
Appeal Decisions

Hearing held on 20 October 2015

Site visit made on 20 October 2015

by Susan Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 05 November 2015

Appeal A: APP/H2733/W/15/3007922

The White Swan, 1 Church Hill, Hunmanby, Filey, North Yorkshire

YO14 0JU

- 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 Enterprise Inns plc against the decision of Scarborough Borough Council.
 - The application Ref 13/02588/FL, dated 2 November 2013, was refused by notice dated 22 October 2014.
 - The development proposed is conversion of stables into two houses, conversion of the hairdressers shop into one house and construction of three new houses in the courtyard.
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Appeal B: APP/H2733/Y/15/3007638

The White Swan, 1 Church Hill, Hunmanby, Filey, North Yorkshire

YO14 0JU

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Enterprise Inns plc against the decision of Scarborough Borough Council.
 - The application Ref 13/02589/LB, dated 2 December 2013, was refused by notice dated 22 October 2014.
 - The works proposed are conversion of the stables into two houses, conversion of the former hairdressers shop into one house, construction of three new houses within the courtyard.
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Decisions

1. **Appeal A:** The appeal is dismissed.
2. **Appeal B:** The appeal is dismissed.

Preliminary Matters

3. Section 1(5) of the Planning (Listed Buildings & Conservation Areas) Act 1990 (the Act) defines the term 'listed building' and sets out that for the purposes of the Act, any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948 shall be treated as part of the building.
4. The White Swan is a Grade II listed building which dates from the late 18th century. Evidence submitted with the appeal indicates that the shop and the

stables are of a similar date to the public house. It is clear from the evidence that these outbuildings are within the curtilage of the public house; therefore, having regard to the terms of the Act, they must be considered part of the listed building.

5. Prior to the Hearing, the Council withdrew its objection to the Listed Building Consent. I have taken this into consideration. Nevertheless s.16 (2) of the Act requires the decision-maker to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses.

Main Issues

6. On that basis, the main issues are:
 - 1) The effect of the proposal on the special architectural and historic interest and setting of the listed building and, linked to that, whether the proposal would preserve or enhance the character or appearance of the Hunmanby Conservation Area.
 - 2) The effect of the development on the availability of a community facility.
 - 3) The effect of the development on highway and pedestrian safety.
 - 4) Whether the proposal constitutes sustainable development.

Reasons

The effect of the proposal on the listed building, its setting, and on the wider Conservation Area

7. The starting point for the consideration of the proposals is Sections 16 (2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which require that special regard is had to the desirability of preserving the listed building, or its setting, or any features of special architectural or historic interest it possesses. Under s.72 (1) of the Act there is a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. The glossary to the National Planning Policy Framework (the Framework) defines the setting of a heritage asset as 'the surroundings in which a heritage asset is experienced' and confirms that 'significance derives not only from the asset's physical presence but also from its setting'. Furthermore paragraph 132 of the Framework states that great weight should be given to the conservation of a heritage asset and any harm to its significance should require clear and convincing justification.
8. The White Swan Inn occupies a prominent central position within the village, opposite All Saints Church which is also a listed building. Its significance as a listed building is derived from its historic role in the development of the settlement and its position as a focal point in the community. Its significance is enhanced by the survival of two of its original outbuildings, the former stables and a building last used as a hairdressers shop, and their setting around what would have been part of the original courtyard. The outbuildings and the space in which they are set enable the original use and function of the Inn as a facility for travellers and their horses to be read and understood as a whole. Although the buildings are in need of some investment, the group also makes a

- positive contribution to the character and appearance, and historic significance, of the Conservation Area which includes other Listed Buildings close to the site.
9. The proposal seeks to convert the former stables to two dwellings and the former hairdressers shop to a single dwelling. In addition a terrace of three dwellings is proposed within the courtyard. The remainder of the courtyard would be used as parking space for the residents of the new dwellings and for the public house manager. The access arrangements would remain as they are at present.
 10. The proposed three new dwellings would be sited within the courtyard some 5-6m from the rear boundary of the site, with private gardens areas behind them. No objection has been raised to the specific design of the dwellings and I have no reason to disagree. **However, it seems to me that the introduction of three new dwellings into the courtyard, unrelated to the public house, would undermine the historic significance of the group and the setting of the listed building, in terms of their function and form.**
 11. I have taken into consideration evidence which suggests that other outbuildings previously occupied the site. These buildings included what appears to be a long narrow building sited adjacent to the western boundary of the courtyard and outbuildings attached to the stables and shop, again running along the boundaries of the site. As with the surviving outbuildings, it is likely that they were used for purposes ancillary to that of the Inn. I acknowledge that the proposed terrace of dwellings would have a long rectangular form similar to that of the outbuildings. However, part of the proposed terrace would be higher than the stable block, it would be a wider building, of a greater scale, and would occupy a more prominent position within the courtyard away from the site boundary. As such it would be more dominant in the courtyard than the existing or previously demolished outbuildings. **Moreover, the dwellings would be independent of the public house use and not therefore ancillary or subservient to it in terms of their function.**
 12. **Consequently the proposed development would cause harm to the setting of the listed building and thereby its significance. In addition, for the same reasons, the proposal would also harm the character and appearance of the Conservation Area. However, as the proposal relates to part, rather than all, of the setting and only part of a much wider Conservation Area, that harm is considered as less than substantial.**
 13. The approach of the Framework in paragraph 134 is that where a proposed development would lead to less than substantial harm to a designated heritage asset, this should be weighed against the public benefits of the proposal including securing its optimum viable use. **In this case, the public benefit would be in the provision of residential accommodation, adding to housing supply and choice. In addition there would be a contribution towards the provision of affordable housing elsewhere. However, these benefits are limited by the scale of the development and do not therefore outweigh the harm of the proposal to the heritage assets which carries significant weight on the negative side of the balance.**
 14. I accept that no objection was raised by the Council to the planning application on these grounds. Nevertheless, the matter was raised by interested parties and I have considered the scheme in the light of the weighty statutory requirements of s 66 (1) and s 72 (1) of the Act.

