



Appeal Decision

Site visit made on 25 July 2024

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2024

Appeal Ref: APP/C2741/W/23/3333593

105 Main Street, Fulford, York, YO10 4PN

- 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 Arborfield Estates Limited against the decision of City of York Council.
 - The application Ref is 23/01297/FUL.
 - The development proposed is change of use to coffee shop at ground floor with 3no. residential flats at first and second floor.
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Decision

1. The appeal is dismissed insofar as it related to the erection of 2 metre high fencing to the front of the building and the new front entrance alterations and awning. The appeal is allowed insofar as it related to the change of use of the building and alterations to the side and rear of it, and planning permission is granted for change of use to coffee shop at ground floor with 3no. residential flats at first and second floor, at 105 Main Street, Fulford, York, YO10 4PN, in accordance with the terms of the application, Ref 23/01297/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development in the decision notice differs from that given on the application form. In the absence of any written agreement to an amendment, I have taken the description of development from the application form.
3. Fulford Parish Council raised concerns with the City of York Council regarding the validity of the appeal. These concerns related to the appeal potentially having been made by a third party. Upon investigation it was evident that this was not the case.

Main Issues

4. The main issues are i) the effect of the proposed change of use of the ground floor on the provision of community facilities in Fulford; and ii) the effect of the proposed frontage alterations and fencing on the character and appearance of the building and the Fulford Conservation Area.

Reasons

Loss of public house

5. Until recently the appeal building was used as a public house and ancillary café at ground floor level, with six guest rooms and a manager's flat above. The

building is currently vacant and as such is making no contribution to the local community. There is no substantive evidence before me to suggest that there is any realistic prospect of the premises reopening as a public house regardless of the outcome of this appeal. The reasons for this are set out in a document provided by the former owners of the site, Red Cat Pub Company, explaining why they sold the property.

6. Despite being surrounded by residential properties, the site is located within a defined neighbourhood parade comprising a variety of small local shops and services that provide an important role in catering for the day to day needs of the local community. There are two further public houses nearby on Main Street, The Plough (approximately 150 metres from the site) and The Saddle Inn (approximately 350 metres from the site), which offer the same provisions as The Bay Horse formerly did in terms of food and drink, outdoor seating, onsite car parking and rooms above. As such, whilst the value of public houses to local communities is not disputed, local residents would not be left without a local pub within walking distance of their homes.
7. In addition to The Plough and The Saddle Inn, there is a small wine shop and tasting bar approximately 40 metres from the site. The Pavilion Hotel, which is less than 300 metres from the site, has a bar and restaurant that is open to non-residents, as well as conference facilities, rooms, outdoor space and parking. Fulfordgate Club and Institute on nearby Heslington Lane provides a similar community facility to that of a public house. Fulford Social Hall on School Lane offers meeting facilities for local groups and social events.
8. It is proposed to retain the commercial/community use of the ground floor of the appeal building by converting the bar, dining and kitchen area of the former public house to a coffee shop with kitchen, customer seating areas and relocated customer toilets. I am advised that an established operator has been found to occupy the coffee shop, which would be open from early morning until evening. The upper floors would be converted to three self-contained apartments, accessed independently from the coffee shop.
9. Paragraph 97 of the National Planning Policy Framework (the Framework) states that planning decisions should, amongst other things, plan positively for the provision and use of community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments; guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs; and ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community.
10. Policy HW1 of the City of York Local Plan – Publication Draft February 2018 (dLP) has not yet been adopted and was subject to modifications following examination. As I am advised that this policy continues to be subject to unresolved objections, I afford it limited weight.
11. A coffee shop is a local shop and would provide a community facility. I did not see any other coffee shops in the immediate surrounding area, and none have been drawn to my attention. Policy HW1 of the dLP does not specifically seek to protect public houses, it seeks to protect community facilities in general, in the interests of ensuring the health and wellbeing of local residents.

