



Appeal Decision

Site visit made on 9 May 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 July 2023

Appeal Ref: APP/T2350/W/22/3313018

7 Accrington Road, Whalley, Lancashire BB7 9TD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Tony Stansfield against the decision of Ribble Valley Borough Council.
- The application Ref 3/2022/0742, dated 4 August 2022, was refused by notice dated 23 September 2022.
- The application sought planning permission for demolition of existing nursery building and erection of three-storey retail/office building with ground-floor parking area without complying with conditions attached to planning permission Ref 3/2017/0633, dated 1 September 2017.
- The conditions in dispute are Nos 2, 3, 4, 6, 8, and 9 which state that:
 - (2) *Unless explicitly required by condition within this consent, the development hereby permitted shall be carried out in complete accordance with the proposals as detailed on drawings:*
PHA/AS/300 Drg No. 300 Rev A: Proposed Site Plan
PHA/AS/400 Drg No. 400 Rev A: Proposed Floor Plans/Roof Plan
PHA/AS/500 Drg No. 500 Rev A: Proposed Elevations and Street Scene
PHA/AS/600: Proposed Cross Section.
 - (3) *Notwithstanding the submitted details, samples of all external surfaces, including surfacing materials and their extents, of the development hereby permitted shall have been submitted to and approved by the Local Planning Authority before their use in the proposed development. The approved materials shall be implemented within the development in strict accordance with the approved details.*
 - (4) *Elevational and section details, including depth of reveal, of the proposed windows/glazing/glazing system including details of framing materials shall have been submitted and agreed in writing by the Local Planning Authority prior to their use in the development. The development shall be carried out in strict accordance with the approved details.*
 - (6) *Notwithstanding the details shown upon the approved plans, the proposed roof lights shall be of the Conservation Type, details of which shall be submitted to and approved by the Local Planning Authority prior to installation unless otherwise agreed in writing by the Local Planning Authority.*
The development shall be carried out in strict accordance with the approved plans.
 - (8) *Notwithstanding the submitted details, elevational details of the height and appearance of the boundary wall to be retained (as indicated on drawing PHA/AS/300 Rev: A), including any alterations, shall have been submitted to and approved by the Local Planning Authority prior to the commencement of any works affecting the aforementioned wall. The development shall be carried out in strict accordance with the approved details.*
 - (9) *Precise details of the proposed cycle storage shall have been submitted to and approved by the Local Planning Authority prior to their installation.*

The agreed details shall be installed and made available for use prior to the uses hereby permitted first becoming operative. The agreed details shall thereafter be retained and be made available for use unless otherwise agreed in writing by the Local Planning Authority.

- The reasons given for the conditions are:
 - (2) *For the avoidance of doubt since and to clarify which plans are relevant to the consent.*
 - (3) *In order that the Local Planning Authority may ensure that the materials to be used are appropriate to the locality in accordance with Key Statement EN5 and Policies DMG1 and DME4 of the Ribble Valley Core Strategy.*
 - (4), (6) and (8) *In order that the Local Planning Authority may ensure that the detailed design of the proposal is appropriate to the locality in accordance with Key Statement EN5 and Policies DMG1 and DME4 of the Ribble Valley Core Strategy.*
 - (9) *To ensure adequate provision for cycle parking/storage is provided for user/employees of the A1/B1(a) uses hereby approved in accordance with Policies DMG1 and DMG3 of the Ribble Valley Core Strategy.*
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing nursery building and erection of three-storey retail/office building with ground-floor parking area at 7 Accrington Road, Whalley, Lancashire BB7 9TD in accordance with the application Ref 3/2022/0742 dated 4 August 2022, without compliance with conditions numbers 2, 3, 4, 6, 8, and 9 previously imposed on planning permission Ref 3/2017/0633 dated 1 September 2017 and subject to the conditions identified in the attached Schedule.

Applications for costs

2. An application for costs was made by Mr Tony Stansfield against Ribble Valley Borough Council. This application is the subject of a separate decision.

