
Appeal Decision

Site visit made on 1 September 2021

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2021

Appeal Ref: APP/J2210/W/21/3272340
15-17 Oxford Street, Whitstable, CT5 1DB

- 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 Aaron Neil and Mark Richardson (The Rock Lodge LLP) against the decision of Canterbury City Council.
 - The application Ref. CA/20/01237 dated 15 June 2020, was refused by notice dated 25 November 2020.
 - The development proposed is a front roof terrace to form seating area and insertion of 2 no. doors to first floor front elevation following removal of 2 no. windows.
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Decision

1. The appeal is allowed and planning permission is granted for a front roof terrace to form seating area and insertion of 2 no. doors to first floor front elevation following removal of 2 no. windows at The Rock Lodge, 15-17 Oxford Street, Whitstable, CT5 1DB, in accordance with the terms of the application, Ref CA/20/01237, dated 15 June 2020, subject to the conditions set out in the schedule at the end of this decision.

Preliminary matters

2. The plans initially submitted with the application showed the proposed wooden balustrade running the full length of the ground floor shopfront, together with a 1.8m high solid timber fence across the return of the shopfront and extending back some distance to the flank wall of No.17. The description in the officer's report matches the proposed development on these first plans. Subsequently a revised scheme was submitted, with the balustrade beginning a little way in from the flank wall of No.15 and ending in line with the flank wall of No.17, some distance short of the full length of the projecting ground floor. In this version of the scheme, the 1.8m solid fence is omitted.
3. I note that the officer's report refers to a second round of consultation that took place due to revisions being submitted. Furthermore, the second scheme takes the proposed terrace further away from the neighbouring property at No.19, and generally has considerably less impact on the view from the public realm. Therefore I am satisfied that I can accept the revised scheme as having been subject to consultation and that I can base my consideration of the appeal on it without prejudice to any party.

Main Issues

4. The main issues in this case are the effect of the proposal on the locally listed buildings, which include the appeal site, and the statutory listed building in the

vicinity, bearing in mind the duty to have special regard to the desirability of preserving the listed building or its setting and of preserving or enhancing the character or appearance of Whitstable Conservation Area.

Reasons

5. The appeal property is a locally-listed building located within Whitstable Conservation Area. The neighbouring properties of 11 and 13 Oxford Street (which are also locally listed and adjoin a listed property) feature a similar arrangement to the appeal site, with a protruding ground floor. Because the appeal premises are on the outside of a bend in Oxford Road, they have a prominence greater than would normally be the case. The existing crittall style metal windows, to be removed, are not original features and do not enhance the character of the building. The council has no objection to their removal and considers that the proposed replacement would be sympathetic to the historic and architectural interest of the building.
6. The listed building (Grade II) is numbered 5A, 7 and 9 Oxford Street; the listing describes it as a "range of mid C18 brick buildings, 2 storeys with whitened walls and clay plain tiled roof. 4 windows first floor with original glazing. Modern shop fronts". This building sits at the back edge of the footway, lining up with the single storey fronts of the locally listed buildings. The shop front, described as 'modern', is of a traditional form, with stallrisers and wooden sign-written fascias, book-ended with pilasters.
7. The shopfronts of the appeal buildings, which have the same general ensemble of stallriser, fascia and pilastered framing, apart from the fact that they are set forward of the original façade, suffer from a lack of meaningful proportions, and present a rather unsatisfactory appearance. The flat tops of the shopfronts are decorated with planters containing shrubs and small trees, together with a prominent white stag. These features contribute to the current unsatisfactory appearance of the flat roofed shopfronts and the jumbled appearance. They are at odds with the more sedate architecture of the buildings themselves, the listed building, and the other buildings on the local list. In my judgement, the proposed roof terrace (amended version) would be a marked improvement on what is there at present.
8. The wooden painted balustrade around the perimeter of the terrace, and the relatively few tables and chairs behind it, would not amount to a cluttered, incongruous, intrusive and unduly prominent feature within the streetscene. Rather, it would add to the general interest of this part of the centre, bringing a sense of vibrancy and interest to the host buildings. Their role is one of subservience to the general character and appearance of the conservation area and they should not be seen as being unsuitable for modest changes that reflect modern times.
9. Whilst I could not have supported the much more prominent first submitted scheme, on balance I find that the proposed terrace, its balustrading and the tables and chairs and their occupation during dining would not be greatly at odds with the architecture of the existing buildings and their neighbours. In relation to the listed building, it is clearly a part of the town centre and no doubt has absorbed changes over the years to reflect how the immediate surroundings have changed. It is now a town centre building, the character and appearance of which reflects both its origins and its current environment. The appeal proposal would not be harmful to the listed building or its setting.

