
Appeal Decision

Site visit made on 19 June 2024

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 29 July 2024

Appeal Ref: APP/C2741/W/23/3324215

40 Walmgate, York YO1 9TJ

- 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 Silesu against the decision of City of York Council.
 - The application Ref 22/01520/FUL, dated 15 July 2022, was refused by notice dated 5 January 2023.
 - The development proposed is the change of use of footway to form seating areas to front and side, installation of awning to front and 2 no. additional awnings to side and installation of folding glass doors to front.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the scheme on highway safety and the convenience of highway users and the effect of the scheme on the character and appearance of the Central Historic Core Conservation Area (the CHCCA).

Reasons

3. The application seeks retrospective planning permission for a series of changes carried out to Paradiso del Cibo, an Italian restaurant at No 40 Walmgate on the corner of Dixon's Yard. Whilst the appellant states that some changes are not now being pursued and the side awnings have been removed, this appeal decision deals with all the elements in the original application.

Highway safety and convenience

4. The scheme includes an external area of seating on the Walmgate footway in front of the restaurant, effectively an extension of the internal seating area when the folding front glass doors are open, together with two areas on the Dixon's Yard footway next to the blank side elevation of the premises.
5. In both cases the seating areas project into the footway used by pedestrians. The footways are perhaps 2–3 m wide, and as shown on drawing DP(0)001, the seating areas encroach over most of their width, leaving little space for pedestrians to pass by, still less to pass one another, forcing them to step off the footway into the road. This would be hazardous, and particularly so for those with buggies and wheelchair users.
6. Both front and side seating areas would therefore increase highway safety risks and inconvenience highway users contrary to Paragraphs 115 and 116 of the

National Planning Policy Framework (NPPF) which preclude development that would have an unacceptable impact on highway safety and seek to prioritise pedestrian movements.

Character and appearance

7. This stretch of Walmgate, designated as part of the CHCCA, is lined on both sides by a variety of two and three storey brick buildings built hard up to the footway. Whilst some may date back earlier, most have a Georgian/Victorian appearance with retail and other commercial uses at ground floor level. The street scene is characterised by 19th century timber shopfronts with stallrisers a consistent feature. The previous shopfront at No 40, whilst painted bright orange, was of this type. In stark contrast, the three section folding doors and matching front door that have been installed are fully glazed to ground level, an unduly discordant and jarring intervention in the historic street.
8. There are examples of full depth glazing in Walmgate, at Student Castle and Hotel Indigo, but these relate to modern buildings with wide frontages further along the street where there is a shift in character away from the more historic narrow frontage buildings near the appeal site. Neither appellant nor Council refer to a further example at Lounge Forty Six on the opposite corner of Dixon's Yard. This may be a recent change but, whether authorised or not, does not justify a shop front at No 40 so markedly different from the style that predominates in the street.
9. The scheme also includes a retractable awning on the front elevation of the property above the folding doors and two on the side elevation. Whilst there is one awning to the side further back, permitted in December 2012, the side awnings would appear an odd feature poorly related to the building and would have no function in the absence of tables and chairs.
10. As with full depth glazing, front awnings are not a characteristic of the street. The appellant can only point to two examples, Noodle Lane at No 74 and the feature at No 88. The latter is not so much an awning as a projecting fascia, and forms part of Hotel Indigo, a modern building located well away down the street. Whilst the awning at No 74 is comparable to that installed at No 40 this is unauthorised and about 100 m away. It does not justify another jarring non-traditional awning in the historic street scene.
11. The folding glass door shopfront and awnings therefore significantly harm the character and appearance of the CHCCA contrary to the legislative duty to preserve such areas and NPPF Paragraphs 205-8. These give great weight to conservation of heritage assets, require a convincing justification for harm and preclude less than substantial harm unless this is outweighed by public benefits, none of which arise in this case.

Conclusion

12. Having regard to the above the appeal should be dismissed.

David Reed

INSPECTOR