
Appeal Decisions

Site visit made on 17 January 2017

by Sarah Colebourne MA, MRTPI

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

Decision date: 26th January 2017

Appeal A Ref: APP/J1860/W/16/3153756

Belle Vue Fitness, 41 Wells Road, Malvern, Worcs, WR14 4RJ

- 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 Andrew Beever against the decision of Malvern Hills District Council.
 - The application Ref 15/01446/FUL, dated 14 October 2015, was refused by notice dated 15 December 2015.
 - The development proposed is the change of use of gym (D2 use) to four residential units (C3) including alteration, re-introduction of glazing to blocked up east window and repairs to external fabric of building including spire.
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Appeal B Ref: APP/J1860/Y/16/3153771

Belle Vue Fitness, 41 Wells Road, Malvern, Worcs, WR14 4RJ

- 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 Mr Andrew Beever against the decision of Malvern Hills District Council.
 - The application Ref 15/01447/LBC, dated 14 October 2015, was refused by notice dated 15 December 2015.
 - The development proposed is the change of use of gym (D2 use) to four residential units (C3) including alteration, re-introduction of glazing to blocked up east window and repairs to external fabric of building including spire.
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Decisions

1. Both appeals are dismissed.

Procedural matters

2. I have noted that there has been a change in ownership of the property since the appeal was submitted but I am satisfied that the ownership details submitted were correct at that time.
3. A third party's representation regarding interest in the property was accepted after the date for submissions on the basis that these could have been presented in person during the hearing. As both parties were aware of this and had the opportunity to respond during the hearing I am satisfied that neither party was disadvantaged.

Main Issue

4. The main issue is the effect of the proposals on the special architectural and historic interest of the listed building at 41 Wells Road.

Reasons

Policy and legislative background

5. In considering proposals for planning permission, the duty imposed by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard must be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses setting of a listed building. Paragraph 132 of the National Planning Policy Framework (the Framework) states that when considering the impact of new development on the significance of a designated heritage asset, great weight should be given to its conservation. The paragraph goes on to say that significance can be harmed or lost through development within its setting. Paragraph 134 requires that where the harm is less than substantial, it should be weighed against the public benefits of the proposal.
6. The development plan now includes the South Worcestershire Development Plan (SWDP) which was adopted in February 2016 after the date of the Council's decisions and has superseded the Malvern Hills District Local Plan. The objectives of policy SWDP6, in seeking to ensure that developments conserve and enhance the significance of heritage assets and SWDP24 in seeking to encourage the re-use and adaptation of heritage assets subject to national policy, legislation and guidance accord with the Framework's requirements.

The listed building and proposals

7. 41 Wells Road is a grade II listed building, which was formerly the Emmanuel Evangelical Church, and is described in the listing description as formerly a Non-conformist chapel. The lowest two levels of the building have been converted into three flats and are occupied. The ground floor (level 3 in the plans) was used as a gym until August 2014 and has remained vacant since then. The Council accepts the principle of residential conversion and planning permission and listed building consent were granted in 2015 for conversion to a single residential unit. The current plans are the same as those originally submitted in 2015 which were then amended to the single authorised unit.
8. At the site visit I saw that there has already been a limited degree of sub-division within the building and that little of the original church furniture, fixtures and fittings remains. Nevertheless, its grand proportions, large interior space, long sight lines, the large prominent east window in the rear elevation (currently blocked up but whose outline remains) and the large stained glass windows along the side elevations, are integral to its character and reflect its former use. These features therefore contribute strongly to its architectural and historical significance.
9. The proposals would provide four additional flats at ground floor level and above. The plans show that there would be much vertical and horizontal subdivision of the internal space and the creation of two new floor levels (4 and 5 in the plans). Whilst the floor at levels 3 and 4 would be set back with glazed screens around the existing window openings with balconies set back from the east window and the exposed trusses above level 5 together with the void above the existing balcony at the front of the building would remain, this would not be sufficient to fully appreciate the building's impressive windows or its volume.

10. Although in this case the harm would be less than substantial, I must give it considerable importance and weight. I must now assess whether there are any public benefits arising from the proposals that would outweigh the identified harm as required in paragraph 134 of the Framework.

Public benefits

11. The development would create a number of public benefits in terms of securing its viability and long term conservation. Firstly, the proposals include the re-introduction of glazing to the east window. This is a large and prominently sited window in an elevated position which can be clearly seen from Abbey Road below the appeal site. Those works would improve the appearance of the building when seen from there.
12. Secondly, the appellant's survey identified that the tower, roof gutters and verges are in poor condition and from what I have seen I would agree. The proposed repair works include a new covering of the spire which is also seen clearly from Abbey Road, the replacement of roof flashings and guttering and the replacement and repointing of some stonework which I noted is particularly necessary around the upper part of the spire. I heard from the Council that the spire has been deteriorating for many years and although it was unaware of any complaints made, the occupiers of the existing apartments also expressed concern at its condition. Although the Council has powers to require owners to carry out urgent repairs or compulsorily purchase a listed building, it said that it would be reluctant to do so as a first step. I was told that these works also formed part of the 2015 scheme for conversion to a single dwelling.
13. Thirdly, the development would enable the provision of additional funding from the new occupiers to a management company which would contribute to the future maintenance and long term conservation of the building.
14. These matters would, therefore, provide clear benefits to the architectural and historic character of the listed building and to the Great Malvern Conservation Area whose character and appearance derive from the individuality of building designs and rich architectural styles in the area. However, the weight given to these benefits is limited given my findings below regarding viability.
15. The development would also provide a small number of new dwellings in a sustainable location and would make a small contribution in terms of housing supply. It would also have some long term and short and long term economic benefits to the local area in the work created by the conversion and maintenance of the building. However, given the scale of the development, I accord these benefits only limited weight.

