

Planning and EP Committee – 15th November 2022.

Application Ref: 22/01294/FUL

Proposal: Retention of a fixed canopy for a period of 3 years - Retrospective

Site: 5 Fortune Buildings, Cowgate, Peterborough, PE1 1LR

Applicant: Mr P Fierro

Agent: Barmach Ltd

Referred By: Cllr Jamil

Reason: "I would like to refer this application to committee because I feel that the committee can then consider the heritage considerations so they can be carefully balanced against the economic benefits of the scheme and the importance of independent businesses to our city centre, importantly, our planning policies pre-date the COVID pandemic and the heightened need for safe and protected outside seating which is something the government actively encourages. I honestly believe that the design of the proposal is acceptable for the Conservation Area."

Site visit: 30.9.22

Case officer: Mr M A Thomson

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E-Mail: matt.thomson@peterborough.gov.uk

Recommendation: REFUSE

1 Description of the site and surroundings and Summary of the proposal**Site and Surroundings**

The application site comprises a three storey building, with the ground floor hosting a restaurant ('The Pizza Parlour'); the application site and its adjoining neighbours are identified as primary retail frontage. The application site is situated with the City Core and the Centre Conservation Area, which backs on to the curtilages of the Grade II Listed Buildings Nos. 4, 6 and 8 Queens Street. Numerous properties within the immediate area are locally listed. The surrounding street scene is predominantly commercial in use, with retractable canopies visible on adjacent shop front.

Proposal

The Applicant seeks planning permission for the retention of a fixed canopy for a period of 3 years. This is a retrospective application as the canopy has already been installed.

The fixed canopy has an area of 5.4m (w) x 2.6m (d) standing at 3.1m in overall height, but 2.4m above the footway.

The canopy has been installed using a powder coated aluminium frame (visible to the side) with a canopy coverall and overhang.

Background

It should be emphasised that the site previously had a retractable canopy which was approved in 2016 under App Ref: 16/01510/FUL. However, in 2021 a fixed canopy was installed without the benefit of planning permission.

Last year, an identical retrospective application, was submitted under App Ref: 21/00961/FUL, however, this application was refused for the following reason:

R1 *The retrospective canopy, by virtue of its design, unacceptably impacts upon the character and appearance of the site and the surrounding City Centre Conservation Area. This is specifically in relation to the fixed and non-retractable operation which is at odds with the retractable canopies visible within the street scene, as well as being wholly contrary to Design Principle 3: Blinds and Canopies of the Peterborough Shopfront Design Guidance SPD (2014), which permits only retractable canopies in Conservation Areas. The proposal results in less than substantial harm to the character of the City Centre Conservation Area, which is not outweighed by the limited public benefits. Accordingly, the development is contrary to Policies LP16, LP18 and LP19 of the Peterborough Local Plan (2019), the Peterborough Shopfront Design Guidance SPD (2014) and paragraph 134 of the National Planning Policy Framework (2014).*

It is noted that the applicant did not appeal this decision.

This application has been accompanied by a Planning, Heritage and Design and Access Statement, seeking to justify the retention of a permeant non-retractable canopy for a period of 3 years.

2 **Planning History**

Reference	Proposal	Decision	Date
21/00961/FUL	Erection of a fixed canopy to replace existing retractable canopy- retrospective	Refused	05/10/2021
19/01761/FUL	Change of use of existing first and second floors from office use into 3 residential flats. Together with a second floor rear extension and an additional storey, third floor extension, to create a 2 further residential flats	Withdrawn by Applicant	11/02/2020
19/01091/FUL	Change of use from office space to 5 flats, we propose to convert the office space under permitted development, but also intend to extend the building to the rear and an additional storey to the roof	Application Returned	
16/01511/ADV	Externally illuminated fascia sign	Permitted	03/10/2016
16/01510/FUL	New shopfront and retractable awning	Permitted	03/10/2016
16/00982/FUL	Change of use of the ground floor (Sui Generis) to Class A3 (Restaurant and Cafe), single storey rear extension and the installation of associated extraction and ventilation equipment	Permitted	22/07/2016

3 **Planning Policy**

Decisions must be taken in accordance with the development plan policies below, unless material considerations indicate otherwise.