Background and Preliminary Matters

3. In 2017 planning permission was granted, subject to a number of conditions, for the demolition of a nursery building and the erection of a three-storey retail/office building with ground-floor parking area.
4. The current proposal seeks removal of condition 2 and its replacement with a condition specifying amended plans that largely reflects the appearance of the development as constructed. In addition, the appellant considers that sufficient, and acceptable, details and information regarding the matters covered within conditions 3, 4, 6, 8 and 9 have been provided within the application. Therefore, whilst not expressly stated within the submission, the proposal also seeks the removal of such conditions, and I have determined the appeal on that basis.
5. The first reason for refusal sets out that the proposed cumulative level of deviation from the approved plans goes beyond that which can be reasonably considered under the provisions of section 73 (s73) of the Town and Country Planning Act 1990 (the Act). The reason goes on to say that the building as constructed does not technically benefit from having planning permission and should be regularised through the submission of a section 73A (s73A) application rather than the s73 application that was submitted.
6. It had been a widely held view that only minor amendments can be approved in s73 applications, supported by the Planning Practice Guidance (PPG) which

states that one of the uses of s73 applications is to seek a minor material amendment, where there is a relevant condition that can be varied¹. However, the scope of s73, as set out in the Act, is not limited to minor material amendments.

7. In this case the proposed amendments relate to the appearance of the building. It does not seek to vary the 'operative' part of the planning permission, that is, the description of the development for which the original planning permission was granted. Given this, I consider that it is within the scope of the determination of this appeal to approve the proposed amendments.
8. Furthermore, although the application was made under s73 there is fluidity between s73 and s73A. A decision maker considering an application (made under s73) to proceed with a development without complying with conditions attached to an existing permission might grant, under s73A, retrospective permission for development already carried out and in addition impose conditions.
9. I have, therefore, dealt with the appeal under s73A of the Act and do not consider that any parties would be prejudiced by that.
10. The Council have referred to some differences between the submitted plans and the development that had already been implemented at that time, which I noted on my site visit. These differences include the quoin detailing on the west elevation which is not shown on the plans but has been incorporated into the building that has been constructed. In addition, the surround around the parking-bay openings on the rear and side elevations as shown on the plans has not been applied. However, I am required to determine the appeal based on the submitted drawings.

Main Issue

11. Having regard to the background of the appeal, the main issue is the effect of the variation of condition 2 and removal of conditions 3, 4, 6, 8 and 9 on the character and appearance of the Whalley Conservation Area.

Reasons

Condition 2

12. The appeal site is situated within the Whalley Conservation Area (CA). As such I have had regard to the statutory duty to pay special attention to the desirability of preserving or enhancing its character or appearance.
13. The Council's Conservation Area Appraisal (CAA) states that the CA's special interest centres on the ruins of a late 13th century Cistercian Abbey, St Mary's and All Saints' Church and attractive churchyard, historic development along King Street and its attractive rural character. The historic buildings of Whalley, as set out in the CAA, are mainly built from local stone with stone rubble walls, dressed stone quoins, stone window and door architraves, and stone roofing slates. In the mid-19th century brick, painted render and Welsh slate became more commonplace.

