



Appeal Decision

Site visit made on 10 January 2023

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2023

Appeal Ref: APP/V0728/W/22/3310347

Badgers Restaurant and Wine Bar 55-57 Church Street, Guisborough TS14 6HG

- 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 G Richardson, Badgers Restaurant and Wine Bar against the decision of Redcar and Cleveland Borough Council.
 - The application Ref R/2022/0020/CA, dated 10 January 2022, was refused by notice dated 18 August 2022.
 - The development proposed is for the installation of an external flue ventilation system with brick effect flue cover at rear.
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Decision

1. The appeal is allowed, and planning permission is granted for the installation of an external flue ventilation system with brick effect flue cover at rear at Badgers Restaurant and Wine Bar 55-57 Church Street, Guisborough TS14 6HG in accordance with the terms of the application, Ref R/2022/0020/CA, dated 10 January 2022 subject to the following conditions in the attached schedule.

Preliminary Matters

2. I have altered the description in the banner heading to align with the Council's in the interest of brevity. I have not included reference in the banner heading to the development being part retrospective because that is not in itself development.
3. Whilst some aspects of the development were in situ, they had not been constructed as proposed. I have therefore determined the appeal in accordance with the drawings.
4. The appellant has advised that the rear of the property was formerly known as No 42 Church Street which was converted from residential into the commercial restaurant layout as at present. This appears to be referred to in the officer report planning history¹. I viewed the inside of the building and there is no physical solid wall or barrier between No 55-57 and what appears to be the former No 42 Church Street, and there are stairs to the first floor.
5. The Council has advised the front part of 55-57 Church Street is Grade II listed (Ref: 1329548 Numbers 55 and 57 and outhouse adjoining north side of number 57, Church Street), they advised that the section of building this application relates to (formerly No 42) is not listed and determined the

¹ Council Ref: R/2018/0230/LB and R/2018/0204/CA

application on that basis. I requested that the Council advertise the development as affecting a listed building.

6. Although the effect on the listed building is not a matter of dispute between the main parties, nevertheless since the proposal is in the Guisborough Conservation Area (CA) and relates to 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) and dealt with both as a main issue.

Main Issues

7. The main issue are:

- Whether the proposal would preserve the Grade II listed building and its setting, and the extent to which it would preserve or enhance the character or appearance of the Guisborough CA and the setting of nearby listed buildings; and
- the effect on the proposal on the living conditions of the occupiers of neighbouring residents, with particular regard to outlook, noise and cooking smells.

Reasons

The listed building and the CA

8. The appeal business is an existing restaurant and café. It is a middle building within an 'L' plan block of commercial units sited around a small, cobbled forecourt area within the Guisborough District Centre. The ventilation system serves the kitchen which is positioned at the rear of the building. This is accessed from a narrow alleyway. The rear of the building is constructed from red brick, with traditional appearance and features. From this area the alley opens into a secluded enclave, of mixed development styles which serves the rear of the business and residential properties at Church Street Mews.
9. The significance of the Guisborough CA is derived from its cultural and social development, including that of a historic rural market town. It is also derived from the architectural quality, heritage and relationships between buildings and spaces between them. Given the above, as an existing commercial business within a prominent forecourt location in the district centre the appeal property makes a positive contribution to the character and appearance of the CA in terms of its attractive frontage and relationship with the group of buildings facing Church Street. The rear of the building also contributing through its traditional appearance and features.
10. The significance of the appeal listed building is also derived for the same reasons from its architectural quality and group value being part of the 'L' Plan block of buildings which face the cobbled forecourt and Church Street, opposite St Nicholas Church and the War Memorial and near Guisborough Priory environs. The rear of the site is not overly visible within this context.
11. The appeal proposal includes a wide metal flue projecting above the rear door towards the roof. This passes in front of a small first floor window associated with the host business. The ventilation system is bulky, and the metal materials are in stark contrast to the brickwork of the host building and do not relate well to its external appearance. However, the alignment of the alleyway

and buildings prevents significant direct views down it towards the appeal site, as such whilst the ventilation system is highly visible from Church Street Mews, it is not a dominant feature when viewed from Church Street.

12. The ventilation system would project above the eaves, but below the ridge of the roof. Therefore, it would not be visible from the frontage of buildings around the forecourt facing Church Street. I also found the intervisibility between the front of the listed building and the development to be limited. I also did not find that the War memorial or St Nicholas church, which are opposite the forecourt would be affected.
13. Although the Council's concerns are that the projection of the ventilation system is harmful to the CA, the Council did not raise concerns regarding the impact of the proposal on the significance of the appeal listed building, surrounding listed buildings or other designated or non-designated heritage assets. However, I do not have any substantive evidence before me, that the setting, features, or special interest of these and the appeal listed building would be significantly harmed. Having considered the proposal and visited the site, I concur with that view and find that the appeal proposal would also preserve the setting of the appeal and other nearby listed buildings.
14. Paragraph 199 of the National Planning Policy Framework 2021 (the Framework) advises that when considering the impact of 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 a clear and convincing justification.
15. I note the comments from the Council's conservation advisor that the brick cladding is anticipated to mitigate the visual impact of the flue. It would be viewed against the brick elevations of the host building, appearing akin to an external chimney stack, which were evident on buildings within the immediate area from Church Street Mews.
16. I also observed other similar brick clad structures and metal flues on other commercial buildings also within the CA from the Northgate Car Park. As such I do not find the overall projection to be significant or out of scale with the host building, its surroundings or spatial quality of the CA. Nor do I find its appearance to be incongruous as the initial starkness of the metal ventilation system would be mitigated by the encasement with brick cladding. I am satisfied that the acceptability could be controlled by the imposition of a condition requiring a matching appearance.
17. The Council has not raised any further points about the internal routing of the ventilation system, and as such I have no substantive evidence to the contrary that it can be routed internally. However, whilst the flue would be visible from Church Mews, enlarged by the cladding and the alley is narrow the overall scale of the development is not excessive or overly prominent.
18. I am also mindful that such features are not uncommon on buildings which serve restaurants, with the Council granting permission and consent for an enlarged area of restaurant. This appeal scheme is clearly a proposal which is consistent with the restaurant and café use. I note the business also had an

extract system in a similar position and have advised this was no longer suitable.

