
Appeal Decisions

Site visit made on 10 March 2020

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 31 March 2020

Appeal 1 Ref: APP/K1128/C/19/3228354

Creek House, Island Street, Salcombe, TQ8 8DP

- 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 Yellow Bridge Developments Ltd against an enforcement notice issued by South Hams District Council.
 - The enforcement notice, numbered PD.RMF/CB/Enf.014351, was issued on 10 April 2019.
 - The breach of planning control alleged in the notice is failure to comply with condition No 4 of a planning permission Ref 41/2397/15/F granted in January 2017.
 - The development to which the permission relates is for alterations and refurbishment including a change of use of the ground floor from offices to retail. The condition in question is No 4 which states that: The change of use to retail shall relate only to the ground floor of the property. Notwithstanding any annotations regarding room types on the first floor this permission does not authorise any change of use to residential or retail on the first floor. The notice alleges that the condition has not been complied with in that the first floor is being used as a residential dwelling.
 - The requirements of the notice are:
 - 1 Cease the residential use.
 - 2 Remove all beds and bedroom furniture other than that in area approved as a night watchman's flat and shown on drawing number MG/02 date February 1994 on planning permission 41/0533/94/3.
 - 3 Retain the provision of an internal doorway opening at the base of the staircase to allow for the link to the ground floor use of the building as shown on the approved drawing number 3396.30 on planning permission 1678/17/FUL. This is to ensure that the night watchman's flat remains incidental to the business use of the entire premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - **Summary of decision: appeal dismissed following correction and variations; planning permission refused**
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Appeal 2 Ref: APP/K1128/W/19/3228893

Creek House, Island Street, Salcombe, TQ8 8DP

- 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 Yellow Bridge Developments Ltd against the decision of South Hams District Council.
 - The application Ref 0550/19/FUL, dated 20 February 2019, was refused by notice dated 25 April 2019.
 - The development proposed is a retrospective application for a change of use from residential/office/storage to residential at first floor, Creek House.
 - **Summary of decision: appeal dismissed**
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Procedural matters

1. Since the determination of Appeal 2, the Salcombe Neighbourhood Plan (SNP) has been examined, passed through the referendum stage and now forms part of the development plan for the area, along with the Plymouth and South West Devon Joint Local Plan 2014-2034 (JLP) which was adopted in March 2019. I am therefore able to attach full weight to the SNP. Although the appellant has referred to the South Hams LDF Core Strategy and Development Policies DPD, these have been superseded by the JLP and I therefore attach no weight to them.
2. Requirement 2 of the notice in Appeal 1 refers to a proposed first floor plan drawing number MG/02 dated February 1994 on planning permission 41/0533/94/3 but the appellant states that the relevant drawing relates to the subsequent 1995 planning permission 41/0085/95/3 for amendments to the approved plans of 41/0533/94/3 that superseded that permission. Appendix B of the appellant's enforcement statement shows a first floor plan with accommodation consisting of staircase from the ground floor, central corridor, reception, ladies toilet, office, men's washroom, kitchen, living, offices and/or workshops. This contrasts with MG/02 which shows a staircase from the ground floor to an office/workshop with a separate living area, store and bathroom. The appellant considers that the notice should be quashed as it includes a requirement which cannot be complied with. However, under s176(1) I have the power to correct or vary a notice if I am satisfied that no injustice would arise to the appellant. As there is very little material difference in the proposed use of the first floor in the two drawings as both show office/workshop and living space, and as the appellant is fully aware of the relevant drawing, I do not believe any injustice would arise through my correction of the notice, which I intend to make.
3. The appellant has also appealed against requirement 3 on ground (c) but as this relates to the steps required to comply with the notice, it is more appropriate to consider it as though it had been made on ground (f). Although the Council point out that the no appeal has been made under ground (f), I do not consider that either party would suffer any injustice through the approach I have taken.

