
Appeal Decisions

Site visit made on 31 January 2017

by Mrs Zoë Hill BA(Hons) Dip Bldg Cons(RICS) MRTPI IHBC

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

Decision date: 28 February 2017

Appeal Ref A: APP/E2001/W/16/3160951
17 Ladygate, Beverley, HU17 8BH

- 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 The Rice Trust against the decision of East Riding of Yorkshire Council.
 - The application Ref: DC/16/01821/PLF/EASTSE PP-05192653, dated 31 May 2016, was refused by notice dated 7 September 2016.
 - The development proposed is change of use from vacant retail to café bar and installation of external canopy to rear.
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Appeal Ref B: APP/E2001/Y/16/3160947
17 Ladygate, Beverley, HU17 8BH

- 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 The Rice Trust against the decision of East Riding of Yorkshire Council.
 - The application Ref: DC/16/01822/PLB/EASTSE PP-05192653, dated 31 May 2016, was refused by notice dated 7 September 2016.
 - The works proposed are described as change of use from vacant retail to café bar and installation of external canopy to rear.
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Decisions

1. Both Appeal A and Appeal B are dismissed.

Preliminary Matters

2. As a consequence of concerns regarding the proposed use of the external area, the scheme was altered to omit the canopy to the rear as shown on drawing no. LAD/02/16/C. A proposed ground floor opening was also omitted. The Council determined the proposals on this basis and so shall I.
 3. The above descriptions were taken from the application forms. However, the Council's notice of decision for the Planning Application describes the proposal as 'change of use from retail (A1) to café bar (A3/A4) and installation of extraction flue to rear'. The Listed Building Consent notice of decision describes the works as 'external and internal alterations including installation of an extraction flue to rear, alteration to location of the door opening to the ground floor wc and removal of a section of wall between two rooms at first floor level'. These descriptions provide greater detail.
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Main Issues

4. No. 17 Ladygate is a grade II listed building and it is situated within the Markets Area of the Beverley Conservation Area. It is therefore my statutory duty to consider whether the proposed development would preserve the special architectural and historic interest of the listed building and its setting and consider whether or not the proposed development would preserve or enhance the character or appearance of the Conservation Area.
5. In addition, in Appeal A, there is a further main issue which is to consider the effect of the proposed development on the living conditions of nearby residential properties having particular regard to noise and disturbance, odour and fumes.

Reasons

Listed Building

6. No. 17 Ladygate is a grade II listed building. The C18th front elevation hides a much earlier building. The front elevation is of brown brick under a clay pantile roof. The ground floor frontage has a large timber sash window and there are two sash windows to the front upper floor. The main door has a fanlight and adjacent to it is a passageway door which gives access to the rear yard. Internally it is evident that considerable reconfiguration has taken place with walls removed and new partitions inserted along with modern fittings. At first floor there is a remaining fireplace of architectural interest, although this is awkwardly related to the internal space. Windows within the rear of the building include older sash windows as well as later replacements. Viewing the property externally, and within the passageway, it is apparent that the structure of the appeal building gable, which extends over the ground floor passageway, is built up to No. 19.
7. The special architectural and historic interest of the listed building, its significance, is derived from its age, vernacular design and use of materials, and its aesthetic value. It also has historic value as a property which has changed over a significant period illustrating changes in use and aesthetic taste.
8. The works to install the proposed extraction flue are set out in general terms. Whilst relatively modest in terms of its impact on historic fabric, it would result in an unattractive flue pipe on the exterior of this listed building. As such, these works amount to harm to the listed building.
9. The occupier of No. 19 has set out concerns regarding structural implications of the change to load bearing that might arise should the internal wall between the front two rooms of the appeal property be removed to allow for greater capacity of visitors to the premises. Moreover, the Council suggest that there should be a condition to allow for further investigation of that wall. However, it seems to me that this matter ought to be resolved prior to any consent being granted. Furthermore, the 'Design Access and Heritage Statement' is limited and does not follow the advice of the Framework that local planning authorities should require an applicant to describe the significance of any heritage assets affected, sufficient to understand the potential impact of the proposal on the significance and, as a minimum, that the relevant historic environment record should have been consulted.

10. Additionally, whilst the removal of the wall separating the front rooms of the property appears to relate to later development this is not particularly recent development and illustrates a phase in the buildings history. However, no detailed assessment has been made or evidence provided in this regard. The limited information prevents proper assessment of the removal of this first floor wall. I therefore cannot conclude, on the information available, that these works would preserve the special interest of the building.
11. On the evidence before me, I conclude that the special architectural interest, which forms much of the significance of the building, would not be preserved by the proposed works. The proposed flue would harm the listed building and the internal works to the first floor front rooms have not been adequately assessed. As such, the works would be contrary to the provisions of s.16 and s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. However, the Framework advises that where harm is less than substantial this should be weighed against the public benefits of the scheme. This balance is also a requirement of Local Plan Policy ENV3 of the adopted East Riding Local Plan 2012-2029 Strategy Document (adopted April 2016) (the Local Plan).

