

Appeal Decisions

Site visit made on 5 December 2016

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 29 December 2016

Appeal A: APP/L2820/C/16/3159740

Flat 3, 90G High Street (Ground Floor), Burton Latimer NN15 5LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Cliff Smart against an enforcement notice issued by Kettering Borough Council.
 - The enforcement notice, numbered ENFO/2016/00093, was issued on 01 September 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from use for retail to residential.
 - The requirements of the notice are: (1) Cease the use of the residential use of any part of the Land; and (2) Remove from the building all fixtures and fittings associated with the residential use of the land including the installed sink, cooker and kitchen cupboard units, washing machine and shower.
 - The period for compliance with the requirements is: For step (1), three months from the date the notice takes effect and, for step (2), six months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/L2820/C/16/3159842

Flat 3, 90G High Street (Ground Floor), Burton Latimer NN15 5LA

- 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 Cliff Smart against the decision of Kettering Borough Council.
 - The application Ref KET/2016/0258, dated 11 April 2016, was refused by notice dated 29 June 2016.
 - The development proposed is described on the application form as: Change of use from A1 to C3(a).
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Decision in Relation to Appeal A:

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the use of the building at Flat 3, 90G High Street (Ground Floor), Burton Latimer NN15 5LA, as shown on the plan attached to the notice, for residential purposes.

Decision in Relation to Appeal B:

2. The appeal is allowed and planning permission is granted for a change of use from retail to residential at Flat 3 (Ground Floor), 90G High Street, Burton
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Latimer NN15 5LA in accordance with the terms of the application, Ref KET/2016/0258, dated 11 April 2016.

Application for costs

3. An application for costs was made by Mr Cliff Smart against Kettering Borough Council. This application is the subject of a separate Decision.

Appeal A on Ground (b)

4. An appeal on ground (b) is made on the basis that the matters alleged in the enforcement notice have not occurred as a matter of fact. In this case, the appellant does not dispute that the property was in use as a single dwelling at the time the notice was served but does dispute that the previous use was a retail unit, as alleged in the notice. When making an appeal on ground (b) the onus, on the balance of probability, rests with the appellant to make his case.
5. Conflicting information has been presented relating to the former use of the unit. Within the appeal form and supporting statement in relation to Appeal A, the appellant states that the lawful use of the unit was as an office within Class B1(a) of the UCO. Those comments are made in relation to a planning permission for the site, dating from 1996, which granted approval for a change of use to office and retail. The permission does not state whether that was an office within Class B1(a) or Class A2 of the UCO. From the plans provided, it would appear that the office element was in the location of the appeal site.
6. However, it does not automatically follow that the planning permission was implemented in accordance with the details, as approved, or that the use has remained the same in the intervening years. Little corroborative evidence is provided in that regard. The appellant suggests that the unit was used from 1996 to 2006 as a 'wholesale travel business which did not have visiting customers' but no evidence to substantiate the fact that it was not open to visiting customers has been provided. In fact, no corroborative evidence regarding the nature of the business is before me. The Council have suggested that the unit was occupied by 'Cliff Smart Travel Agency' and that the use as a travel agent fell within the retail classification under Class A1 of the UCO. Due to the lack of information presented it is difficult to determine whether the travel agency was a retail or office use, whether that use was implemented in accordance with the 1996 permission or, if not, whether the use had gained immunity from enforcement action due to the passage of time.
7. The appellant also contends that the ground floor of the building, including the appeal site and adjacent units, was used as a public house between 2006 and 2014. No planning permission appears to have been granted for that use and no evidence has been presented relating to the business to enable an understanding of the way in which the property was used over that period. If the property was in use as a public house, the information before me would suggest that the use was unauthorised.
8. Little information is provided for the period from 2014 up until the point at which the enforcement notice was served. The application for planning permission made in relation to Appeal B describes the proposal as 'change of use from A1 to C3(a)' with reference to the Town and Country Planning (Use Classes) Order 1987 (as amended) (the UCO). It appears that the Council advised the appellant that the existing use should be described as Class A1

(retail) but it is not entirely clear how that conclusion was reached. However, if the appellant was of the belief that the use did not, in fact, fall within that classification he was under no obligation to make an application on that basis. The 'existing' plan submitted with the application i.e. the plan prior to conversion to residential accommodation, depicts the appeal site, and the adjacent shop, as a single unit with a link between the two spaces. A section of the appeal site is shown as storage.

