



Appeal Decisions

Hearing Held on 26 November 2019

Site visit made on 26 November 2019

by Anne Jordan BA (Hons) MRTPI

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

Decision date: 12th December 2019

Appeal A

Appeal Ref: APP/C2741/W/19/3228547

The Punch Bowl, 5-9 Blossom Street, York, YO24 1AU

- 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 JD Wetherspoon plc against the decision of City of York Council.
- The application Ref 18/02057/FUL, dated 5 September 2018, was refused by notice dated 12 February 2019.
- The development proposed is two-storey and single-storey extensions with roof terrace following the demolition of existing single-storey rear extensions and fire escape.

Appeal B

Appeal Ref: APP/C2741/Y/19/3228548

The Punch Bowl, 5-9 Blossom Street, York, YO24 1AU

- 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 JD Wetherspoon plc against the decision of City of York Council.
- The application Ref 18/02058/LBC, dated 5 September 2018, was refused by notice dated 12 February 2019.
- The works proposed are listed building consent for internal and external alterations including demolition of rear extensions and fire escape, erection of two-storey and single-storey extensions with roof terrace, refurbishment of customer areas and relocation of customer toilets to first-floor.

Decisions

1. The appeals are dismissed.

Application for costs

2. At the Hearing an application for costs was made by JD Wetherspoon plc against City of York Council. This application is the subject of a separate Decision.

Procedural Matters and Policy Background

3. The Council have referred to policies in the City of York Local Plan - Publication Draft February 2018 (local plan). This plan has at the time of writing not been through examination and so I have no basis for concluding that the policies within it will be adopted in their current form. I have therefore attributed limited weight to these policies in the determination of the appeal.
4. The Council referred in their decision to policy HE5 of the emerging Development Control Local Plan, rather than HE3. I have accepted this as an error and have taken policy HE3 into account in my decision.

Main Issues

5. The first main issue for both appeals is the impact the works would have on heritage assets. These are the effect on the Grade II listed building known as The Punch Bowl Hotel, 5-7 Blossom Street, its setting, or on any features of special architectural or historic interest that it possesses, the effect of the proposal on the setting of the Grade I listed Micklegate Bar and whether the proposal would preserve or enhance the York Central Historic Core Conservation Area.
6. In relation to Appeal A, a further main issue is whether the proposal would provide acceptable living conditions for adjoining residential occupiers.

Reasons

The effect of the proposal on heritage assets.

7. 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 and appearance of that area.
8. The Punch Bowl Public House is Grade II listed and is a three storey corner property which faces onto Blossom Street and Nunnery Lane. The property dates from c1835 and c1863 and was originally a public house and shops, later used as a hotel. The earlier part of the building fronts Blossom Street and is made up of 5 bays with a now infilled central carriage arch. The building sits close to Micklegate Bar (Grade I) and the City Walls (Scheduled Ancient Monument) and forms part of the shared view of these landmarks.
9. The building was originally designed as an inn with multiple letting rooms above. It is currently used as a public use (Use Class A4) which occupies the ground floor, with some ancillary use upstairs in the space originally used as lodging rooms. The rear coach yard is now in use as a beer garden, with a modern conservatory and single storey flat roofed addition occupying a large part of the space. A single storey pitched roof building fronts Nunnery Lane giving the site an enclosed character.
10. Internally the ground floor of the building has been much altered, but the original plan form of a spine corridor from which letting rooms were accessed remains intact on upper floors and some of the original chimney breasts remain. The fenestration of the rear elevation of the earlier range has largely been replaced, although an infilled stair window remains. The parties agree that the external elevations of the 1863 range are well preserved and of high architectural interest.
11. The significance of the asset lies in its design as an inn with shops on part of the ground floor, the surviving plan form illustrating the original purpose of the building, and in the surviving fabric which informs this. Its external appearance also contributes to the varied street scene and is demonstrative of the evolution of the city, sitting just outside a historic Bar on the city walls, within the Central Historic Core Conservation Area.

