



Appeal Decision

Site visit made on 7 November 2018

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2018

Appeal Ref: APP/M2325/C/18/3203663

Land at 7 Dicconson Terrace, 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 Anna Maximus Ltd against an enforcement notice issued by Fylde Borough Council.
 - The enforcement notice, numbered EN/17/0430, was issued on 10 April 2018.
 - The breach of planning control as alleged in the notice is that works have been undertaken to enclose the front terrace of the property with those works involving the erection of a front canopy over the whole of the terrace and associated balustrades around its edges.
 - The requirements of the notice are either (a) remove the unauthorised canopy and balustrades, or (b) make alterations to the unauthorised works so that they comprise only (i) a canopy that complies in all respects with planning permission 15/0533 granted by the Council on 14 January 2016 and (ii) a glazed balustrade of no more than 1500 mm in height (measured from the floor level of the terrace in front of the building) glazed entirely with clear glass and without any signage or advertising that complies in all respects with planning permission 15/0452 granted by the Council on 2 September 2015.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.
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Decision

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.

Procedural Matter

2. Since the enforcement notice was issued, the Council has adopted the Fylde Local Plan to 2032 (LP). The LP replaces the Fylde Borough Local Plan (As altered October 2005). Hence, Policies EP03 and EP04 of the Fylde Borough Local Plan (as altered October 2005) are no longer relevant for the purposes of determining the appeal. In respect of the main issue, the relevant policies in 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) is directly relevant to the main issue.
3. 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.

4. The National Planning Policy Framework was revised on 24 July 2018 (the Framework) and this post-dates the enforcement notice. I have taken the Framework into account as part of the consideration of the deemed planning application below.

Appeal on ground (a) and the deemed planning application

5. The appeal has been made 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.
6. The breach of planning control is the erection of a front canopy with balustrades. The appeal building is mid-terraced and is used as a restaurant called Spago. It is a Grade II listed building and falls within the Lytham Town Centre Conservation Area (CA). The main issue is whether or not the appeal works preserve the Grade II listed building, or any features of special architectural or historic interest that it possesses and whether or not the appeal development preserves or enhances the character or appearance of the CA.
7. The Grade II listed building dates back to 1825. It is positioned within a predominantly two storey brick terrace of properties with some of the buildings also including projecting bay windows. All of the properties include architecturally impressive window and door surrounds.
8. I have been able to view the appeal site/building prior to the breach of planning control. The photograph from Lytham Heritage Group clearly shows that the building is symmetrical, with a wide ground floor entrance breaking forwards slightly and containing a round-headed doorway with a door case of Tuscan semi-columns and a fanlight with radiating metal tracery; two large C20 segmental bow-windows with glazing bars to the ground floor front elevation; three 8 over 8 pane sashes to the upper floor, and a small 3 over 3 pane attic window in the imposing and grand pediment.
9. Prior to the breach of planning control, the land immediately to the front of the building was open and undeveloped, a characteristic which exists for almost all of the other properties in the rest of Dicconson Terrace. Taken as a whole, the above attributes add considerably to the architectural interest and significance of the listed building and this part of the CA. There is no doubt that the appeal building contributes positively to the traditional character and appearance of this part of the CA.
10. I am aware that planning permission has been approved for both a glass balustrade¹ and canvas canopies² at the appeal property. These relatively recent planning permissions are material planning considerations of considerable weight in decision making terms. Indeed, the requirements of the enforcement notice give the option of compliance with the aforementioned planning permissions.

¹ 15/0452 Erection of 1.5 metre high glass balustrade and facing of existing kerb upstand with honed York Stone to replace existing rendered dwarf wall and railings around the front terrace area – approved 2 September 2015.

² 15/0533 Erection of post-mounted canvas canopy over front forecourt dining area – approved 14 January 2016.

