



Appeal Decisions

Site visit made on 23 June 2022

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2022

Appeal A Ref: APP/H2733/W/21/3279452

Middle Earth Tavern, 25-26 Church Street, Whitby YO22 4AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Ms Jill Blackburn against Scarborough Borough Council.
 - The application Ref 19/02865/FL is dated 13 December 2019.
 - The development proposed is balcony to front elevation (first floor) and removable railings and decking to courtyard at ground floor level.
-

Appeal B Ref: APP/H2733/Y/21/3279456

Middle Earth Tavern, 25-26 Church Street, Whitby, North Yorkshire, YO22 4AE

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeal is made by Ms Jill Blackburn against Scarborough Borough Council.
 - The application Ref 19/02866/LB is dated 13 December 2019.
 - The works proposed are balcony to front elevation (first floor) and removable railings and decking to courtyard at ground floor level.
-

Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matters

3. This decision letter and my reasoning concern planning and listed building consent appeals for the same site and the same scheme, the applications for which the Council failed to determine.
4. Had the Council determined the application for planning permission (Appeal A) it has indicated that it would have refused the proposed development owing to the impact on the character and appearance of the host building, the effect on the Whitby Conservation Area and the living conditions of nearby occupiers.
5. In respect of the application for listed building consent (Appeal B), the Council has indicated that it would have refused the proposed works because of the harm to the Grade II listed building.
6. Although not included in the proposed development or works described in the banner headings above, the submitted drawings show that two of the first floor windows would be changed to doors to allow access onto the proposed balcony.

On my visit I noted that this aspect of the proposal had already been undertaken, along with alterations to the design of the windows. The appellant's Heritage Statement indicates that to the outside of the screen on the proposed balcony would be a 1100mm high wrought iron guarding, but the submitted drawings do not show this. For the avoidance of doubt, my assessment of these cases is based on the submitted drawings and not the works and development that have taken place on site or described in the Heritage Statement.

Main Issues

7. Based on the putative refusal reasons and from all I have seen and read, the main issues in Appeal A and Appeal B are whether the proposal would:
 - preserve the Grade II listed buildings known as 25 Church Street and 26 Church Street, their settings or any features of special architectural or historic interest which they possess, and
 - preserve or enhance the character or appearance of the Whitby Conservation Area (CA).
8. An additional main issue in respect of Appeal A is:
 - the effect of the proposed balcony on the living conditions of nearby occupiers, with particular regard to outlook, light, privacy and disturbance from its intended use including lighting and odours.

Reasons

Significance and special interest

9. The Middle Earth Tavern is comprised of Nos 25 and 26 Church Street, which are two Grade II listed buildings (List Entry Numbers: 1316367 and 1148333 respectively). The statutory list description identifies No 26 Church Street (No 26) as dating from the 17th century and No 25 Church Street (No 25) from the 18th century. No 26 is two storeys, double fronted with a central entrance and symmetrical dormers within the pantile roof. No 25 steps slightly forward and features a left-hand entrance and single, front-facing dormer in the roof and multi-pane sash windows.
10. The special interest and significance of the listed buildings lies, in part, in their historic and architectural interest, their age, surviving historic fabric and traditional features, which includes the legibility of the order and simplicity of their facades and traditional timber sash windows. Significance in each listed building is also derived from the use and connection between the two as a public house but wherein there remain an obvious difference in proportions and layout and built evolution.
11. The immediate setting of Nos 25 and 26, comprising the tight-knit urban townscape along Church Street and rising up the hillside to the east, and the open outlook over the harbour allows the buildings to be experienced and appreciated from both the eastern side of the river and from the opposite side of the harbour. Thus, the buildings' relationship to the harbour and Church Street frontage also contributes to their significance and special interest.
12. The appeal site is situated within the Whitby CA. For the purposes of the Council's Whitby Conservation Area Character Appraisal and Management Plan,

(adopted 11 February 2014) the appeal site is located within Character Area 3 – Church Street south from Grape Lane. This area is residential in character with some commercial uses, with development along Church Street following the harbour side with a tight urban grain. There is a variety of building designs, heights and scale, as well as window design. Within this part of the CA flat frontages predominate, although there are a small number of porches and balconies on the front elevations, including at No 24B Church Street, which forms part of a modern townhouse, and further along Church Street to the north.

13. Nos 25 and 26 are traditional buildings that provide an important component of the townscape, positively contributing to the CA's character and appearance as a whole and thereby to its significance as a designated heritage asset.

