20. 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 asset 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.
21. The appellant argues that the additional kitchen floorspace that has been created by the appeal scheme is necessary for the operation of the business and its future viability. I understand that the orangery was permitted for a different user of the building (gelateria) that did not require cooking facilities. The appellant argues that it is too small for a standard restaurant kitchen and provides insufficient back of house floorspace in relation to the amount of front of house floorspace.
22. The expanded kitchen space allows the optimal running of the kitchen. I note that the zoning, operation and flow of the kitchen are designed in line with food safety regulations and best practice. Preparation of food takes place in stages from the rear to the front of the kitchen and there are separate areas for different types of food preparation as well as a separated area for dish washing. Food is passed through the sash window whilst returning plates enter the rear of the kitchen. This minimises the need for waiting staff to enter the kitchen which prevents injuries and accidents and supports food safety.
23. I have had regard to the submitted Food Safety Impact Assessment which concerns the implications of the loss of the roofed area and appreciate that the current kitchen layout and arrangements have contributed to the business being awarded the highest Food Standards Agency Food Hygiene Rating of 5.
24. In terms of an alternative layout/location for the kitchen, I am aware that the restaurant relies on bottled drinks which in the absence of a cellar are stored in the building's rear extension along with freezers and a fridge. I also acknowledge that any revised arrangements to the floorplan would be affected by a number of factors including the need to maintain customer seating, to provide an adequate extraction system, and to preserve the historic parts of the building, as well as to ensure fire safety.
25. I accept that in the absence of the appeal scheme the space available in the kitchen would be reduced and the sash window could no longer be used for passing food. Accordingly the zoning, operation and flow of the kitchen would be affected. Even so, whilst the ground floor of the appeal building has a somewhat awkward layout, the floorplan has already been extended to reflect more modern day requirements and its commercial use. I have not been made aware of the minimum space requirements to achieve the satisfactory zoning, operation and flow of the food preparation areas associated with the appellant's business. Nor has the amount of necessary storage space been quantified.

26. Thus, on the basis of the evidence before me and my own observations on site, I am not persuaded that an alternative satisfactory arrangement of the ground floor of the building to provide the required size and layout of kitchen (that would meet the relevant safety and hygiene requirements), can necessarily be ruled out.
27. In terms of the dining experience offered, the appellant argues that the current arrangements provide an interesting and engaging environment for customers, which allows them to watch food preparation and interact with kitchen staff whilst taking in the historic building. However, these are benefits which are not necessarily precluded if the appeals were to be unsuccessful. I see no reason why pleasant surroundings and a positive eating experience could not be provided in the absence of the appeal scheme.
28. 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 and the city centre. Paragraph 81 of the Framework states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Paragraph 93 of the Framework seeks to ensure that services are able to develop and modernise, and are retained for the benefit of the community. I also acknowledge that the current economic climate is challenging.
29. That said, whilst appreciating the constraints of the building, it has not been explained what the financial effect of the removal of the roof/skylight would be in the context of the operation of the business overall. I acknowledge that there would be costs involved in reinstating the yard both in terms of undertaking the necessary works to remove the roof and make good the orangery, and in terms of the need to temporarily close the restaurant whilst the works take place (and the resultant loss of revenue).
30. There would also be costs associated with the consequential works referred to by the appellant including the relocation of kitchen fittings/equipment and the provision of drainage. That said, I note that the drainage of the yard area was required as part of the permission for the orangery. However, the drains were not provided at that time since the appellant installed the roof/skylight. Whilst appreciating that the orangery is now in place and the practical implications this has, I am conscious that the drainage of the area was always anticipated. I have seen nothing to suggest that it would necessarily be unsupported by the Council or harmful to the listed building.
31. Therefore, even in this context, it remains that I have seen no substantiated evidence to indicate that the business is unviable in the absence of the appeal scheme, or that it would cease trading if the appeals were not to succeed.
32. Accordingly, whilst I accept that there are some benefits to the business arising from the appeal scheme, they are limited by the factors set out above. Therefore, on the basis of the evidence before me, I am not persuaded that the scheme is necessary in securing the optimum viable use of the heritage asset in support of its long term conservation. Thus, it has not been demonstrated that the continued viable use of the appeal property as a restaurant is dependent on the appeal scheme. 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 roof/skylight.

