



Appeal Decision

Hearing held on 18 March 2008
Site visit made on 18 March 2008

by **Francis Farrimond DipTP MRTPI**

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

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Decision date:
31 March 2008

Appeal Ref: APP/C2741/F/07/2052340 40 Goodramgate, York, YO1 7LF.

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Simon Evans against a listed building enforcement notice issued by City of York Council.
- The Council's reference is 06/00094/LBUILD.
- The notice was issued on 28 June 2007.
- The contravention of listed building control alleged in the notice is the installation of a first floor patio, fencing, kitchen flue, access door and steps to the patio.
- The requirements of the notice are (1) Remove from the building the first floor patio, fencing, kitchen flue, access door and steps to the patio. (2) Make good any works necessary to restore the building to the condition that prevailed immediately before the carrying out of the unauthorised works.
- The period for compliance with the requirements is 3 months.
- The appeal is made on the grounds set out in section 39(1) (c) (d) (e) & (g) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Decision

1. I dismiss the appeal and uphold the listed building enforcement notice. I refuse listed building consent for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Site & surroundings

2. The appeal site is part of a mid-terrace property on the west side of Goodramgate, a historic street, formerly a main thoroughfare from the city centre, through Monk Bar, to the north. The building was originally a house. It is currently divided into a retail shop (No 38) and the appeal site (No 40) a cafe. From the evidence of its listing the building is probably 15th century, being extended in the 17th century and re-fronted in the 18th century. It is timber framed with a painted brick front. The rear is of orange brown bricks in random bond and orange brick in stretcher bond. In addition to its Grade II listing No 40 lies within York Central Historic Core Conservation Area No 1.

Site history

3. Planning permission was granted for the change of use of the appeal premises from a retail shop to use for the sale of food and drink in September 2004. An appeal against a refusal of planning permission to extend the hours of

operation of the restaurant was allowed in June 2006 for a trial period of one year. Following investigation of a complaint about the notice works to the appeal building applications for retrospective planning permission and listed building consent were submitted. When those applications were refused in November 2006 and January 2007 the appeal notice was issued.

Reasons

The appeal on ground (c)

4. The Appellant claims that listed building consent is not needed, in part, because the works do not affect the character of the listed building. Although it is accepted that the fencing is new it is argued that the timber decking to the patio, the access door to the patio and the flue existed before and the current works represent like-for-like replacement of those pre-existing works. And, the access steps are internal and only fixed to the building by 2 screws.
5. However, in addition to there being no record of any permission for similar works to the rear of the building, the patio decking appears completely new as is the casement access door replacing, from the evidence, a former sliding sash timber framed window with 12 lights. What is more, planning permission for use of the appeal building as a café was only granted in September 2004. And, the use of the patio is for customers of the café rather than for the building occupier's use only. The Appellant's planning application for the works indicate they were primarily to provide an outdoor area for smokers following introduction of indoor smoking restrictions in July 2007. On that basis, I consider that, as a matter of fact and degree, the current operations to form a patio with enclosing fencing and a new access door, comprise new works rather than repair or replacement of any pre-existing development. Furthermore, it is conceded that the flue is different from earlier flues in being taller (about 2.4 metres high above the decking) and of wider bore (about 25 centimetres) to meet the Council's Environmental Health requirements.
6. The works described in the notice, because (save for the internal access steps to the door) they are external and attached to the rear elevation of the restaurant they do affect the character of the listed building. Therefore, the appeal on ground (c) fails.

The appeal on ground (d)

7. For an appeal on ground (d) to succeed it is necessary for the Appellant to demonstrate that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building. In addition, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter. And, that the works carried out were limited to the minimum measures immediately necessary.
8. I have no evidence that the works were urgently necessary for the preservation of the building or in the interests of safety or health. Furthermore, although the former 12 glazed light timber framed sliding sash window may have been in need of replacement (and may well not have been an original window) that could have been done with a like for like new replacement rather than a different timber framed casement door with 4 larger lights. The works specified

in the notice relate solely to either new operations or claimed replacement or repair operations. They are all modern appendages not necessary for the urgent preservation of the original building.

