
Appeal Decisions

Site visit made on 7 February 2017

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

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

Decision date: 06 March 2017

Appeal A: APP/G2713/W/16/3162170 **214 High Street, Northallerton DL7 8LW**

- 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 Yorkshire Trading Co Ltd against the decision of Hambleton District Council.
 - The application Ref: 16/01535/FUL, dated 1 July 2016, was refused by notice dated 27 September 2016.
 - The development proposed is a change of use from a shop (Class A1) to a hot food takeaway (Class A5), including associated internal and external alterations.
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Appeal B: APP/G2713/Y/16/3162169 **214 High Street, Northallerton DL7 8LW**

- 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 Yorkshire Trading Co Ltd against the decision of Hambleton District Council.
 - The application Ref: 16/01536/LBC, dated 1 July 2016, was refused by notice dated 27 September 2016.
 - The works proposed relate to a change of use from a shop (Class A1) to a hot food takeaway (Class A5), including associated internal and external alterations.
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Decision

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed and listed building consent is refused for works relating to a change of use from a shop (Class A1) to a hot food takeaway (Class A5), including associated internal and external alterations.

Preliminary Matters

3. As the proposal is in a Conservation Area and affects a Listed Building I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
4. The Council have not identified any adverse impacts on the character or appearance of the Northallerton Conservation Area (CA). Nonetheless, I have had special regard to the desirability of preserving or enhancing its character or appearance. As the proposal would retain the existing façade and result in the

installation of extraction equipment that would not be visible from the public domain I am satisfied that it would preserve those interests and not be detrimental to the historic significance of this heritage asset.

5. The Council has an emerging plan that is at an early stage and is yet to be examined in public. As its policies have not been tested and may be subject to modification this appeal will be determined in accordance with the extant development plan¹ and the National Planning Policy Framework 2012 (the Framework).
6. The appellant has relied upon two appeal decisions² to justify the proposal. Whilst I have paid careful attention to these decisions the circumstances are not similar in all respects because they do not relate to the local development plan that forms the basis of this appeal. Moreover, one was located in an area of reduced footfall with a higher proportion of non-retail units whilst the other was associated with a small local centre of limited economic capacity within the wider context of an emerging plan that was at an advanced stage. Consequently, this appeal has been determined on its individual merits and the evidence before me.

Main Issues

7. The main issues are whether the proposal would preserve a Grade II listed building, 214 High Street, and any of the features of special architectural or historic interest that it possesses and its effect on the vitality and viability of the Northallerton Primary Retail Area.

Reasons

8. The appeal site comprises a ground floor retail unit (Class A1) that is part of a three storey property located in the centre of Northallerton within a Primary Shopping Frontage. The proposal is seeking to convert the ground floor to accommodate a customer seating area, service counter and kitchen with an ancillary cold room and accessible customer WC. The first floor would accommodate two store rooms, a plant room, an office and a staff WC with the second floor providing ancillary storage. The proposed hot-food takeaway would be open to customers on a daily basis between the hours of 11:00 and 23:00.

The listed building

9. The building was first listed in 1988 and is a former residential dwelling dating from the early 19th century with an early 18th century range to the rear. Both elements have been subject to modification and incorporate later additions. The main part of the building that is the subject of this appeal comprises three stories with two bays and an offset, modern shop frontage with a central doorway. It is constructed from brick and surmounted by a Welsh slate roof that rises above the two adjoining properties. The windows are distinctive and comprise two over two, un-horned sashes of the same proportion. The building occupies a prominent position on one of the main routes into the town centre. As such this elevation makes a significant contribution to the historic commercial frontage of Northallerton. Given the above, I find that the special

¹ Hambleton District Council LDF Core Strategy DPD 2007 and Hambleton District Council LDF Development Policies DPD 2008.

² APP/Q0505/W/15/3137889 and APP/J0405/W/16/3143953

interest of the listed building, insofar as it relates to this appeal, to be primarily related to the historic building fabric and the architectural integrity of its main façade.

10. I observe from the plans and my site visit that the proposal would lead to the formation of internal and external openings to accommodate extraction and ventilation equipment. These would be located between the ground, first and second floors and in the roof of a rear outrigger as well as in the rear elevation of the main building. I note from the plans that the ductwork for the extraction equipment would have a 400 mm diameter and penetrate the floor slabs of the first and second floors and the roof. A much smaller ventilation duct, associated with a WC, would penetrate the rear elevation. Whilst the principal elevation would remain unaltered this would lead to an acknowledged loss of historic fabric. Given the above, I find that the proposal would fail to preserve the special interest of the listed building. Consequently, I give this harm considerable importance and weight in the planning balance of this appeal.
11. Paragraph 132 of the National Planning Policy Framework 2012 (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 the alteration or destruction of those assets. Given the limited loss of fabric, I find the harm to be less than substantial in this particular instance but nevertheless of considerable importance and weight.
12. Under such circumstances, paragraph 134 of the Framework advises that this harm should be weighed against the public benefits of the proposal, which includes the securing of optimal viable use of listed buildings. The appellant is of the opinion that the proposal would be beneficial because, among other things, it would create jobs and enhance the appearance of the CA through the re-use of a currently vacant building thus ensuring a more active frontage. I accept that these public benefits would accrue and that the proposal would help ensure the continued viable use of the appeal property. However, these benefits are predicated on the acceptability of the proposed change of use. As I am dismissing Appeal A these public benefits consequently only carry limited weight.
13. Bearing in mind the harm that would be caused and the fact that this would not be outweighed by any public benefit, I conclude that the proposal would fail to preserve the special historic interest of the Grade II listed building. This would fail to satisfy the requirements of the Act, paragraph 134 of the Framework and conflict with policy CP16 of the Hambleton District Council LDF Core Strategy DPD 2007 and policy DP28 of the Hambleton District Council LDF Development Policies DPD 2008 (DP) that seek, among other things, to ensure that development preserves 'man-made' assets and listed buildings. As a result the proposal would not be in accordance with the development plan.