12. The proposal comprises the demolition of the existing single storey addition, including the glazed conservatory, and its replacement with a part single storey, part 2 storey addition. A roof terrace, accessed by external stairs, is proposed for the roof of part of the single storey addition. The works also include internal alterations to facilitate refurbishment including the provision of customer toilets at first floor level, and the provision of a lift to the first floor.
13. The proposed single storey addition would narrow the width of the existing yard, to no more than that of a wide alleyway. On this basis the Council argue that any perception of the original use of this space, as a coaching yard, would therefore be lost. However the existing space is already occupied by a substantial single storey addition, which includes a modern glazed conservatory. The space has none of its original historic character, and it is not obvious to the general observer that the space would formally have contributed to the character of the building. Therefore whilst the addition will alter the character of this space further, it would have only a negligible effect of the significance of the asset.
14. The 2 storey element would be set back from the main façade and so only barely visible from Nunnery Lane and in glimpsed views from the opposite side of Blossom Street on the approach to Micklegate Bar. In this view a very small proportion of the flat roofed addition would be seen against the backdrop of the stark side façade of Old Priory Court, which would temper any visual impact. Some glimpsed views of the planted screening may be evident in some limited shared views of the asset alongside Micklegate Bar, but given the large proportion of the wider street scene which this view would also encompass, this would have a neutral effect on the setting of the Micklegate Bar and the city wall, and would not have a material impact on the wider Conservation Area. In views from the city wall flat roofs are a common feature to the rear of buildings and in the very limited glimpsed view from the wall the proposed extensions would not appear intrusive or alter the prevailing character of this part of the conservation area or the character of Micklegate Bar.
15. I take into account the glazed appearance of the safety screen which would enclose the beer garden. This would have a contemporary appearance but due to the position of the screen within an enclosed yard, and viewed in the context of bar furniture and planting on the proposed beer garden would not be a prominent feature. The glass would be sand-blasted and the submitted plan shows a "grass-effect" which I am not convinced would be sympathetic. However, I am satisfied that subject to an appropriate condition a suitably subdued effect, which would not detract from the historic character of the asset, could be achieved and do not consider that the use of a glazed balustrade would in principle harm the building's significance.
16. With regard to the position of the washbasins within the proposed WCs at first floor level. I concur that the position of the basins would render them visible through windows at first floor and that this would detract from the character of the building in views from the road. However, the parties agree that a workable solution to ensure an appropriate position for the basins could be facilitated through use of a planning condition. The proposed layout of the male WCs would obscure the chimney breast and alcoves. This feature is indicative of the historic use of the property as a coaching inn and although it has no fireplace, it nonetheless contributes to the character of the building

interior. The feature is not being removed, but the fact that it would not be seen would have a small harmful effect on the significance of the asset.

17. The Council have raised no objection to the internal alterations at ground floor level and taking into account the extent of existing alteration that has occurred to the building I am satisfied that these changes would not impact upon the significance of the asset. Furthermore, although I note the Council's concerns regarding lack of detail in relation to the potential impact of internal piping and duct work, and the need for an appropriately positioned and designed ventilation system to the kitchen, I have no evidence that these matters are not resolvable through the use of appropriate conditions.
18. The site is also located within the York City Centre Area of Archaeological Interest. The Council are content that the proposal would not have an adverse impact on the archaeological interest of the area and I see no reason to dispute this view.

Conclusion on Heritage Assets

19. The enclosing of the chimney breast would cause some limited harm to the significance of the Grade II listed building. The harm that would arise would be "less than substantial". The *National Planning Policy Framework* (the Framework) directs that when considering the impact of a proposed development on the significance of a heritage asset, great weight should be given to the asset's conservation. I therefore attribute considerable importance and weight to this harm, which the Framework also indicates should be weighed against the public benefits of the scheme.
20. The proposal would enable to the use of the upper floors of the premises. I have no reason to consider that the proposal before me is the only means by which the second floor could be reused and have no information in relation to viability. I note that the premises would retain a ground floor WC and access to the existing beer garden is achievable to those with mobility impairments. I therefore give no weight to the introduction of a lift in this case. Nevertheless, the scheme would provide enlarged premises for the business and in this regard would bring some economic benefits through employment, as well as providing an enhanced facility of residents and tourists. The use of a larger area would also arguably bring some aspects of the asset into wider view, thus enhancing its appreciation as a heritage asset. Taking into account the very limited harm that would occur to the significance of the asset, I consider these benefits to be sufficient to outweigh the identified harm in this case.
21. The proposal would not comply with Policy HE4 of the Development Control Local Plan which requires that proposals will have no adverse effect on the character, appearance or setting of a listed building. This policy is not consistent with the Framework which post dates the DCLP and which requires that less than significant harm be weighed against the public benefits of the scheme. I therefore give more weight to the Framework in this case.
22. The proposal would comply with guidance in the Framework which seeks to preserve heritage assets in a manner appropriate to their significance. It would also not conflict with policies D4, D5 and D11 of the Publication Draft Local Plan (2018) (local plan) and policies HE3 and GP1 of the Development Control Local Plan 2005 (DCLP) which together have similar aims.