11. Whilst I do acknowledge that the Council has previously approved planning permission for glass balustrades and canopies, I note that in making these decisions the Council very carefully ensured that the balustrades were clear glass and low in height and that the canopies were light weight, retractable, included appropriate decorative features and did not extend across the entrance doorway/pathway. Indeed, the approved development included two canvas canopies either side of the entrance doorway thereby breaking up the overall mass of development. Overall, and recognising that there are some exceptions, the approved development is more reflective of the most of the other canopies in the CA which are light weight, do not include solid sides and where the facades of the buildings are visible to the passer-by.
12. Given the height of the approved clear glass balustrades and the overall position, extent and design of the approved canopies, I am satisfied that the consented works would preserve the Grade II listed building and its setting. Indeed, had the planning permissions been implemented, I am satisfied that the aforementioned and important listed building architectural features would have remained visible in the street-scene and that the character and appearance of the CA would be preserved.
13. In contrast to the above, the appeal development has the appearance of a more dominant and imposing front extension. The development includes a more extensive roof(s). The connecting roof over the entrance pathway is higher than the roof(s) of the main canopies and appears discordant and clumsy to the passer-by. This represents an unacceptable departure from the simpler and more slender design solution previously approved by the Council.
14. Owing to the use of enclosed glazed sides (one side also includes the use of obscure glazing which is particularly harmful and the hedge does not fully screen it), coupled with the use of some thick frames/structural bars and a number of cross members, and an overall absence of sympathetic architectural detailing, I consider that the appeal development looks out of place and unacceptably interferes with and substantially obscures the strong symmetry and balance of the appeal building's facade. In fact, the development unacceptably erodes the architectural composition of the facade from which a considerable degree of its special interest and significance derives. I find direct conflict with the SPD which states that "*the canopy shall not obscure any key design or architectural features to the host building*".
15. Much of the front facade of the building is now obscured from view to the passer-by and unlike the approved development which would be light weight and subservient in scale, the appeal development appears dominant and imposing on the building. It is seen as a very solid addition to the front of the otherwise more open and undeveloped forecourts to the terrace of properties. The difficulty in seeing parts of the front facade of the building is compounded to some extent by the fact that in parts the glazing includes etching. In this regard, I find direct conflict with the SPD which states that "*the canopy shall retain the open character of the frontage and not result in a closed space, such that it assumes the form of a projecting conservatory*".
16. When considered as a whole, the appeal development undermines the building's contribution to the street-scene to the detriment of the character and appearance of the CA. Bearing in mind the duties arising from the Planning (Listed Buildings and Conservation Areas) Act 1990, these considerations lead

me to the inescapable conclusion that the development/works preserve neither the listed building and its special interest, nor the character and appearance of the CA.

17. The appellant has referred me to examples of other canopies/front extensions in the CA. I note that some of the developments referenced by the appellant do not actually have the benefit of planning permission. Indeed, No 84 Clifton Street is also the subject of an enforcement notice and both this and a regularising planning application have been appealed³. In respect of 62A Clifton Street, the Council say that this development will "*likely be the subject of enforcement action in the event that it is not removed willingly*". I do acknowledge that the No 4 Dicconson Terrace (Capri), which is also a listed building, includes a front canopy. I do not know the exact circumstances which led to this development being approved. However, it cannot be directly compared to the appeal development/works as it is a much more open and slender structure with no glazed balustrades to the front. Furthermore, this structure does enable more of the front facade of the listed building to be viewed from the street.
18. Whilst I do accept that there are other front canopies in the street/CA, I do not consider that the appeal development suitably reflects the more light weight and relatively unenclosed structures that exist in most parts of the CA. Furthermore, I have identified that harm has been caused to the listed building. Therefore, none of the examples of other canopies/front extensions referred to by the appellant outweigh the identified harm that has been caused to the CA and the appeal listed building.
19. I acknowledge that the breach of planning control is likely to enable more extensive use of the forecourt than the permitted scheme which would not have fully enclosed sides. Indeed, I do not doubt that the more enclosed/solid nature of the development means that dining can take place more regularly particularly during inclement weather. This in turn could increase turnover for the business, and in this sense would be an economic benefit. However, I have not actually received any objective evidence from the appellant to substantiate the view that the business would be unviable if the appeal development/works were removed or indeed were replaced with development/works approved in 2015/16 respectively.
20. In addition to the above, the appellant says that it is not possible to implement planning permission 15/0533 due to "*wind loadings*". I have no objective evidence before me to substantiate this view, but, in any event, this would not justify allowing harmful development. I agree with the Council, that had this been an issue then the appellant could have first discussed the possibility of a different and more sensitive design solution taking into account the character and appearance of the CA and the special architectural or historic interest of the listed building.
21. I have concluded that the works and development have failed to preserve the listed building and the character and appearance of the CA. Whilst due to the extent of these effects I consider that this causes less than substantial harm to the significance of these designated heritage assets, their conservation is nonetheless a matter which the Framework anticipates (at paragraph 193) should carry great weight. Moreover, that harm should be balanced against

³ Appeal Ref Nos APP/M2325/C/18/3206089 & APP/M2325/W/18/3206090

the public benefits of a proposal (para 196). In this case, there are no identified public benefits accruing from the development and works that are of sufficient weight to tip the balance in its favour of allowing the appeals when set against the clear heritage harms. For above-given reasons, the development/works do not accord with the conservation and design aims of Policies EN5, GD1 and GD7 of the LP; the SPD and the Framework. In reaching this conclusion, I have taken into account the supportive comments made by the occupier of the Old House, the comments of which have already been addressed in the reasoning above.

Conclusion

22. 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.

D Hartley

INSPECTOR