Planning (Listed Building and Conservation Areas) Act 1990

Section 66 - General duty as respects listed buildings in exercise of planning functions

The Local Planning Authority has a statutory duty to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

Section 72 - General duty as respects conservation areas in exercise of planning functions.

The Local Planning Authority has a statutory duty to pay special attention to the desirability of

preserving or enhancing the character or appearance of the Conservation Area or its setting, or any features of special architectural or historic interest which it possesses.

National Planning Policy Framework (2021)

Section 12: Achieving well-designed places

Section 16: Conserving and enhancing the historic environment

Peterborough Local Plan 2016 to 2036 (2019)

LP06 - The City Centre - Overarching Strategy

Promotes the enhancement of the city centre. Major new retail, culture and leisure developments will be encouraged. It is promoted as a location for new residential development and as a location for employment development including mixed use. Improvements to the public realm will be promoted and the historic environment protected.

LP13 - Transport

LP13a) New development should ensure that appropriate provision is made for the transport needs that it will create including reducing the need to travel by car, prioritisation of bus use, improved walking and cycling routes and facilities.

LP13b) The Transport Implications of Development- Permission will only be granted where appropriate provision has been made for safe access for all user groups and subject to appropriate mitigation.

LP13c) Parking Standards- permission will only be granted if appropriate parking provision for all modes of transport is made in accordance with standards.

LP16 - Urban Design and the Public Realm

Development proposals would contribute positively to the character and distinctiveness of the area. They should make effective and efficient use of land and buildings, be durable and flexible, use appropriate high quality materials, maximise pedestrian permeability and legibility, improve the public realm, address vulnerability to crime, and be accessible to all.

LP17 - Amenity Provision

LP17a) Part A Amenity of Existing Occupiers- Permission will not be granted for development which would result in an unacceptable loss of privacy, public and/or private green space or natural daylight; be overbearing or cause noise or other disturbance, odour or other pollution; fail to minimise opportunities for crime and disorder.

LP17b) Part B Amenity of Future Occupiers- Proposals for new residential development should be designed and located to ensure that they provide for the needs of the future residents.

LP18 - Shop Frontages, Security Shutters and Canopies

LP18 c) Canopies- Will only be acceptable on the ground floor of a shop, café, restaurant or public house and only if it can be installed without detracting from the character of the building or surrounding area.

LP19 - The Historic Environment

Development should protect, conserve and enhance where appropriate the local character and distinctiveness of the area particularly in areas of high heritage value.

Unless it is explicitly demonstrated that a proposal meets the tests of the NPPF permission will only be granted for development affecting a designated heritage asset where the impact would not lead to substantial loss or harm. Where a proposal would result in less than substantial harm this harm will be weighed against the public benefit.

Proposals which fail to preserve or enhance the setting of a designated heritage asset will not be supported.

LP47 - City Core Policy Area

Part a General- Within the City Core the council will seek development of the highest quality which strengthens the area including the retail, leisure, tourism and civic focus. New development must improve the townscape and public realm, protect Cathedral views, preserve or enhance heritage assets, protect and enhance existing retail. Additional car parking will only be supported in exceptional circumstances.

Other Documents

Peterborough Shop Front Design Guidance SPD (2014)

4 Consultations/Representations

Peterborough Civic Society

Object - The Peterborough Civic Society objects to this retrospective application for a fixed canopy. The objections to the refused application submitted in 2021 (reference 21/00961/FUL), after the fixed canopy was installed without planning permission, remain.

The fixed canopy is an unattractive, substantial box girder structure which imposes negatively on the street scene and is out of character with Cowgate and the City Centre Conservation Area. The negative appearance of the fixed canopy is accentuated by the attractive retractable canopies on adjacent buildings.

There are no other fixed canopies in Cowgate, in line with the restrictions imposed by the Peterborough Shop Front Design Guidance SPD (2014) which states that only fully retractable canopies will be permitted on buildings which are a heritage asset or within a conservation area.

The Planning, Heritage, Design and Access Statement submitted in support of the fixed canopy is unconvincing as all five of the quoted reasons for retaining the canopy would be equally covered by a retractable canopy. No purpose would be served by granting a three-year temporary permission to review the planning merits of the canopy as it has already been in place without permission for over a year and the negative impact is obvious.