Viability

16. No viability assessment was provided with the planning application and the Council's decision says that 'the applicants have not demonstrated that the scheme for conversion of the property to less than four units is financially unviable.' Following that, the appellant's original appeal documents included a viability assessment to show that the proposed four unit scheme would be viable and that three units would not be viable. The Council then provided its own assessment of the proposed four unit scheme. This also concluded that a four unit scheme would be viable. However, the Council concludes, on the basis of the appellant's original assessment, that a scheme of three units would also be viable. It also considers that it is highly likely that a scheme for one

unit would be viable although the basis of that is unclear to me given that no figures have been provided at any stage during the appeal for one unit.

17. Since then the appellant has provided a review of both his own and the Council's assessments and has provided revised figures for a four unit scheme. Whilst there are some significant differences between the parties' viability assessments, both were prepared by viability specialists and show that a scheme for four flats would be viable. At the hearing, despite discussion of the differences between the parties' figures, neither party sought to alter its figures for the four unit scheme although the appellant accepted that some of the figures relating to a three unit scheme in the original viability assessment are no longer relevant.
18. The adjustment of the variables in viability calculations can fundamentally alter the outcome. Looking at the main differences between the parties figures, it seems to me that some of the assumptions made by both parties have merit and that the difference between the likely costs and value of the development lies somewhere between the two parties' figures. The Council's inclusion of ground rent in its value of sales would seem to be in accordance with the RICS guidance referred to by the parties despite the appellant's contention that it is unusual. On the other hand, the Council's figure for lower professional fees is not relevant in this case because although it is based on evidence of fees already incurred it is lower than the industry benchmark and is unique to the appellant who no longer owns the property. The inclusion of a contingency figure by the appellant is appropriate because no such figure was provided in the builder's quotation (and which was, in any case, the lowest and least detailed of those provided). The industry-standard land value provided in the appellant's review appears reasonable taking into account the recent transfer of ownership and likely risk to a developer. The developer's expected profit could reasonably be expected to be in a range between the parties figures, given that any development of the property would carry a higher than normal level of risk but that it may appeal to a range of developers, including smaller ones who may be prepared to accept a profit towards the lower end of the range.
19. I have noted the submissions made by the appellant's estate agent and viability consultant regarding the risk associated with a lesser number of units. However, in the absence of further information and as I have seen no plans for a three unit scheme, no figures for a single dwelling and as the appellant accepts that some of the original figures for a three unit scheme are no longer relevant, I am unable to make my own assessment of the likelihood of the viability of a scheme of less than four units and have insufficient evidence to conclude that the proposed development is the only scheme that would be viable.
20. Furthermore, the Council is not satisfied that the property has been adequately marketed. It was marketed with a local agent between June 2013 at £339,000 and August 2013 when it was reduced to £329,000. The agent said in a letter dated May 2014 that it continued to be marketed although I have no evidence that it has been since then. Although the property changed ownership in August 2016 for £185,000, I was told that this was to remove the threat of bank repossession against historic development loans. The marketing figures appear unrealistically high given the viability evidence provided by the parties and the most recent purchase price, notwithstanding the reason behind that transaction. I was told by the appellant that it does not currently show on the

Rightmove property website and that the third party who has very recently expressed an interest contacted the appellant rather than the agent. I agree with the Council, therefore, that there is no evidence of a continued and realistic marketing exercise and this adds further weight to my views that the proposed development is not necessarily the only viable means of securing the building's future.

Other matters

21. At the hearing, the occupiers of the existing apartments expressed concerns regarding the impact of the proposals in terms of parking provision, noise, drainage and overlooking. The Council raised no objection in these terms and I am satisfied that subject to conditions, the proposed scheme would not cause harm in terms of parking, drainage or the living conditions of the existing occupiers.

Planning balance

22. Crucially, as a third party has expressed an interest in buying the property for use as a single dwelling (for which permission already exists) and despite the fact that this has not yet materialised into an offer, which is perhaps not surprising pending the outcome of this appeal, I am not persuaded that the appeal proposal would be the only viable way to achieve the conservation and long term future of the building. Consequently, neither the conservation benefits identified earlier nor the other benefits identified are sufficient to outweigh the harm that would be caused by this scheme.

Conclusion

23. I conclude then that, for the reasons given above, the proposed development would harm the special architectural and historic interest of the listed building contrary to policies SWDP6 and SWPD24. As such it would not accord with the environmental dimension of sustainability required in the Framework and would not constitute sustainable development. It would, therefore, be contrary to the Council's development plan and to national policy in the Framework as a whole. I have taken into account all other matters raised but none is sufficient to alter the outcome of my findings. Both appeals should be dismissed.

Sarah Colebourne

Inspector

APPEARANCES

FOR THE APPELLANT:

Chris Couper	Planning consultant
Hugh Lacey	Development consultant
Andrew Beever	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mark Stringer	Planning Officer
Ben Lawless	Conservation Officer
David Coate	Viability specialist

INTERESTED PERSONS:

Mr Wilson	Local resident
Ms Williams	Local resident
Mr Thompson	Local resident
Mrs Thompson	Local resident