



Appeal Decisions

Site visit made on 23 April 2024

by **C McDonagh BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal A Ref: APP/H2733/W/23/3325999

Market Hall, Abbey Wharf, Market Place, Whitby YO22 4DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Paul Clemitshaw against the decision of Scarborough Borough Council.
- The application Ref is 22/01831/FL.
- The development proposed is described as 'remove and replace the existing porous stone façade to the existing 1960s modern addition to the building, create a partially open roof terrace with balcony and glazed link from the historical asset, and extend the existing balcony area to the north facing elevation of the modern element, at 1st floor level.'

Appeal B Ref: APP/H2733/Y/23/3326000

Market Hall, Abbey Wharf, Market Place, Whitby YO22 4DD

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
- The appeal is made by Mr Paul Clemitshaw against the decision of Scarborough Borough Council.
- The application Ref is 22/01832/LB.
- The works proposed are described as 'remove and replace the existing porous stone façade to the existing 1960s modern addition to the building, create a partially open roof terrace with balcony and glazed link from the historical asset, and extend the existing balcony area to the north facing elevation of the modern element, at 1st floor level.'

Decisions

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

Preliminary Matters

3. The two appeals concern the same proposal submitted under different legislation. For the sake of expediency, I have dealt with both appeals in this decision letter.
4. On 1 April 2023 Scarborough Borough Council merged with a number of other Councils to form the new unitary authority of North Yorkshire Council. These appeal decisions refer to the name of the Council shown on the decision notices, which are the subject of the appeals, of 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.
5. A revised version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. Whilst I have had regard to the revised Framework, the issues most relevant to the appeals remain unaffected by the

revisions. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that such a course of action would disadvantage no party.

6. The Council's reasons for refusal on the decision notices for both appeals, and subsequently the appellant's evidence, concern the following aspects of the proposals: replacement of the stone façade of the extension; installation of an external steel structural support frame; formation of a roof terrace; galvanised mast feature; extension of the existing second floor level mezzanine with glazed link; steel escape staircase to ground level; enclosed mesh surround to lower section; stone cladding to rear elevation with recessed window features; and an internal staircase to mezzanine level.
7. However, from the evidence before me, including the list of works/developments on the proposed elevations plan¹, the proposals also include the following: new window frames; parapet wall and coping; roof terrace rainwater outlet; balcony balustrading; new doors and glazed wall; and conservation area rooflights. Much of the assessment in the relevant officer reports focused on the formation of the roof terrace, cladding and steel frame. As the decision maker in these appeals, in discharging the statutory presumptions set out in sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I am required to consider all aspects of the works/developments proposed. Consequently, in the interests of fairness, both main parties were given the opportunity to comment on the remaining elements of the proposal. I have taken any responses received into account in my determination of the appeals in the relevant sections of this decision letter.
8. The appeal site lies in proximity to a number of other listed buildings. The statutory duty set out in s66(1) of the Act, requires me to have special regard to the desirability of preserving their settings. The effects of the proposal on the settings and thus significance of any adjacent listed buildings does not form a reason for refusal by Council in respect of Appeal A. However, I note that one of these, the Grade II* listed Old Town Hall, is referenced in an objection to the proposal by an interested party. Consequently, I have raised consideration of this matter to a main issue. As the appellant has addressed this matter in their evidence, I am satisfied that their interests would not be prejudiced by this approach.
9. Following on from the above and given my conclusions below, bearing in mind the Old Town Hall's Grade II* listed status², Historic England should have been notified of the proposal at application stage. However, I have concluded that the proposal should be dismissed for reasons relating to its effects on the special interest/significance of a designated heritage asset and on the character and appearance of the WCA. In these circumstances, little would be gained by delaying the decision to undertake that notification. Had my decision been otherwise, however, I would have provided an opportunity for the notification to take place.

