



Appeal Decisions

Site visit made on 18 December 2018

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2019

Appeal A Ref: APP/M2325/C/18/3206089

Land at 84 Clifton Street, Lytham St Annes, Lancashire as shown edged red on the plan attached to the notice

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Charles Furnell against an enforcement notice issued by Fylde Borough Council.
 - The enforcement notice was issued on 31 May 2018.
 - The breach of planning control as alleged in the notice is a glazed extension creating an enclosed area forward of the elevation of the building facing Clifton Square.
 - The requirements of the notice are either (a) remove the unauthorised structure described in section 3 of this notice and reinstate the resultant opening in the Clifton Square elevation with a series of timber framed vertically proportioned windows to reflect the original windows on the Clifton Street elevation of the building or (b) make alterations to the unauthorised structure so all remaining elements of it comply in all respects with planning permission 17/0971 granted by the Council on 7 February 2018.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/M2325/W/18/3206090

84 Clifton Street, Lytham St Annes FY8 5EN

- 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 Charles Furnell against the decision of Fylde Borough Council.
 - The application Ref 18/0284, dated 5 April 2018, was refused by notice dated 31 May 2018.
 - The development proposed is the formation of a canopy to the Clifton Square elevation with a permanently glazed roof and balustrade around and retractable glazed screens to the front and sides.
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Decisions

Appeal A Ref: APP/M2325/C/18/3206089

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/M2325/W/18/3206090

2. The appeal is dismissed.

Procedural Matters

3. In respect of Appeal B, I have used the description of development from the Council's decision notice and the appellant's appeal form as this more accurately describes the planning application development.
4. Following the issue of the enforcement notice (Appeal A) and the refusal of planning permission (Appeal B), the Fylde Local Plan to 2032 (LP) has been adopted. The LP replaces the Fylde Borough Local Plan (As altered October 2005). Hence, Policy EP03 of the Fylde Borough Local Plan (as altered October 2005) is no longer relevant for the purposes of determining the appeals.
5. In respect of the main planning issue, the relevant policies in the LP are policies ENV 5 (Historic Environment), GD1 (Settlement Boundaries) and GD7 (Achieving Good Design in Development). I do not consider that Policy EC5 (Vibrant Town, District and Local Centres) of the LP is directly relevant to the main issue.
6. In addition to the above, in September 2018 the Council adopted the Supplementary Planning Document: Canopies and Glazed Extensions on Commercial Forecourts - A Design Note (SPD). I have taken this SPD into account as part of the determination of this appeal.
7. The National Planning Policy Framework was revised on 24 July 2018 (the Framework) and this post-dates the enforcement notice and the refusal of planning permission. I have taken the Framework into account as part of the consideration of the appeals.

Ground (a) appeal and the Section 78 appeal

8. The appeal property is being used as a bar/restaurant and is called The Deacon. It was originally used as a bank and is an imposing and prominent traditional building located on the corner of Clifton Square and Clifton Street. It is a locally listed heritage asset and falls within the Lytham Town Centre Conservation Area (CA).
9. In respect of the enforcement notice, the appellant has appealed on ground (a) of s174 of the Town and Country Planning Act 1990 (as amended) which is that planning permission ought to be granted in respect of any breach of planning control which may be constituted by the matters stated in the notice. The breach of planning control is a glazed extension creating an enclosed area forward of the elevation of the building facing Clifton Square. Planning permission was sought for the same development in April 2018 and the reasons for refusal of the planning application essentially correspond with the reasons for issuing the enforcement notice. Hence, the main issue in respect of both Appeal A and Appeal B is whether or not the development preserves or enhances the character or appearance of the CA.
10. As part of my site visit, I was able to walk the CA and in particular to consider the development which is the subject of the appeals in the context of the character and appearance of the CA. This part of the CA includes a number of traditional buildings which differ in terms of the use of materials, but where there is generally a uniformity of height. Whilst there are some more modern buildings within the CA, there are nonetheless a number of older and more traditional buildings many of which include attractive decorative design

features including the use of pitched roofs and flat front elevations which meet the more simple main roofs.