Conservation Area

12. The appeal site is situated within the Beverley Conservation Area. The Markets Area of the Conservation Area is characterised by its Georgian heritage, based on earlier development, its mix of commercial and residential uses surrounding the open the market areas as well as the specific market related buildings. Indeed, the Council's Conservation Area Appraisal states 'its specialness is to be found in the contrast of its shopping spaces, whether the spaciousness of the Saturday Market or greater intimacy of Wednesday Market...' It goes on to note the shop fronts and public realm are of a 'mostly intact English Historic town centre'. The historic vernacular character of the buildings, the traditional materials, including floor material, and the open spaces all contribute to the character and appearance of this attractive Conservation Area which has developed to have strong aesthetic and communal values.
13. Whilst I consider that the proposed use would not harm the character of the Conservation Area as a whole, the siting of the flue as an unsympathetic industrial type structure, weighs a little against the proposal in that it would neither preserve nor enhance the character or appearance of the Conservation Area. The harm to the Conservation Area would be less than substantial so this needs to be weighed with any public benefits of the scheme in the planning balance. This balance needs to be undertaken before I can conclude in respect of Local Plan Policy ENV3.

Living Conditions

14. The appeal property is situated towards the edge of the town centre and market area of Beverley where Policies EC1 and EC3, taken together, seek to encourage schemes which support the vitality and viability of the town centre, including the night time economy provided that such activities can be controlled to address amenity implications. I saw that beyond this property there were some other hot food uses. As such, a degree of disturbance would be expected in this area later into the evening.
15. The appeal scheme would change the property from a shop to use as a 'café bar' that would be open from 11:00 am to midnight Monday to Saturday and

- 11:00 to 18:00 on Sundays. The business would have kitchen/food preparation areas on both the ground floor and first floor and have tables for customers on each floor too.
16. Following consultation responses the appeal scheme no longer proposes an external awning and seating area. I am satisfied that a condition could be used to prevent use of that external area by customers and I shall consider the proposal on that basis.
17. I appreciate that there are other hot food takeaway, café and restaurant uses in this locality as well as public houses. However, in the case of the appeal property I saw that it is attached to a house. In particular, the attached property, No. 19, has a bedroom which adjoins one of the proposed dining rooms and that bedroom has a window close to the access door to the proposed café bar business. There is also a ground floor living room close to this access. Notwithstanding the intention to provide sound attenuation between the dining room and neighbours wall (a matter which is not provided for in terms of detail in either the planning permission or listed building consent applications), the comings and goings associated with the proposed café bar would be likely to cause a significant degree of noise and disturbance until late at night.
18. The concern in respect of 'fumes' referred to by the Council relates to smokers standing outside the premises at the front because there would be no other external area for use by customers. Although I have no evidence that this would be a significant concern it is my experience that some people are likely to smoke outside such premises and this might add a little harm to the living conditions of the adjoining property. Furthermore, notwithstanding the proposed extraction equipment, there is a likelihood of some odours impacting upon living conditions for the neighbouring house which adds marginally to the significant concerns regarding noise and disturbance.
19. Given that the proposed external seating area is no longer part of the appeal scheme, and noting the location of the food preparation areas, I am satisfied that, subject to conditions regarding music, it is unlikely that there would be material harm to the living conditions of dwellings in Globe Mews or working conditions at the office in No. 15. Nonetheless, the likely significant harm to the living conditions of the occupiers of No. 19, particularly in terms of noise and disturbance, is such that I find conflict with Policy ENV1 and as a consequence Policy EC3 would not be complied with either. I also consider that there would be conflict with advice contained within the National Planning Policy Framework (the Framework) which makes it clear that planning should always seek a good standard of amenity for all existing and future occupants of land and buildings.

Planning Balance and Conclusions

20. I have found that the proposed development would harm the living conditions of the occupiers of 19 Ladygate and this weighs heavily against the scheme and is such that it is determinative in terms of Appeal A (the planning appeal). Moreover, there would be harm to the listed building and Conservation Area. Whilst those harms are less than substantial the only public benefit before me would be the active use of the listed building in the use proposed. In this case, given I shall dismiss the planning appeal the benefit of the proposed use would not outweigh the Listed Building or Conservation Area harms identified. As a

result I find that the proposal fails to accord with Local Plan Policy ENV3. Thus, Appeal B shall fail (the Listed Building Consent Appeal). Further, the listed building and Conservation Area harms add weight to the planning reasons to dismiss the planning appeal.

21. I have considered whether any benefit would be gained by seeking further information in respect of the wall to be removed, but given my conclusions on the living conditions matter it would not materially alter the decisions and so little would be gained by doing so.
22. For the reasons set out above and having had regard to all other matters raised, both appeals are dismissed.

Zoë Hill

Inspector