¹ Dwg No: AW/ 310C

² List Entry Number: 1261706

Main Issues

10. The main issues for both appeals are whether the proposal would: (1) preserve the listed building or any features of special architectural or historic interest which it possesses; (2) preserve the setting of an adjacent listed building; and (3) preserve or enhance the character or appearance of the Whitby Conservation Area (WCA).

Reasons

Special Interest and Significance

11. The appeal property is Grade II listed and comprises an older, larger section ('the main building') and a smaller, relatively modern extension ('the extension') to the northern elevation. The listing description³ gives the official name of the listed building as 'Clothing Factory' and informs its former use as a covered market. It dates from sometime in the mid-19th Century and is currently used for retail at ground floor level and a pub/restaurant on the first floor. The extension evidently dates from the 1960s and has an existing external balcony area, which adjoins the main building and continues along the harbour side.
12. From all that I have seen and read, the special interest and significance of the listed building is derived predominantly from its historic and architectural interests. Historic interest is drawn from the main building's age and its functional connection to trade and commerce in the area through its uses as an open market and former factory. Architectural interest is derived from its simple, utilitarian form, traditional materials, surviving historic fabric and features such as the sash windows and hipped roof with ventilation grid. There is further historic interest drawn from the group value and association with the other buildings of Sandgate and listed buildings in Market Place.
13. As existing, the extension is an unassuming and utilitarian addition to the main building. Despite some of its external flaws, it does not compete with the main building and is in keeping with the historic functions of the adjoining structure insofar as it supplements the operations of the former factory and market hall. In these respects, it contributes to the special interest/significance of the listed building, albeit to a limited degree.
14. The Grade II* listed 'Old Town Hall' building is located in the adjacent Market Square and is oriented towards the appeal building. From my observations on the site visit, the appeal building is clearly within the setting of the Old Town Hall, which derives special interest and significance predominantly from its historic and architectural interests. Historic interest is derived in part from its age and historic function as a central place for trade and meetings in a central and prominent position in the town. Architectural interest stems in part from its use of traditional materials, such as ashlar stone, and detailing such as the Doric columns and ornate clock turret.
15. The location of the Old Town Hall in the Market Square, which is still largely used for commercial purposes, provides a bustling setting within which many of the adjacent buildings have been largely well preserved. In this context, its heritage merit can be appreciated. The setting of the Old Town Hall therefore makes a positive contribution to its significance.

³ List Entry Number: 1254057

16. The appeal site is located in the WCA, which derives its character and appearance and thus special interest and significance predominantly from its fishing, commerce and trade heritage centred around its harbour and the wealth it brought to the area. This resulted in a busy commercial area which is particularly evident in the dense and tight knit built form around the harbour and the narrow, steep streets which remain and link various sections of the town. The Grade I listed Whitby Abbey is a prominent feature viewed above the harbour area on a rocky headland while the Market Place and imposing Town Hall building are of further interest closer to the appeal site.
17. There are various phases of growth evident in Whitby, which has resulted in a mix of architectural styles and distinct sub-areas. The WCA has been divided into character areas in the Council's Whitby Conservation Area Character Appraisal and Management Plan (adopted February 2011) (WCAMP). The appeal site is located in Character Area 2 – 'The historic core of the town on the east side of the harbour'. Much of the town's fishing and trade heritage is evident in this area, not least in the 17th and 18th Century fishermen's and shipbuilder's cottages. The WCAMP also identifies the positive contribution of features in this character area such as the steep roofscapes, particularly the complex pattern of steeply pitched roofs which are primarily red pantiles, the harbour frontage buildings, and the general quality of buildings, circa 50% of which are listed. These factors all contribute further to the character and appearance of the WCA. The appeal building's prominent location and heritage merit means that it contributes in a positive way to the WCA's significance as a designated heritage asset.