The proposal

14. The proposal includes the erection of a balcony at first floor level along the frontage of No 26, attached to the flank wall of No 25. The balcony would have a 1.5 metre high glazed screen, supported by steel supports placed horizontally at floor level and supported from ground level. Access to the balcony would be gained from 2 doorways at first floor level which have been formed by extending 2 sash windows to floor level. The doors would be constructed of timber and have 4 panels of glass in each side of the doors, similar in appearance to the new first floor windows.
15. The level of details and evidence of method of fixing provided on the drawings is limited. Even if the proposed balcony could be designed to avoid interference with any historic fabric, it would introduce a substantial modern structure at first floor level which dominate the frontage of No. 26 and detract from the legibility of the clear order, symmetry and timber detailing that characterises its frontage. Whilst the proposed balcony would not affect the front of No. 25, it would reach up to the front of its flank wall and erode something of the clear distinction that the extant set back creates between the two buildings.
16. Although of similar proportions to the windows on the first floor and being constructed of timber, the new doors would be read as such, with the door frames being wider where they join than glazing bars normally associated with multi- pane sash windows. As such they would harmfully erode the otherwise symmetrical appearance of No 26. Although the balcony would be clear-glazed, the activity and associated furniture upon it that would likely entail would compete with the authenticity the No. 26 and detract from its architectural integrity. Moreover, the insertion of the doors would result in a small loss of historic fabric from the front elevation of No 26.
17. Accordingly, I conclude that the proposal would not preserve the special architectural or historic interest of the Grade II listed buildings known as No 25 and No 26 Church Street. In these respects, the proposed works and development would fail to satisfy the requirements of sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
18. The proposals would weaken the traditional appearance and authenticity of the appeal site, and the contribution the listed buildings make to historic Whitby CA townscape would be eroded. The impact of the proposal would be conspicuous in the streetscene, when viewed close up and also from the opposite side of the harbour. Therefore, and notwithstanding the CA's varied character and

appearance, the proposal would undermine the character and appearance of the CA as a whole and cause harm. Whilst the harm may be localised, conflict still arises with section 72(1) of the Act.

Public benefits and heritage balance

19. Paragraph 199 of the National Planning Policy Framework (Framework) advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.
20. Given the extent of the development and works, I find that the harm that would be caused to the significance of each Grade II listed building, as well as CA as designated heritage assets would, in each case, be 'less than substantial'. In accordance with Framework paragraph 202, the harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use.
21. The appellant asserts that additional space is required to allow the pub/restaurant business to recover from the Covid-19 pandemic. Whilst this outcome would be of private benefit to the appellant, it would also provide tangible social and economic benefits to Whitby and its community¹. These meaningful public benefits carry moderate weight in favour of the appeals. However, although the harm in this instance may be considered 'less than substantial', this should not be equated with a less than substantial planning objection and is of considerable importance and weight.
22. I acknowledge that the ground floor seating area, adjacent the road with limited views of the harbour is not ideal in terms of its location. However, the area was busy at the time of my visit with customers and there is little evidence to demonstrate that the buildings' optimum viable use as a pub/restaurant is 'at risk', or that the proposed development and works are fundamentally necessary to secure the buildings' optimum viable use or long-term conservation.
23. It is submitted that the works and development are reversible, but even if the balcony was subsequently removed the doors that would have been formed would be likely to remain and the harm to the significance of the designated heritage assets would not be removed.
24. I note that there are balconies at first floor level and above nearby in Church Street, but they are on more modern buildings to those before me and thus not directly comparable. Reference has been made to a balcony allowed at appeal on Abbey Wharf (formerly the Shambles)². Although I have not been provided with a copy the decision letter, the Council has quoted parts of the Inspector's reasoning and given that they found that the 'building had limited historic interest' I find that the circumstances of this case are not directly comparable to the schemes before me. These matters therefore carry little weight in support of the appeals.

¹ What is meant by the term public benefits? Paragraph: 020 Reference ID: 18a-020-20190723, Planning Practice Guidance.

