
Appeal Decision

Site visit made on 6 January 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2020

Appeal Ref: APP/K1128/W/19/3231970

Hawthorn House, 1 Exeter Road, Ivybridge, Devon PL21 0BN

- 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 Pyne Estates Ltd against the decision of South Hams District Council.
 - The application Ref 0147/19/FUL, dated 15 January 2019, was refused by notice dated 27 March 2019.
 - The development proposed is the alteration and conversion of a commercial building to 2 x self-contained dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. It was unclear from my observations on site whether the property was occupied but I noted that the external physical alterations have already been carried out. I have determined the appeal accordingly.

Main Issue

3. The main issue is the effect of the proposal on the vitality and viability of Ivybridge town centre having regard to local and national planning policies.

Reasons

Ivybridge town centre

4. The site lies within the primary shopping area for Ivybridge as defined within the policies map for the Plymouth and South West Devon Joint Local Plan 2014-2034, March 2019 (LP). Ivybridge is recognised as a main town in the district and falls within the Thriving Towns and Villages Policy Area for the purposes of the development plan. Furthermore, the appeal site lies within the town centre identified on the proposals map of the Ivybridge Neighbourhood Plan, October 2017 (NP). The appeal building previously accommodated a hairdressers (Class A1) at ground floor level and office (class A2 or B1) at first floor level. These uses fall within the main town centre uses defined in the National Planning Policy Framework (the Framework).
5. The development provides a two bedroom flat on each floor (class C3). Notwithstanding paragraph 85 of the Framework which recognises that residential development can play an important role in the vitality of town

centres, residential uses are not included within the definition of main town centre uses in the glossary in Annex 2 of the Framework.

6. Policy DEV18 of the LP generally seeks to protect local shops and services and amongst other matters, sets out the nature of the development that would be supported within designated centres. It stipulates that development within centres should maintain the vitality and viability of the centre as a whole and ensure that the centre retains its role in the retail hierarchy, meeting the needs of the area it serves. In addition, development within centres should create an attractive street frontage and not cause unacceptable fragmentation or isolation of retail premises or a frontage.
7. Policy DEV18 (4) specifically lists five circumstances where development in the Thriving Towns and Villages Policy Area will be supported. This aligns with paragraph 85(b) of the Framework which states that policies should define the extent of town centres and primary shopping centres and make clear the range of uses permitted in such locations as part of a positive strategy for the future of each centre. Sub-paragraph (iii) of policy DEV18 (4) relates to proposals for uses outside Classes A1, A2 or A3 in ground floor premises within primary frontages which are supported only where the use would achieve a significant improvement in the vitality and viability of the centre. Sub-paragraph (iv) refers to supporting the loss of ground floor premises in retail use (Use Class A1) within secondary frontages to other main town centre uses where they encourage footfall within the centre and support the main functions of the rest of the centre.
8. The evidence presented does not clearly demonstrate whether the appeal site comprises either a primary or secondary shopping frontage for the purposes of policy DEV18, and no definition is given. On that basis, given the more peripheral location of the appeal site towards the northern edge of the defined primary shopping area, it is reasonable to suppose it has characteristics more typical of a secondary frontage. This is reinforced by the map extract¹ that formed part of the evidence base for the LP. However, as the residential flats do not constitute main town centre uses, the loss of the ground floor A1 unit conflicts with policy DEV18 (4)(iv).
9. Moreover, policy INP1 of the NP supports developments which promote the vitality, viability and retail health of the town centre. The appeal site falls within the area designated in policy INP2 for a mixed-use development east of the River Erme. The uses specifically supported by policy INP2 include a health and leisure hub, a hotel and restaurant and retail and office development. The NP² particularly refers to the River Erme, which lies in close proximity to the appeal site, as an under-realised asset towards which the town centre should turn its face. The loss of a retail unit at ground floor level within the appeal building does not accord with policy INP1(a). Furthermore, although policy INP2 does not prevent residential development as part of a mixed-use development, the appeal proposal removed uses within those promoted by the policy. Therefore, overall the proposal conflicts with these policies.
10. Additionally, the change to residential use, irrespective of the lack of an obvious shopfront to the building, removed a ground floor active frontage within a short section of commercial premises within the primary shopping

¹ Figure 10, page 19 Appellant's appeal statement

² Paragraph 4.4

area. The frontage to this group of buildings located between Costly Street and the River Erme facing towards the weir and car park, is already physically isolated to a degree. The development, although not unattractive given the historic use of the building as a dwelling, nevertheless leaves only two shop fronts and a small entrance to commercial premises as active frontage at ground floor level. Accordingly, the proposal exacerbates the isolation and fragmentation of the frontage to an unacceptable degree, something which policy DEV18(2) seeks to prevent.

