



Appeal Decision

Site visit made on 15 July 2025

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th August 2025

Appeal Ref: APP/C2741/W/25/3362935

The Jubilee, Balfour Street, York YO26 4YU

- 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 Dominic Woodward, on behalf of Tri-Core Developments, against the decision of City of York Council.
 - The application Ref is 23/02148/FUL.
 - The development proposed is conversion of existing public house to provide six apartments.
-

Decision

1. The appeal is allowed and planning permission is granted for conversion of existing public house to provide six apartments at The Jubilee, Balfour Street, York YO26 4YU in accordance with the terms of the application, Ref 23/02148/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. Following the Council's decision but prior to the submission of the appeal, the City of York Local Plan (the Local Plan) was adopted in February 2025. The draft policies of the Local Plan were referred to in the Council's decision, and copies of the now adopted policies have been provided as part of the appeal. The main parties have had an opportunity to comment on the adoption of the Local Plan through the appeal process. I have thus had regard to the Local Plan policies.

Main Issues

3. The main issues are:
 - Whether or not the proposal would result in the unnecessary loss of a valued and important social, recreational and community facility; and
 - The effect of the proposal on the significance of the building as a non-designated heritage asset (NDHA) and whether the benefits of the development outweigh any harm.

Reasons

Social, recreational and community facility

4. The appeal site comprises a former public house and outbuildings, and its associated curtilage. The evidence indicates that the building operated as The Jubilee pub until its closure in 2016. It is set across 4 levels, including the cellar, with the public house use occupying the ground floor and part of the first floor. The building is currently vacant and boarded up and the site remains somewhat

unkempt. The evidence indicates that it has been in this condition for several years. The appeal proposal seeks to convert the building into 6 apartments. This would result in the total loss of the extant public house use.

5. Paragraph 98 of the National Planning Policy Framework (the Framework) states that, to provide the social, recreational and cultural facilities and services the community needs, planning decisions should plan positively for the provision and use of community facilities (including public houses), to enhance the sustainability of communities. It also indicates that planning should 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.
6. Policy HW1 of the Local Plan is consistent with the Framework. It will only provide support for the loss of existing community facilities, or facilities last used for community purposes, in exceptional circumstances. Exception (iv) applies specifically to commercial facilities and requires that evidence is provided that demonstrates the facilities are no longer financially viable with no market interest.
7. While exceptions (i) and (ii) to Policy HW1 require replacement facilities be provided on or off-site, these are distinct from exception (iv), which does not require re-provision elsewhere in the case of facilities that are no longer financially viable. Likewise, evidence of local facilities which can cater for the loss of the relevant facilities and are accessible is necessary in respect of exception (iii), but not in respect of exception (iv).
8. The appeal building is in a well-defined part of the city, bounded by the River Ouse on 3 sides, and the railway to the south. The site is located centrally within this area, at the intersection of several roads, serving as somewhat of a focal point. The Jubilee was re-designated as an Asset of Community Value (ACV) in 2021 and based on the evidence was a valued community facility when in operation.
9. The evidence indicates that the site has been marketed extensively as a public house, first as a going concern between July 2016 and May 2017, and again via a second agent from May 2017 to September 2018. More recently, following the previous appeal decision, further marketing of the proposed retained public house use was undertaken from April 2022 for a period of 17 months leading up to the submission of the application to which this appeal relates. The site had been on the open market for over 33 months leading up to submission of this appeal.
10. The appellant state that they also engaged with a local community group who had expressed an interest in purchasing the pub, following the site's designation as an ACV, though there are unsubstantiated claims that the appellant was elusive and uncooperative in these communications.
11. The site has nevertheless now been vacant for approximately 9 years, and it has been marketed for a considerable portion of this time. While there has been some interest over the latest marketing period, the majority of this was for acquisition of the property to convert it to residential use. Those who had expressed an interest in the public house operation either had not been able to demonstrate proof of funds or declined to proceed following a viewing. Ultimately, there is no compelling evidence of meaningful market interest in the operation of a public house from the site or any other community use.