The primary retail area

14. Policy DP21 of the DP states that a balance between retail and non-retail commercial uses (e.g. banks, cafes) will be maintained to secure the variety and vitality of Primary Retail Areas as identified elsewhere in the development plan. The policy goes on to advise that this balance shall be achieved through differential controls applied to secondary and primary shopping frontages. In the Northallerton primary frontage this equates to the restriction of non-retail

commercial use to no more than 25% of the total frontage, when measured by total distance. The appellant accepts that this threshold has been exceeded and that the most recent evidence suggests that non-retail use comprises around 35.5% of the primary frontage.

15. It has been suggested that this policy carries reduced weight because it is not consistent with the Framework. Planning law³ requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. Paragraph 215 of the Framework advises that the development plan should not be considered out-of-date simply because it was adopted prior to the publication of the Framework. Due weight should be given to its policies according to their degree of consistency with the Framework. The greater the consistency the greater the weight.
16. In this particular case the Council maintain that primary shopping frontages with a high proportion of retail uses are supported by the Framework and that non-retail uses in the town centre are supported by other policies at alternative town centre locations. As such, the Council have suggested that the development plan is not overly restrictive despite the prescriptive nature of policy DP21, insofar as it relates to primary frontages. Whilst the appellant maintains that the policy is overly restrictive I note that it nevertheless permits non-retail commercial uses in secondary frontages provided they do not occupy more than two consecutive units. Consequently, I find that an acceptable degree of flexibility is present and I am satisfied that the policy promotes a competitive town centre that provides customer choice and a diverse retail offer, as required by paragraph 23 of the Framework. As such, I find that it has a high degree of consistency with the Framework and thus carries full weight.
17. The appellant has also suggested that the threshold is not based on an up-to-date evidence base and that the 'retail situation' in Northallerton has changed, as evidenced by the fact that the proportion of non-retail uses is above the defined primary frontage threshold. However, I do not have the full facts before me concerning those permissions nor do I have any substantiated economic evidence that would suggest a significant or permanent trend towards non-retail use in Northallerton is present. In contrast, recent evidence⁴ provided by the Council suggests that Northallerton is vital and viable with low levels of vacancy and that it should remain the main shopping destination for the district. Consequently, I find that the need for an increased non-retail use in Northallerton lacks any substantiated basis and that the supporting evidence for its continued retail use is consistent with paragraph 158 of the Framework.
18. I acknowledge that the Town and Country Planning (General Permitted Development) (England) Order 2015 encourages a greater flexibility in relation to changes from Class A1 to Class A2 and A3. Whilst I have no doubt that this seeks to encourage the reuse of vacant units, to encourage more flexible town centre growth, the potential impact of such changes on the local retail environment is still recognised by the fact that any such change requires prior notification. Bearing this in mind, as well as the fact that the increased

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (as amended)

⁴ Hambleton District Retail and Town Centre Uses Study. GVA Final Report, January 2014.

flexibility does not apply to Class A5, I find that this consideration has little relevance to the specific circumstances of this case.

19. The appellant has highlighted the undisputed fact that the appeal property has remained vacant since it was marketed in March 2015. I observed that this was still the case at the time of my site visit. It has been suggested that this continued vacancy is detracting from the vitality and viability of the town centre and that there is no proven demand for an A1 use at this location.
20. Whilst I accept the previously identified public benefits, I am not satisfied that a single hot food takeaway would make a significant contribution to an already thriving local economy in a town centre that has been identified through an objective, independent assessment⁵ as 'vital and viable'. I acknowledge the proposed opening hours would provide an opportunity for sales throughout the day but in the absence of any substantiated evidence to the contrary I have nothing before me to suggest that this would, in fact, be the case. Given that the majority of sales would most likely occur in the evenings, the proposal would, at most, only be capable of making a small contribution to the evening and night-time economy of Northallerton. Neither this nor the other benefits that I have identified are sufficient to outweigh the cumulative erosion of the primary retail function of this frontage and the resulting policy conflict.
21. I acknowledge that the property has been vacant for some time and that efforts have been made to find a suitable retail occupant through a professional marketing exercise. The Council has drawn my attention to undisputed deficiencies relating to an apparent lack of engagement with local retailers and a failure to utilise the Council's commercial property register. Whilst I accept that some effort was made I am not satisfied that it was sufficiently comprehensive to justify the conclusion that there is a proven lack of demand for an A1 use at this particular location. I acknowledge that the spatial configuration of the property led to its rejection by two A1 retailers. However, no evidence is before me to justify why this could not be mitigated to make the building more attractive to potential retailers. Furthermore, I find the low response rate unsurprising given the highly dilapidated appearance of the property in the marketing material despite the fact that this had been remedied by the time of my site visit.
22. Given the above I conclude that the proposal would cause significant harm to the vitality and viability of the Northallerton Primary Retail Area contrary to policy DP21 of the DP. Consequently, the proposal would not be in accordance with the development plan.

Conclusion

23. For the above reasons and having regard to all other matters raised I conclude that, on balance, the appeals should be dismissed.

Roger Catchpole

INSPECTOR

⁵ Hambleton District Retail and Town Centre Uses Study. GVA Final Report, January 2014.