9. I also note that a brief description of the pre-application advice given to the appellant in 2014 is given on the application form, including the following comment; 'On closure of the bar informed Burton Latimer T.C. would prefer ground floor A1 use. Both planning and buildings stated as not changes they (*sic*) was no need for them to be involved'. Whilst the information is limited, it suggests that advice may have been sought about the conversion of the property from a public house into retail use. As set out above, the adjacent unit is in use as a shop and the plans submitted with the application in relation to Appeal A show that shop extending into the area covered by the appeal site.
10. The Council has provided little evidence of its own in support of the allegation that the former use was a retail unit within Class A1. It appears to have relied, to some extent, upon the information given on the application form. However, to my mind, it was not unreasonable to assume that the appellant was best placed to understand the way in which the unit was being used at that point in time. Whether a retail use was lawful would, it seems to me, largely depend upon whether the use as a travel agency fell within the scope of Class A1 and, if so, whether that use itself was lawful. The appellant has failed to provide sufficient evidence to justify his case in relation to those matters.
11. As set out above, the onus, on the balance of probability, falls on the appellant to demonstrate his case in relation to an appeal on ground (b). Due to the lack of clarity in the evidence that has been presented it is difficult to ascertain how the unit was used immediately prior to conversion to residential use and, less still, whether the use was lawful. I am not satisfied that the information provided is sufficient to demonstrate that the matters stated in the notice have not occurred as a matter of fact and, for that reason, Appeal A on ground (b) fails.

Appeal A on Ground (c)

12. The basis of the ground (c) appeal is that the former use of the property was an office within Use Class B1(a) and, as such, that the change of use to residential use would have benefitted from deemed planning permission under 'permitted development rights' set out in Class O, Part 3, of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO). For the reasons given in relation to my decision on ground (b), the appellant has not demonstrated, on the balance of probability, that the use of the unit fell within Class B1(a) of the UCO prior to conversion to residential use. It follows that I cannot conclude that the change to a residential use would have benefitted from 'permitted development rights' under Class O.
13. Even if the previous use of the building fell lawfully within Class B1(a), any change to residential use under Class O of the GPDO is only permitted subject to the condition that, before beginning the development, the developer must apply to the local planning authority for a determination as to whether prior approval will be required as to transport and highway impacts, contamination

risks or flooding risks on the site. No such application was made and the conversion would not have complied with the terms of the GPDO such that the change of use would not have benefitted from permitted development rights under Class O.

14. For the reasons given, I conclude that Appeal A on ground (c) should fail.

Appeal A on Ground (a) and Appeal B

15. Based upon the stated reasons for refusal in relation to Appeal B and the reasons for issuing the enforcement notice in relation to Appeal A, the main issues are the same for both appeals. Those main issues are:

- i) The effect of the development on the vitality and viability of Burton Latimer's town centre; and
- ii) Whether the residential unit will provide acceptable living conditions for any future occupants, with particular regard to whether the internal size of the unit is sufficient to provide an acceptable standard of living.