12. Interested parties contend that the marketing of the pub has been inadequate. However, the most recent marketing¹ was undertaken by an agency specialised in hospitality business sales. Moreover, the Council commissioned an independent viability appraisal (Barry Crux Report)² which found that the marketing has been carried out in a proper and effective manner. Additionally, neither of the previous Inspectors raised concerns with the approach taken in earlier marketing.
13. While the appellant's marketing agent required suitable proof of funds prior to arranging viewings, they contend that this was to ensure interested parties have the relevant expertise and finances to take on the lease and operate a viable business, to protect the appellant as the landlord, protect prospective tenants who may otherwise find themselves in difficulty, and to protect the local community from the site opening and closing again in quick succession, as has happened in the past. Notably, the Barry Crux Report recognises that this is clearly because a significant amount of capital expenditure is required in order to bring the standard of the building up to a high specification for use as licensed premises.
14. The Barry Crux Report did find the agent's quoted rent to be too high given the circumstances. Nonetheless, it contended that even allowing for rental concessions there is low confidence that there would be any success in attracting an appropriate tenant.
15. I recognise that the site has remained in a poor condition during its marketing, having experienced break-ins and vandalism over several years. While it is alleged by interested parties that the condition of the pub has purposefully been allowed to deteriorate to dissuade future occupiers, there is no substantiated evidence of deliberate neglect before me. Unfortunately, vandalism is not uncommon with long term vacant commercial properties. Windows and doors have however been boarded up for some time, providing a degree of protection both from trespass and from the elements, and the external area to the rear is securely gated with signage warning against unauthorised entry.
16. My attention has been drawn to the planning conditions appended to the previous planning permission, granted on appeal³. Conditions 8 and 9 required a building survey and a report documenting repair and improvement works for the retained public house. Interested parties note that this work has not been carried out. However, these conditions are only triggered on occupation of the approved flats. Condition 9 allows for one of the flats to be occupied before these works are required. There is no suggestion of occupation, and thus currently no obligation for this work to be carried out, and no evidence that a breach of condition has occurred. The existence of these conditions on a previous permission does not compel the appellant to proceed with that permission or preclude the appellant from pursuing alternative proposals. That this work was not completed prior to marketing does not itself therefore indicate the marketing was flawed.
17. Nevertheless, I recognise that investment in the property may have improved its marketability, and the marketing report acknowledges that in many instances this would be the recommended approach. However, given the limited market interest to date, the current economy and the substantial food and drink offerings in central

¹ Christie & Co, The Jubilee Balfour Street, York, YO26 4YU, 26 September 2023

² Barry Crux & Company Chartered Surveyors, Report and Viability Appraisal, 28 October 2024

³ Appeal Ref APP/C2741/W/21/3285000

York, the marketing report concluded that substantial investment is highly unlikely to be worthwhile for a pub use at the site and would not make commercial sense.

18. Moreover, the Barry Crux report was based on the previous permission. It assumed the premises would be provided as a shell, with internal parts fitted out by the tenant. This would include internal wiring, plumbing systems, sanitaryware, a bar server area, basement cellarage facilities, new décor, fixtures, fittings, furniture, floor coverings etc. Having regard to this, it concluded that the capital cost of creating a licensed premises is likely to be prohibitively high in relation to the likelihood of a business proposition being viable and successful.
19. Interested parties raise concerns that the appellant has simply sought to impose a housing scheme that provides the best financial return. However, there has been an extended period in which market interest in a pub use has had an opportunity to materialise. Had a viable offer been presented by a prospective tenant, there is no compelling reason for me to suspect this would have been rejected out of hand.
20. The site is in a relatively densely populated area. However, this is merely one factor in whether a pub use would be successful in this location, among others such as its catchment area, local competition and changing social habits. The financial viability of the pub when it was operational has not been evidenced. It is however recognised by the appellant, the Council's independent appraisal and interested parties that the pub had struggled for some years prior to its closure, and there is no substantive evidence that this was solely down to poor management practices.
21. I recognise there may be new residential development in the pipeline in the vicinity of the site that may have provided an uplift in the customer base longer term. However, limited information has been provided in respect of this, and the impact it may have on the profitability of a pub operation in this location is not clear. Ultimately, I must determine the appeal based on the existing circumstances.
22. Based on the evidence before me, it has therefore been demonstrated that the facilities are no longer financially viable, with no substantive market interest. The proposal would thus comply with exception (iv) in Policy HW1 of the Local Plan and, in this instance, the loss of the site as a community facility would be justified.
23. Accordingly, the proposal would not result in the unnecessary loss of a valued and important social, recreational and community facility. It would be in accordance with Policy HW1 of the Local Plan. This policy, among other provisions, seeks to protect existing community facilities from unjustified loss, in the interests of community cohesion and to limit social isolation.