PCC Conservation Officer

Object - The canopy does not meet any standard of good design which we would expect to see in one of the most prominent locations in our city.

The Shop Front Design Guide requires any such canopy within a Conservation Area to be temporary retractable, appropriately incorporated in the fascia and of a traditional character. The canopy, which has been installed, is non-retractable with side advertising and constructed with a visible permanent and ugly box section frame. The design is awkward, and the incongruous design is exacerbated when viewed in conjunction with the positive canopies immediately adjacent. This adverse impact is exacerbated through its permanent fixing and its prominent position within the street scene.

Cowgate was subject to a shopfront improvement scheme between 2010 and 2014, whereby substantial grants were provided by the Council and Historic England, (£105,000 contributed respectively), which were used to improve shopfronts. In total, £750,000 has been spent improving the area. Subsequent to these improvement works, the Shopfront Design Guide (2014) was adopted, which sets out clear guidance as to how shopfronts should look, and to ensure that the improvements were retained long term.

Officers have worked very hard over the past decade to achieve the substantial improvements made within the city core. This has come from taking a consistent approach which balances the

needs of business with the character of the City Centre. An inconsistent approach very quickly sets unwanted precedents, which in turn leads to an untidy and cluttered street scene.

PCC Peterborough Highways Services

No objection

Local Residents/Interested Parties

Initial consultations: 15

Total number of responses: 1

Total number of objections: 0

Total number in support: 1

A petition in support of the application with x signatures has been submitted. The issues raised are summarised below:

- Does not impact on streetscene and is not out of character with Cowgate
- Allows customers to enjoy outdoor dining
- Other retractable canopies out morning till night
- Its supports restaurant during uncertain climate
- Ensures restaurant continues to thrive and serve community

No further letters of representation have been received other than comments relating to support from Cllr Jamil which have been noted above.

5 Assessment of the planning issues

a) Design and impact to the character and appearance of the site and the surrounding area.

Policy Context

The protection of the historic character of the City Centre and heritage assets within it is heavily emphasised in a number of policies within the Local Plan as set out below:

Local Plan Policy LP6: City Centre – Overarching Strategy, is very clear that new development should be of a scale, character, quality of design and standard of finish that will enhance the City Centre character including the setting or views of heritage assets.

Local Plan Policy LP47: City Core Policy Area seeks development of the highest quality which should improve the townscape quality, protect important views of the Cathedral and preserve the significance of heritage assets.

Local Plan Policy LP19: The Historic Environment, as well as including a general presumption that heritage assets and their settings should be preserved and enhanced, specifically emphasises the importance of Conservation Area Appraisals and the need to protect important views of the Cathedral.

Local Plan Policy LP18 Shop Frontages, Security Shutters and Canopies, is very clear that canopies will only be acceptable if they do not detract from the building and surrounding area. The policy specifically refers to the Peterborough Shop Front Design Guide SPD for details of how the policy should be implemented.

The Peterborough Shop Front Design SPD is a material consideration and provides detailed criteria for all matters pertaining to shop front design; the criteria relating to canopies are as follows:

Design Principle 3 : Blinds and canopies states a new blind or canopy should:

- (i) cover the width of the shop front fascia;

- (ii) be incorporated into the fascia, flush or behind the fascia, and not obscure any architectural detailing;
- (iii) be of materials and colour to complement the shop front and building;
- (iv) have the outer edge a minimum of 1m from the kerb and be no less than 2.6m above the pavement.

If the building is a heritage asset or is within a conservation area, only fully retractable canopies / blinds will be permitted.

Officers have emphasised the last sentence as the proposed canopy is situated within a Conservation Area.

Taking the above into account it is clear that there is a very strong presumption against harm to heritage assets within the city centre including the conservation area.

Discussion

The application site is situated within a primary shopping frontage within the City Core of the City Centre. In addition to this, the application site is within the City Conservation Area, of which there are a number of locally listed buildings within close proximity to the application site. It is also noted that this part of the Conservation Area, i.e. the eastern end of Cowgate frames positive views towards the Grade I listed Cathedral and Grade I listed St John's Church as noted in the Conservation Area Appraisal. Lastly, there are a number of retractable shop front canopies which have been installed within the locality in recent years, including immediately next door, which have been designed to accord with the Peterborough Shop Front Design Guide.