15. In terms of the proposed works to the Listed Building, s.16 (2) of the Act requires the decision maker to have special regard to the desirability of preserving the building or its setting or any features of special architectural interest it possesses.
16. The structural report submitted with the application indicates that outbuildings, which are both currently used for storage purposes, are in a reasonable structural condition but require some repair and renovation. Physical alterations to the external walls of the stables would include the provision of new openings to the front and side elevations and the bricking up of openings to the rear. Internally a central staircase would be removed and new staircases constructed. Physical alterations to the shop would include alterations to existing openings, plus new windows to the west elevation and alterations to the internal layout.
17. I accept that the Council has now withdrawn its objection to the granting of listed building consent for the works proposed. Nevertheless, some historic fabric would be lost and there would be an alteration to the plan forms of both buildings. Consequently there would be some, albeit limited, harm to the listed building. Without any planning permission in place for a change of use, the public benefits of the proposal necessary to outweigh that harm would not be realised. As such, in this respect, the proposal also fails the tests of the Framework at paragraph 134.

The effect of the development on the availability of a community facility.

18. Paragraph 70 of the Framework sets out the need to 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. In addition it supports a proactive approach to the sustainable development, modernisation and retention of established facilities for the benefit of the community.
19. There is no doubt in my mind that the White Swan is a well-established and much valued community facility. This is evidenced by the fact that it is listed as an asset of community value¹ and by the large amount of public interest in this particular case. I understand from all that I have seen and read that the premises are used amongst other things as a meeting place for community groups; as a venue for local and family events; and as a facility for holiday occupants of nearby campsites as well as being enjoyed by local residents as a result of its traditional character and atmosphere.
20. The appellants have made it clear throughout the appeal that the proposal does not relate to The White Swan Inn itself – the public house will remain in terms of the main building and its use. However, the car park would be lost as a result of the new development. Parking provision would be made only for residents of the new dwellings and for the public house manager. The beer garden would also be lost.
21. There is a dispute between the parties as to the proportion of the clientele who park in the car park but nevertheless it seems to me that it is an asset of the business. It is an attraction to those, including elderly residents and tourists, who wish to drive and thereby assists in the functioning of the Inn. The site lies close to a bus stop but I understand that the bus service does not operate

¹ Section 87 of Localism Act 2011

in the evenings and nor is there an evening train service. Public transport options for getting to the site are therefore limited. I accept the appellants' point that some local residents are able to walk to the premises. However, tourists staying at nearby campsites would have more limited options. Similarly the beer garden is also an attraction of these particular premises particularly for families.

22. There is no evidence before me to suggest that the public house is not economically viable. However, it was clear at my site visit that it is in need of a substantial amount of investment. **The car park and beer garden, and the outbuildings, which are also a resource, appear to me to have potential to assist in the development of the facility for the benefit of the community. Their loss would remove the potential they offer.**
23. I have taken into consideration that there are other pubs or similar facilities within and just outside the settlement including The Cottage Inn which lies immediately adjacent to the site. These other facilities go some way to meeting the community's needs. However, the Framework seeks to guard against the unnecessary loss of valued facilities and I am not persuaded that the presence of other facilities justifies the loss of part of a valued community asset.
24. Consequently I conclude that the appeal proposal would conflict with the objectives of paragraph 70 of the Framework.

The effect of the proposal on highway and pedestrian safety

25. Vehicular access into the site is via the original access, between the Inn and the shop, which connects to the public highway across a section of hardstanding, understood to be common land maintained by the Parish Council. The use of that land as an access is historic and, whilst I have noted the Council's concern, there is no convincing reason before me as to why it should not continue to be used for such purpose in connection with the proposed development.
26. The access is around 3.5m in width. The Council has suggested that visibility splays of 2m x 16m and pedestrian visibility splays of 2m x 2.0m are required at the site access. Both main parties agree that these splays cannot be achieved. However, the access to the site has served as a car park for some considerable time. Local residents advise that it is well used and I saw this at my site visits.
27. Whilst I have taken into consideration the Council's concerns that the access is substandard in terms of its width and emerging visibility, it seems to me that speeds of vehicles are, and would continue to be, low due to the restricted width of the access. The appellants are proposing rumble strips to demarcate the site entrance and to slow traffic further. I noted that the public footpath does not run directly in front of the building and that tables and chairs would discourage pedestrians taking such a route on the north side of the access where visibility is the more restricted. Whilst on the south side it may be possible for a pedestrian to walk close to the existing building, and thereby out of the sight of an emerging driver, it seems to me that the Cross Hill area is used by both pedestrians and vehicles and that drivers would adopt a cautionary approach as they leave the site, as at present.

