



Appeal Decisions

Site visit made on 28 September 2020

by **Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 October 2020

Appeal A Ref: APP/V2255/W/20/3244647

78 Preston Street, Faversham ME13 8NU

- 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 Ken Rogers against the decision of Swale Borough Council.
 - The application Ref 18/504874/FULL, dated 10 September 2018, was refused by notice dated 12 July 2019.
 - The development proposed is the erection of a new-build shop and self-contained flat at the rear of 78 Preston Street.
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Appeal B Ref: APP/V2255/Y/20/3244648

78 Preston Street, Faversham ME13 8NU

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Ken Rogers against the decision of Swale Borough Council.
 - The application Ref 18/504875/LBC, dated 10 September 2018, was refused by notice dated 12 July 2019.
 - The works proposed are the erection of a new-build shop and self-contained flat at the rear of 78 Preston Street.
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Decisions

Appeal A Ref: APP/V2255/W/20/3244647

1. The appeal is dismissed.

Appeal B Ref: APP/ V2255/Y/20/3244648

2. The appeal is dismissed.

Preliminary Matter

3. As the proposal concerns a listed building in a conservation area, I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

4. The main issues are:
 - A. whether the proposal would preserve the grade II listed building, whose statutory address is 78 and 78a Preston Street, as well as its setting and the setting of the listed buildings beside it at 76, 76a, and 77 Preston Street;
 - B. whether it would preserve or enhance the character or appearance of the Faversham Conservation Area (CA);
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- C. its effect on the living conditions of surrounding occupiers; and,
- D. its effect on the health of the tree at 78a Preston Street.

Reasons

The significance of the listed buildings and the CA

5. This C17 listed building, like the adjoining grade II listed buildings Nos 76,76a & 77 with which it forms a group, and which date from the C15 and C17, has two quite different characters. Its frontage, smartened in the C19, provides an intimately scaled enclosure to the relatively narrow, commercial Preston Street. Its delicately detailed shopfront is set between decorated pilasters in a formal façade of large, decorated window openings under a blocking course and front parapet.
6. The rear of this building and the group, by contrast, presents a less formal, looser arrangement of forms and undulating roofs, descending in height and width as they recede from the street frontage. The townscape of clay-tiled roof planes and chimneys rising over the footprints of buildings, altered over centuries, is distinctive for its historic forms, detailing and materials. The significance of this group of listed buildings as far as this proposal is concerned, is the open spatial setting behind them which gives prominence to their roofscape and their rear facades, which are a legible and intrinsic part of both their special historic and architectural interest.
7. The combined effect of the shifting eaves and ridge heights, the different pitches and chimneys, and the varying forms of individual roofs and buildings reveal in this section a glimpse into the medieval origins of the CA, as well as the architectural development of Preston Street which betrays a commercial shift in the centre of gravity of the CA. The collective effect of the surviving patterns of development, and the vernacular building forms and textures enriches the historic and architectural significance of the CA and demonstrates the importance of Faversham to trade from London and its industrial development in the C17 and C18.

A. The effect of the proposal on the listed buildings

8. Though the outbuilding and platform in the rear yard have an accessory relationship to the main building, they appear not to date from before 1 July 1948. Their loss would not harm the significance of the listed building or its special historic and architectural interest. Similarly, though the boundary, garden wall may need alterations to its fabric or foundations to accommodate the proposed building, given the length of the affected section and its likely age, I can identify no harm to its historic fabric, subject to conditions to secure its stability and the sensitivity of any new work.
9. Notwithstanding this, the length and height of the proposed building and its siting so close to the rear façade of No 78 would dominate the group of listed buildings, obscuring their rear facades and roofs. It would disrupt the historic and delicate balance of scale between the hierarchy of forms of the group of listed buildings incrementally descending from the street frontage towards the rear. Its inarticulate, extended, plain form, lacking the finer textures and modelling of the listed buildings behind it, would appear as an indistinctive intrusion in their rear setting, and in public views from the west.

10. While the proposal would not harm the historic fabric of this listed building Nos 78 & 78a, it would fail to preserve its setting, as well as the setting of the grade II listed buildings 76, 76A & 77 Preston Street with which it forms a group. It would conflict with policies CP4, CP8 and DM14 of the Swale Borough Local Plan 2017 (LP) which require development proposals to be of high quality design, to sustain and enhance the setting of designated heritage assets, and to conserve and enhance the built environment, as well as LP policy DM32 which requires development to preserve the setting of listed buildings paying special attention to design, including scale, materials, situation and detailing.