Non-designated heritage asset (NDHA)

24. The Jubilee is included in the York Open Planning Forum register of buildings and structures that are of important and interest to local communities. Due to the building's heritage significance and condition, it has been listed on York Citizen's Heritage at Risk Register, a public-led list of heritage assets coordinated by York Civic Trust. There is no dispute that it is an NDHA.
25. The building dates from the late 19th century. It was constructed by a renowned architect and has historic ties to the railway industry and the local community of workers. It holds historic interest for this reason and community significance due to

its role serving the local community for many years. The building also derives significance from its traditional scale and architecture, as well as its location at the centre of the community and at the intersection of several roads. It is prominent in views along Kingsland Terrace in particular. Key features include moulded orange and blue brick and carved stone dressings, York clamp bricks to the core, arch headed sash windows, Cumberland slate roof tiles laid in diminishing courses, elegant classical dormers and deep projecting dentilled eaves.

26. While the loss of the public house use and associated public access to the building would invariably cause a degree of harm to its significance, the site has not operated as a pub for some time now and, as set out above, has been demonstrated to be unviable for this purpose.
27. The proposal would result in the subdivision of the building internally to create self-contained residential units. Much of the layout of the former pub would be reconfigured, including the first-floor function room. However, internal works could be, and have been, undertaken without the need for listed building consent, as highlighted by the Council. Notably, Historic England found that by 2016 the interior had not been well preserved.
28. Externally, the proposal would include limited changes to the building's facade and would preserve its prevailing features. Several roof lights would be inserted into the roof, and a new matching dormer window would be provided adjacent to the existing two on the south facing roof slope. Though it would no longer provide an access, the front door would be replaced in a similar style, blocked up from the inside only. The partition wall between units 1 and 3 would also be offset at first floor, to enable retention of the existing central window on the front elevation. Other minor alterations would be required to make good areas affected by the demolition of the existing outbuildings and removal of an external staircase. In total however these works would not detract from the prevailing character and appearance of the building.
29. Though the existing outbuildings are historic, they do not significantly add to the architectural interest of the building and their position to the rear somewhat curtails their contribution to its prevailing character and appearance. Moreover, their demolition was approved through the previous permission. The harm arising from their removal would thus be limited.
30. The Council's Conservation Officer recommended that in the event the proposal was approved, then planning conditions should be used to secure details of the treatment of all architectural joinery, a schedule of external repairs, details of any new or replacement materials and external fixtures and a landscaping scheme, in the interests of protecting the NDHA. I am satisfied that such conditions would be sufficient to preserve the architectural quality of the building.
31. The existing building is currently in a state of disrepair and has been for some time. Window openings are covered up with graffitied boards. Panes of glass have been smashed. The external areas are significantly overgrown, with vegetation obscuring traditional features. In its current condition it is a detracting feature, which does not positively contribute to the character and appearance of the area.
32. The proposal would bring the building back into use. It would repair and restore its external features, tidy up the external areas of the site and necessitate its ongoing maintenance. Notably, the appeal scheme would result in less harm to the exterior

of the building than the previous permission, which sought additional openings. This would assist in the preservation of the building's architectural significance and enhance the character and appearance of the area. The proposal would also contribute to the area's housing supply and reuse previously developed land in an existing urban area with associated access to local services and public transport.

33. The proposal would result in a moderate degree of harm to the significance of the building as an NDHA, particularly to its communal significance. However, having regard to the scale of the harm identified and the significance of the heritage asset as required by paragraph 216 of the Framework, the benefits of the proposal would, on balance, outweigh the harm to the significance of the building as an NDHA. The proposal would therefore be in accordance with Policy D7 of the Local Plan. This policy, among other provisions, permits development which would remove, harm or undermine the significance of such assets where the benefits of the development outweigh the harm having regard to the scale of the harm and the significance of the heritage asset.

