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Item No: 7.3

Application: 211240

Applicant: Lion Walk Shopp, Martin Leatherdale

Agent: Miss Iona Hodgson, Art Eat Invent

Proposal: Listed Building Application to paint a permanent art mural on the external side of the church graveyard wall.

Location: Holy Trinity Church, Trinity Street, Colchester, CO1 1JN

Ward: Castle

Officer: Eirini Dimerouki

Recommendation: Refusal

1.0 Reason for Referral to the Planning Committee

- 1.1 This application is referred to the Planning Committee at the request of Cllr Goacher for the following reason: *“Significant concerns about the impact and design of this mural. Will impact negatively on this heritage site as the design is not in keeping with the setting.”*. Moreover, the applicant is Cllr Leatherdale on behalf of Lion Walk Shopping Centre.

2.0 Synopsis

- 2.1 The application seeks consent to the painting of a permanent art mural on the external wall of the Vestry at the former Holy Trinity Church. The former Church is listed at Grade I and is situated within the designated Colchester Conservation Area 1.
- 2.2 The key issue of consideration is the impact of the proposal on the special interest of the listed building. An additional consideration is the impact of the mural on the character of the Conservation Area.
- 2.3 Material planning considerations are taken into account in accordance with National and Local Planning Policy, along with consultation comments and local representations. The application is subsequently recommended for refusal.

3.0 Site Description and Context

- 3.1 The application site is situated on the northern end of Trinity Street, one of the most attractive and picturesque streets in the historic town centre which comprises a high number of listed buildings. To the north, the site is bound by Culver Street West, a secondary commercial street that runs parallel to High Street; Pelham Lane which has been retained as a pedestrian link between the two commercial axes ends onto Trinity Square. Lion Walk Shopping Centre and Colchester Library, both erected in the 1970s, are located to the east and the south of the site respectively.
- 3.2 The site comprises the former Church and its churchyard that includes several trees and many tombs and monuments. The churchyard is enclosed by iron railings on top of a brick dwarf wall; to the east side, the enclosure is interrupted by the Vestry wall which is the subject of this application.
- 3.3 The former Holy Trinity Church is listed at Grade I (NHLE List Entry Number 1169575). Grade I listed buildings are of exceptional interest and only 2.5% of listed buildings are Grade I. The site was first listed on 25 February 1950 and its list entry describes it as follows: *“Particularly interesting for its fine pre-Conquest west tower, probably built mid C11, largely in Roman brick, 3 stages, pyramidal tiled roof; the west doorway has a triangular head and the windows are round-headed. This tower was built on to an earlier Church of circa 1000, of which only the west wall remains. The rest of the building is largely C14 and C15, much restored in 1886. There is an interesting monument - a mural alabaster monument to William Gilbert 1544-1603 famous for his researches into electricity.”*

- 3.4 A detailed description of the building is included in the “Inventory of the Historical Monuments in Essex, Volume 3, North East” of the Royal Commission on Historical Monuments of England, published in 1922. According to the account of the site’s development, the Vestry was added to the east side of the Church when Holy Trinity was restored and extended with the addition of the North Aisle and North Chapel in the second half of the Nineteenth Century.
- 3.5 Holy Trinity was made redundant in 1956 and was briefly a museum and later, an arts centre and café. At present, it is vacant and not accessible to the public. Despite its vacant status, the historic site makes a very positive contribution to the Conservation Area. It is a green space between the busy commercial zones of Lion Walk Shopping Centre and Culver Street that contributes positively to the area by virtue of the aesthetic qualities of the historic church and the tranquil character of the churchyard.

4.0 Description of the Proposal

- 4.1 The application seeks consent to the painting of a permanent art mural on the east elevation of the Vestry that fronts onto the Lion Walk Shopping Centre. The wall measures approximately 9.50m in length and 3.00m in height and includes a blind brick arch to the southernmost half. The vestry brick gable wall is currently rendered and painted in a dark red colour.
- 4.2 The Vestry which accommodates toilet and kitchen facilities dating from when the site was in use, suffers from increased levels of damp which are evident in the interior but also manifest on the east elevation as well in the form of flaking and blistering of the painted finish.
- 4.3 The proposed mural would cover the entire surface of the wall. Its content includes sites and personalities that relate to the history of Colchester. The mural would be painted with household paints, applied directly on the surface of the wall, and then covered by anti-graffiti coating.