33. Any improvements to the heritage asset itself are also public benefits of the proposal. The appellant states that the small enclosed north facing rear yard area was dark and damp. As well as being a trap for leaves and animals, the walls were decaying as a result of being unsheltered. The appeal building has suffered decay elsewhere and parts of it have been repaired and rebuilt. Reference is also made to the condition of the courtyard between Nos 9 and 11.
34. I accept that by internalising the area the appeal scheme has removed the rear wall of the cross extension from the effects of the elements (including the sash window and the now exposed brickwork). However, I have seen no substantiated evidence to demonstrate that prior to this it was necessarily failing or at risk. I am also mindful that historic buildings by their nature are likely to require repair and maintenance. Moreover, I have seen nothing to demonstrate that other less invasive alternative measures to protect the historic fabric of the listed building were considered or ruled out.
35. As set out above, any improvements to the significance of the building arising from the reinstatement of the brickwork to the rear wall of the building are small and not necessarily dependant on the appeal scheme. Therefore, taking all these factors into account, the public benefits associated with any improvements to the heritage asset itself are small.
36. The appellant also refers to public benefits in terms of reducing noise and disturbance to the occupiers of nearby residential properties (some of which have windows less than 3 metres away). Noise and disturbance is a recognised issue in the area. Neighbouring premises' licence conditions preclude the use of outdoor areas and planning conditions at the appeal property restrict opening hours and amplified music. I am also aware that the emerging Publication Draft York Local Plan 2018 (Emerging Local Plan) seeks to protect the amenity of occupiers including from noise disturbance.
37. Expert acoustics advice has been provided which refers to breakout noise escape from the restaurant and the kitchen. In particular it is indicated that this arises from the single glazed sash window to the dining area (which is difficult to seal) as well as from staff passing through the area from the kitchen to the restaurant. The appellant refers to noise arising from doors opening and closing, crockery, talking, music and cooking.
38. I acknowledge that the roof/skylight is likely to have reduced noise emissions from the appeal property. The acoustic reports indicates this reduction to be in the region of some 15 decibels. However, it is not explained what baseline this reduction is taken from. I have seen nothing to suggest that the noise emanating from the appeal property in the absence of the roof/skylight would be likely to be of such a level as to be harmful to the living conditions of nearby occupiers. Whilst I note that no noise complaints have been received since the appeal scheme has been in place, nor have I seen any noise complaints relating to the use of the appeal site prior to its construction.
39. Thus, although a reduction in potential noise and disturbance can be regarded as a public benefit of the scheme, there is no evidence before me to suggest that there was a particular issue at the appeal property relating to the rear yard area. I am also conscious of the small size of the yard and the arguments made by the appellant as to its limited practical useability. These factors are also likely to limit sources of noise generation. Furthermore I have seen

nothing to indicate that other alternative and less harmful noise reduction measures have been considered. With all these matters in mind, in my view the public benefits associated with any reduction in noise and disturbance are very limited.

40. The former yard area is not externally accessible and is seen from inside the restaurant. The appellant regards it to be unsuitable for storage (including of bins), and therefore under-utilised. Paragraph 120 of the Framework seeks to promote and support the development of under-utilised land and buildings including building on or above service yards. Emerging Local Plan Policy R3 also promotes the re-use of existing units to create additional floorspace. However this is subject to historic building and conservation considerations. Besides, the scheme's contribution to increasing floorspace and making effective use of land would be modest given the small size of the area in question.
41. Other public benefits are put forward by the appellant. The appeal scheme provides an improved ground floor layout to the building and increased connectivity between the rooms. The skylight allows ventilation, improved air flow through the restaurant and a more pleasant dining and working environment. It also improves the building's insulation and energy efficiency. However, these benefits could be achieved through alternative less harmful measures and this tempers the weight to be afforded to them. In terms of the environmental benefits, I find that the scheme's contribution to carbon reduction and tackling climate change is small given its limited scale.
42. Reference is made to increased security and reduced points of entry for break ins at the appeal property. However, given the courtyard is effectively landlocked with no external access I am not persuaded that the appeal scheme has resulted in any great improvements in this regard. I am also mindful that any such benefits are for the most part private rather than public.
43. Additionally it is argued that the scheme reduces the risk of fire by separating the kitchen from the historic part of the building and using a sprinkler system. However, in practical terms the appeal scheme has resulted in the kitchen being located closer to the cross extension than was previously the case. As such, I cannot see that any discernible public benefits arise in this regard.
44. Taking all these matters into account, I find that even when considered together, the public benefits in this case are insufficient to outweigh the harm to the heritage asset that I have identified.
45. For these reasons the scheme fails to satisfy the requirements of the Act and paragraph 197 of the Framework. It is also contrary to Policy D5 of the Emerging Local Plan which is supportive of proposals where they preserve the special architectural or historic interest of listed buildings. However, the weight I afford to this and the other emerging policies referenced above is limited by the fact that they remain in examination.
46. Policies GP1 and HE2 of the York Development Control Draft Local Plan 2005 (which is not formally adopted but has been approved by the Council for development management purposes) are also cited on the decision notice. However, since these policies refer more generally to the local environment and the character of the area, including historic locations, they are not directly

relevant to the reason for refusal in this case which refers to the impact of the scheme on the appeal property only.

Other matters

47. The appellant indicates that enquiries to the Council regarding a roof/skylight to the yard have taken place over a number of years and have been favourably received with no fundamental concerns raised. I have had regard to the various documents provided by the appellant, including those from the conservation and enforcement officers in relation to the appeal scheme.
48. That said, there is no dispute between the parties that the orangery was originally designed to be attached to the cross extension, or that it was reduced in extent at the request of the Council (to ensure it was separated from the historic part of the building with part of the yard retained). Besides, whilst I appreciate that there has been inconsistency in the Council's advice, matters of judgement are at play and this is not a reason to allow development or works that I have concluded are harmful. I confirm that I have determined the appeals based on the evidence submitted, considered the scheme on its individual merits, and made my own assessment of its impact.
49. The appeal property is in the York Central Historic Core Conservation Area. The effect of the scheme on the character and appearance of the conservation area is not a reason for refusal and no concerns are raised in this regard by the Council. However, the absence of harm in this regard counts neither for, nor against the scheme.

Conclusion

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

E Worthington

INSPECTOR