28. Records indicate that despite being below current standards, the access has operated without any notifiable personal injury accidents. There is no evidence before me to demonstrate that the proposal would significantly increase the use of the access. On this basis I am satisfied that the proposal would not result in any detriment to existing highway conditions, such that it would be a danger to highway or pedestrian safety.

Sustainability

29. The Framework sets out a presumption in favour of sustainable development which, it advises, has three dimensions: economic, social and environmental. The proposal would have some limited economic gains both during the construction period and in terms of on-going economic support for local facilities. The conversion of the outbuildings, which are currently under-utilised, would give them a more economically beneficial use.
30. The proposal would have some social benefits in terms of the provision of additional housing with accessible local services and an element of affordable housing. However, the proposal would result in the loss of the car park and beer garden which would detract from its appeal as a community facility and would remove an opportunity for the development of the facility for the community's benefit.
31. The environmental role of sustainability, the Framework advises, is the contribution to the protection and enhancement of the natural built and historic environment. For the reasons set out, the proposal would not protect or enhance the historic environment. Consequently when assessed against the policies of the Framework taken as a whole, the proposal does not constitute sustainable development.

Other Matters

32. I have taken into consideration the concern of residents that the proposal would result in the loss of public car parking space and thereby exacerbate car parking issues elsewhere. At the time of my visits there were few available parking spaces within Cross Hill or the immediately surrounding roads. I understand from residents that this is a common occurrence although evidence is largely anecdotal and is disputed by the appellant. Parking on Cross Hill is not always available, especially when community events are being held.
33. The Swan Inn car park is privately owned and any parking that occurs there that is not in connection with the use at the public house is at the owner's discretion. However, the proposal would remove parking facilities for public house customers and this would exacerbate the demand for parking in the area. There is no convincing evidence to suggest that this would affect the viability of neighbouring businesses but I accept that it would add to inconvenience for existing town centre users. This was not a reason for the refusal of planning permission and is not determinative but nevertheless the matter adds some weight to my decision.
34. Third parties have also expressed concern about whether the residents of the proposed units would be afforded reasonable living conditions. In my judgement, particularly given the position of the function room at the rear, there could be some disturbance to future residents as a result of activity and noise. In addition, the converted shop would have habitable room windows

immediately adjacent to the access and passing vehicles could also result in noise and disturbance.

35. However, I have noted the tight knit nature of dwellings and businesses in the area and the proximity of residential properties on the opposite side of the Inn. It seems to me that in such a village centre location a degree of noise and disturbance is to be expected. In addition, to an extent, harm could be mitigated by a management plan which could be secured by planning condition. As such I consider that the proposal would afford adequate living conditions to future occupants.

Conclusion

36. As set out above the proposal would result in less than significant harm to the listed building and its setting and to the character and appearance of the Conservation Area. There is a weighty statutory requirement to preserve these heritage assets as set out in the Act. In addition, the proposal would have an adverse effect on a valued community asset. Furthermore I have found that the proposal does not constitute sustainable development when assessed against the Framework taken as a whole. Whilst there are some benefits of the scheme, particularly in relation to the provision of housing, these are limited as a result of the scale of the development and do not therefore outweigh the totality of the harm.
37. Consequently, for the reasons set out above, and taking into account all other matters raised, the appeals are both dismissed.

S Ashworth

INSPECTOR

APPEARANCES

For the Appellant

Doug Jennings - Doug Jennings Planning Services

Lynda Pearson - Enterprise Inns plc

David Leybourne – Architect

Jason French – Enterprise Inns plc

For the Council

Daniel Metcalf – Scarborough Borough Council

Nick Read - Scarborough Borough Council

Interested Parties

Harvey Stockdale – Hunmanby Parish Council

Linda Tindall – Local Resident

John Wragg – Local Resident

Dale Ingram – Planning 4 Pubs Ltd

Helen Gorton – Hunmanby Parish Council

Steve Sinclair – Local Resident

Rosie Adams – Local Resident

Keith Schofield – Local Resident

Paul Broadbent – Local Resident

Christine Broadbent – Local Resident

Andrew Hunter – Local Resident

Peter Norris – Local Resident

Dorothy Vahid- Kasiri – Local Resident

Rosie Craven – Local Resident

Tony Anderson – Local Resident

Jill Callaghan – Local Resident

Jan Paddock – Local Resident

Patricia Bridge – Local Resident

Cllr Michelle Donoghue Moncriffe – Scarborough Borough Council

Susan Wragg – Local Resident

Documents Submitted at the Appeal

Statement of Common Ground

Section 106 Agreement