¹ PPG Paragraph:015 Reference ID:17a-015-20140306

14. The building, as proposed and constructed has natural stone slip cladding on the front elevation as approved. However, the side and rear elevations have an ivory, stipple rendered finish rather than the approved stone slips. Due to the position of the building relative to those adjoining and the car park to the rear, the side and rear elevation are highly visible in the public realm.
15. The appeal building is sited next to 5 Accrington Road, a modern building within the CA, that has a natural stone front elevation and light-coloured rendered side elevations. There are also other, older, partially and fully rendered buildings in the CA. This includes a fully rendered building with stone quoins at the corner of Accrington Road and Queen Street, which has a high level of visibility within the public realm and is close to the appeal site. In this context, whilst the light-coloured side and rear elevations draw the eye, the appeal building as constructed does not appear incongruous within the CA.
16. Additionally, the proposed and constructed development does not include the approved wrap around shop windows to the front corners of the side elevations and stone banding detail to the side and rear elevations. As set out above, whilst shown on the proposed plans, the surround to the parking bay openings have not been implemented. Consequently, there has been a loss of articulation and visual interest to these elevations.
17. I observed on my visit that there are a number of side elevations to other buildings that lack articulation and are prominent in the street scene. Furthermore, the CAA does not identify stone banding as an architectural quality that contributes to the significance of the CA and I noted that stone banding is not a feature of any of the buildings within the CA near to the appeal site. The omission of such a feature does not, therefore, result in the building being inappropriate in its appearance or result in visual harm.
18. The quoin detailing, that was not included in the approved plans, introduces some articulation to the corners of the front and side elevations. As set out in the CAA, quoins are a common feature in the CA including on the two Grade II listed buildings near to the site, the Swan Hotel and the former Whalley Arms. The quoins are therefore appropriate in the CA and compensates for the features of the approved scheme that have been omitted from the appeal proposal.
19. The surrounds to the parking bay openings as shown on the appeal plans would also add some visual interest to the side elevations. The absence of the surrounds from the building as constructed does not, however, result in a building that is harmful to the character and appearance of the CA.
20. The Council has raised no objections about the amended first floor central recessed window on the front elevation, and the omission of a first-floor window and gabled porch entry point on the rear elevation. Based on my observations on site, I agree that, due to the minor nature of the window amendments and lack of prominence of the rear elevation, such amendments are not harmful to the character and appearance of the CA.
21. Accordingly, although different to the approved scheme, the overall effect of the amendments has not resulted in the quality of the development being diminished. Moreover, due to the appeal proposal being visually compatible with the character and appearance of the area, the significance of the CA has not been unacceptably eroded. Rather than appearing overtly austere and

stark, as stated by the Council, the development as constructed complements and harmonises with the CA buildings.

22. I therefore conclude that the variation of condition 2 would not harm the character and appearance of the Whalley Conservation Area. Consequently, I find no conflict with CS Key Statement EN5 and CS Policies DMG1 and DME2 which seek, among other things, the conservation of heritage assets, development to be a high standard of building design, and the protection of townscape. Neither do I find conflict with paragraph 135 of the National Planning Policy Framework (the Framework) which seeks to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes made to the permitted scheme.

Conditions 3, 4, 6, 8 and 9

23. With regard to condition 3, as set out above, I consider that the materials utilised in the construction of the external walls are acceptable in their appearance and extent. In addition, based on my observations on site, I consider that the dark grey colour and appearance of the roof tiles are in keeping with the CA.
24. Based on my observation of the variety around the appeal site, I consider that the framing materials of the installed windows on the first and second floor are appropriate in appearance and the extent of reveal is sufficient. I therefore consider that the aims of condition 4 have been met.
25. As confirmed by the appellant, and I observed on my visit, the rooflights that have been installed, as required by condition 6, are of the Conservation type lying flush with the roof plane. As such, they are acceptable in appearance.
26. Although the appellant has indicated that the front boundary wall is to be retained and maintained as existing the proposed site plan (PHA/045) shows that an opening will be formed, and the height reduced to 1m. The proposed reduction in the height of the wall would be minimal and the formation of an opening would be appropriate and consistent with the appearance other front boundary walls close to the site. Therefore, based on the information provided and my observations on site, I consider that such alterations to the wall would ensure that the character and appearance of the CA is not harmed.
27. The appellant has confirmed that the cycle storage area is at the rear of the building within the recessed enclosures and therefore not visible from public views. Accordingly, the cycle storage area does not adversely affect the character and appearance of the CA.
28. Consequently, conditions 3, 4, 6, 8 and 9 are not now reasonable or necessary given the stage that the development has reached. As such I consider that they can be removed. In reaching this conclusion I note that the Council have not raised any specific objection to the aspects of the development that are addressed in these conditions.
29. I therefore conclude that the removal of conditions 3, 4, 6, 8 and 9 would not harm the character and appearance of the Whalley Conservation Area. The development without the disputed conditions would comply with CS Key Statement EN5 and CS Policies DMG1, DMG2 and DME4. Such policies seek, among other things, the conservation of heritage assets, development to be a

high standard of building design, the protection of townscape and that provision is made for cyclists. Neither do I find conflict with paragraph 135 of the Framework.