Living conditions

23. The proposal would alter the use of the external area of the pub. I noted on site that the existing beer garden had tables and chairs and sufficient space, if fully occupied, to accommodate around 30 people. The plans show indicative seating for 60 within a beer garden located at first floor level. However, it seems likely to me that during busy periods, at weekends and during fine weather, the space would be partly occupied by customers who would not be eating and who would be content to stand. In this regard, based on the size of the space and the proportion of it likely to be occupied by furniture, I consider the appellants' assumption of 122 occupiers to be a reasonable one. It also seems likely to me that given the location and popularity of the premises, it would be used to full capacity during some busy periods.
24. The appeal property is adjoined to the south-east by a three-storey block of apartments known as Old Priory Court. Accesses to the individual flats is achieved either at ground level, from an internal stairwell, or via external balconies which overlook the appeal site. Residents have raised concerns that noise from the adjoining use, in particular from the use of the beer garden, would have an adverse impact on living conditions, due to noise and disturbance.
25. The proposal is accompanied by a noise survey¹. The data shows a consistently high level of background noise, with consistent incidents of obtrusive noise over the 24 hour period. Indeed the parties agree that the site is characterised by high levels of traffic noise. The appellant argues that given the noise characteristics of the site, the period of operation of the proposed use and the reduction in noise provided by the building envelope, the predicted noise levels would not have a material effect on the living conditions of adjoining residential occupiers.
26. In order to predict noise levels from the development the noise survey uses a number of assumptions, firstly that half of the users of the beer garden could be speaking at any one time², and that one third of those voices would be raised, but not shouting. The Council have confirmed that they are happy with the methodology adopted. The parties also agree that the period of operation proposed – up to 11O'clock at night, would constitute daytime hours for noise assessment purposes.
27. The noise survey predicts that noise levels at the flats (referred to as the Noise Sensitive Receptor or NSR), would be around 65dba during normal use and 69.1dba during peak periods, a significant increase over average noise levels currently recorded. When a 10dba reduction is applied to account for the building envelope, it is argued that noise levels at the adjoining property will not be notably higher than those currently experienced. As this correction is only applied to the predicted noise levels, I have taken the correction to refer to the screening effect from the 2 storey extension, rather than the existing building.

¹ J D Wetherspoon plc, The Punch Bowl, Blossom Street, York Noise Impact Assessment DC2390-R1v4 by Dragonfly Consulting

² The methodology assumes the beer garden has a capacity of 150, higher than the capacity of 122 which is applied for.