5.0 Land Use Allocation

- 5.1 DP6 Town Centre Uses

6.0 Relevant Planning History

- 6.1 The recent planning history of the site includes Planning Permission 110030 and Listed Building Consent 110031 for the “*Change of use from former museum to a cafe with occasional music events and church services. General refurbishment and decoration to main church hall, addition of gate and railings to prevent access into tower. Refurbishment of kitchen and WC facilities including creation of new disabled WC.*”, granted on 23 March 2011. Advertisement Consent was granted in 2016 for the interpretation panel on the railings on Trinity Street.

- 6.2 An application was made in 1996 in respect of the eastern wall of the Vestry (LB/COL/96/1630). The application sought consent for the addition of a mosaic mural. The proposal was regarded inappropriate for the site and the application was withdrawn.

7.0 Principal Legislation and Policies

- 7.1 Planning law requires that applications for Listed Building Consent must be determined in accordance with Section 16(2) of the Planning (Listed Buildings & Conservation Areas) Act 1990, having 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(1) of the Act requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Regard is also given to Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that applications are determined in accordance with the development plan unless material considerations indicate otherwise.
- 7.2 The National Planning Policy Framework (NPPF 2019) must be taken into account in planning decisions and is a material consideration, setting out national planning policy. The NPPF's Section 16 "Conserving and enhancing the historic environment" provides the guidelines for the protection and conservation of heritage assets, including listed buildings and Conservation Areas. Paragraph 193 determines that 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). Paragraph 194 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Paragraphs 195 and 196 identify and deal with two levels of harm respectively: substantial and less than substantial harm linking their justification to the public benefits that can potentially outweigh them.
- 7.3 Moreover, planning applications must be decided in accordance with the development plan, unless material considerations indicate otherwise. Continuing the themes of the NPPF, Colchester Local Plan 2001-2021 includes the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) which adds detail through local strategic policies. Particular to this application, the following policies are most relevant:
- ENV1- Environment, which states that the Borough Council will conserve and enhance the historic environment and safeguard the Borough's history through the protection of and enhancement of sites of national, regional and local importance.
 - UR2 - Built Design and Character, which sets out that developments which are discordant with their context and fail to enhance the character, quality and function of an area will not be supported.

- 7.4 In addition, also relevant are the adopted Colchester Borough Development Policies (adopted 2010, amended 2014):
- DP1 - Design and Amenity, which requires that development proposals must respect and enhance the character of the site, its context and surroundings in terms of material and detailed design features.
 - DP14 - Historic Environment Assets, which stresses that development will not be permitted that will adversely affect a listed building or a Conservation Area.
- 7.5 Further to the above, the Historic England Good Practice Advice Notes 1-3 (March 2015) should also be taken into account in the decision-making process for applications affecting listed buildings or the historic environment generally.

8.0 Consultations

- 8.1 The stakeholders who have been consulted and who have given consultation responses are as set out below. More information may be set out on our website.

- 8.2 Environmental Protection
No comments.

- 8.3 Highway Authority
The Highway Authority does not object to the proposals as submitted.

- 8.4 Historic England
*"We consider the level and quality of information submitted with the application to be completely inadequate, particularly in relation to the assessment of the proposed mural's impact on the setting of the church and the Vestry Wall itself, which are entirely in the ownership of your authority.
Notwithstanding the lack of information, in our view the proposed mural would be wholly inappropriate in this highly sensitive location on Trinity Square within the Colchester Town Centre Conservation Area due to its scale, subject matter and its permanence.
The Vestry to the former church dates from 1840 and the wall that forms the subject of the application is listed by attachment to the church. In this instance we would stress that the former Holy Trinity Church is grade I listed and so is within the top 2.2% of listed buildings nationally.
We acknowledge that the applicants, Lion Walk Shopping Centre are keen to create an artwork... "that reflects Colchester as a whole which will help the public to interpret and understand the significance of the location and of Colchester town."
However, had we been approached for comments at pre-application stage, we would have clearly stated that a mural painted in this specific location would be an extremely prominent, contextually inappropriate feature in the streetscape, that would cause harm to the significance of the adjacent grade I listed church as a result of the detrimental impact on its setting.*

Recommendation

Historic England objects to the application on heritage grounds.

