
Appeal Decision

Site visit made on 18 January 2017

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 9 February 2017

Appeal Ref: APP/T4210/W/16/3160333

George Hotel, Market Street, Bury BL9 0BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
 - The appeal is made by Eventmore Limited against the decision of Bury Metropolitan Borough Council.
 - The application Ref 59918, dated 22 March 2016, was refused by notice dated 13 June 2016.
 - The development proposed is to subdivide the ground floor into two shops and elevational alterations to create two shop fronts.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The development has been carried out. The description of the development on the application form omits reference to the elevational alterations to create two shop fronts as shown on the proposed plans. The Council amended the description of development to include reference to the elevational alterations and this description was used on the decision notice and in Section E of the appeal form. I have therefore made my determination on this basis, having removed the phrase "retrospective application" as this does not constitute development. This description is reflected in the heading above.

Main Issue

3. The main issue is whether the proposal would preserve or enhance the character or appearance of the Bury Town Centre Conservation Area.

Reasons

4. The appeal site is a three storey building located within the Bury Town Centre Conservation Area (CA). The CA is centred on the historic core of central Bury which developed as a medieval market town. The street pattern reflects the early stages of the town's history. Buildings around Market Street post-date 1850 when the construction of buildings, such as the Grade II Listed Derby Hall, brought about a wave of Victorian redevelopment which resulted in one of the town's grandest civic streets.
 5. With a dense grain, the irregular street pattern of the area is predominately characterised by a mix of shops, restaurants, bars and other commercial uses. The architectural interest of the CA is principally in the fine grouping of
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Victorian and Edwardian buildings. The significance of the CA is generally derived from the use of locally sourced sandstone, the high quality of masonry which has resulted in buildings of high architectural merit and the fact that many of the most important buildings were constructed in a short period between 1850 and the early 20th century.

6. The appeal property fronts onto Market Street and the public area around Kay Gardens. Located at the end of a terrace, the building is a particularly prominent feature in this part of the CA. The stone parapet rises above the roof of the building and the masonry is intricately detailed in places. Aside from the works subject to this appeal, the building is largely unaltered since it was re-fronted in stone in the late 19th century when the footprints of two houses, which were unchanged since around 1845, were covered.
7. The building has pairs of projecting bay windows at first and second floor levels. The windows are set back with pilasters either side. Photographs indicate that prior to the works subject of this appeal the ground floor contained similarly paired bay windows above a continuous plinth and sited either side of a decorative central entrance door with a deep stone hood and fanlight. Indeed, it is evident that the building had Art Nouveau-style glazing bars to the windows of the ground floor. Consequently, the building has a pleasing symmetry, consistency and a distinct vertical emphasis. Notwithstanding the alterations subject to this appeal, the building and its architectural merit makes an important, positive contribution to the significance of the CA. Indeed, the Bury Town Centre Conservation Area Character Appraisal 2007 (CACA) recognises the appeal property as a significant unlisted building that makes a positive contribution to the character of the CA.
8. Permission is sought for the sub-division of the ground floor of the building into two retail units. The Council has raised no objections to this in principle and on the evidence before me I have no reason to disagree. Nevertheless, the development also includes external works to facilitate the subdivision. The works comprise the installation of fully glazed shop fronts on the front elevation of the building either side of the central entrance door. The glazed openings contain doors so that the central entrance is retained for the residential uses above. In addition, pilasters to both sides of the shop fronts have been constructed in concrete and roughly finished.
9. I note that the works have ensured that the stone hood to the central entrance door has been retained and that the upper floors remain intact. However, the ground floor bay windows and a significant proportion of the plinth have been removed. Moreover, the stall risers below the ground floor bays have been removed completely. The loss of such significant architectural features has significantly diminished the historical merits of the building.
10. Whilst the glass shop fronts provide clean lines and uncluttered entrances to each unit, they pay little attention to the original character of the building and appear in stark contrast to the prevailing use of stone in both this building and the wider CA. Furthermore, the appeal property is a particularly prominent feature and the alterations are visible in several vantage points from both within and outside of the CA. The design of the alterations and the materials used fail to complement the host property and diminish the historic interest of the building. Consequently, the development is not of a high standard of design and has introduced a discordant feature into the CA.