9. The appeal on ground (d) fails.

The appeal on ground (e)

10. In considering this ground of appeal, that listed building consent ought to be granted for the notice works, sections 66(1) & 72 (1) of the Planning (Listed Buildings & Conservation Areas Act) 1990 require me to have special regard, in the determination of this appeal, to the desirability of preserving the setting of the Listed Building and both preserving and enhancing the character or appearance of the Conservation Area.
11. The Appellant argues that the works, located to the rear of the building, are small in scale and screened by the unobtrusive fencing. Furthermore, the building is adjoined at the rear by various industrial and commercial uses, including some with extract flues and other non-original and utilitarian features of a different character from the street frontage of Goodramgate. Moreover, there is only a single potential public viewpoint from Deangate and College Street to the north through a narrow gap between the Cross Keys public house and York Minster Workshops. From that viewpoint the fencing and flue, which has been painted to colour match adjacent roofing tiles, may be glimpsed against the surrounding roofscape rather than in profile. The access door is a replacement for a non-original window in the same position which also functioned as a door. The outdoor patio is also necessary for the continuing success of the Appellant's business resulting from the impact of the inside smoking ban and the difficulties for businesses in Goodramgate resulting from local parking restrictions. Advice in Planning Policy Guidance Note 15 *Planning & the Historic Environment* (PPG15) indicates the need for appropriate new uses for old buildings to secure their preservation.
12. I observed that the patio, fencing and flue have formed visible additions to the listed building. The patio also has 2 timber bench style picnic tables and a timber slatted bench. The timber panel domestic garden style fencing (about 1.6 metres high above the decking) and the commercial appearance of the extract flue are not sympathetic to the design and materials of the original timber framed and brick appeal building. Furthermore, their location at first floor height to form a high level outside café amenity area is different from nearby ground level external sitting and drinking areas. Together, the notice works harm the character of the original building. And, the presence of customers on the patio, together with such paraphernalia as brightly coloured umbrellas for shading tables in summer, would add to the damage to the setting of the listed building.
13. In addition to the harm to the integrity of the building itself, although located to the rear, the new works are visible from Deangate and College Street, from nearby upper floor windows of dwellings and offices and from the tower of York Minster which is open to the public. Nor is the harm outweighed, in this case, by the Appellant's business needs. That harm to the character and setting of the original building conflicts with the objectives of local planning policies GP18, HE2 & HE4 of the City of York Draft Local Plan, Policy E4 of the North Yorkshire

County Structure Plan and Government advice in PPG 15 which require that development proposals will be expected to respect or enhance the special historic interest and visual amenity of listed buildings and conservation areas.

14. The appeal on ground (e) fails.

The appeal on ground (g)

15. The Appellant claims that the steps said to be required for restoring the building to its original condition are excessive because restoration to the prior condition of the building would serve no useful purpose. Nor can it be achieved as the rotten timber decking and the non-original window, together with the former flue, have all been disposed of.

16. But, nothing less than the total removal of the first floor patio, fencing, kitchen flue, and access door to the patio would overcome the harm to the character of the listed building that I have identified. Furthermore, the steps, although internal, would not be necessary if the patio is removed. The notice requirements would be complied with by restoring the access door with a new window of a similar design to that removed. Since I have no evidence that any pre-existing decking or flue were authorised or lawful it is not necessary to replace them other than works to make the building good where the current unauthorised works have been removed.

17. The appeal on ground (g) fails.

Conclusions

18. For the reasons given above I conclude that the appeal should fail.

Francis Farrimond

INSPECTOR

APPENDIX 2.

Planning History of 40 Goodramgate

Planning reference	Proposal	Decision
04/03013/FUL	Change of use from retail to food and drink (Class A3)	Approved 28.09.2004
04/03015/LBC	Internal alterations as part of change of use to food and drink (Class A3)	Approved 28.09.2004
05/01751/FUL	Variation of condition 5 of planning permission (04/030113/FUL) to increase approved opening hours of 0900-2300 (Mon-Sat) and 10.00-22.30 (Sunday) to 08.45-02.00 (Mon- Sat) and 10.00-02.00 (Sunday).	Refused 19.10.2005
06/00009/REF DOE Ref. APP/C2741/A/06/2009485/NWF	Variation of condition 5 of planning permission (04/030113/FUL) to increase approved opening hours of 09.00-23.00 (Mon-Sat) and 10.00-23.30 (Sunday) to 08.45-02.00 (Mon-Sat) and 10.00-02.00 (Sunday)	Allowed 21.06.2006
06/01094/FUL	Construction of patio to first floor including new fencing and access door; kitchen extract flue	Refused 12.01.2007
06/01095/LBC	Internal and external alterations including construction of patio to first floor, new fencing, door and kitchen extract flue	Refused 13.11.2006