28. The two storey element would provide a barrier to properties at ground and first floor level, and the relative position of the 2 storey extension and the bedroom window to flat 10 at second floor level do not allow for a direct line of sight, mitigating some of the effects of any increase in noise. However, in relation to flat 13, a window which is not identified in the noise survey serves a small open plan kitchen which opens directly onto the living area for the flat. This combined space comprises around half the floor area of the flat. The window would have a direct view of part of the new beer garden and so would be exposed to the increased noise levels arising from the use. It is therefore unclear whether a -10dba barrier correction would be realistic in this case. Whilst I accept that the external space to flat 13 is unlikely to be used for recreation and so should not be taken into account, without an evidenced assessment of existing internal noise levels within the property, it is unreasonable to assume that these would be unchanged by the proposal.
29. I take into account that the proposed beer garden would close earlier than the existing outdoor facility which is open until 1am. However, the noise survey shows that there isn't currently a large drop in noise levels after 1am, suggesting that the noise arising from the existing facility doesn't dominate the noise profile of the area. This is in contrast to a significant predicted rise in noise arising from the proposal, albeit earlier in the evening. I therefore have no basis for concluding that the effects of the proposed beer garden would be broadly similar to the existing facility.
30. During the hearing the parties both acknowledged that predicting the effects of noise in this case was not straightforward and that a number of assumptions would necessarily have to be made. The survey over-estimates the capacity of the beer garden, and its hours of operation, but takes no account of the kitchen window to flat 13. It makes necessary assumptions about the proportion of patrons talking in raised voices, but is unclear how instances where behaviour would deviate from this have been modelled. The beer garden could be supervised, and could be subject to strict controls over hours of operation and amplified music, all potentially achievable by adherence to planning conditions. I acknowledge that it isn't in the best interests of the business to tolerate unsociable or rowdy behaviour and so there is reason to assume that the business would make every effort to comply with such conditions. I also accept that some degree of intrusion would be expected in a busy city centre location.
31. Nevertheless, even with the identified controls, the noise effects of a large group of patrons on licenced premises even in daytime is likely to be unpredictable and perceptions of intrusion arising from noise associated with such activity will differ from that of traffic noise. In this regard, I concur with the Council that the nature of the use is likely to give rise to increased instances of intrusive noise.
32. I am therefore of the view that taking into account the predicted noise levels, the potential for unpredicted instances of disturbance above that modelled, and given my significant misgivings about the likelihood that increased noise would be evident within flat 13, I cannot be assured that existing living conditions would be maintained. In the absence of conclusive evidence in this regard, I must take a precautionary approach. Accordingly, on the second main issue I conclude that the proposal would fail to maintain a high standard

of amenity for existing residential occupiers and so would fail to comply with national policy outlined in paragraph 127 of the Framework. As the proposal has failed to demonstrate that environmental quality would be maintained it would also conflict with policies ENV2 and D11 of the local plan, which carries some further limited weight.

33. Adjoining residents have also raised concerns that the proposal would be overbearing and would adversely affect public space within the development and some properties within the development. I noted during the site visit that the amenity area was a narrow space which was used for bin storage. Although this space would be overshadowed by the proposed development, given the size and use of the space, I do not consider that this effect would significantly detract from the living conditions of occupiers. The adjoining 2 storey structure would be evident when within the second bedrooms of flat 2 and flat 6. However, these windows would not face directly onto the development and so outlook would not be significantly affected. Furthermore, whilst the construction of an additional storey would be likely to lead to some reduction in light to the bedroom window of flat 2, I do not consider that this would be so significant as to materially harm the quality of living conditions within. These matters do not therefore add to my concerns.

Conclusion

34. The proposal would not conflict with guidance in the Framework in relation to heritage assets, but would fail to maintain adequate living standards for adjoining residential occupiers. The proposal would bring economic benefits through the expansion of the business and would provide an enhanced facility for residents and those visiting the city. However, these benefits need to be measured against the impact the proposal would have on the living conditions of the adjoining occupier. Taking into account the impetus in the Framework to consider the health implications of new development and the very significant concerns I have as to the potential impacts on living conditions that the proposal would have, I give more weight to the harm that would occur than to the benefits in this case.
35. Accordingly, for the reasons outlined above, the appeal is dismissed.

Anne Jordan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Carl Stott BA(Hons) MA Town Planning (Urban Conservation) MRTPI Associate EIA Practitioner	Nineteen47 Ltd
Liz Humble MA MA IHBC MCIFA	Humble Heritage
Chris Chittock BSc (Hons) MIUA	Dragonfly Consulting
Andy Sills	Dragonfly Consulting

FOR THE LOCAL PLANNING AUTHORITY:

Mark Barratt	City of York Council
Emma Tindall	City of York Council
Lindsay Jenkins	City of York Council

DOCUMENTS SUBMITTED AT THE HEARING:

Floor plans relating to Old Priory Court: Proposed Second Floor ref 98:35:01A, and unnumbered plans for ground floor, first floor and third floor.