Listed Building

18. The proposed works/developments are predominantly to the extension and would include the removal of the stone façade and replacement with three sections faced in different materials; one of stone, one of off-white render and one of black concrete composite as well as a steel support structure to stabilise this part of the building. These three new facades would include new windows and three differing sections of pitched roof; one section with red pantiles atop the stone façade, glass above the rendered part and an open section above the black concrete portion. This would create a new roof terrace and balcony area which would accommodate additional seating, while the existing second floor mezzanine above the main building would be extended into this area and enclosed by a glazed link structure.
19. The proposed external stone and off-white render sections of cladding is evidently inspired by the varied materials palette of the surrounding area. However, in combination with the black concrete composite it would be a confusing patchwork arrangement which would jar with the relatively simple and utilitarian appearance of the main building. These elements of the scheme would be an incongruous and uncomfortable mix of styles which would not assimilate well into the strong local contextual character while also undermining the primacy of the main building.
20. Although I take on board that the change to the roof of the extension would not make it taller, the change to a partially exposed structure and those sections clad in a mixture of glass and pantiles would harmfully alter the simple appearance of the existing roof. It is claimed that the roof is not original, although it is unclear as to whether this applies to the main building or the

extension. In any event, the proposal would diminish the legibility and understanding of the listed building as a whole, and while the extension is a later addition which the appellant considers is of low architectural merit, it is nevertheless listed as part of the designation and telling of the historical evolution of the building. Despite creating some extra views from the new roof terrace, this element of the scheme would be harmful.

21. The glazed link structure would connect the existing mezzanine of the main building to the proposed roof terrace and is attached to the proposed glazed section of the roof of the new structure. As the appellant points out, the use of glass generally allows permeability and therefore not compromising, hiding or disfiguring the host structure. However, this section is labelled as obscured which would reduce its permeability. It would therefore add a more noticeable amount of bulk to the roof and complicate its distinctive form, particularly its ventilation grid which is referenced in the listing description of the listed building. Although I note the appellant would be agreeable to a condition to specify clear glazing on this section, to my mind that would not eliminate all concerns, and the glass would still be very apparent. In this case, this would erode the form and integrity of the existing roofscape by introducing an overtly modern feature. Given that this would be a sizeable intervention into the main building and its structure, the lack of information on this element is also a concern.
22. The extensive use of glazing throughout the proposed works/developments to the extension would also appear incongruent with the relatively simple spread and design of fenestration across both sections of the building. Although the host building has no doubt undergone a lot of changes in its lifetime and I am aware of its use in buildings around the world in general to contrast the old with the new, the glass pyramid of the Louvre in Paris does not alter my assessment of the impacts of the appeal building in Whitby.
23. It is claimed that the use of glass to one section of the roof and the glazed link would allow these parts of the proposal to be 'invisible' from most viewpoints. From my vantage points on the site visit I would disagree with this, but whether something is visible is only one consideration of impacts to the special interest or significance of a listed building, which are safeguarded for their inherent architectural and historic interest. In any event, the harmful effects identified to the extension would be readily perceptible when viewed from many vantage points within the town as I observed on my site visit.
24. With regards to the proposed replacement window frames, there is very little detail on this element of the scheme before me. The application forms for both planning permission and listed building consent state that at present, there are 'white timber frames with metal mesh to the ground floor level and northeast gable end and anthracite grey uPVC frames to the 1st floor level'. The proposal seeks to replace the timber frames with black uPVC. There are no detailed drawings, schematics or details of any kind on the proposed replacements or justification for the change from timber frame to uPVC. Generally speaking, uPVC is a synthetic and modern material which does not adequately emulate a timber texture. To my mind, their replacement with uPVC would be incompatible with the historic and architectural interest of the listed building.
25. The proposal includes an external, exposed steel frame on the north facing elevation of the extension. The appellant confirms there was a labelling error

on the proposed elevation plan, and the frame is not annotated, nor is the frame to the south elevation. Regardless of whether this was due to numerous revisions, it is concerning that there are so few details for what seem to be crucial structural elements of the works/developments, both to safeguard the existing building and the proposed works/developments.