Officers would emphasise that, before the canopy to which this application relates was installed, the application site utilised a fully retractable canopy which, when fully reclined, sat flush with the fascia sign. Evidence can be found under Appendix 1.

Within the Design and Access Statement, the Agent refers to the Conservation Area Appraisal and Management Plan for Cowgate, specifically Paragraph 5.26, which states, 'Cowgate forms one of the principal gateways to and from the city centre for pedestrians from the railway station ... it has suffered from modern incursions that have had greatest impact on the north side of the road'.

On Page 8, the Agent reaches their own professional opinion; 'it is evident from the above that the character of this part of the Conservation Area is of lesser quality than the southern side of the street and properties to the east of the application site'. This view is not shared by Officers.

It is not a question of whether an application site, or indeed a Conservation Area, is of 'lesser quality'; the thrust of local and national planning policy seeks to preserve or enhance the significance of the Conservation Area as a whole, whether this be a largescale re-development scheme, or alterations to a shop front. Indeed, incremental negative changes can fundamentally erode character and the fine urban grain of an area.

Officers are concerned that the justification for this proposal infers that this part of the Conservation Area is of lesser quality, and the canopy should simply be supported on the basis that there is something else visually questionable within the vicinity. The premise of a Conservation Area is to 'preserve and enhance' its historic character and significance. As previously mentioned, this part of Cowgate includes positive views towards Cathedral Square as well as the Cathedral itself and part of St John's Church. Such views contribute to the significance of this part of the Conservation Area and are very sensitive to incremental erosion to the quality of the townscape through inappropriate development. Any temporary structures used in exceptional circumstances elsewhere, cannot be used to justify other development which would detract from the streetscape, and historic character of the Conservation Area, particularly when the application site previously had a canopy which met the Councils Shop Front Design Guide.

To further attempt to justify the canopy, reference has been made to an outdoor seating shelter at

Bean Around on Cathedral Square. Further to clarification from the Conservation Team, it is understood that this structure was installed as a strictly temporary measure to form an outside seating area during the period of exceptional circumstance and gradual re-opening of businesses within the City Centre following Covid lockdowns. It was installed as quickly as possible to meet the reopening dates and was for a temporary period only. However, the council are currently in the process of having this structure removed following the ending of Covid restrictions.

Paragraph 199 of the NPPF (2021) states, 'when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'

In assessing any potential harm, Officers have had regard to the City Conservation Area Appraisal, LP Policy 18: Shop Frontages, Security Shutters and Canopies, and The Peterborough Shop Front Design Guide.

The canopy is a discordant and incongruous structure which is contrary to the visions and objectives of the Peterborough Shop Front Design Guide and Conservation Area Appraisal. It results in harm to the historic character and significance of the Conservation Area, both in terms of the immediate townscape and positive views towards Cathedral Square. The harm in this case is considered to be less than substantial, although this should not be taken in any way to mean the harm is acceptable or insignificant.

To illustrate this point, Officers refer to Paragraph 45 of a previous appeal decision (APP/Q3305/A/14/2221776). Whilst this appeal relates to residential development, the points within it relating to harm to Conservation areas are highly relevant. Officers have consciously struck out certain wording for the purposes of emphasizing the Inspectors findings. The Inspector clearly sets out the thrust of assessing harm to Conservation Areas, i.e. whilst there may be less than substantial harm, it is a question of whether the harm is otherwise acceptable:

'There would also be harm to the setting of the Conservation Area, an integral part of its significance on this approach. Whilst, in the parlance of the Framework, that harm would be less than substantial, there would still be real and serious harm. There would also be conflict therefore, with policy DP3 of the Part 1 Plan, which is only supportive of schemes that would preserve, and where appropriate enhance the significance and setting of the District's heritage assets'

Where less than substantial harm is identified, the test of Local Plan policy LP19 and NPPF Paragraph 202 applies, which states,

'where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use'

As part of this application the Agent has argued the following public benefits outweigh any harm caused to the Conservation Area:

- Responds to the challenges of the Covid -19 pandemic;
- Provides safe covered outdoor seating for customers in all weather conditions;
- Provides appropriate social distancing between tables;
- Supports the city centre economy; and
- Ensures the financial sustainability of the business and the protection of associated jobs.

