



## Appeal Decision

Hearing Held on 20 March 2019

Site visit made on 20 March 2019

**by S Harley BSc(Hons) MPhil MRTPI ARICS**

an Inspector appointed by the Secretary of State

Decision date: 8<sup>th</sup> April 2019

---

**Appeal Ref: APP/W2465/W/18/3202506**

**2-4 Humberstone Gate and 1-3 Haymarket, Leicester LE1 3PH**

- 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 Metro Bank Plc; against the decision of Leicester City Council.
  - The application Ref 20171687, dated 8 August 2017, was refused by notice dated 13 November 2017.
  - The development proposed is installation of shopfront and ATM; external alterations (Class A2).
- 

### Decision

1. The appeal is allowed and planning permission is granted for the installation of shopfront and ATM; external alterations (Class A2) at 2-4 Humberstone Gate and 1-3 Haymarket, Leicester LE1 3PH in accordance with the terms of the application Ref 20171687, dated 8 August 2017, and the plans submitted with it and the conditions set out in the attached schedule.

### Procedural Matters

2. Although the site address is described on the application form as 2 Humberstone Gate, Leicester LE1 3PH the full address is as set out above. I have considered the appeal on this basis.
3. The application was submitted using the Planning Portal facility for submitting joint applications for planning permission and for advertisement consent so the description of the proposal as set out on the application form includes advertisements as well as the works that require planning permission. On receipt the Council, in agreement with the appellant, separated the advertisement proposals into a separate application Ref 20171688.
4. The appellant can occupy the building under the Town and Country Planning (General Permitted Development Order) 2015 (GPDO) (England) (Schedule 2 Part 3 Class D) as amended which permits a change of use from Class A1 (shops) to a use falling within Class A2 (Financial and professional services). This appeal relates solely to the works that require planning permission.
5. Since the decision on the planning application the National Planning Policy Framework (the Framework) has been revised twice. It was agreed at the Hearing that, other than changes to the Paragraph numbers, no significant issues arise from the changes in respect of this appeal.

## **Background and Main Issues**

6. The appeal site is the southernmost corner of the former Littlewood store building (the former Littlewood building) and the elevational alterations would take place at ground and first floor levels. It was constructed in the 1960s as one phase of the Haymarket Centre development and other adjoining Haymarket Centre buildings are different in scale and appearance. The Littlewood store is outside, but adjoins, the boundary of the High Street Conservation Area (the High Street CA). This was extended to include the Grade II Listed Haymarket Memorial Clock Tower (the Clock Tower) which is sited near to the west elevation of the former Littlewood building. A little further away the Church Gate and Market Place Conservation Areas adjoin the High Street CA. Although not a reason for refusal of the planning application, at the Hearing the Council indicated that the proposed development could have a harmful effect on the setting of the High Street CA.
7. I am required to consider the effect of the proposal on the setting of heritage assets. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (S66 of the Act) requires that special regard be given to the desirability of preserving the setting of listed buildings. Whilst no statutory protection is afforded to the setting of other heritage assets, including conservation areas, paragraphs 187 and 189 of the Framework require an assessment of the significance of heritage assets that might be affected by a development proposal, including any contribution to their significance made by the setting of those assets.
8. Taking into account the above the main issues are: the effect of the proposed development on the character and appearance of the former Littlewood building and the nearby area; the effect on the character and appearance of the nearby conservation areas; and on the setting of the Grade II Listed Clock Tower.

## **Reasons**

### *Character and appearance*

9. The architectural design of the Littlewood building could be described as brutalist. The south and west elevations have three projecting stepped balconies. The ground floor frontage is set back beneath the lower balcony which forms a canopy along both elevations. The first, second and third floor elevations are also set back on both elevations. Above this is a different elevational feature with a vertical emphasis.
10. Originally the balconies had white concrete balustrades which gave a strong horizontal emphasis to the three lower floors. Although these have been replaced by grey railings the horizontal emphasis remains a striking feature of the three lower floors. The ground floor contains active shop fronts. However, the first floor no longer has an active frontage. The balcony is largely unused except where plant and equipment are situated. The first-floor windows/doors are now largely closed off by blank glazing and curtain walling, other than that the sales floor associated with the nearby TK Maxx store can be seen from the first-floor balcony. However, at present there is no public access to the balcony and the first floor display of that store is barely discernible from the street. The ground floor canopy and walls are further stepped around the southernmost

corner. Although not symmetrical the elevations present a sense of uniformity arising from the strong horizontal emphasis