B. The effect of the proposal on the CA

11. I have identified harm to the settings of these listed buildings. I have taken into account the buildings erected behind the neighbouring buildings at Nos 79 to 83 which are prominent in views from the west. However, their historic roofscape is less prominent than the roofscape of this group. While those back buildings have a bearing on the setting of these listed buildings, they have not undermined the substantial historic and architectural contribution these listed buildings make to the townscape of the CA, which would be the result of this proposal.

12. I acknowledge the degree of harm to the significance of the CA is limited. Nonetheless, the Act requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of the CA, against which test, the effect of this proposal on the appearance of the CA, fails.

13. The proposal would not preserve the appearance of the Faversham Conservation Area. It would conflict with LP policies CP4, CP8 and DM14, and LP policy DM33 which requires development to preserve or enhance all features that contribute positively to the conservation area's special character or appearance.

D. The effect of the proposal on the living conditions of surrounding occupiers

14. The Council identified significant overlooking from the proposal into the garden of No 77 and overshadowing of the garden of No 78a. However, it concluded that because these matters did not feature in a 2008 decision, and because the amenity spaces of flats in town centres are often compromised, they were not of overriding significance.

15. I appreciate that flats above shops in the commercial centre of a historic town might not commonly enjoy the same amenity as dwellings in less built-up areas, with naturally greater access to light and space. I take this into account in my consideration below. However, having read the representations of surrounding occupiers, and having regard to the National Planning Policy Framework (the Framework) which says¹ that planning decisions should ensure that developments create places with a high standard of amenity for existing and future users, I find the living conditions of surrounding occupiers to be highly relevant to this proposal.

16. No 78, the flat above the shop: The first floor flat above the shop at No 78 has a large bedroom at the back, served by a single window looking onto the yard, which is the site of the proposed building.

¹ National Planning Policy Framework, paragraph 127

17. At such proximity, the proposed building would reduce the outlook from the bedroom to almost nothing. It would have the most dismal effect of over-enclosure on the occupiers in the bedroom of the flat. Notwithstanding the hipped form of its roof, the proposed building would also reduce the access to diffuse skylight from that room, by a significant degree. I acknowledge the town centre location of the proposal as described above, however, the affected window is critical to the living conditions of the occupier of the flat, which this proposal would reduce by an unacceptable degree.
18. No 77: The space behind No 77 is given over to a garden leading to a parking space beside the public carpark. The garden serves the flat over the shop and it appears to have a higher ground level than No 78. The first-floor bedroom, kitchen and living room windows of the proposal would overlook the garden of No 77, and to a lesser degree into the large kitchen window in the back wall of No 77, at first floor. I have taken into account the location of the proposal as described above, but it would be so close to No 77 that the risk of the loss of privacy would be significant. Because of its height and length and its proximity to No 77, the proposed building would have an over-enclosing effect on the outlook of these occupiers in their garden, and an intrusive impact on the outlook from the first-floor kitchen window. The living conditions of the occupiers of No 77 would be significantly harmed by the proposed development.
19. No 78a: The first-floor window at the rear of No 78a appears to serve a bedroom of the flat over the shop. While there would be no risk of overlooking into it from the proposed building, its proximity, combined with its height and length, would have an intrusive impact on the outlook from this bedroom. The rear area of No 78a is an open yard, given over to hard surfacing and parking. In this context, the loss of outlook from within that rear area as a result of this proposal would not be harmful to living conditions. While sunlight from the south would be reduced, given the nature of the yard and without evidence to the contrary, I cannot find harm to living conditions in terms of light in the yard of No 78a.
20. I conclude on this issue that the proposed development would harm the living conditions of the occupiers of the flat over the shop at No 78 with particular regard to outlook and light, as well as the occupiers of No 77 with particular regard to privacy and outlook, and the occupiers of the flat over the shop at No 78a, in terms of outlook. It would conflict with LP policies CP4 and DM14 which require development to achieve high quality design and to cause no significant harm to amenity.
- C. The effect of the proposal on the tree at 78a Preston Street*
21. The proposed building would stand over around half of the root protection area of a large, maturing Holly tree, around 9m tall, standing in the back yard of No 78a, and it would require the removal of around half of its canopy. This would ultimately lead to its demise, if not its contribution to visual amenity from its familiar tree shape, leaf texture, and movement.
22. I understand the Council's objection to the loss of the tree, but I do not share its view that its maturity and prominence makes its contribution to the visual character of the CA significant. The tree stands in isolation, its trunk very close to the boundary wall separating two hard surfaced back yards otherwise bereft of trees, or shrubs of any significance. While the public car-park contains

mature trees planted in a municipal arrangement which provides a soft, green texture to the area behind the site, and substantial visual amenity to the CA including in views from the appeal site, the space in these private back yards is more distinctive for setting-off the forms and textures of the listed building than for the visual contribution of a single tall, vertical, green structure.