11. I am referred to a Retail Study carried out by Peter Bretts Associates as evidence of the thriving nature of Ivybridge as a local centre. On this basis the appellants consider that the proposal would not be harmful to the town centre as a whole. Be that as it may, the study formed part of the evidence base to the LP, following which the primary shopping areas were identified and adopted, including the appeal site. The contents of the study do not address or outweigh the harm identified due to the conflict with policy DEV18 (2) and (4), nor the policies of the NP. Moreover, these are not concerns that can be surmounted by the use of planning conditions.
12. In support of the proposal the appellants' point to a marketing exercise undertaken prior to the conversion works. Nevertheless, it is not clear from the letter³ what the actual dates of the marketing period was overall, and little detail is given regarding the activities undertaken, other than 22 viewings. It does not specify whether this related to the premises as a whole, or whether the retail and office units were marketed separately.
13. I acknowledge that the location within a conservation area may limit physical alterations to the premises to a degree. Nevertheless, there is limited substantive evidence before me to show that no steps could be taken to address concerns raised by parties who viewed the premises regarding the lack of a shop front. Neither is it clear whether other main town uses were investigated or marketed for part or all of the premises. Therefore, based on the information before me, it is not shown that a use at ground floor that complied with policy DEV18(4)(iv) could not be secured such that the only available option to avoid a long-term vacant building was a residential conversion for the entire building.
14. Accordingly, I find that the proposal has a harmful effect on the vitality and viability of Ivybridge town centre having regard to local and national planning policies. For the reasons already outlined above it is therefore, contrary to policy DEV18 of the LP and policies INP1 and INP2 of the NP.

Other matters

15. I accept that the proposal would provide two dwellings in a sustainable location that would contribute and diversify the overall housing supply. Moreover, this is likely to be particularly attractive to the retired sector. Nevertheless, the overall benefit arising from two such dwellings is limited, and therefore, this attracts only limited weight in favour of the proposal.
16. Additionally, although the appellants' highlight the acceptability of the proposal in relation to a range of other planning matters⁴, the absence of harm in these regards does not count in favour of the proposal as these are matters which

³ Bruton Knowles, Commercial Property Consultants dated 26 June 2019, Appendix 2 Appellant's appeal statement

⁴ Page 22, Appellants' Appeal Statement

would need to be addressed in any event. As such, this does not overcome the harm identified in relation to the main issue.

17. There is some disagreement between the parties as to which flood zone the appeal site lies within given its proximity to the River Erme. However, an extract from the Environment Agency's flood map⁵ indicates that it is within Flood Zone 1, which denotes the lowest risk of flooding. In any event, although the Council suggests that the sequential test should apply⁶, the proposal principally relates to the change of use of an existing building and paragraph 164 of the Framework indicates that changes of use should not be subject to the sequential test. Whilst the Council points to concerns regarding the difficulties of accessing the site should the surrounding area be flooded, there is little technical evidence to substantiate this concern. Additionally, if such extreme circumstances were to occur in the vicinity of the site, its location within an area of concentrated development in the town centre of Ivybridge is unlikely to notably add to the burden on emergency services who would be in attendance in any event.
18. The appeal site is located within the Ivybridge Conservation Area (CA) which covers the historic core of Ivybridge and is centred on the river and the ancient bridge. Its significance lies in part in the way the buildings and spaces it contains reflect the evolution of the settlement over many years. The appeal building has aesthetic value as an attractive stone built vernacular building with a symmetrical principal elevation and therefore, makes a positive contribution to the appearance of the CA. I am mindful of the statutory duty in section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. However, the proposals contain only minor physical alterations to the side elevation of the building and as a result the proposal preserves its contribution to the character and appearance of the CA.
19. The appeal site is within the 12.3km zone of influence for the Plymouth Sound and Estuaries Special Area of Conservation (SAC) and the Tamar Estuaries Complex Special Protection Area (SPA). These are habitats recognised under the Conservation of Habitats and Species Regulations 2017 as being of international importance for the mudflat and marine environment which provides feeding and roosting habitat for, amongst other wildlife, rare and vulnerable species of birds. Policy SPT14 of the LP indicates that within the zone of influence the sites are vulnerable to adverse recreational impact arising from residential development and this is reinforced by the comments of Natural England⁷, to which I have given considerable weight given their specialist knowledge.
20. The change of use of the building introduces additional residents to the site who, in contrast to the occupants of commercial premises, are likely to undertake recreational activities from their domestic base. Given the proximity to the SAC and SPA it is reasonable to suppose that future residents of the flats would potentially visit the Sites for recreational purposes and dog-walking. Intensification of such activities would be likely to cause disturbance to the birds and their habitat. There is little to suggest that such visits, in combination with other residential development within the district, would not

⁵ Appendix A, Appellants' final comments dated 6 October 2019

⁶ Council Statement of Case paragraph 1.3-1.5

⁷ Consultation response dated 7 March 2019

have a significant effect on the internationally important interest features of the SAC and SPA.

21. Policy SPT14 further indicates that development will be required to provide for appropriate management, mitigation and monitoring on site, and/or financial contributions towards off site mitigation and management. This will need to be agreed and secured prior to any approval of the development. The appellants' have not proposed any mitigation measures. However, as I am dismissing for other substantive reasons it is not necessary for me to consider this matter in further detail as it would not affect the outcome of my decision.

Planning balance and conclusion

22. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁸. The proposal conflicts with policies in the development plan which seek to protect the vitality and viability of Ivybridge town centre. This weighs significantly against the proposal. No compelling reasons have been shown to justify my determining the development other than in accordance with the adopted development plan.
23. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

⁸ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.