11. The adjacent Haymarket Centre building on the Humberstone Gate (south) elevation also has a strong horizontal emphasis but this is delineated by red brick bands which do not fully align with the balconies of the former Littlewood building. The adjacent building on the west elevation is of a very different appearance: it is set back; it has an angled front elevation; has a wide relatively low entrance; the window openings at ground and first floor are predominantly vertical; and there is a mainly solid beige brick façade above.
12. A particularly prominent change in the appearance of the west elevation occurred when the gateway structure and red banding of the TK Maxx brand were installed. The gateway structure, which is also red, extends upwards from the first-floor balcony above the base of the third-floor balcony. It is of open rectangular form and, due to its colour, size and shape, appears particularly prominent in views from the street.
13. The proposed development would extend the walls of the first floor out to the edge of the first-floor balcony. The ground floor would be extended on the corner to enclose the currently splayed entrance, and the canopy above the ground floor would be removed along both elevations. A glazed two storey shop front would be installed.
14. Although the proposed mid-height blue fascia banding along parts of the elevations would mimic the line of the canopy, this would not entirely align with the first-floor balcony and would be a much weaker horizontal feature. Moreover the proposed grey uprights, including the panels concealing air conditioning plant, would introduce more verticality despite the grey upper fascia panels which would be positioned below the second-floor balcony. In these ways the proposed development would detract from the uniformity of the former Littlewoods building, disrupting its visual integrity and architectural merit. It would not be in proportion with the lines of the façades of which it would form a part. In these respects there would be some harm to the character and appearance of the former Littlewood building and the nearby area and therefore some conflict with Saved Policy BE10 of the City of Leicester Local Plan 2006 (the LP) and the Leicester City Council Shop Front Design Guide 2017 in this respect.
15. The proposal would provide a modern, transparent and open shop front that would be appropriate in a Central Shopping Core location such as this. In these ways it would not be dissimilar to many other modern shop fronts, including those in the nearby conservation areas.
16. The proposal would be out of keeping in that most shop fronts are single rather than double storey in height. However, there are some examples of double storey frontages albeit mostly at entrances or where these more closely align with other features of the building of which they form part. The evidence also indicates that the original intention was to have more activity at first floor level than is now the case. Taking this into account and, as the development is proposed for a corner location, on balance I conclude that a modern double storey shop front as proposed would not be so over dominant in its context as to be inappropriate or to conflict with Policy CS3 of the Leicester City Core Strategy 2014 (the CS) and its design objectives of seeking attractive, successful and sustainable places.

17. Moreover, the proposal would help promote the image of Leicester as a modern city, responding to changing social, technological and economic conditions. In being open every day and into the evening the proposal would provide an active frontage onto public space which could help promote public safety through the evening in particular. This would conform with the guidance in Policy CS3 of the CS which seeks active frontages onto public spaces.

*Effect on conservation areas*

18. The Conservation Area Appraisal for the High Street CA summaries its special interest as being its high quality townscape and architecture which is a product of the varied heights, designs, detailing and roofscapes of its buildings and its Listed Buildings of which the Clock Tower is one. Paragraph 4.33 emphasises the commercial character of High Street with very varied facades; some buildings are three and four storey shops with large additional display window at first floor level and many building display quirky or eye-catching features. The High Street CA is linear and the Clock Tower is a key land mark at the east end of, and an integral part of the view down, High Street. The Clock Tower would be visible in views both to and from the proposed development.
19. The Church Gate CA extends broadly northwards from the High Street CA. Its special character is as it shows within its building stock the development of part of an important city thoroughfare from the Medieval Era to the present day. The building stock shows how previous generations adapted and modified existing buildings for contemporary purposes and the increasing importance of industry and manufacturing to the city as well as housing for the associated workers. The proposed development would be seen at an oblique angle from the southernmost tip of the Church Gate CA.
20. The Market Place CA extends roughly to the south of the High Street CA and is some 500m to the south-west of the Clock Tower. Its special character derives from its history of occupation of almost 2000 years and the open air market at its heart which is at least 700 years old. Its street layout has changed relatively little. The proposed development would be seen at an oblique angle from the northernmost tip of the Church Gate CA and from the small part of this CA which extends into Gallowtree Gate.
21. None of the CAs would be directly affected but the proposed development would be seen from within parts of the CAs and there would be views from the site into the CAs. The setting of a heritage asset are the surroundings in which it is experienced. The CAs have in common their historical significance as part of the commercial core as Leicester develops and as routes along which people passed and/or congregated. The proposed development would not alter this character. The appearance of this corner would be significantly altered but could be viewed as part of the evolving commercial character.
22. Overall I conclude that the effect of the proposed development on the way in which the CAs are experienced would be neutral. In terms of the statutory objectives a development which leaves character or appearance of a CA unharmed amounts to its preservation. Accordingly I find no conflict with Policy CS18 of the CS in this respect.