12. Whilst the Council refer to the loss of the whole operation (public house with rooms) guest rooms, which typically provide accommodation for people from outside of the local area, are not defined as a community facility in either local or national policy and no reasoning has been provided as to what community harm or conflict with policy would be caused by their loss.
13. The proposal would not result in a reduction in the number of community facilities in Fulford. Although one of the three public houses along Main Street would be lost, this would be replaced by a coffee shop of the same size, which would make a positive contribution to the mix of community facilities available to the benefit of the growing population of Fulford. Moreover, such a use would be less likely to cause disturbance to the immediately surrounding residential properties than a public house. Although the coffee shop would operate at different hours to a public house and would not serve alcohol, it would provide a valuable alternative facility in which people can meet or come together during the daytime, including in the morning when most public houses are closed, assisting in tackling loneliness, mental health and wellbeing.
14. I have had regard to the concerns raised, some of which appear to overlook the fact that the proposal will retain the ground floor community use and imply that the public house would be replaced with housing. One letter of objection, which does not resist the loss of the public house, suggests converting the whole of the building to residential use would be better given the need for new homes. Concerns regarding parking are unfounded given that no parking would be lost and there is no reason why the coffee shop and 3 apartments in this sustainable location would generate a greater parking demand than the former public house, letting rooms and manager's flat. Other concerns raised are purely speculative.
15. Several appeal decisions relating to the change of use of public houses, which were dismissed, have been brought to my attention. However, all of these cases related to proposals that would entirely remove or significantly reduce the floorspace of the community use. As such they are not directly comparable to the proposal before me, which would provide a replacement community facility of the same floorspace.
16. Whilst I have not been advised that The Bay Horse has been nominated or added to the Council's list of Assets of Community Value, I acknowledge that it has operated as a public house serving the local community for generations, and that it could potentially be profitable again under the right management and business model. I also note the many activities that were hosted by the former pub. However, these failed to make it financially viable, and other public meeting places remain available locally to host such events.
17. Although a public house may have greater economic value than a coffee shop, particularly when trading successfully, this does not mean that a coffee shop would be of less social value to the local community in terms of health and wellbeing, which is what the most relevant policies seek to support.
18. I note that there is local support for the proposal, which would retain the building in its current form, bring the empty building back into use revitalising the area, provide a safe community space/local venue which local people can visit with young children, and which would enhance the mix of community facilities and eateries in the area which is currently lacking a coffee shop. Whilst I acknowledge that the law does not prevent children from entering

public houses, the proposal would increase the choice of facilities available locally for parents and children to enjoy.

19. I therefore conclude that the change of use of the ground floor of the appeal building from a public house to a coffee shop, would not adversely affect the provision of community facilities in Fulford or undermine policies that seek to support and retain such facilities. The proposal would comply with paragraph 97 of the Framework, which seeks to ensure facilities and services are able to develop and modernise and are retained for the benefit of the community.
20. Although I afford only limited weight to Policy HW1 of the dLP, I am satisfied that the proposal would accord with this on the basis that the former public house that would be lost would be replaced by a coffee shop of equivalent capacity and quality on the same site. Parts (ii) to (iv) of this policy only apply where there is no equivalent on-site re-provision. In this case there is alternative on-site provision, and the existing facility is being adapted to meet another community need. Viability testing and marketing are only required where parts (i) to (iii) are not met. Whilst the developer may not have consulted with the local community, given the status of the Policy at the time the application was made, I afford that very limited weight. Moreover, it is evident from the consultation process undertaken by the Council that the proposal is not highly controversial and there is support from those respondents that live closest to the site.

Character and appearance

21. The site is located within Fulford Conservation Area (CA), wherein there is a statutory duty under section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
22. Main Street is flanked by short terraces which either front directly onto the footpath or are set back behind small front gardens. Buildings vary in age but are typically of simple rectangular plan form, constructed in pinkish-brown brick, with white painted vertically or horizontally sliding sash windows, and clay pantile or Welsh slate roofs.
23. The appeal building is brick with a slate roof. It has modern white UPVC windows together with a modern white UPVC conservatory and other later additions and outbuildings to the rear. It is set back behind a front garden area, which is enclosed by a low wooden picket style fence. The side boundaries of the site which are situated forward of the building frontage comprise brick walls. The building is identified as being of positive value to the area in the Conservation Area Character Appraisal where it is described as a striking detached late Victorian building which is somewhat incongruous in scale and design but whose use is typical of a rural village.
24. The proposed change of use would not involve any extension or major alterations and the majority of the minor alterations proposed are acceptable. However, the 2 metre high timber close boarded fencing proposed to sub-divide the front garden of the building in order to provide a passageway to the side entrance, would be visually incongruous due to its height and position and would detract from the open character of the site frontage. Other front gardens in the area, where they do exist, are typically bound by low walls or fencing and soft planting.