The appeal site and relevant planning history

4. The appeal property is a two storey building that has been extensively re-furnished with the ground floor occupied by a local architectural firm and the first floor as a three bedroom flat with its own access via an internal staircase on the left hand side of the building. It is situated on the north side of Island Street adjacent to the creek and located within a conservation area. It is within an area of long established marine employment originally associated with slipways and boatyards to the rear and is now characterised by varying commercial uses including retail uses focused on the maritime and leisure market. The south side of the street is predominantly residential with the dwellings set at a higher level than the commercial properties.
5. The site has an extensive planning history which is documented in the statements of case. The more relevant of the planning decisions include the following:
 - Permission was granted for the conversion of part of the building to create a night watchman's flat (41/0533/94/3) subject to a condition

“(c) The residential flat which comprises part of the development hereby approved shall only be occupied ancillary to and in conjunction with the workshop/office use being carried out in the premises”.

- Permission 41/0085/95/3 was granted subject to conditions for amendments to approved plans 9/41/0533/94/3 for conversion of part of building to flat (render to front and side elevations and internal layout).
 - Permission 41/1487/00/CU was granted subject to conditions for change of use of ground floor to office accommodation.
 - Permission 41/2397/15/F was granted subject to conditions for alterations and refurbishment including change of use of ground floor offices to retail. The officer’s report explained that the change of use did not relate to the first floor. Application 4023/16/ARC related to the approval of details reserved by condition (3).
 - Application 1678/17/FUL was granted for external amendments to 41/2397/15/F and the use of the ground floor as A2/B1.
6. The appellants replied to a Planning Contravention Notice in a response dated 29 November 2018.

Appeal 1: The appeal on ground (c)

7. An appeal on this ground is that the matters alleged to be a breach of planning control, if they occurred, did not constitute a breach of control.
8. The appellant contends that condition (c) of permission 41/0533/94/3 was for a residential flat to be used in association with the workshop/office. The case of *I’m Your Man*¹ is cited which established the principle that any restriction on use must be imposed by way of condition, and further referred to in the *Winchester*² case.
9. The appellant refers to officer file notes which indicate that in May 1995 the upstairs use was as a ‘holiday let’ and ‘the flat had been completed and in use’. As the Council point out, the residential use was not the permitted use for the whole floor. Furthermore, the premises were occupied as offices for Bartons Solicitors between 2000 and March 2015, with the first floor comprising 6 offices, storeroom, bathroom and toilet³. The appellant contends that as there was no Certificate of Lawfulness for such a use, then the use of the first floor reverts back to its last authorised use, this being that the first floor should comprise part residential and workshop/office. However, the Council points out that the introduction of another unauthorised intervening use could render the residential use abandoned through reference to *Thurrock*⁴. I note that in *Panton and Farmer*⁵ it was held that lawful use rights could only be lost through evidence of abandonment; by the formation of a new planning unit; or by being superseded by a further change of use.
10. It is unclear what the appellant is seeking to demonstrate in the submitted case. Even if it is correct to describe the authorised use of the first floor to

¹ *I’m Your Man v SSE and North Somerset DC* [1999] 4 PLR 107

² *Winchester CC v SSCLG & Others* [2013] EWHC 101 (Admin), [2015] EWCA Civ 563

³ Statement of Truth of Raymond Hayes, Solicitor, dated 8 January 2020, Appendix 7, Council’s Statement of Case.

⁴ *SSETR v Thurrock BC* [2002] EWCA Civ 226

⁵ *Panton and Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461

comprise 'Workshop/Office and ancillary residential accommodation', the allegation refers to a breach of condition 4 of 41/2397/15/F. That condition is clear on its face (and was not appealed against) and the earlier approval of part of the first floor as a night watchman's flat does not provide an unfettered use of the whole floor for residential purposes. Indeed, it is doubtful whether the night watchman's flat was ever brought into use or occupied as intended. It was evident from my site inspection that the first floor of the appeal property had been converted into a residential dwelling and there was no evidence of any office/workshop use at first floor level.

11. I conclude on this ground that a material change of use has occurred as a matter of fact and this change of use is clearly in breach of condition No 4 of planning permission Ref 41/2397/15/F.

