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## Appeal Decision

Site visit made on 30 September 2019

**by Beverley Wilders BA (Hons) PgDurt MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14<sup>th</sup> October 2019**

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**Appeal Ref: APP/T2350/W/19/3233488**

**The Old Stables, King Street, Whalley BB7 9SP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Lino Della Pesca (Whalley Leisure Ltd) against the decision of Ribble Valley Borough Council.
  - The application Ref 3/2018/1121, dated 27 November 2018, was refused by notice dated 8 April 2019.
  - The development proposed is described as general refurbishment of the existing building with proposed small single-storey extensions to create a new servery from the restaurant and small storage unit to the rear of the building. Change of use to create a new restaurant at ground floor and retail at first floor. New infill wall and timber screens proposed to front and side boundary with existing boundary walls remaining untouched.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. The Council's third reason for refusal refers to "likely noise and colour impact". However, it is clear from the evidence that the reason should in fact have referred to noise and odour. I have determined the appeal accordingly.

### Main Issues

3. The main issues are the effect of the proposal on:
  - the character and appearance of the Whalley Conservation Area and the setting of nearby listed buildings having particular regard to alterations proposed to the boundary wall, the proposed fenestration and the proposed use;
  - highway and pedestrian safety;
  - the living conditions of the occupiers of nearby residential properties having particular regard to noise and odour.

### Reasons

#### *Character and appearance*

4. The appeal site is located in the Whalley Conservation Area (CA). The Council's Conservation Area Appraisal (CAA) states that its special interest centres on

the ruins of a late 13<sup>th</sup> century Cistercian Abbey, St Mary's and All Saints' Church and attractive churchyard, historic development along King Street and its attractive rural character. The CAA notes that most of the boundaries in the CA are defined by sandstone rubble walls topped by a variety of copings, generally between one and one and a half metres high where they define front boundaries. These aspects of the CA contribute to its significance. The site lies immediately adjacent to the listed Church and its churchyard, to the east of the listed Abbey and near to other listed properties on King Street. The Church is set within a reasonable sized and verdant churchyard which is slightly elevated and approached from King Street via a cobbled lane. Its set back position relative to King Street and its churchyard significantly contribute to its setting.

5. The appeal site comprises a vacant two-storey L-shaped building and associated courtyard together with land at the rear. The building is identified as a Building of Townscape Merit in the CAA. It is constructed from rubble stone and is traditional in its form and appearance, though it appears from the evidence that at least some elements of it have been re-built since original construction. The front boundary of the courtyard is partially enclosed by existing stone walling, with walling on the right-hand side of the courtyard adjoining and forming part of the stone wall which marks the perimeter of the churchyard of the listed Church. As identified in the CAA, such stone walls are prevalent and characteristic of the immediate surrounding area and contribute to the significance of the CA.
6. The existing courtyard to the front of the building has a fairly open and simple, uncluttered appearance and is reflective of the simple, utilitarian appearance of the existing building. The proposal involves alterations to the front boundary with a section of new rendered walling, the construction of a new entrance feature and the erection of 3 metre high self-supporting timber screens on top of the front walling. I note that the appellant questions how much of the existing front boundary wall is original and states that an attempt has been made to combine new and old in a sensitive way. However, in contrast to the existing front boundary, the alterations and extensions proposed to the wall would result in the front boundary having a dominating and enclosed appearance comprising a variety of materials. The simple consistency of the existing walling would be lost and the height and materials of the proposed new entrance would be incongruous and at odds with nearby boundaries which are predominantly stone rubble walling. The alterations to the front boundary would be in close proximity to and within the setting of the adjacent listed Church meaning that the alterations would be harmful to both the CA and the Church.
7. The courtyard elevations of the building contain a number of large openings, probably reflective of its former use, some of which contain brown upvc window frames. The appellant states that such windows were approved by a previous permission (Ref 3/2007/0762) though I have seen no evidence to confirm that this is in fact the case. It is proposed to replace the existing upvc windows with double glazed, aluminium windows. The submitted elevation drawings show that the windows would have small panes and that some would be top-opening. Whilst I note the Council's concerns in relation to the proposed fenestration, noting that the proposed window and door openings are largely reflective of the size and position of existing openings, I consider that fenestration details could be adequately controlled by the imposition of a suitably worded condition were I to allow the appeal.

8. The site is located to the rear of commercial premises on King Street and adjacent to the churchyard and various commercial uses within Abbey Works. Although I noted a number of pubs, bars and restaurants on King Street, the position of the appeal site and the nature of businesses at Abbey Works is such that this particular part of the CA is likely to be relatively peaceful in the evening. The proposal which includes an external dining area in the front courtyard and restaurant opening hours of between 0800 and 0100, 7 days a week would be likely to result in the loss of this peaceful character and this would be harmful to both the character of the CA and the setting of the adjacent Church.
9. The position of the appeal site relative to other listed buildings and the scale and nature of the proposed development means that I do not consider that the proposal would be harmful to any listed buildings except the adjacent Church.
10. The harm to the significance of the CA and nearby listed building that would result from the proposal would be less than substantial. I have attached considerable importance and weight to the desirability of avoiding any such harmful effect on the CA and listed building in accordance with Sections 66 (1) and 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). Paragraph 196 of the National Planning Policy Framework (the Framework) states that where a proposal would lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal.
11. The proposal would bring a vacant building back into use and would provide some modest economic and social benefits to the local area. However, any public benefits of the proposal would not be significant enough to outweigh the harm to designated heritage assets identified.
12. Taking the above matters into consideration, I conclude that the proposal would fail to preserve the character and appearance of the CA, would have a harmful effect on the setting of the listed Church and would not meet the requirements of sections 66 and 72 of the Act. For the same reasons it would not accord with policies EN5, DMG1 and DME4 of the Ribble Valley Borough Council Core Strategy 2008-2028 adopted December 2014 (CS). These policies seek, amongst other things, the conservation of heritage assets and development to be a high standard of building design.