Conditions

30. I have replaced condition 2 with a condition that includes the amended list of approved plans. I have also replaced condition 9 as it remains necessary that the cycle storage is retained and made available for that purpose. Conditions 2, 3, 4, 6 and 8 have been omitted for the reasons set out above.
31. The Planning Practice Guidance (PPG) advises that where an application under section 73 of the Act is granted the planning permission should also repeat the relevant conditions from the original planning permission unless they have already been discharged.
32. Other than in respect of condition 7 of the original planning permission, I have not been presented with the Council's confirmation that other conditions of the planning permission have been discharged. Therefore, I shall impose all those, other than condition 7, that I consider remain relevant. If some have in fact been discharged, that is a matter which can be addressed by the parties.
33. The development has already commenced, therefore a condition specifying the time limit for commencement is not necessary. In addition, the timing of various matters referred to in conditions have been adjusted where necessary to reflect that the development has commenced.
34. I have adjusted the wording of condition 5 of the original planning permission to reflect that the east and west elevations no longer have a shop frontage.
35. I have no evidence before me that confirms that the first-floor windows are fitted with obscure glazing and are non-opening in accordance with the specifications of condition 10 of the original planning permission. I have therefore adjusted the wording of the condition to require that such windows are fitted prior to the occupation of the building.
36. At this stage of construction, given that the development is substantially complete, it is not necessary to require the submission, approval and implementation of a Construction Method Statement and Traffic Management Plan. I have therefore omitted condition 16 of the original planning permission.

Conclusion

37. For the above reasons, and having regard to all other matters raised, I conclude that the appeal is allowed, and a new planning permission is granted.

Elaine Moulton

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in complete accordance with the proposals as detailed on drawings:

PHA/045: Proposed Site Plan

PHA/001 Drg No. 100: Proposed Elevations

PHA/AS/400 Drg No. 400 Rev A: Proposed Floor Plans/Roof Plan

PHA/AS/600: Proposed Cross Section

A703: Construction Drawings Details

- 2) Within 3 months of the date of this decision, details at a scale of not less than 1:20, of the ground floor shop frontage shall have been submitted to and approved by the local planning authority. The development shall be carried out in strict accordance with the approved details.
- 3) The cycle storage shall be made available for use prior to the uses hereby approved first becoming operative and thereafter retained and made available for that purpose.
- 4) Prior to the uses hereby approved first becoming operative, the first floor windows to the east and west elevations of the development hereby permitted shall be fitted with obscure glazing (which shall have an obscurity rating of not less than 4 on the Pilkington glass obscurity rating or equivalent scale) and shall be non-opening, unless parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. The windows shall remain in that manner at all times unless otherwise agreed in writing by the local planning authority.
- 5) The car parking areas (as indicated on drawing PHA/AS/400 Drg No. 400 Rev A) shall be marked out and be made available for use prior to the uses hereby approved first becoming operative. The approved parking provision shall thereafter be retained and be made available for use unless otherwise agreed in writing by the local planning authority.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any Order revoking and re-enacting that Order, no external lighting/floodlighting or building mounted lighting shall be erected or placed anywhere within the site or upon the building to which this consent relates without written consent from the local planning authority.
- 7) Notwithstanding the submitted details, prior to their installation, full details of the design, specification (including noise ratings), fixing and finish, including sections at a scale of not less than 1:20 of all extract vents, means of extract, air conditioning, ventilation or any other associated externally mounted/located plant shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended or re-enacted) and the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 (as amended or re-enacted) the ground and first/second floor areas of the development hereby approved shall only be used for the purposes of Retail (A1) and Office Use (B1(a)) respectively and for no other purpose, including any other purpose within Use Classes A1 or B1(a).
- 9) The A1 and B1(a) businesses hereby approved shall only be operated from the premises between the following hours:

08:30 to 18:00 Monday to Saturday
11:00 to 16:00 Sundays

There shall be no business operated from the premises or site outside the stated operating hours.

- 10) Foul and surface water shall be drained on separate systems.
- 11) Within 3 months of the date of this decision, a surface water drainage scheme, based on the hierarchy of drainage options in the National Planning Practice Guidance with evidence of an assessment of the site conditions shall be submitted to and approved in writing by the local planning authority.

The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards and unless otherwise agreed in writing by the local planning authority, no surface water shall discharge to the public sewerage system either directly or indirectly.

The development shall be completed in accordance with the approved details.

End of Schedule