*The Listed Clock Tower*

23. Designed by Joseph Goddard in honour of four famous benefactors of Leicester's history the Clock Tower was built in 1868 at the confluence of six streets following demolition of the Assembly Rooms in the 1860s. It became the first traffic island in the country and a junction for the first tram service in Leicester. The style is flamboyant Gothic; it is made of Ketton limestone with a base of Mountsorrel granite and is a recognisable Leicester landmark of moderate to high architectural and artistic value. The proposed development would not directly affect the Clock Tower itself.
24. The area of the Clock Tower is one of the three places in the town where proclamations were read out by the town crier. Overall it has moderate historical value. It has been, and remains, a focus for protests, congregation and celebration. Modern civic functions that take place around it include VE, Christmas, sports, and return of the remains of Richard III celebrations. Overall, I conclude the Clock Tower is a designated heritage asset of moderate to high historical significance to the City as a whole. The proposal would not alter this and in this respect, I find that the special interest and significance of the Clock Tower would be preserved.
25. The immediate setting of the Clock Tower is the open space in which it stands and the variety of surrounding buildings which contribute to the vibrant Central City Shopping Core. At the time of the construction of the Clock Tower the surrounding buildings were historical, some being on medieval plot boundaries. Significant changes took place in the 1960s with the construction of the Littlewood Store and subsequently the Haymarket Centre, which opened in June 1973 and is six storeys high. The uncompromising horizontal, relatively plain, appearance of the former Littlewood building, together with its height, is in stark contrast to the ornate and vertical appearance of the Clock Tower. A further change took place with the erection of the TK Maxx entry and associated signage which, due to their colour, height and rectangular shape, further compete with the Clock Tower.
26. Overall the Haymarket Centre currently does not make a positive contribution to the setting of the Clock Tower. The proposed shopfront would not be out of place against the TK Maxx frontage and would not be uncommon on a modern high street. However, it would impinge on the immediate setting of the Clock Tower, as breaking the balcony fascia would disrupt the uniformity which currently competes less with the Clock Tower than would the proposed double height shop front. It would distract the eye from the Clock Tower. In this respect I conclude there would be some minor harm to the setting of the Clock Tower and some conflict with Policy CS18 of the CS.
27. However, it is clear that that in historical times, and as shown by photographs the Deloitte Heritage Statement 2018, there was a much 'busier' elevational back drop to the Clock Tower in the past with more variety of size, shapes, and degree of ornateness. In some views the ground floor canopy obstructs views of the Clock Tower and its partial removal would open up some views. In addition the proposed shop front would be comprised of largely transparent glazing and there would be views of the Clock Tower through this.
28. Taking all these matters together I conclude that this harm to the setting of the Listed Clock Tower, in terms of Paragraph 196 of the Framework, would be less than substantial. 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.

29. The public benefits arising from the proposal would include: a significant investment in the fabric of the building which would update and visually uplift this corner of the shopping core making better use of the currently inactive space at first floor; an ongoing commitment by way of a 25 year lease on the property; the provision of an alternative banking availability with a focus on customer service and convenience for local customers and small and medium enterprises; the creation of 25 new full time local jobs and training opportunities; and seven day a week and evening opening hours would encourage town centre footfall and assist with safety and security in the area.
30. I acknowledge the Council's view that the above public benefits could be delivered in other less harmful ways. For example I am told that in the past the Council has expressed a desire to project an image of a total glazed façade to all floors of the building although this would be best achieved by way of comprehensive refurbishment. However, there is no evidence to indicate that such a refurbishment is a realistic prospect in the near future particularly as the former Littlewood building is not in the control of one owner.
31. I understand there is a high occupancy rate of shop units in the Central Core and see no reason to suppose that the units currently comprising the appeal site, which are currently in retail use, would remain vacant for any significant period of time. However, the ground floor units with the overhanging canopy have a dated feel and other occupiers may not deliver the extent of public benefits offered by the appellant as a major business intending to set up a flag ship enterprise in the City. The appellant has indicated that there would be no possible design solution that would work for Metro Bank within the limitations of the existing balcony/canopy arrangements. I see no reason to doubt this.
32. As required by Paragraph 193 of the Framework 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). Nevertheless, in this case, I conclude that for the purposes of Paragraph 196 of the Framework, that the public benefits would outweigh the less than substantial harm that I have identified with regard to the immediate setting of the Grade II Listed Clock Tower. Accordingly I conclude that, taken as a whole, the proposal would be acceptable in this regard.