We consider that the application does not meet the requirements of the NPPF, in particular paragraph numbers 194 and 196.

The mural would be contextually inappropriate in this highly sensitive location, due to its scale and detailed design and we urge you to refuse the application.

In determining this application you should bear in mind the statutory duty of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess.

You should also bear in mind section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Your authority should take these representations into account and seek amendments, safeguards or further information as set out in our advice.”.

9.0 Parish Council Response

9.1 Not Parished.

10.0 Representations from Notified Parties

10.1 The application resulted in a number responses from interested third parties The full text of all of the representations received is available to view on the Council's website. However, a summary of the comments is given below.

10.2 At the time of writing, seven (7) comments in support of the proposal had been received. The commentators note that:

- The Victorian wall is not as significant as the rest of the Church;
- The wall looks unremarkable and drab and the mural would brighten it up;
- The mural would not cause material harm to the wall which is already painted;
- The project would have a positive impact in the current COVID climate.

10.3 Forty-four (44) comments of objection have been lodged. The main points made by the commentators are as follows:

- The proposed mural is inappropriate for the Grade I listed site (in terms of style and design);
- The proposed mural is inappropriate for the Conservation Area (in terms of style and design) and does not have the potential to enhance it;
- The proposed mural is inappropriate for the site but could be acceptable on a non-designated site within the Lion Walk Centre or another location in the Conservation Area;
- The eastern wall of the Vestry is equally significant as any other part of the Church and should be repaired and remain free of any additions;
- The wall could accommodate an artwork but it would have to be of better quality and in keeping with the character of the site;
- The use of unsuitable materials for works could result in material harm to the wall;
- It is unclear who would maintain the mural or repair it in case of vandalism (concerns about costs and impact on the street scene if the mural is defaced

- and not repaired);
- There are concerns about the content (inaccuracies, omissions e.t.c.);
- It is a commercial project that utilizes a heritage asset without securing direct benefits for the site.

10.4 Colchester Civic Society

“Grade I listing is defined as a building of ” exceptional national architectural or historical importance” . The site is the high point of Trinity Street , the most historically significant street in Colchester.

We would also consider it to be at the very heart of the Town Centre Conservation Area . These areas are created specifically ”to protect their special character and appearance “ (Colchester.gov.uk)

With the clarity of these definitions we would question the application by a neighbouring commercial organisation, the Lion Walk Shopping Centre to paint on the vestry wall. This addition to the church of the vestry dates to 1840 and the wall itself forms a part of the curtilage of the site. As such, the wall is deemed to be listed at the same level as the Saxon Tower. It is plainly not to be considered a part of the shopping centre.

We remain unconvinced of the need for this wall to be anything but redecorated appropriately.

Our particular concern is with the design of the mural itself. It touches only marginally on the history of the local area, ignores much including the military and is quite inaccurate to include “ Humpty Dumpty “ as any part of the town’s history. It does little to inform the visitor except at the most trivial level . It remains a highly coloured piece in the style of children’s illustration with a suitably significant reference to the applicant. It is probably a suitable design for a quite different part of Lion Walk other than the wall of this Grade I treasure. It is hard to argue that is a suitable enhancement to the Conservation Area or a acceptable treatment for an exceptional building.

We would draw attention to the proposed paint materials. We would suggest that it would be wise not to use anything but micro porous paints as the masonry is likely to be solid. It would also be wise to check the stability of the existing paint and render layers. The issues of the peeling of paint through a lack of adhesion and failures of renders which have lost strength through the leeching of lime should be considered.

We would also advise a check that the internal masonry is dry so that should any damp occur due to a change in the outer paint surface ,this would become the responsibility of the promoters rather than the owners.

We note a possible proposal for an anti vandal surface to the mural but are mindful that should the application succeed , a condition should be required for repair and maintenance by the applicants. In particular ,a requirement might be considered necessary to insist on an artist repainting and repairing within a suggested 48 hour time period to remove any damage or offensive additions.”

