



Appeal Decision

Site visits made on 2 January 2018 and 5 February 2018

by A Jordan BA Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 February 2018

Appeal Ref: APP/A4710/W/17/3179929

Fusion Nightclub, Central Street, Halifax, West Yorkshire, HX1 1HU

- 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 Reza Shahsavar against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 16/01591/FUL, dated 5 December 2016, was refused by notice dated 7 June 2017.
 - The development proposed is a smoking area to second floor and alterations to existing smoking area to first floor.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The structure has already been built and so the application is made retrospectively. Although, the building outlined in red on the submitted location plan does not accord with the site address. I have identified the building from the submitted elevations and site photographs which were verified during the site visit.
3. The appeal property is a Grade II listed building, listed under the address, Former Barclay's Bank, Nos 4 to 8 Central Street, Halifax. The site also lies within the Halifax Town Centre Conservation Area. The application is not accompanied by an application for listed building consent.

Main Issues

4. Accordingly, the main issues for the appeal are:
 - The impact the works would have on the listed building, known as 6 Central Street, or on any features of special architectural or historic interest that it possesses and the effect of the proposal on the Halifax Town Centre Conservation Area.
 - The effect of the proposal on the living conditions of adjoining residential occupiers.

Reasons

The Effects of the Proposal on Heritage Assets

5. S16(2) and S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 require special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic

interest which it possesses. S72(1) of the Act requires special attention to be had to the desirability of preserving or enhancing the character or appearance of a Conservation Area.

6. Policies, BE14 of the (Development within Conservation Areas) of the *Replacement Calderdale Unitary Development Plan* (UDP) seeks to ensure that alterations and extensions to listed buildings do not have an adverse effect on the architectural and historic character of the building and respect the individual details of the building including the form, design, scale, methods of construction and materials. Policy BE18 requires that development proposals respect the characteristics of buildings in the Conservation Area as well as the wider townscape. These policies reflect the statutory duties defined in the Act. Policy BE1 also aims to ensure that development proposals make a positive contribution to the quality of the existing environment and seek high standards of design.
7. The listing describes the building as a former bank and details the elements of the façade that contribute to its attractively decorative appearance, which provides a good example of eclectic mid-Victorian architecture. The significance of the asset lies predominantly in its outward appearance as part of a wider island group and as an example of a building which reflects the importance of the town during the mid-Victorian period. In addition to the appeal property, a number of adjoining buildings also appear to be listed and the building is also listed because of its group value.
8. The building runs along one side of a triangular “island” formed by buildings along Central Street, Crown Street and Silver Street. These back onto a rear yard, the undercroft entrance to which sits alongside the appeal property. The yard is a relatively small space and the height of the surrounding buildings gives it an enclosed and overbearing character. The buildings are constructed in stone and brick with regularly spaced and simply detailed window openings at upper level. The rear facades lack the ornamentation of the front elevations with fire escapes, drain pipes and flues clearly evident. At the time of my visit large amounts of rubbish and other detritus crowded ground level. I can therefore appreciate why the council conservation officer described the space as “Dickensian”.
9. The application comprises the erection of a 2 storey smoking shelter above an existing rear extension at the rear of the appeal building. It is constructed of a metal framework with timber infill panels and flooring. Parts of the side and front panels are louvered, which is apparent when within the structure, but not immediately obvious from ground level, from which the structure appears largely enclosed. Due to its size the structure obscures a substantial portion of the original rear façade. The use of timber also appears incongruously rustic in the existing commercial context. Even taking into account the utilitarian appearance of the original rear elevation, the size of the structure and the alien materials used, result in an obtrusive and uncomplimentary addition which is entirely out of character with the simple qualities of both the appeal property and its neighbours. In this regard the structure fails to preserve the character and appearance of the existing building. Although the significance of the listed building largely lies in the appearance of its front façade, the intrusive addition would nonetheless erode its Victorian character in views from adjoining buildings and would thus have a harmful effect upon its significance.