### **Conditions**

33. I have considered the conditions proposed by the parties in light of the Framework and Planning Practice Guidance. As well as the standard condition specifying the time limits for commencement of development compliance with the approved plans is necessary to provide certainty.
34. It is necessary for materials for external elevations to be controlled given the prominent location and the proximity of heritage assets. This should be a pre-commencement condition so materials are agreed in time to be incorporated into the development. A condition retaining transparency of the glazing is necessary to minimise the effects on visibility of the Clock Tower. It was agreed at the Hearing that a condition requiring an external materials maintenance plan is not necessary and so I have not imposed one.

## **Conclusion**

35. I have found there would be some harm to the character and appearance of the former Littlewood building and the nearby area and therefore some conflict with Saved Policy BE10 of the LP. On the other hand I have found that a modern double storey shop front as proposed would not be inappropriate or conflict with Policy CS3 of the CS and its design objectives of seeking attractive, successful and sustainable places. Moreover, the provision of an active frontage onto public space could help promote public safety through the evening in particular. This would conform with the guidance in Policy CS3 of the CS which seeks active frontages onto public spaces.
36. I have found that the effect of the proposed development on the way in which the CAs are experienced would be neutral which amounts to preservation. The proposal would not alter the significance to the City as a whole of the Clock Tower as a focus for protests, congregation and celebration. There would be no conflict with Policy CS18 of the CS in these respects.
37. I have found there would be some harm to the setting of the Listed Clock Tower, as the proposed double height shop front would break the balcony fascia and would disrupt the uniformity of the former Littlewood building which currently competes less with the Clock Tower than would be the case with the proposed development. This harm would be less than substantial. In this respect I have found some conflict with Policy CS18 of the CS. However, I have found that the public benefits would outweigh the less than substantial harm that with regard to the immediate setting of the Grade II Listed Clock Tower.
38. Taking all the above into account I conclude that all the benefits of the proposal would outweigh all the harm. The appeal should succeed.

*S Harley*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - Location Plan ES0.0
  - Block Plan ES0.1
  - Existing and Proposed Elevations E3.1 and A3.1
  - Existing and Proposed Overall Floorplans E0.0 and A0.0
  - Existing and Proposed Basement Floor Area E1.0 and A1.0
  - Existing and Proposed Ground Floor Area E1.1 and A1.1
  - Existing and Proposed First Floor Area E1.2 and A1.2
  - Proposed Shopfront Sections A4.1
  - Proposed Shopfront Sections (Entry Glazing) A4.0
  - Proposed ATM's A7.1
- 3) Prior to the commencement of development a sample panel of the materials to be used in the construction of the external surfaces shall be submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved sample and shall be retained as such.
- 4) The south and west facing elevations of the approved development shall remain clear glazed and no advertisement or any other material individually exceeding 6 metres<sup>2</sup> in area or cumulatively covering 10% of the glazing of the northern section (between the north and central metal clad pillars of the shopfront) of the west elevation, or cumulatively covering 16% of the glazing of the eastern section (between the east and central metal clad pillars of the shopfront) of the south elevation shall be displayed on the external or internal sides of the glazing unless previously agreed for a specified period in writing by the local planning authority or agreed by way of separate express consent to display advertisement where express consent is required. No advertisement or any other material shall be displayed on the external or internal sides of the glazing of the corner section of the shopfront at either ground or first floor level unless previously agreed for a specified period in writing by the local planning authority or agreed by way of separate express consent to display advertisement where express consent is required.

### **End of Schedule**



## **APPEARANCES**

### FOR THE APPELLANT:

Saira Kabir Sheikh	QC Francis Taylor Building
Alastair Close	Planning Potential
Sam Elliott	Planning Potential
Calum Ewing	Metro Bank
Katie Wray	Deloitte Real Estate
David Leech	Haskoll Architects

### FOR THE LOCAL PLANNING AUTHORITY:

Tom Ipgrave	Planning
Justin Webber	Conservation
Nicola Handa	Urban Design