11.0 Parking Provision

11.1 N/A.

12.0 Accessibility

12.1 N/A.

13.0 Open Space Provisions

13.1 N/A.

14.0 Air Quality

14.1 N/A.

15.0 Planning Obligations

15.1 This application is not classed as a “Major” application and therefore there was no requirement for it to be considered by the Development Team and it is considered that no Planning Obligations should be sought via Section 106 (s.106) of the Town and Country Planning Act 1990.

16.0 Report

16.1 The main issue in this case is the impact of the proposed mural on the special interest of the Grade I listed site of the former Holy Trinity Church. The impact of the proposal on the designated Conservation Area is an additional material statutory consideration.

16.2 The application seeks consent to the painting a mural on the east wall of the Vestry which fronts onto Lion Walk Centre. The former Holy Trinity Church comprises the pre-Conquest Tower, the main body of the Church that was rebuilt in the Fourteenth and the Fifteenth Century and the Nineteenth Century additions that include the North Aisle, North Chapel and East Vestry. Although the Anglo-Saxon Tower and the medieval part of the building make the highest contribution to its architectural and historic value, the Nineteenth Century additions, built in Gothic Style to match the medieval Church, contribute to its aesthetic value and provide evidence of the site’s development. At present, the east wall of the Vestry is painted in a dark red colour which does not assist its legibility as an integral element of the Church; the wall is often mistaken as a section of the site’s enclosure rather than an external wall of the Grade I listed building. Moreover and despite the dark paint and its poor state of repair, the monochromatic surface of the wall remains a neutral feature of the site that leaves the East elevation of the Church as the focal point of the views of Trinity Square when seen from the East.

16.3 The proposed mural includes a representation of various sites and personalities that relate to the history of Colchester. The design comprises striking colours and the style is reminiscent of graffiti works or children’s book illustrations. This artistic approach is regarded inappropriate for a site of such high heritage significance. By virtue of its busy content, intense colours and frivolous style, the mural would fail to integrate harmoniously into the site of the historic Church and would have an adverse impact on its tranquil and picturesque character. The polychromatic representation would compete visually with the east elevation of Holy Trinity to the backdrop and would shift the visual focus from the Church to the wall.

- 16.4 The mural would be painted with household paints and covered by anti-graffiti coating. The application does not include enough technical details for the execution of the work. Given the present condition of the wall, painting directly on its surface does not seem feasible; a preparation of the substrate should be necessary, but the application does not include any information on the matter. At the same time, the use of household paints and anti-graffiti coating generates concerns for the impact on the Vestry wall which suffers from damp. The proposed materials could affect the breathability of the historic fabric, exacerbating the existing problem and accelerate the deterioration of the stonework.
- 16.5 The detrimental impact of the mural on the character and appearance of the listed building, as discussed in Par. 16.5, would reflect poorly on the Conservation Area as well. At present, there is a striking contrast between the busy Lion Walk Shopping Centre and the tranquil churchyard of Holy Trinity which is particularly evident when the application site is viewed for the north or the south. The addition of the mural on the Vestry wall would add further visual clutter in an area which is already cluttered by the shops' signage, shopfront representations, banners, street furniture and external seating, causing the commercial character of the Shopping precinct to encroach into the historic site.
- 16.6 Some commentators argued that the cheerful character of the mural could be a positive addition to the Conservation Area if painted on another surface in the Shopping Centre. This is a valid point that takes into account the desirability to enhance the vitality of the Conservation Area, while protecting its most sensitive areas and heritage assets.
- 16.7 For the reasons set out above, the proposed mural would result in a level of harm to the special interest of the Grade I listed site through material impact to historic fabric and adverse impact to its character and appearance. The detrimental impact on the historic site would reflect poorly on the Conservation Area, while additional harm to the historic town centre would result from the addition of visual clutter in the location. This harm would be classified as less than substantial, according to the definitions of the National Planning Policy Framework.
- 16.8 The Framework gives great weight to the conservation of designated heritage assets, noting that the more important the asset, the greater the weight should be. The Framework also states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, that harm requires clear and convincing justification and should be weighed against the public benefits of the proposal. However, the application includes insufficient material for the justification of the proposal (such as the selection criteria for the location, the concept and the style of the mural etc.). Moreover, the project which is an initiative of the Lion Walk Shopping Centre, would not secure any benefits or 'dividend' for the Grade I listed building. In the proposed location it would also fail to benefit and enhance the Conservation Area, whereas it could have a positive impact if added in another location without heritage constraints identified.