26. The structural assessment⁴ advises that, generally speaking, the damage to the overall building footprint is limited to the extension which has suffered lateral movement to the external corners due to corrosion, the window heads and cills have weathered, and reinforcements have also corroded. There are also instances of corrosion and damage internally. However, the report recommends a more invasive inspection to investigate the extent of corrosion to steelwork by propping the first-floor level on the extension. This is considered by the report author to be a matter of urgency. I see no reason to doubt the findings of the engineer on this matter. There is no recommendation to secure the south elevation of the main building.
27. This urgency forms a large part of the appellant's case with regards to the benefits of the scheme before me. However, the structural report does not recommend that a roof terrace and glazed link to the main building is constructed, and it is unclear as to why the proposal would be required in its current form to achieve the necessary building stabilisation works/developments if they are of such importance. Moreover, the report suggests further investigations are required, and there is nothing before me to indicate that the building, if it is in such poor condition as stated by the appellant, can support any extra weight of people, furniture or further building works/developments at roof level. As such, regardless of whether the steel frame is aesthetically congruous, the extent of the intervention for apparent stabilisation works/developments is not justified.
28. The proposal also seeks to cover the existing windows of the east elevation of the extension, creating recesses infilled with stone. It appears as though the external emergency staircase would necessitate the removal of some of the windows, while there are also new openings at the top and middle sections of the stairs. This would inevitably cause the loss of historic fabric and interrupt the simple façade and utilitarian design of the building in general. There is no information before me on the new openings.
29. The proposed balcony area of the new terrace includes a decorative mast feature, although it is not clearly labelled on the elevation plan. This appears something of an afterthought and a way to tie the building to its harbourside location. Although it has functioned historically as a clothing factory and market hall, the building would have likely had some ties to shipping through the importing of textiles and other materials for clothing. However, it further complicates an already convoluted design which seemingly tries to create ties to many design elements locally which bely the simple design and unassuming aesthetics of the building as it exists. The mast is therefore a somewhat clumsy feature and one which would appear incongruous set against the architectural interest of the listed building; namely its simple form and utilitarian appearance.
30. The elevation plan also includes rooflights to the north and south facing roof pitches of the pantile section of the proposed roof. These would be inserted into

⁴ ASP – Inspection Report 7072

new pantiles so in and of themselves would not lead to a loss of historic fabric. However, they would add more elements to an already busy roofscape, and I have already concluded that the proposed design of the roof would be unacceptable. Adding rooflights to this would not improve the situation and would further harm the building when considered against the simple roof form of the existing extension.

31. I note the Council did not comment or did not take issue with other elements of the scheme when approached for further information. These include the parapet wall and coping, roof terrace floor and tanking, balcony balustrading, an internal staircase, rainwater outlet piping and the new doors and glazed wall on the terrace. There are scant details of these aspects of the scheme, such as their design or fixings where required.
32. It is imperative that proposals are accompanied by drawings and specifications of sufficient detail to illustrate and/or describe the proposed works/developments in order to avoid any uncertainty over the extent of what is proposed, and to allow a robust assessment of any consequent effects. This lack of information casts significant doubt over their individual impacts both physically and their subsequent appearance. This is highly undesirable in general terms, but especially given that the property is a Grade II listed building located adjacent to other listed buildings and within a Conservation Area, where great weight is given to the conservation of these designated heritage assets.
33. Again, as decision maker I am mindful of the duties arising from the Act, and I am unable to assess whether these parts of the overall proposal would preserve the special interest of the listed building. Nor could I reasonably draw any conclusions against the relevant sections of the Framework. Whilst I note that the Council did not refuse the applications in these terms, I have reached my own conclusion on the evidence before me which is borne out of a lack of detailed information and certainty over what is proposed.
34. The appellant suggests that further information could have been requested via condition attached to a grant of permission/consent with regards to materials and structural elements. While this is not uncommon for extra information on materials, there are fundamental concerns regarding the design as a whole. To that end, requesting further details to ensure no harm 'structurally and without significant harm to the roof structure' would not meet the test of being reasonable given there is nothing before me to indicate this is even achievable at this stage as the structural report does not advise on the works/developments to the roof.
35. I agree that generally speaking there may well be more than one suitable design, as espoused by an Inspector in a 2012 appeal case⁵. However, in this case, which I have assessed on its own merits, the design before me is not acceptable for the listed building as I have detailed in the preceding paragraphs. I therefore conclude that the proposal would not preserve the Grade II listed building or any features of special architectural or historic interest which it possesses and would thus fail to satisfy the requirements of sections 16(2) and 66(1) of the Act for the reasons given above.