10. I therefore find myself in agreement with the council's senior heritage officer who, of the second submitted scheme stated that *"it is considered that the harm has been reduced by the revision but not entirely removed. It is considered that the application represents a very low level of less than substantial harm to the locally listed building and conservation area"*. As such there is a balance to be struck, setting the very low level of less than substantial harm against any public benefits of the proposal. There is a strong public benefit in maintaining the vitality and viability of businesses in a town centre area, and this is probably particularly true in a seaside resort such as Whitstable. I consider that the appeal proposal, as amended, is likely to lead to a more successful business, and one that serves the needs of local people and visitors alike. This is a public benefit sufficient to outweigh the very low level of harm identified.

Other matters

11. There have been a number of representations from neighbouring occupiers and other interested persons. The main thrust of those objecting to the proposed development is concern about noise, drunkenness and general disturbance. I note that the consultation response from the council's environmental health team made no objection to the revised scheme. The appeal site is within a town centre location, where I am told that the council seeks to enhance the vitality, attractiveness and viability of the shopping area. This must mean, among other things, supporting existing enterprises to develop and expand their attractiveness to encourage business, so long as this is not at the expense of the living conditions of people living in the vicinity.
12. Given the nature and scale of the proposal, the proposed roof terrace would not result in any effects of overbearing, overshadowing or loss of light to neighbouring properties. The reduced terrace area would be positioned away from neighbouring habitable windows, and the number of diners would be small. The council's environmental health team has raised no objection in relation to noise and disturbance, following the revisions to the size of the terrace. Given the above, I am satisfied that no unacceptable impact upon the living conditions of the occupiers of adjoining dwellings would arise from the proposed development. Appropriate conditions could be imposed to assist in this regard.

Overall conclusions

13. I Have found that there would be no harm to the listed building at 5A, 7 and 9 Oxford Street or its setting, and a very low level of less than substantial harm to the locally listed buildings and conservation area. This low level of harm is outweighed by the public benefits of supporting the vitality and viability of this commercial area. I am satisfied that the duty to have special regard to the desirability of preserving the listed building or its setting is met, as is that of preserving or enhancing the character or appearance of Whitstable Conservation Area. Preserving can be achieved either by a positive contribution to preservation or by development which leaves character or appearance unharmed, that is to say preserved; this will be met in this case and I will allow the appeal.

Conditions

14. The council has suggested a number of conditions that it considers should be imposed on any planning permission. I have considered these in the light of Planning Practice Guidance (PPG), and to ensure compliance with PPG I have amended some of the text. The appellants have stated that the suggested conditions are acceptable.
15. The conditions are necessary for the following reasons: condition 2 is for clarity and to provide certainty as to the development permitted; conditions 3 and 4 are to ensure that the detailing of the balustrading and the joinery for all new doors and windows is subject to approval by the council so that their materials, design, construction and colouring are appropriate to the nature of the building and its surroundings in the conservation area. Conditions 5 and 6 are necessary to safeguard the living conditions of the occupiers of nearby residential properties.
16. In respect of conditions 3 and 4 I have amended the opening text of each, which as submitted reads "Prior to their first use in the development hereby approved". This could be interpreted to mean that the balustrading and the joinery could be put in place before the details are approved, because quite clearly the first use will be after the access to the area and the balustrading is in place. I therefore prefer to set the timing of the submission of the required details as "No development hereby permitted shall start, other than preparatory clearing of planting and other objects from the roof and works to the surface of the terrace, until ... ". This will not prevent a start being made on the development before the required details are submitted.

Terrence Kemmann-Lane

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with the submitted drawings: Drawing no.001, Site location plan; Drawing no. 200 REV B, Existing and proposed elevation; Drawing no.101 REV B, Proposed floor plan.
- 3) No development hereby permitted shall start, other than preparatory clearing of planting and other objects from the roof and works to the surface of the terrace, until details and samples of the balustrade have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details and samples.
- 4) No development hereby permitted shall start, other than preparatory clearing of planting and other objects from the roof and works to the surface of the terrace, until details of the joinery for all the new doors and windows, shall have been submitted to, and approved in writing by the Local Planning Authority. The details shall include elevations of each item, and vertical and horizontal section drawings of each item at scale 1:20, and 1:2 for small details. The development shall be carried out in accordance with the approved drawings.
- 5) The terrace hereby approved shall only be used between the hours of 09:00am and 09:00pm daily.
- 6) The terrace hereby approved shall not be used by more than 15 people at any one time between the hours of 09:00am and 07:00pm on any given day. Between the hours of 07:00pm and 09:00pm, the terrace shall only be used by a maximum of 8 people at any one time.