19. In the context of the mitigation and for the reasons given above, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
20. The appellant is of the opinion that the proposal would be beneficial because it would allow the business to operate more widely which would serve the local community in a social manner, achieving economic benefit by retaining jobs, business rate income, local expenditure and retaining existing business relationships with associated services for the restaurant.
21. I therefore give moderate weight to the above public benefits, which include social and economic benefits, given the overall scale of the harm and mitigation. I therefore consider the proposed development would outweigh the less than substantial harm to the CA and appeal listed building.
22. I conclude that the proposal would preserve the Grade II listed building and its setting, and the character and appearance of the Guisborough CA. This would satisfy the requirements of the Act, paragraph 197 of the Framework and would not conflict with policy HE1 of the Redcar and Cleveland Local Plan 2018. This seeks, among other things, to ensure that the character of the CA is preserved or enhanced.

Living conditions

23. The proposed ventilation system has sought to replace one which was previously sited at the rear of the building. The extract point is shown to be close to and below neighbouring windows, some of which are single glazed. Notwithstanding the alley is narrow in places, I am satisfied that the projection of the ventilation system would not be physically overbearing. It would be seen in oblique views and would be sited sufficiently far away from the occupiers of neighbouring and nearby properties. Therefore, neighbouring occupiers would not experience an undue enclosing effect which would harm their living conditions.
24. The rear of the building is also located within a District Centre, close to other similar businesses and traffic noise from nearby roads and was not an inherently quiet area. However, the cooking of food has the potential to adversely affect the living conditions of nearby residents. This can be because of odours emanating from the premises as well as noise and vibration from extraction equipment.
25. The proposed extraction flue would extend above the eaves level and window of the adjacent properties, and away from those opposite, so any discharge would be at a higher level than adjacent windows to dissipate odour. The Council's statement notes the additional silencer and baffle style grease filters which have subsequently been installed.
26. I am conscious that the Council's environmental health officer has advised that they have received complaints but have not been able to determine the existence of a nuisance. I therefore do not have substantive evidence that the noise, odour or vibrations or rattling from the ventilation system would be

unacceptable. In any event, these can be dealt with by planning conditions. These matters, taken together, lead me to the view that the proposed use would cause no harmful effects in terms of noise or odours to the occupants of adjacent and nearby properties.

27. For these reasons, I conclude on this main issue that the proposed use would cause no material harm to the living conditions of the occupants of adjacent buildings. The application is therefore in accordance with policy SD4 of the Redcar and Cleveland Local Plan 2018, which seeks to ensure development will not have a significant adverse effect on the occupiers of nearby buildings.

Other Matters

28. The appellant's intentions and failure to obtain planning permission prior to the installation of the ventilation system is not a matter before me or which has any bearing on my decision. It is unfortunate that nearby residents have terminated tenancy agreements, and some have stated there would be effects on income. However, these are these are private matters.
29. Interested parties have referred to the design and position of the flue, whether the size of the development is necessary, that it should be re-routed internally, and that the proposal would create a precedent. However, I am required to assess the proposal on its own merits and as submitted, and accordingly in this instance have found the proposal to be acceptable.

Conditions

30. In addition to the standard time limit condition [1], I have imposed a condition to secure the development is undertaken in accordance with the submitted drawings [2]. In addition, I have also imposed a condition securing the appearance of the brick cladding and supporting frame is imposed in the interest of the visual appearance of the area [3]. A condition requiring details of the ventilations system including measures for noise, odour and vibration is imposed to ensure the development deals with this to the Council's satisfaction, and in the interests of the living conditions of nearby residents [4]. I have expanded upon the Council's requirements in the interest of clarity. I have amended the timescale for the submission of the latter two conditions to be subsequently agreed by the Council because the installation of necessary extract equipment may need to be in place prior to the cladding.

Planning Balance and Conclusion

31. I consider the proposed development would cause less than substantial harm to the significance of the CA and listed building. It has however been shown that public benefits would outweigh this harm. Conditions can also be imposed to ensure the ventilation system operates effectively. As a result, the proposal would be in accordance with the development plan.
32. For the reasons given above I conclude that the appeal should be allowed.

K Williams

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 permitted shall be carried out in accordance with the following approved plans: Drawing 1 Revision A - Site Location Plan dated 18/01/2022; Drawing 2 – Existing Ground Floor Block Plan dated 10/01/2022; Drawing 2 – Existing Ground Floor Block Plan dated 10/01/2022 (annotated with Location of the new ventilation system and flue cover system); and Drawing 4 – Elevations Revision A dated 18/01/2022.
- 3) Prior to the installation and within 2 months of the date of this decision, a scheme showing the details of the proposed flue cover and finish of the supporting frame hereby permitted shall be agreed in writing by the local planning authority. The scheme shall include a timetable to be agreed with the Local Planning Authority for the installation. Once approved, the development shall be installed in accordance with the approved details and timescale and thereafter retained.
- 4) Within 2 months of the date of this decision, a scheme for the ventilation system which shall include measures to alleviate noise, fumes and odours (and incorporating grease filters and silencer) and a timescale for the installation and completion shall be submitted to and approved in writing by the local planning authority. The ventilation system shall be installed in accordance with the approved timescale and specification and thereafter be maintained and retained.

End of Schedule