⁵ Appeal reference: APP/Y9507/A/12/2178545

36. The proposal would also be contrary to the provisions of the Framework with respects to the historic environment and policy DEC5 of the Scarborough Borough Local Plan (LP) (adopted July 2017) which advises proposals affecting a designated heritage asset (or an archaeological site of national importance) should conserve those elements which contribute to its significance. Harm to such elements will be permitted only where this is outweighed by the public benefits of the proposal, to which I will return later in this decision in the heritage balance.

Setting of Listed Building

37. Given my findings with regards to the effects of the proposal on the appeal building, it logically follows that the proposal would fail to preserve the setting of the Old Town Hall and the contribution this setting makes to its significance. This would be contrary to section 66(1) of the Act. This would also be contrary to policy DEC5 of the LP, which advises proposals affecting a designated heritage asset (or an archaeological site of national importance) should conserve those elements which contribute to its significance. Harm to such elements will be permitted only where this is outweighed by the public benefits of the proposal.
38. The submitted evidence, including the official list entry for the appeal building, refers to the presence of other listed buildings within the vicinity of the appeal property, to which the statutory duty under section 66(1) of the Act would also apply. Neither the main parties nor any interested parties have provided any detailed information regarding these assets or any perceived effects on them to enable me to undertake an assessment as part of the determination of the appeals. However, given my conclusions on the other main issues, this matter is not determinative, and little would be gained by delaying the decision to go back to the parties on this matter. As such, I have not pursued it further.

Whitby Conservation Area

39. The appeal building is a prominent part of the WCA, particularly when viewed from the western side of the harbour and the swing bridge. I have found that the proposal would harm the traditional and utilitarian character of the listed building, particularly as a result of the proposed developments to its roof. It is unclear as to how the proposed roof could fit 'subtly' into the surrounding roofscape while also creating visual interest. I understand the rationale for taking design cues from the material palette of the surrounding area. However, in this case it has created a visually confusing patchwork of the area, which is compounded by the decorative mast feature and the prominent location of the building.
40. The WCAMP details the important contribution the roofscape, general quality of buildings, many of which are listed, and the harbour frontage make to the significance of the WCA. It follows that the identified negative effects to the listed building would not preserve or enhance but would rather materially and incrementally diminish the character and appearance of the WCA as a whole and thus its significance as a designated heritage asset. This would not accord with Section 72(1) of the Act.
41. The proposal would also be contrary to the provisions of the Framework and policies DEC1 and DEC5 of the LP, which advise that proposals affecting a

Conservation Area should preserve or enhance its character or appearance especially those elements identified in any Conservation Area Appraisal.