25. Front entrances and commercial shopfronts within the CA typically comprise wooden doors (many with glazing) and wooden frames with modest traditional porch canopies and surrounds. Whilst the principal of replacing the existing front door and central window with a wider door opening, glazed side panels and fanlights would be acceptable, the design and materials of the proposed new door opening and its surround would fail to preserve the appearance of the CA. The proposed timber clad box awning would hide the unsightly external pipework that is currently visible and as this is proposed to contain branding, it would presumably also remove the need for a further large fascia sign. However, the pipework could be hidden in other ways and a new fascia sign and traditional porch canopy could be provided that better reflect the age and design of the building.
26. I therefore conclude that the proposed new entrance door, awning and fencing to the front of the building would be detrimental to the character and appearance of a building that makes a positive contribution to the significance of the CA. Although this would result in less than substantial harm to the significance of the CA as a whole, that harm would not be outweighed by the public benefits of bringing the building back into use as a local community facility, given that this could be achieved without these unsympathetic alterations.
27. Accordingly, the proposal would be contrary to paragraph 205 of the Framework, which requires great weight be given to designated heritage assets irrespective of the level of harm. The proposal would also be contrary to Policies D4 and D11 of the dLP, in so far as they seek to ensure proposals respond positively to their immediate architectural context and local character and history, in terms of the use of materials and detailing and that they sustain the significance of heritage assets and the character and appearance of conservation areas.

Conclusion and Conditions

28. The proposed change of use would result in the ground floor premises being brought back into use as a beneficial community facility of equivalent capacity and quality to that which previously operated from the site. It would also provide three residential apartments in a highly sustainable location, and the proposed works to the sides and rear of the building would preserve the character and appearance of the CA. However, the sub-division of the front garden with 2 metre high timber fencing, and the proposed front entrance alterations, would fail to preserve the character and appearance of the CA.
29. As the description of development on the application form does not include the frontage alterations and fencing, and given that these elements of the proposal can be clearly severed, physically and functionally from the proposals, without preventing the remainder of the development from going ahead, I am satisfied that a split decision can be issued in this case.
30. The Council has suggested some conditions which the appellant has had the opportunity to comment upon. I have imposed the standard time limit and a condition clarifying which drawings the development must accord with and which elements have not been granted planning permission, to provide certainty. A condition to ensure matching materials are used is necessary to safeguard the character and appearance of the area and a condition to control any new extraction plant or equipment is necessary to safeguard both the

appearance of the site and the living conditions of nearby residents. As the residents cycle parking provisions shown on the submitted drawings are not adequate, a condition requiring details of secure enclosed cycle parking to be agreed and provided prior to the occupation of the apartments is necessary. Whilst I have had regard to the appellants comments regarding the purpose of Class E, given that I have granted planning permission on the basis that the proposal would not result in the loss of a community facility and meeting place, it is necessary to remove permitted development rights which would enable the coffee shop to change to other uses without the need for a further planning application.

31. I have not imposed a condition relating to noise insulation as this is adequately covered by Building Regulations. Conditions requiring the residential and commercial aspects of the development to achieve BREEM standards of excellent and very good are unreasonable in this case given the age of the building, its current use and the absence of any adopted policy requiring standards that exceed those set out in current Building Regulations, which are already very high. As no extensions, outbuildings or areas of hardstanding are proposed beyond the footprint of those which currently exist, the development would have no effect on biodiversity and accordingly enhancements are unnecessary. I also note that the buildings and habitat on site have low potential for bats. Car parking and bin storage areas are shown on the approved drawings which condition 2 requires the development to accord with. As such further conditions relating to these matters are unnecessary.
32. For the reasons given above and having had regard to all matters raised, I conclude that the appeal should succeed in part, and I will grant planning permission for the change of use of the building, including the external alterations to the side and rear of it. The appeal is dismissed in relation to the frontage alterations and front fencing.

R Bartlett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing numbers 230120-03-D, 230120-04-C, 230120-05-E, 230120-06-C and 230120-07-A, except in respect of the 2 metre high fencing at the front of the building and the new front entrance and awning.
- 3) The external wall and roof materials to be used in the development hereby permitted shall match those used in the host building.
- 4) Details of any new extraction plant, machinery or filtration system required, shall be submitted to and approved in writing by the local planning authority prior to its installation. Once installed it shall be appropriately maintained and serviced in accordance with manufacturer guidelines.
- 5) Prior to the first occupation of any of the residential apartments hereby approved, secure enclosed cycle parking shall be provided on site and made available for use by occupiers of the approved apartments, in accordance with details that shall first be submitted to and approved in writing by the local planning authority. The cycle parking shall be retained thereafter.
- 6) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), (or any Order revoking and re-enacting that Order with or without modification), the ground floor premises shall be used solely for use class E(b) and for no other purposes of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or any other provision(s) equivalent to that Class / those Classes in any Statutory Instrument revoking and/or re-enacting that Order with or without modification.

END OF SCHEDULE