16.9 The proposal would thus fail to comply with the statutory requirements and the national and local policies for the protection of designated heritage assets and Conservation Areas and is consequently recommended for refusal.

17.0 Conclusion

17.1 By virtue of its design and style, the mural would be inappropriate for the highly significant historic site and would detract from its appearance and character. The materials to be used could exacerbate the poor condition of the wall by reducing its breathability and aggravating the existing issue of damp. The addition of the mural would affect the tranquil character of the churchyard and add visual clutter in the location, having thus an adverse impact on the Conservation Area as well. Therefore, the proposal would result in less than substantial harm to the special interest of the Grade I listed site and the Conservation Area. However, the project would fail to secure any benefits for the designated heritage assets that could outweigh the anticipated harm. Since the application would not comply with the legislation and the national and local policies for the protection of designated heritage assets and Conservation Areas, it is recommended for refusal.

18.0 Recommendation to the Committee

18.1 The Officer recommendation to the Committee is for:

REFUSAL of Listed Building Consent for the reasons set out below:

1. The planning application relates to the East wall of the Vestry of the former Holy Trinity Church. The site is listed at Grade I for its exceptional special interest and is situated within the designated Colchester Conservation Area 1. The application seeks consent to the painting of mural that includes reference to sites and personalities associated to the history of Colchester. The mural would be painted directly on the surface of the wall with the use of household paints with a finish of anti-graffiti coat.

Section 16(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant listed building consent, special regard is given to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the Act requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Additionally, Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning applications are determined in accordance with the local development plan unless material considerations indicate otherwise.

The National Planning Policy Framework (2019) states that 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, noting that the more important the asset, the greater the weight should be; any harm to its significance should require clear and convincing justification (Section 16, Paragraphs 193 and 194). Paragraph 196 of the Framework notes that where a proposed development would result in less than substantial harm to a

designated heritage asset , the relevant balancing exercise is to weigh-up the harm caused against the public benefits of the proposal.

The relevant adopted Local Plan Policies in respect of the protection of the heritage assets and Conservation Areas include Core Strategy Policies ENV1 and UR2 and Development Policies DP1 and DP14. Policy ENV1 (Environment) of the Core Strategy (adopted December 2008, updated 2014) states that the Borough Council will conserve and enhance the historic environment and will safeguard the Borough's history through the protection of and enhancement of sites of national, regional and local importance. Core Strategy Policy UR2 (Built Design and Character) sets out that developments which are discordant with their context and fail to enhance the character, quality and function of an area will not be supported. Planning Policy DP1 (Design and Amenity, revised July 2014) of the Development Policies (Adopted October 2010, revised July 2014) requires that development proposals must respect and enhance the character of the site , its context and surroundings in terms of material and detailed design features. Development Policy DP14 (Historic Environment Assets) stresses that development will not be permitted that will adversely affect a listed building or a Conservation Area.

By virtue of its design and style, the mural would be inappropriate for the highly significant historic site and would detract from its appearance and character. The materials to be used could exacerbate the poor condition of the wall by reducing its breathability and aggravate the existing issue of damp. The addition of the mural would affect the tranquil character of the churchyard and add visual clutter in the location, having thus an adverse impact on the Conservation Area as well. Therefore, the proposal would result in less than substantial harm to the special interest of the Grade I listed site and the Conservation Area. The application does not provide sufficient information for the justification of the proposal, while the project would fail to secure any benefits for the designated heritage assets that could outweigh the anticipated harm.

Therefore, the proposal is considered contrary to the aforementioned adopted Local Planning Policies and the provisions of the National Planning Policy Framework and allied Practice Planning Guidance (PPG) . By failing to protect the special interest of the Grade I listed Holy Trinity Church and preserve or enhance Colchester Conservation Area 1, the application also fails to accord with the statutory requirements that are set out by Sections 16(1) and 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.