Heritage Balance

42. Paragraph 205 of the 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. Despite the somewhat wordy refusal reasons, the Council has not specified the level of harm in either of the decision notices. Given the extent of the development/works, I find that the harm that would be caused to the significance of the Grade II listed building, as well as the Old Town Hall by virtue of development within its setting and the WCA as designated heritage assets would, in each case, be 'less than substantial'. This harm is given considerable importance and weight in the planning balance.
43. In accordance with Framework paragraph 208, the harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum viable use. However, as per the Planning Practice Guidance⁶ (PPG), if there is a range of alternative economically viable uses, the optimum viable use is the one likely to cause the least harm to the significance of the asset, not just through necessary initial changes, but also as a result of subsequent wear and tear and likely future changes. This has not been demonstrated sufficiently within the submitted evidence before me. As such this is worthy of limited weight in the heritage balance.
44. While I would agree that the reasons for refusal are somewhat confusing in their allocation of positive weight, in my view due to the limitations of the structural assessment and its recommendations for further exploratory work, I can only assign limited weight in favour of the stabilisation.
45. The proposals would add extra covers for the bar/restaurant which it is asserted would expand the tourist offering in this busy visitor area, which would accord with the aims of policy TOU1 of the LP. To my mind, this would offer more seating at the same establishment rather than diversification of the industry, which also requires the proposal to respect the distinctive tourism character of the area in which it is proposed. I have concluded to the contrary on this matter, and the Council has not determined the proposal was contrary to this policy regardless. As such, this is worthy of limited positive weight in favour of the scheme.
46. The proposal would lead to a small boost to a local contractor through the construction process. Moreover, it would to a degree also constitute an efficient use of land, notwithstanding my findings on the harm to heritage assets, insofar as it would renovate an existing building. I take on board the frustrations of the appellant with the wording of the Council's reasons for refusal on this matter, which ascribes considerable benefit to the scheme, but to my mind this increased revenue in the regeneration of an existing building would be worthy of limited weight in favour of the proposal.
47. Whitby Town Council did not object to the proposal based on the most recent amendments which are before me. Be that as it may, a lack of objection from

⁶ Paragraph: 016 Reference ID: 18a-016-20190723

the Town Council, or indeed interested parties, would be neutral in the planning balance, weighing neither in favour nor against the scheme.

48. The Framework generally seeks to achieve sustainable development and advocates for the presumption in favour of such development. However, conserving the historic environment is one factor of sustainable development. Paragraph 120(c) espouses the use of brownfield sites for homes and other identified needs. This is not a proposal for housing and there is nothing before me to indicate there is a particular need for the extension of the bar/restaurant, albeit it would be financially beneficial.
49. I am also directed to paragraph 11(d)(ii) of the Framework. However, there is nothing before me to indicate that there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date. Indeed, the appellant has pointed to policies such as TOU1 to substantiate the benefits of the scheme. The so called 'tilted balance' paragraph would therefore not be triggered.
50. For both appeals, I acknowledge that changes to heritage assets do not automatically result in harm to their significance and change can also be positive or neutral and it only becomes harmful if the identified special interest is eroded. I also agree that conservation is an active process of managing change to heritage assets in ways that sustain, reveal or reinforce their heritage interests. However, as outlined above, the proposal would weaken the heritage interests of the listed buildings and WCA and erode their identified special interest and significance. Therefore, the less than substantial harm to the significance of the identified designated heritage assets would weigh considerably against the proposal.
51. Given the above and in the absence of sufficient public benefits that outweigh the harm found, I conclude that the proposal would fail to preserve the Grade II listed building or any features of special architectural or historic interest which it possesses, nor would it preserve the setting of an adjacent listed building or enhance the character or appearance of the WCA. As such, the proposal would be contrary to the requirements of sections 16(2), 66(1) and 72(1) of the Act, paragraphs 205 and 208 of the Framework and policies DEC1 and DEC5 of the LP.

Other Matters

52. The appellant has raised significant issues with the Council's handling of the applications. This includes not conducting a site visit and pre-application advice not being sufficient. However, it is not my role to ascribe blame in an appeal decision letter. The Council will have its own complaints procedures and this matter has not been determinative in my assessment of the proposal.

Conclusion

53. For the reasons given above, I conclude that Appeals A and B should be dismissed.

C McDonagh

INSPECTOR