Vitality and Viability of the Town Centre

16. As noted above, the unit appears to have had a history of a mix of uses prior to conversion into residential use and the precise lawful use is uncertain from the evidence before me. However, the appellant indicated that the use was in retail use prior to the conversion and the Council have issued the enforcement notice and refused planning permission on that basis. The appellant has failed to provide sufficient evidence to demonstrate that the alleged breach of planning control has not occurred, on the balance of probability.
17. However, setting aside the planning history of the site, I note that the unit has no shop front facing onto the High Street and the access is tucked away at the rear of the building. Although a public car park is situated to the rear of the site, it appears to me that the configuration of the unit is such that it is not well placed to attract passing custom. The converted building is within the Burton Latimer Conservation Area and is clearly of some historic interest. It appears that the Council has previously indicated that it would be reluctant to permit new openings onto the High Street and I can appreciate that it would be difficult to achieve such alterations without disrupting the attractive stonework on that façade.
18. The result of the above is that the unit has no direct relationship with the High Street and I have no doubt that such an arrangement would make the building unattractive to retailers due to the lack of any obvious method of opening up the site to passing customers. The loss of the unit for retail or service related uses would be less noticeable, in terms of the visible impact on the town centre, than would be the case if a traditional shop front were to be blocked up as part of a residential conversion. It appears to me that the conversion has caused very little visible harm to the outward appearance of the town centre, which remains attractive and vibrant. In that sense, I am satisfied that the development has not undermined the objectives of the Burton Latimer Urban Design Framework (2006), and concur with the assessment of the Council that the character and appearance of the Conservation Area has been maintained.
19. Moreover, the centre retains a good mix of retail, food and service uses and there did not appear to be an unduly high level of vacant units at the time of

my visit. As noted in Policy 12 of the North Northamptonshire Joint Core Strategy (2016)(the NNJCS) Corby and Kettering are expected to provide for higher order retail facilities in the northern half of the area covered by the plan and the range of shops and services within Burton Latimer appears to be commensurate with what would be expected for a small town centre serving the day to day needs of the local population.

20. The unit was previously been shown to be connected to the adjacent retail unit on plans submitted with the appeal. The subdivision of the unit does not appear to have impaired the ability to attract an occupant to the adjacent unit and there is no evidence that the sub-division will harm the viability of that unit moving forward, as suggested by the Council. It could equally be the case that a smaller unit will be attractive to independent retailers, presumably with a smaller rental value. Therefore, having regard to the above I am satisfied that the conversion to residential use has not had any significant effect on the vitality and viability of the town centre, nor is it likely to in future.
21. The development has not unduly affected the mix of shops and services in the town centre or undermined the predominance of A1 retail uses, such that it complies with the aims of Policy 12(a) of the NNJCS and the overarching aims of section 2 of the National Planning Policy Framework (the Framework) which seeks to ensure the vitality of town centres.
22. The Council have referred to policy 64 of the Kettering Local Plan (1995). That is a positively worded policy which sets out circumstances in which new retail development will be considered and assessed. It does not set criteria for the assessment of applications for conversion to non-retail uses and, as such, is not directly relevant to the appeal before me. Moreover, the Burton Latimer Parish Plan highlights a desire to retain a good mix of retail uses within the town, and, for the reasons given, the conversion in this instance has not harmed the centre to any significant degree in that respect.
23. The Council have referred to the loss of a community facility, with reference to policy 7(c) of the NNJCS. The appellant notes that the NNJCS defines community uses and services as 'those that provide for the health and well-being, social, educational, spiritual, recreational, leisure and cultural needs of the community'. The Council have not presented any information that would lead me to conclude that a retail unit falls within that definition. Consequently, I find that policy 7(c) is not directly relevant to the appeal. Equally, it does not appear to me that the unit is a safeguarded or committed employment site, as covered by policy 22(c) of the NNJCS. Even if it did fall within the scope of the policy, the scale of the unit is such that any harm in terms of economic prosperity resulting from the conversion to residential use would be negligible.
24. Thus, for the reasons given, I conclude that the development is acceptable, having regard to its effect on the vitality and viability of Burton Latimer's town centre.