#### *Highway and pedestrian safety*

13. There are two existing vehicular access points off King Street near to the site, one between Nos 35 and 37 and one between No 53 and The Dog Inn pub. At my site visit I observed that both these accesses are quite narrow and saw parking taking place near to them meaning that access was restricted to one way traffic. The access between Nos 35 and 37 appears to serve the various existing commercial uses within Abbey Works and it seems that it would be this access which would be used by vehicles accessing the appeal site. There are no designated footpaths along either of the vehicular accesses and lighting along them is minimal with lighting only noted along the access near the Church and the pub. There are a number of existing parking spaces and garaging within the site to the rear of the building and at the time of my visit cars were parked within the front courtyard.

14. The existing garages would be demolished as part of the proposal and the number of parking spaces on site would be increased from 11 to 21, including 2 disabled spaces. The appellant states that on site parking would be restricted to use by staff and disabled customers and that customers are anticipated to either walk to the site from the local area or to park in existing car parks nearby. The application form states that 4 full-time and 6 part-time staff are proposed. Consequently, given the total number of parking spaces proposed and the likely number required for staff and disabled customers, it seems unlikely that any existing parking at the rear of the site would be displaced by the proposal.
15. As stated, the building is currently vacant although permission has previously been granted for it to be used for a café and community facilities (Ref 3/2007/0762). However, I am not aware of the details of that permission, whether it remains extant and how it compares to the proposal before me. The proposed use of the vacant building as a restaurant and shop would generate additional vehicle and pedestrian movements to/from the site at various times throughout the day and evening. Vehicular access to the site is poor and any increase in traffic using the access between Nos 35 and 37 is likely to increase the potential for conflict between vehicles and between vehicles and pedestrians. This would be detrimental to highway and pedestrian safety.
16. It seems to me from the evidence that most pedestrians accessing the site would do so via the access between No 53 and The Dog Inn. Although there is no designated pavement along this access, any vehicles travelling along it are unlikely to be travelling at speed and it is only a relatively short distance between King Street and the site entrance. In addition, as stated, there is some existing lighting along this access and this would further improve conditions for pedestrians. I am satisfied that were I to allow the appeal, any concerns regarding a lack of lighting within the proposed car park could be adequately addressed by the imposition of a suitably worded condition.
17. Taking the above matters into consideration, I conclude that the proposal would have an adverse effect on highway and pedestrian safety. It is therefore contrary to Policy DMG1 of the CS which seeks, amongst other things, development proposals to consider traffic implications and to ensure safe access can be provided.

#### *Living conditions*

18. Although the site is primarily surrounded by commercial uses, it appears that there are residential uses within the upper floors of the properties fronting King Street, the rear elevations of a number of which are close to and face towards the front courtyard of the appeal site. This proximity means that the use of the courtyard as an outside dining area during the hours and days proposed is likely to give rise to unacceptable levels of noise and disturbance. This would be significantly harmful to the living conditions of the occupiers of these properties.
19. Whilst a canopy is proposed above the courtyard together with the entrance screens, there is no evidence regarding how effective these features would be in reducing noise generated by the outside dining area. Moreover, the fact that the use would be a restaurant rather than a pub does not necessarily mean that noise levels would not be harmful. Reference has been made to the fact that there is a beer garden to the rear of The Dog Inn. However, whilst this

may be the case, this is further away from properties on King Street and I am unaware of the details of the beer garden, for example its size and hours of use. I note the appellant's willingness to consider time restrictions on the use of the courtyard but no suggested times have been submitted other than those stated on the application form.

20. With regard to odour, it seems that this was raised in relation to a previous application for a similar proposal at the site considered and refused by the Council (Ref 3/2018/0530). However, I have not been provided with any details of the Council's particular concerns in respect of odour and in the absence of this, it seems to me that were I allowing the appeal this matter could be adequately addressed by the imposition of a suitably worded planning condition regarding ventilation and extraction equipment.
21. Taking the above matters into consideration, I conclude that the proposal would have a significant adverse effect on the living conditions of the occupiers of nearby residential properties having particular regard to noise. It is therefore contrary to Policy DMG1 of the CS which requires development proposals, amongst other things, to not adversely affect the amenities of the surrounding area. Although the Council's reason for refusal relating to this issue also refers to CS Policy DMG3, this relates to transport and mobility and does not therefore appear to be relevant to the issue of living conditions.

### **Other Matters**

22. In reaching my decision I have had regard to the appellant's willingness to address the concerns raised in relation to the proposal where possible and his eagerness to become a valued part of the local community and to provide a fine dining experience. I also note the concerns raised in respect of the deteriorating condition of the building, the recent fire and unauthorised use by squatters. However, I must determine the proposal before me and any social, economic and environmental benefits offered by the proposal do not outweigh the harm that I have identified. Concerns relating to the accessibility and deterioration of the building could be addressed by means other than the proposal.

### **Conclusion**

23. For the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

*Beverley Wilders*

INSPECTOR