12. The appeal on this ground fails.

Appeals 1 and 2: The appeal on ground (a) and the s78 appeal

13. An appeal on this ground is that planning permission ought to be granted or the condition or limitation concerned ought to be discharged. The main issues are the effect of the development on employment land/premises and on the suitability of the premises for residential use in respect of the potential effect on existing businesses.

Employment Land

14. The appellant has calculated that the first floor is 113 sqm of which the office/workspace equates to 63sqm. This would represent a maximum employment of 5 persons if the floorspace is in office use.

15. Planning policies and decisions have sought to protect the employment uses of the Island Street area over a long period of time and it was in this context that the night watchman's flat was originally approved as it was ancillary to and subsidiary to the main employment use of the building and compatible with the wider marine environment. The principle of retaining employment uses has been carried forward through the JLP and in the SNP.

16. JLP Policy DEV14 seeks to maintain a flexible supply of employment land and premises. DEV14.1 of the policy indicates that the change of use of existing employment sites needs to meet one of three criteria, these being that the proposal is specifically provided for in the LP to deliver wider strategic objectives; or there are over-riding and demonstrable economic, regeneration and sustainable neighbourhood/communities benefits. The development does not satisfy these criteria. The requirement that there is no reasonable prospect of the site being used for employment use in the future is also not demonstrated, despite the submission of a viability report that is referred to later in this decision.

17. Policy DEV14.2 specifically protects employment sites with wharves and quays for marine related uses appropriate to the site and location. The site is located in a row of buildings which benefit from access to the water via slipways and a rear ground floor boat store at the appeal property, according to the Council, has housed kayaks and domestic paraphernalia associated with the residential use. I note, however, that the appellant states that there is no physical, legal or ownership link between the boat store and Creek House.

18. Policy DEV14.3 protects employment sites from neighbouring development that will adversely affect employment operations.
19. In respect of the Island Street and Gould Road area (employment policy area C), in summary, SNP Policy SALC EM2 states that only employment uses shall be permitted with marine related uses taking priority, however all B1 uses will be supported, small scale workshops for marine uses or arts and crafts are considered the most appropriate by the community. Ancillary retail will be permitted. It goes on to say that "Where the loss of an employment site is justified as no longer viable the applicant must demonstrate through an independent assessment that the vacant units have been actively marketed and offered at a reasonable rent (comparable with rents achieved elsewhere in the parish) for a minimum period of 1 year, a market review of the sites and details of the marketing."
20. The JLP encourages towns and villages to become more sustainable with access to housing, employment services and facilities that meet their needs and are resilient. Whilst I accept that residential uses support the town centre economy, this is not outweighed by the loss of the appeal site to residential use, which albeit relatively small in terms of its effect on employment land/premises, is nevertheless damaging to the policy objectives of the development plan.
21. I therefore conclude on this issue that the development adversely affects the supply of employment premises.

Living Conditions

22. The appeal site is in a mixed use area where marine and other non-residential activities take place. The National Planning Policy Framework (the Framework) at paragraph 182 indicates that businesses should not have unreasonable restrictions placed on them as a result of development permitted after they were established and this is reflected in JLP DEV 14.3. The Council considers that appellant's submitted noise assessment⁶ fails to reflect that marine uses can be sporadic but noisy in nature and this could lead to conflict between residential and employment uses.
23. In view of the location of residential properties to the south of Island Street and with the other proposed as a result of the appeal decision referred to below, businesses in the area are already constrained by the presence of existing dwellings in close proximity. I conclude therefore that the living conditions of occupants use of the appeal site for residential purposes would not place unreasonable restrictions on the operations of employment uses nearby, beyond any that may currently exist in this mixed use part of Salcombe.

Other Matters

24. The site is within the Salcombe Conservation Area and South Devon Area of Outstanding Natural Beauty (AONB). Although the development introduces a more significant residential use on the first floor of a building than originally anticipated through the permission for the night watchman's flat, its effect on the character of the conservation area is not significant. The development would therefore preserve the character and appearance of the conservation area have no impact on the landscape quality of the AONB.