Living Conditions

25. The application for planning permission states that the approximate floorspace is 36.5m². Policy 30(b) of the NNJCS states that new housing must meet the National Space Standards as a minimum in order to provide residents with adequate space for basic furnishings, storage and activities. The minimum floor area for a one person, one bedroom flat is 39² but reduces to 37m² if a

shower room is provided instead of a bathroom. A shower room is provided in this instance. The required standard for a one bedroom, two person, dwelling is 50m².

26. The parties dispute whether the unit should be counted as a single person or 'two person' dwelling. There is no dispute that the unit is occupied by a single person, albeit that a double bed is situated in the bedroom. It is not uncommon for a single person to use a double bed and it would be difficult for a local planning authority to monitor the use of a property over its lifetime to ascertain whether a single bed or double bed was being used. It seems to me that the standards will be used, in most cases, to ascertain an appropriate space standard based upon the assumed future use of the property at the time a planning application is being considered. In most situations the planning application will be submitted at a point where development has not been carried out.
27. In this case, the development has been carried out and let to a single person, with a shower room. It seems to me that the design of the space as a 'studio flat', with a combined kitchen and living area, shower room and separate bedroom is aimed at single occupation, notwithstanding that the present occupant uses a double bed. Consequently, it is reasonable, in my view, to assess the space within the unit on the basis of how it is currently occupied. I accept that the level of occupation may fluctuate in future but the same could be said of any dwelling permitted through the planning system. Accordingly, as a single person unit with a shower room, the required space standard would be 37m².
28. The property falls marginally below that and fails to comply with the terms of policy 30(b). However, I consider that the nature of the building and the internal design provide for adequate living conditions in mitigation of any shortfall below the national standard. In particular, the living space and kitchen area benefits from a high, 'open', ceiling and a correspondingly generous floor to ceiling height. The room is well lit and, when combined with the ceiling height, that creates a relatively spacious feeling. The kitchen is compact but comprises all of the equipment one would normally expect and the living space contains ample storage, and a sofa/ dedicated relaxing space for watching television etc.
29. The bedroom contains sufficient space for the bed, wardrobe and storage and also benefits from a window onto the High Street to provide natural light and ventilation. In my view, any shortfall in floorspace within the unit as a whole is compensated for by the spacious feel of the kitchen and living area and the adequate size of the bedroom. A similar floorspace within a basement with a comparatively low ceiling height would no doubt feel much more cramped. However, in this case, I am satisfied that the flat provides well thought out living accommodation containing adequate space and facilities for a comfortable existence. The Council does not allege that the living conditions of any occupants would be adversely affected by any adjacent uses and, on the information before me, I have no reason to draw a different conclusion.
30. Thus, whilst the development conflicts with the requirement of policy 30(b) it does not conflict with the over-arching aim of the policy which is to provide acceptable standards of residential accommodation. For the reasons given, I conclude that the unit provides for adequate living conditions for the present

occupant and any future occupants, in accordance with one of the core principles of the Framework, as set out at paragraph 17. Accordingly, the limited conflict with the requirements of policy 30(b) of the NNJCS is outweighed, in my view, by the specific circumstances of the case and the fact that the accommodation provides acceptable living conditions.

Conditions

31. Neither party put forward any conditions in the event that I were to allow the appeals. The Council's delegated officer report refers to a consultation response from the environmental health officer, which appears to request that conditions were attached to any approval, at the application stage, in relation to refuse collection, air quality, noise separation and radon levels. However, no detailed conditions have been suggested no justification for any conditions is before me. In the absence of any details, I cannot conclude that any conditions are necessary to make the development acceptable in planning terms.

Overall Conclusion on Appeal A on Ground (a) and Appeal B

32. For the reasons set out above, I conclude that the conversion of the unit to residential purposes has not caused undue harm to the vitality and viability of Burton Latimer's town centre and that the accommodation provides and acceptable living conditions for the current occupant and any future occupants.
33. Accordingly, I consider that planning permission should be granted for the development. Appeal A on ground (a) therefore succeeds and Appeal B is allowed. I shall grant planning permission and quash the enforcement notice.

Chris Preston

INSPECTOR