



Appeal Decision

Site visit made on 2 October 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2023

Appeal Ref: APP/U2750/W/23/3321679

10-11 Pier Road, Whitby, North Yorkshire YO21 3PU

- 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 Harry Tuby against the decision of Scarborough Borough Council.
 - The application Ref 22/01358/FL, dated 17 August 2022, was refused by notice dated 9 November 2022.
 - The development proposed is a first-floor balcony to the front of Harry's Bar and alteration to existing first floor windows to form openings for proposed French doors providing access to the balcony.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. On 1 April 2023 Scarborough Borough Council merged with a number of other Councils to form a new Unitary Authority of North Yorkshire Council. This appeal decision however refers to the name of the Council shown on the decision notice which is the subject of the appeal, that being Scarborough Borough Council. Development plans for the merged Councils remain in place for the area within the new Unitary Authority they relate to until such time as they are revoked or replaced.

Main Issue

3. The main issue is whether the proposed development would preserve or enhance the character and appearance of the Whitby Conservation Area (WCA).

Reasons

4. The appeal property is a four-storey building that is current used as a bar and restaurant. It is located on Pier Road to the west of Whitby Harbour where there are several commercial properties. The building has four distinct bays, with a frontage to the ground floor which is partially obscured by an existing canopy structure.
5. The property is located within the Whitby Conservation Area (WCA) which covers a large area around Whitby Harbour and is renowned for its historical character and religious and maritime significance. It contains buildings from various periods that positively contribute to demonstrate the town's historical evolution. The appeal property is a positive example of an historic property in

the Harbour setting and it positively contributes to the street-scene and the character and appearance of the WCA.

6. The proposed balcony would be sited at first floor level and would span the width of the property. It would be accessed via proposed French doors which would be installed to the existing bays that would involve removing part of the lower sections to increase the size of the openings. The balcony would be surrounded by partially frosted glass and would be constructed of grey steelwork.
7. The Whitby Conservation Area – Character Appraisal & Management Plan (2013) identifies, amongst other things, that in the WCA some streets have suffered badly from inappropriate window alterations, with Pier Road being the worst example. It also identifies the appeal property as having a good shop front with period detail but some inappropriate aspects.
8. Due to its size, design and elevated siting, the proposed balcony would dominate the front of the host property, particularly when viewed from street level, and would obscure much of its architectural detail and historical significance. The design and materials used in the proposed development would form a harmful incursion both to the appearance of the property overall and the street-scene in general. The proposed French doors, due to their design size and shape, would disrupt the otherwise ordered form of the fenestration to the upper floors, which are pleasantly proportioned in their current form.
9. The appellant has referred to the fact that the installation would not require any structural alteration to the property as it would be free-standing and entirely reversible. These factors do not however remove the harm that I have identified would be caused.
10. I note there are other balconies in the street-scene. I do not, however have full details of these balconies to give them significant weight in the appeal. They are also of different styles, sizes and to different properties and in different positions to the appeal proposal, which I have in any event considered on its own individual planning merits.
11. I therefore conclude that the proposed development would have a harmful impact on the character and appearance of the WCA and would thereby fail to preserve or enhance its character and appearance. The proposed development would be contrary to Policies DEC 1 and DEC 5 of the Scarborough Borough Local Plan (2017) which require, amongst other things, that development is of good design which preserves or enhances the character or appearance of conservation areas.
12. The proposed development would also be contrary to the requirement of the National Planning Policy Framework (2023) (the Framework) that heritage assets are conserved in a manner appropriate to their significance, and that when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

Other Matters

13. The appellant has referred to the removal of the current pergola which was installed using Permitted Development Rights during the Covid-19 pandemic. The existing installation also partially obscures the shop-front and

demonstrates the harm that can be caused through inappropriate additions. However, it is not clear why its removal is predicated on the undertaking of the proposed development. Therefore, whilst its removal is a benefit of sorts, I give it limited weight in favour of the appeal.

14. The appellant has referred to case law¹ that clarified the categories of harm that are relevant to heritage matters and that the level of harm attributed to a proposed development is a matter of planning judgement, with even negligible harm being enough to constitute 'harm', albeit less than substantial. Although I have not been provided with a copy of the judgement, my determination of the appeal has been made on this basis.
15. The appellant has also referred to case law² concerning the approach to non-designated heritage assets. Although I have not been provided with a copy of the judgement, in this case, however, for the reasons given above, I have found that harm would be caused to the designated heritage asset, that being the WCA.

Planning Balance and Conclusion

16. Having regard to paragraph 202 of the Framework, I find that as the proposed development would affect a limited part of the conservation area, the harm to the conservation area is relatively localised, and therefore the proposed development would cause less than substantial harm to the significance of the designated heritage asset. I do not, however, find that this harm is outweighed by the removal of the existing pergola, the economic benefits, or any other public benefits of the proposed development.
17. The proposed development therefore conflicts with the development plan and there are no identified other considerations, including the Framework, that outweigh this conflict.
18. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR

¹ R.(oao James Hall and Company Limited) v City of Bradford Metropolitan District Council and Co-Operative Group Limited [2019] EWHC 2899

² Dorothy Bohm v SSCLG [2017] EWHC 3217 (Admin)