11. I note that modern, glazed shop fronts have been fitted at neighbouring No 6 Market Street and the Bury District Co-Operative Society Emporium building. However, the CACA states that such alterations have greatly diminished their historic merits. Indeed, I agree with the Council that to allow replication of such features would be unduly harmful to the significance of the CA.
12. The appellant has indicated that vinyl films to replicate the frames of the original building could be added to the building through a suitably worded condition. However, the use of vinyl films would fail to replicate the sense of depth or the intricacy of the original masonry on the building and would not adequately mitigate the harm resulting from the alterations. Such a condition would not therefore be necessary.
13. I conclude, therefore, that the proposal would fail to preserve or enhance the character or appearance of the Bury Town Centre Conservation Area. As a consequence, it would conflict with Policies EN2/1 and EN2/2 of the Bury Unitary Development Plan 1997 which state that development will only be acceptable if it will preserve or enhance the character or appearance of the Borough's Conservation Areas. It would also conflict with paragraph 132 of the Framework which states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, and Paragraph 138 of the Framework which states that harm to a building which makes a positive contribution to the significance of the Conservation Area should be treated either as substantial harm under paragraph 133 or less than substantial harm under paragraph 134.
14. For the reasons above I have found that the proposal would be harmful to the CA. That harm would be less than substantial and in accordance with paragraph 134 of the Framework, it should be weighed against any public benefits of the proposal.
15. The appellant indicates that the subdivision of the unit is essential to ensure the building remains in commercial use and I note that the external works provide separate accesses for the two units. I also note the original windows were not appropriate for retail use, giving little space for display areas.
16. However, whilst I afford such public benefits moderate weight, the harm identified to the significance of the heritage asset in this instance weighs more heavily than the public benefit. Thus, the proposal would not accord with the provisions of paragraph 134 of the Framework.

Other Matters

17. Planning permission was granted in 2016 at the appeal property for the change of use of first and second floors from offices (Class B1a) to 5 no self-contained apartments. (Council Ref: 59702) The appellant has made representations to the effect that the Council has already approved the development subject to this appeal under that planning permission.
18. Condition 2 of that permission requires the approved works to be carried out in accordance with a list of plans, one of which illustrates the ground floor subdivision and external alterations which are subject to this appeal. However, a condition requiring approved works to be carried out in accordance with a list of plans does not require all works on the plans to be carried out. Rather, it

requires that where such permitted works are carried out they are done so in accordance with the approved plans.

19. Furthermore, a planning permission should stand by itself and the meaning be clear within the four corners of the document. The description of the approved development did not make reference to the sub-division of the ground floor or the ground floor external alterations. Whilst it is not unusual for the description of the development to refer only to the major part of a development for the sake of simplicity, a planning permission cannot authorise development beyond which that is applied for or stated in the decision notice. Moreover, the application was explicit in referring to the change of use of the first and second floors of the building. Had the development included works at ground floor, it would have said so. In addition, the subdivision of the ground floor and the external works subject to this appeal are shown as existing features as well as proposed on the approved plans under the 2016 permission.
20. As a result, I consider it has not been demonstrated that a reasonable and lawful fall back position exists in this case. In any event, it is not for me, under a section 78 appeal, to determine whether or not that is the case. To that end it is open to the appellant to apply for a determination under sections 191/192 of the Act and my determination of this appeal under s78 does not affect the issuing of a determination under s191/192.
21. The appellant and the occupiers of the shop units indicate that the alterations required to return the building to its previous appearance would have a significantly negative impact upon the ongoing financial viability of the existing businesses. However, I have been provided with no substantive evidence which demonstrates how such changes would result in the businesses being unable to continue to trade from the building or indeed how it would have a financial impact on the businesses. I therefore afford such statements little weight.
22. I note that no objections have been received from local residents regarding the development and that the appellant purchased the property with the works already undertaken. However, such matters would not outweigh the failure of the proposal to preserve or enhance the character or appearance of the CA.
23. The appellant considers the proposal should be considered in the context of the presumption in favour of sustainable development. However, in this case, as the proposal conflicts with paragraph 134 of the Framework, a restrictive policy under Footnote 9 would apply and the presumption in favour of sustainable development under Paragraph 14 would therefore be dis-applied.

Conclusion

24. For the reasons given above I conclude that the appeal should be dismissed.

Jason Whitfield

INSPECTOR