11. Clifton Square is a busy and vibrant area and would probably be best described as being in the heart of the town centre. Whilst there are a few exceptions, as referred to by the appellant, in the main the canopies to the front of the commercial properties are open sided and have light-weight and thin frames some of which include traditional decorative brackets. Overall, this ensures that most of the canopies appear subservient in scale to the more imposing and characterful buildings behind. The aforementioned attributes add positively to the overall character and appearance of the CA as a whole.
12. I note that there is an extant planning permission in place for a canopy to be attached to the appeal building¹. This is a material consideration of considerable weight in decision making terms. However, unlike the extant planning permission, the appeal development includes glazed sides (including the use of motorised glazed retractable screens) and hence parts of the frame appear bulkier/wider and there is an absence of ironwork decorative features.
13. I can fully understand why the appellant has opted for an extension which can be fully enclosed. This means that the space can be used at all times for dining purposes, particularly when there is inclement weather. I am also aware of the appellant's comment about licensing restrictions which he says does not allow the use of outdoor areas after 22.00hrs. I do not doubt that more frequent use of the extension for dining purposes would have the potential to generate additional income for the business and hence that there would be some economic and employment benefits if the development were to be allowed. In considering this matter, I note the information provided in the appellant's appeal statement (i.e. appendix 4: Economic Benefits Infographic) which details how The Deacon contributes to the local area in employment, investment and local business rate terms.
14. However, and notwithstanding the above contributions, I have not actually been provided with any objective or persuasive evidence from the appellant that the implementation of the more sympathetic and acceptable extant planning permission would render the business unviable in financial terms. I note the comment made by the appellant that without the unauthorised development the "*business would likely be unable to continue*", but this comment is not reasonably substantiated.
15. The above identified public benefits have to be weighed against the impact of the appeal development upon the host property as well as the wider CA. The appeal development does not look like a canopy. Instead it looks like a substantial and solid extension due to its glazed sides. Owing to its thick frame, and more enclosed appearance, it has the effect of significantly detracting from the more open and light weight appearance of most of the other canopies in the area. Furthermore, it appears dominant and bulky when read against the more traditional building behind and detracts significantly from the open appearance of the vibrant Clifton Square.

¹ Planning permission 17/0971 approved on 14 March 2018 for the erection of a glazed canopy to the Clifton Square elevation including a balustrade around and alteration of existing window openings to allow access to the extension/outdoor covered seating area

16. I acknowledge that parts of the original building can still be seen through the glazing, but this does not overcome my concerns relating to the thickness of the frame or its overall dominant appearance in the street-scene. Furthermore, enclosed front extensions are not prevalent in the CA as a whole: light weight and simple canopies are mainly seen in the locality.
17. I note that there is a front extension at No 7 Dicconson Terrace which is in close proximity to the site. However, this is unauthorised and an enforcement notice appeal² (ground (a)) has recently been dismissed for this harmful development. I do acknowledge the appellant's comment that unlike No 7 Dicconson Terrace, the appeal building is not Grade II listed. However, I have determined this appeal on its individual planning merits and in respect of the impact of the subject development upon the character and appearance of the CA.
18. For the collective reasons outlined above, I do not consider that the development preserves or enhances the CA as a whole. Whilst there would undoubtedly be some economic/employment benefits associated with the retention of the appeal development, this is not of sufficient magnitude to outweigh the identified harm caused to the character and appearance of the CA. The latter is a matter to which I afford considerable weight in decision making terms. Whilst the harm to the CA would be less than substantial in the context of paragraph 196 of the Framework, none of the identified public benefits outweigh the less than substantial harm to the CA.
19. I conclude that the development does not accord with the design and conservation aims of Policies GD1, GD7 and ENV 5 of the LP, the SPD and the Framework. In reaching this conclusion, I have also taken into account the comments made by Civic Voice and the occupier of No 9 Dicconson Terrace.
20. I note the supportive comments made by Councillor Raymond Thomas and his concerns about The Deacon going out of business and such an impact upon tourism and the local economy. However, I do not have any actual evidence that compliance with the requirements of the notice would result in The Deacon going out of business. Furthermore, and, in any event, the harm that has been caused to the CA by the breach of planning control is considerable. Therefore, the comments made by Councillor Raymond Thomas do not outweigh or alter my overall conclusion on the main issue.
21. For the reasons outlined above, the ground (a) appeal (Appeal A) fails and Appeal B shall be dismissed.

Ground (g) appeal

22. The appeal made on ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
23. The notice gives the appellant a period of six months to comply with the requirements. The appellant says that a period of twelve months is needed as the extension is an "*established use and is being utilised daily*". I acknowledge that the extension is currently in use. However, the appellant has not actually provided any evidence to substantiate the view that more than six months is needed to comply with the requirements of the notice. On the evidence that is before me, I am satisfied that six months is an acceptable compliance period.

² Appeal Ref APP/M2325/C/18/3203663

24. For the reasons outlined above, the ground (g) appeal fails.

Conclusions

Appeal A Ref: APP/M2325/C/18/3206089

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal B Ref: APP/M2325/W/18/3206090

26. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

D Hartley

INSPECTOR