⁶ Noise Survey by Acoustic Associates South West Ltd.

25. The appellant has drawn attention to a recent appeal decision nearby at Brewery Quay⁷ which was allowed for the demolition of an existing building and the erection a building with ground floor commercial floorspace and a 6 bedroom dwelling above. Whilst the appellant considers that the appeals are comparable, the sites are distinctly different and I note that the Inspector in that case drew a distinction between the appeal site subject to that appeal having a quay but not having a slipway, with the workshops further to the west which do have slipways (paragraph 22).
26. In addition, the appellant has submitted a development viability report⁸ in which it is concluded that a scheme of ground and first floor commercial accommodation would not provide a reasonable return but is viable with the first floor as residential accommodation. Whilst this may be the case the appellant has failed to demonstrate that the requirements of Policy SALC EM2 regarding marketing have been met.
27. The combined authorities can demonstrate a 6.5 year land supply at the point of adoption of the JLP and therefore paragraph 11d of the Framework is not engaged.
28. I have had regard to the comments of the Town Council and local residents regarding the history of the site.
29. Having had regard to all relevant comments I conclude, on balance, that the development does not accord with JLP Policy DEV14 and Policy SALC EM2 regarding employment land and the protection of employment uses and that condition No 4 of a planning permission Ref 41/2397/15/F was correctly imposed as relevant and necessary.
30. The appeal on ground (a) and the s78 appeal fail.

Appeal 1: The appeal on ground (f)

31. An appeal on this ground is that the requirements of the notice are excessive. Requirement 3 refers to approved drawing number 3396.30 on planning permission 1678/17/FUL in respect of the retention of a ground floor internal doorway. However, the appellant points out that this drawing shows the existing layout of the building (although it is described 'As Existing/Approved' in the key). Drawing number 3396.31, as referred to in Condition 2 of planning permission 1678/17/FUL indicates that the internal doorway between the staircase and the ground floor office area is removed. It appears therefore that the Council has misunderstood the approved drawings and planning permission clearly grants approval to the removal of the internal doorway.
32. The appeal on this ground succeeds in part and I shall vary the notice by the deletion of requirement 3.

Appeal 1: The appeal on ground (g)

33. An appeal on this ground is that the compliance period is too short. The appellant contends that there is little or no harm generated from the unlawful change of use and that a period of 12 months would be reasonable "to allow for the enforcement notice to be enforced sufficiently". What is meant by this

⁷ APP/K1128/W/18/3215145

⁸ Vickery Holman Property Consultants 17 December 2019

latter statement is unclear as the appellant has not provided any information to justify a longer compliance period.

34. The appellant's claim that little or no harm arises from the use but the reasons for issuing the notice are quite clear in respect of the need to protect employment sites. As the requirements, as varied, only require the cessation of the residential use and the removal of certain items of furniture, there is no reason why in normal circumstances this cannot be achieved within a period of three months. However, as the country is currently facing unprecedented times through the coronavirus pandemic and the disruption that this is causing, I will extend the compliance period to 6 months.

35. The appeal on this ground therefore succeeds.

Conclusions

36. For the reasons given above I conclude for Appeal 1 that a reasonable period for compliance would be 6 months and I am varying the enforcement notice accordingly prior to upholding it with corrections and variations. The appeal on ground (g) succeeds to that extent but I refuse to grant planning permission on the deemed application.

37. For the reasons given above I conclude that the Appeal 2 should also be dismissed.

Decisions

Appeal 1 Ref: APP/K1128/C/19/3228354

38. It is directed that the enforcement notice be corrected by the deletion of Requirement 2 and its replacement with the words:

"2 Remove all beds and bedroom furniture other than that in area approved as 'living' shown on the First Floor Plan forming part of planning permission 41/0085/95/3",

and varied by:

- the deletion of Requirement 3, and
- the deletion of 3 months and the substitution of 6 months as the period for compliance.

Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal 2: Ref: APP/K1128/W/19/3228893

39. The appeal is dismissed.

P N Jarratt

Inspector