The applicant did not put forward any public benefits as part of the previous application. However in the previous Case Officer report, the public benefits were considered and the NPPF and LP Policy LP19 tests were applied. The report stated:

'whilst it is acknowledged that the canopy permits outside expansion of the existing business, which is essential in the city's recovery from the Covid-19 pandemic, a retractable canopy which accords with the SPD would achieve a similar result. Therefore, the public benefit is considered to be limited and not sufficient to outweigh the harm to the Conservation Area'.

As such, the Local Planning Authority correctly considered the public benefits of the proposal, and found that these did not outweigh the 'less than substantial', but still unacceptable, harm to the Conservation Area. The applicant chose not to appeal this decision.

In the case of the current application, any public benefits have reduced further with the ending of the Covid pandemic as well as the restrictions that were imposed at the time, such as social distancing, rendering many of the applicant's arguments redundant, including any justification for a temporary 3 year permission. In this case it is being argued that the financial sustainability of the business and associated jobs is a public benefit and that the fixed canopy is essential to achieve this. No evidence has been put forward to justify this and it is not in any case the function of the planning system to give an individual business a competitive advantage over other businesses which is effectively what is being sought. The viability and competitiveness of an individual business is not a material planning consideration in this case. This is an issue for the market to decide, and is outside of the scope of planning.

Furthermore, there is no evidence that safe seating for customers in all weather conditions cannot be provided using a an appropriately designed retractable canopy, as is the case with other nearby cafes and restaurants in the city centre. The fixed canopy notably extends a similar distance across the pavement to the retractable canopies on the adjacent premises. Little weight can therefore be given to any wider economic benefits of the fixed canopy, including the vitality of the city centre as a whole. In fact it can be reasonably argued that the viability and vitality of this part of the city centre could be affected detrimentally through incremental deterioration of the attractive historic townscape that attracts visitors.

For the reasons outlined above, the development results in unacceptable less than substantial harm to the City Centre Conservation Area, including the immediate townscape and views towards Cathedral Square, and any public benefits clearly do not outweigh this harm. As such, the proposal is contrary to policies LP6, LP16, LP18, LP19 and LP47 of the Peterborough Local Plan (2019), the Peterborough Shopfront Design Guidance SPD (2014) and paragraphs 134 and 202 of the NPPF (2021).

b) Highway safety

The canopy has been installed 2.4 metres above ground level. As such, the Local Highway Authority (LHA) have raised no objections as it is considered that sufficient clearance is available for all users of the adjacent footway and the vehicular highway itself.

The proposal accords with Policy LP13 of the Peterborough Local Plan (2019)

6 Conclusions

The proposal is unacceptable having been assessed in light of all material considerations, including weighing against relevant policies of the development plan and for the specific reasons given below.

7 Recommendation

The case officer recommends to the Planning and Environmental Protection Committee that Planning Permission is **REFUSED** for the following reasons:

R1 The retrospective canopy, by virtue of its design, unacceptably harms the character and appearance of the site and the surrounding City Centre Conservation Area. This is specifically in relation to the fixed and non-retractable operation which is at odds with the retractable canopies visible within the street scene, as well as being wholly contrary to Design Principle 3: Blinds and Canopies of the Peterborough Shopfront Design Guidance SPD (2014), which permits only retractable canopies in Conservation Areas. The proposal results in less than substantial harm to the character of the City Centre Conservation Area, which is not outweighed by any limited public benefits. Accordingly, the development is contrary to Policies LP6, LP16, LP18, LP19 and LP47 of the Peterborough Local Plan (2019), the Peterborough Shopfront Design Guidance SPD (2014) and paragraphs 134 and 202 of the National Planning Policy Framework (2014).

Copy to Councillors – Councillor Amjad Iqbal
– Councillor Mohammed Jamil
– Councillor Alison Jones

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