23. I appreciate that even a single, mature tree is a significant resource for wildlife, and has value in the environment. However, given its isolation and the number of mature trees in the public carpark beside the appeal site, its contribution to the biodiversity of the site and the surrounding area is limited.
24. Representations mention the likelihood of the space behind the listed buildings originally being used for growing food, in which case fruit orchard specimens may well have prospered in the sheltered conditions here. However, any such planting has long gone, with this section now characterised by concrete yards, in which context a twin-stemmed Holly tree standing uncomfortably close to a boundary wall, with ivy growth covering its trunk and much of its inner canopy, makes a very limited contribution to the visual character of the CA.
25. I can see no visual, historic or arboreal connection from this tree to those in the public carpark, or to the listed buildings above which it appears to rise and whose roofscape it obscures. This lack of relationship to the CA, the tree's isolation, its position, and the present character of the hard-surfaced yards around it diminishes its significance and its amenity value to the CA. Moreover, the strong and distinctive bearing of the backs of the listed buildings on the space behind them would continue to enrich the enclosing character of this section of the CA, and mitigate the loss of its very limited contribution to the CA.
26. For these reasons, in respect of the tree at No 78a, I find no harm from the proposal to the visual amenity of the area or to the character or appearance of the CA, and no conflict with LP policies DM29 and DM33 which protect features that contribute positively to the character or appearance of the CA, and resist the loss of individual trees that make an important contribution either to the amenity, historic, landscape, townscape or biodiversity value of the site or the surrounding area.

Other Matters

27. The appeal site is located within 6km of the Swale Special Protection Area (SPA). The Council's appropriate assessment, after Natural England's advice, concludes that, in combination with other projects, the additional residential accommodation would have a significant effect on the internationally important interest features of the SPA as a result of increased recreational disturbance.
28. The Council considers that the harmful effects of the proposal could be mitigated by a financial contribution to off-site mitigation. There is no evidence of any such contribution from the appellant or any mechanism to secure it. However, as I have found against the appellant on the main issues, and therefore planning permission is to be refused, I have not pursued this matter further.
29. Where I found overlooking from the proposed flat into the first-floor window of No 77, there is a risk of loss of privacy in the return direction. Were I allowing the appeal, I would have sought the views of the parties on this, but as I am

dismissing it, I have not pursued this further. I have noted the representations about parking and footfall, but they do not lead me to a different overall conclusion.

Planning Balance

30. While I have found no harm from the proposal in respect of the tree at No 78a, it would harm the living conditions of surrounding occupiers, and it would fail to preserve the setting of the grade II listed buildings 78 & 78a Preston Street, as well as 76 & 76a Preston Street and 77 Preston Street, and the appearance of the CA, contrary to the clear expectations of the Act.
31. Paragraph 193 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through development within the setting of the designated heritage asset. Although the degree of harm here would be less than substantial, this does not equate to a less than substantial planning objection, especially where the statutory tests are not met.
32. Under such circumstances, paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the proposal. I acknowledge the social and economic benefits of the proposal which would provide additional and accessible retail space and an additional dwelling in a sustainable, central location as well as the benefits from construction work and the spending of future occupiers and visitors in the local economy.
33. However, there is no substantive evidence that there is a need for additional retail space. In any event, these public benefits do not outweigh the harm to the setting of the listed buildings and the appearance of the CA and the failure to meet the statutory expectations that these settings be preserved, a consideration the courts have determined is a matter of considerable importance and weight.
34. In the absence of any public benefit to outweigh the harm identified, I conclude that the proposal would fail to preserve the setting of the grade II listed buildings and the appearance of the CA, as well as the living conditions of surrounding occupiers. It would fail to satisfy the requirements of the Act, paragraph 192 of the Framework and the policies of the development plan. For the above reasons, and having regard to all other matters raised, I conclude that the appeals should be dismissed.

Patrick Whelan

INSPECTOR