Other Matters

34. An objection has been received from the Environment Agency (EA) raising concerns that the EA's Flood Map for Planning shows the site lies within Flood Zone 3 (FZ3), with a high probability of flooding from rivers, and the submitted Flood Risk Assessment (FRA) does not sufficiently address how occupants will be kept safe from identified flood hazards.
35. The FRA recognises the 'More Vulnerable' categorisation of the proposed use, and its location in FZ3. It contends that the development is not currently at risk of flooding from a 1% Annual Exceedance Probability (AEP) event, provided the flood defences remain intact, but could be at risk during its lifetime if the flood embankment is not raised in response to climate change.
36. The development would rely for its safety on flood warnings and evacuation and, failing that, on the safe refuge at first floor level which is above the 0.1% AEP flood level. Accordingly, the FRA recommends that flood risk management measures are implemented should planning permission be granted.
37. The Council is the Lead Local Flood Authority (LLFA), and the Council's Flood Risk Engineer advised during the application that, in spite of the objection from the EA, they can support the application for several reasons. These include, previous permissions and the extant use mean there will be no change to its Flood Risk Land Use Vulnerability Classification; there will be no bedrooms/sleeping on the ground floor; safe access and escape can be included as part of an agreed emergency plan; the site and surrounding area benefit from improved flood defences; and suitable foul and surface water drainage can be achieved.
38. The LLFA is satisfied that these matters can be adequately addressed by suitable planning conditions and there is no compelling reason for me to conclude otherwise.
39. Interested parties have suggested that the building should be considered for other purposes to provide additional services to residents, including retail use. No proposals for alternative uses have been put forward however, and ultimately the appeal must be determined based on what is proposed in this case.

40. Interested parties have also raised concerns regarding construction traffic and its management. Given the scale and nature of the development there is unlikely to be significant traffic associated with construction, and any disruption that does occur would be temporary. Nevertheless, unauthorised parking or blocking of an access can be addressed by other means.

Conditions

41. The Council has suggested conditions should the appeal be successful. I have considered these, along with representation from all parties, and amended where necessary to accord with the Planning Practice Guidance (PPG) and the tests for conditions set out in the Framework.
42. In addition to the conditions I refer to above, and the standard time limit condition, it is necessary to specify the approved plans as this provides certainty.
43. To ensure the functional use of the site, a condition is necessary to require the construction of the parking and manoeuvring areas prior to occupation and their retention thereafter.
44. In the interests of recording and advancing understanding of the significance of the NDHA, a condition is required to secure a photographic record and description of elements of the building to be changed or removed. Likewise, in the interests of the character and appearance of the area and to protect the NDHA, conditions are required to secured details of the proposed cycle stores, prior to occupation, and the proposed solar panels, prior to their installation.
45. A condition is required to ensure the apartments achieve a BREEAM Domestic refurbishment fit out rating of 'very good' or higher, in accordance with Policy CC2 of the Local Plan.
46. In the interest of public health and safety a condition addressing risks from unexpected land contamination is necessary.
47. In line with recommendations from the Council's Public Protection section, conditions are required to secure a scheme of sound attenuation measures in the interests of the living conditions of future occupants, and to secure details of any machinery, plant or equipment audible outside of the premises, in the interests of the living conditions of the occupiers of neighbouring properties.

Conclusion

48. I have found that the proposal would not result in the unnecessary loss of a valued and important social, recreational and community facility. While it would result in a moderate degree of harm to the significance of the building as an NDHA, particularly to its communal significance, the benefits of the development would outweigh the identified harm.
49. The proposal would therefore adhere to the development plan as a whole and there are no other considerations that would outweigh this finding. Accordingly, for the reasons given, the appeal succeeds.