10. The visual effects of the proposal on the wider Conservation Area are limited. The yard is enclosed and so the works are not clearly apparent in views of the front of the building, or of the wider townscape. I therefore consider the proposal to have given rise to very limited harm to the character and appearance of the Halifax Town Centre Conservation Area.
11. I am advised that a single storey shelter previously stood above the rear extension and that the proposal comprises an enlargement of this existing structure. The Council records show that an application was made in 2009 for a smoking shelter at first floor level but that this application was withdrawn. Photographs from the appellant also show an existing structure. However, I have no compelling evidence that the structure was lawful. Furthermore, the structure before me is substantially larger than the previous addition. I therefore give no weight to the existence of a previous smaller structure as a fallback in considering the effects of the proposal on the listed building.
12. The proposal would therefore be contrary to paragraph 132 of the National Planning Policy Framework (the Framework), which directs that great weight should be given to the conservation of designated heritage assets, and with local policies which has similar aims. The works would affect only parts of the Listed Building and the harm caused to its significance would thus be less than substantial. This harm is nevertheless a matter to which I attribute significant weight which the Framework indicates should be weighed against the public benefits of the scheme.
13. The applicant has advised that the structure is an essential facility for his business, which has suffered economically since the introduction of the smoking ban. Whilst I acknowledge that the facility will have provided an attractive facility for smokers, and so improve the attractiveness of the venue to such customers, I do not accept that a structure of the size and form proposed is a necessary component of the venue, and this limits the weight I attribute to it as a public benefit. Whilst I note that the appellant will have invested capital in having the structure built, the works were carried out without the necessary consents at the appellant's risk, and so I attribute no weight to this matter. I note the view of the appellant that the structure includes works to the fire escapes, and has assisted in reducing trips and falls, potentially improving safety at the venue. I have no substantive evidence that the works represent an improvement or that health and safety requirements could not be achieved in a less intrusive manner, and I give no weight this matter.
14. Therefore, even though I consider the harm to the significance of the listed building to be relatively low on the scale of "less than significant harm", the benefits identified also carry very little weight. As such, they do not outweigh the harm the proposal would cause to the character of the listed building, or to its significance as a heritage asset. I therefore conclude the proposal would fail to comply with national policy outlined in the Framework and with local policies BE1 and BE14 outlined above.

The Effects of the Proposal on Living Conditions

15. The Council and the appellant appear to be in dispute as to whether the structure can be classified as a smoking shelter. Whatever its status, I noted on site that both floors of the structure provided an extensive external seating area. It was equipped with tables arranged in fixed booths and would, to my

mind, be relatively attractive as an outdoor area for drinking and socialising in which customers would be likely to linger. Whilst I am advised that the area does not have external music, and is supervised by bouncers, even relatively low key use of the area by customers would naturally give rise to noise and disturbance over the course of the evening which would occur during unsociable hours. Given the open and louvered construction of the structure this noise would be likely to travel.

16. The property lies with part of the town centre covered by policy S12 of the UDP, which seeks to encourage residential uses in the town centre, and to protect such occupiers from the worst effects of the night-time economy. I note the appellant's view, that existing residents would be aware of the nightclub use before moving to the area, and would expect a level of disturbance in a town centre location. I take into account of the fact that an open structure was previously in place and in use as a smoking shelter at the site. However, its replacement with a structure over 2 floors effectively extends the outdoor seating available to the nightclub and so would be likely to increase levels of disturbance coming from the building. Letters from local businesses indicate that some of the upper floors of the buildings facing into the rear courtyard are occupied as residential flats and I noted during my visit that some of the rear facing windows appeared to be used as bedrooms. Given the proximity of these properties, I see no reason to dispute the view that the use of the structure has given rise to noise and late night disturbance which is harmful to their living conditions.
17. The proposal would therefore conflict with policies S12 and EP8 of the UDP which together seek to ensure that development within the Halifax Residential Amenity Area does not cause an unacceptable loss of amenity as a result of noise or disturbance, particularly late at night. It would also fail to comply with guidance in the Framework which seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other Matters

18. The proposal has given rise to harm to the living conditions of nearby residential occupiers. It has also had a harmful effect on the significance of the heritage asset. Whilst I take account of the fact that the proposal would provide a facility which would potentially be of benefit to the night-time economy in the town, this matter does not outweigh the totality of harm identified.
19. Accordingly, having regard to all of the matters raised, for the reasons outlined above, the appeal is dismissed.

Anne Jordan

INSPECTOR