² Refs APP/H2733/A/03/1114929 and APP/H2733/E/03/1115098

25. The resurfacing of the outside seating area to the front of Nos 25 and 26 and its enclosure is not raised as a concern by the Council in terms of the effect on designated heritage assets. While I consider this aspect of the proposal would preserve the special architectural and historic interest of the Grade II listed buildings and the character and appearance of the CA, the absence of harm in this regard does not mitigate the harm identified to the significance of the designated heritage assets.
26. I have no reason to doubt that the appellant has invested heavily in the buildings over the years, particularly following a flood event and that the works have been carried out to a high standard. However, whilst these matters are applauded, they do not provide justification for the harm I have identified and do not offer any public benefit that would weigh in the balance to outweigh the harm.
27. I note the number and content of representations submitted in support of the proposal and the alleged benefits to the customer experience. These matters of themselves are not matters to which I give anything other than very limited weight. They do not outweigh the identified harm.
28. Whilst I give moderate weight to the public benefits which would accrue from the proposal, these are not sufficient to outweigh the considerable importance and weight I give to the harm that would be caused to the significance of the two Grade II listed buildings and the CA as individual designated heritage assets. The proposed works and development therefore fail to accord with the historic environment protection policies within the Framework. For the same reasons, conflict also arises with Policies DEC1 and DEC5 of the Scarborough Local Plan (SLP), which seek to ensure that proposals reflect the local environment, respond positively to local context and conserves those elements of designated heritage assets which contribute to its significance.

Living Conditions

29. The appeal site is located between residential properties. Adjacent to No 26 is a 3 storey stone building with accommodation in the roof which is set forward of the front wall of No 26. At first and second floor levels are side windows which face towards the appeal property.
30. The proposed balcony, whilst not extending the full width of No 26 would be in close proximity to the side windows on No 27. Tables upon the balcony would take diners in close proximity to the first floor side window and whilst a taller screen could be erected to the side of the balcony as suggested by the appellant, this would not prevent direct views from the front of the balcony into this window. Such a loss of privacy would be harmful to the living conditions of the occupiers of this property. Whilst it is claimed that the first floor is used for holiday accommodation, occupiers would be likely expect a reasonable level of privacy similar to that which they would expect at home.
31. Noise from the use of the balcony would be likely to cause disturbance to the occupiers No 27. However, such noise would be unlikely to be greater to that which is emanated from the ground floor outside seating area, which has been previously found to be acceptable by the Council. Amplified noise from inside the building would be likely to be heard if the doors to the balcony were open, but this would be unlikely to be materially greater than a situation where such

music was being played on the ground floor of the pub with the windows open. The appeal does not fall on this matter.

32. The outside area to the front of the building would be surfaced with composite decking and enclosed with removal railings. Although not raised as a concern by the Council, nearby occupiers are concerned that the surfacing would be noisier than the existing tarmac. Whilst I acknowledge that decking may not absorb sound from heels the same as tarmac, it is unlikely that people walking upon it would cause noise nuisance to the degree that its use would harm the living conditions of nearby occupiers.
33. I also note the concern about people smoking outside of the pub late into the evening and the effect that this may have on the nearby bed and breakfast establishment. It appears however that the Council has previously found that the ground floor outdoor area is acceptable, and the resurfacing of this area and its enclosure would be unlikely to result in additional usage over and above the current situation. As a consequence, the enjoyment of nearby residential properties would be unlikely to be harmed by this aspect of the proposal.
34. No 27 is located in a roughly northerly direction to No 26. The presence of the balcony with an end panel as proposed would be likely to have an impact on light entering the first floor side window of No 27. However, this would be for only a short period of time during the day. It would be unlikely to result in the room being dark and gloomy or reduce the enjoyment of it, particularly given that the room also appears to be served with windows looking out across the harbour.
35. I note the concern raised about odours affecting the enjoyment of No 27 but have not been provided with substantive evidence to demonstrate that the existing dining that takes place outside the front of the pub/restaurant has resulted in nuisance to nearby occupiers. In the absence to demonstrate otherwise, I find that harm to the living conditions of nearby occupiers would not result in respect of this matter.
36. Lighting on the proposed balcony could be a source of nuisance to nearby occupiers, but this could be controlled by an appropriately worded planning condition which the appellant is willing to accept.
37. The loss of privacy that would result to the occupiers of No 27 would materially harm the living conditions of the occupiers of this property. The absence of harm in respect of noise, light, odours and light nuisance do not mitigate the identified harm. They are neutral matters in the planning balance which neither weigh in favour nor against the proposal. On this basis the proposal conflicts with Policy DEC4 of the SLP which seeks to ensure that existing and future occupants of land and buildings are provided with a good standard of amenity.

Conclusions

38. For the above reasons I conclude that the proposed works and development conflict with sections 16(2), 66(1) and 72(1) of the Act, the Framework and in respect of Appeal A, the development conflicts with the development plan. There are no material considerations which indicate that the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that Appeal A and Appeal B should be dismissed.

RC Kirby

INSPECTOR