Ryan Cowley

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 nos 2470 OS (site location plan); 2470 1F (Proposed Plans, Elevations); and 2470 2C (Proposed site plan).
- 3) Prior to the demolition of outbuildings and internal alterations to the public house, a photographic record and description of the elements of the building to be changed or removed shall be submitted to the Local Planning Authority in accordance with recording methods that have been agreed in writing with the Local Planning Authority.
- 4) Prior to the commencement of any external works to the site, details of foul and surface water drainage measures shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details and maintained in the approved form for the lifetime of the development.
- 5) Prior to the first occupation of the apartments hereby permitted, a detailed hard and soft landscaping scheme, including boundary treatments, shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall thereafter be provided in accordance with the approved details. Any trees or plants which within the lifetime of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless alternatives are agreed in writing by the Local Planning Authority.
- 6) Prior to the first occupation of the apartments hereby permitted, a detailed flood warning and evacuation/emergency plan shall be submitted to and approved in writing by the Local Planning Authority. This plan shall include details regarding the evacuation of the building on receipt of a severe flood warning, rather than occupants taking refuge in the upper floors of the building. The approved flood warning and evacuation/emergency plan shall thereafter be adhered to at all times.
- 7) Prior to the first occupation of the apartments hereby permitted, details including scaled elevations and materials and finished appearance of the cycle stores shall be submitted to and approved in writing by the Local Planning Authority. The cycle stores shall be installed as shown on the approved scheme and maintained in the approved form for the lifetime of the development and shall be solely used for this and no other purpose.
- 8) Prior to the first occupation of the apartments hereby permitted, the areas shown on the approved plans for parking and manoeuvring of vehicles and cycles shall be constructed and laid out in accordance with the approved plans, and thereafter such areas shall be retained solely for such purposes.
- 9) Prior to the first occupation of the apartments hereby permitted, a detailed scheme of sound attenuation measures that achieves the relevant internal noise criteria, as set out in the Residential Noise Assessment (Nova Acoustics ref NP-010013 dated 02/10/23), for protecting the approved residential accommodation from externally generated noise shall be submitted to and approved in writing by the Local Planning Authority. Upon completion of all sound attenuation

measures, no part of the development shall be occupied until a noise report demonstrating compliance with the approved measures has been submitted to and approved in writing by the Local Planning Authority. The sound attenuation measures shall be retained thereafter.

- 10) Notwithstanding the approved plans, details of any machinery, plant or equipment to be installed in or located on the premises, which is audible outside of the premises, shall be submitted to and approved in writing by the Local Planning Authority, prior to its installation. These details shall include average sound levels (LAeq), octave band noise levels and any proposed noise mitigation measures. The machinery, plant or equipment and any approved noise mitigation measures shall be fully implemented and operational prior to the first occupation of the apartments hereby permitted and shall be appropriately maintained thereafter.
- 11) Notwithstanding the approved plans, details of the following shall be submitted to and approved in writing by the Local Planning Authority, prior to their installation:
 - i. new dormer window and changes to existing dormer windows;
 - ii. new roof lights that shall be a top hung 'conservation design' including vertical glazing bar;
 - iii. alterations to/and or replacement of existing windows that shall where practical retain the existing sash openings; and
 - iv. solar photovoltaic panels.

The development shall thereafter be carried out in accordance with the approved details.

- 12) Notwithstanding the approved plans, details of any external fixtures to be installed on the building, including but not limited to signage, lighting, utilities metering, internet and any terrestrial or satellite receiver equipment and boiler and mechanical extraction vents, shall be submitted to and approved in writing by the Local Planning Authority, prior to them being installed. The development shall thereafter be carried out in accordance with the approved details.
- 13) Notwithstanding the approved plans, prior to the repair or replacement of any external joinery fixtures, including windows, doors and cornices, a schedule of repairs or large-scale drawings, including sections, for any proposed replacement fixtures shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 14) The infill brickwork shall match the existing brickwork in all respects including bonding, size, colour and texture of bricks and the colour and finished treatment of mortar joints.
- 15) There shall be no sleeping accommodation / bedrooms permitted on the ground floor of Units 1, 2, 3 and 4 at any time.
- 16) The apartments hereby permitted shall achieve a BREEAM Domestic refurbishment fit out and rating of 'very good' or higher. A Post Construction Assessment and certificate by a licensed BREEAM assessor, demonstrating 'very good' or higher, shall be carried out and a copy of the report submitted to

the Local Planning Authority for its written approval within 12 months of first occupation (unless otherwise first agreed by the Local Planning Authority).

- 17) In the event that unexpected contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where remediation is necessary, remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the relevant phase of development is resumed or continued.

END