The Planning Inspectorate

Appeal Decision

Site visit made on 9 March 2020

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 1 May 2020

Appeal Ref: APP/E2001/W/19/3243234
The Old Coaching House, 43 North Bar Within, Beverley HU17 8DG

- 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 B Yeardley against the decision of East Riding of Yorkshire Council.
- The application Ref: 18/02222/PLF, dated 9 July 2018, was refused by notice dated 4 October 2019.
- The development proposed is change of use from retail to private residential part of ground floor and associated internal alterations.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal property is Grade II listed, part of 41 to 47 (odd) (including No 2 Vicar Lane), North Bar Within. Having regard to Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I am required to pay special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. However, I am aware that the 'associated internal alterations' proposed as part of this change of use, along with other internal works, have been granted listed building consent by the Council[1] and that the majority of the works have already been completed. On this basis, the issue of whether the proposal would preserve the Grade II listed building or any features of special architectural or historic interest which it possesses is not before me as part of this appeal, and I have not considered it in my determination of the development proposed.

Main Issues

3. The main issues are:

   - The effect of the proposed change of use on the vitality and viability of the town centre; and
   - The effect of the proposed change of use on the character and appearance of the area, with due regard to whether it would preserve or enhance the character or appearance of the Beverley Conservation Area (BCA).

[1] Application Ref: DC/18/02223/PLB, Application Ref: 18/02485/PLB, Application Ref: DC/16/01704/PLB and Application Ref: DC/16/30409/CONDET.

Reasons

4. The appeal property is a retail unit within a row of shop premises that form the ground floor of the Old Coaching House which dates from the first half of the 18th century. Formerly the Tiger Inn, the building was later subdivided to form several separate retail units on the ground floor with residential accommodation above. The appeal property is stated to have been vacant for the past four to five years. The adjacent ground floor units are currently in retail use.

5. The development proposed is the change of use of the appeal unit from retail (A1) to residential (C3). This includes the construction of a new part solid/part glazed partition behind the existing display bed (which has been granted listed building consent[2]) that would allow borrowed light into the proposed residential accommodation and provide space for a retail display when viewing the unit from the street.

Vitality and viability of the town centre

6. The appeal property is located within a Secondary Shopping Frontage of the Primary Shopping Area in the identified town centre of Beverley, as defined in the East Riding Local Plan Policies Map. Policy EC3 of the East Riding Local Plan 2012-2029 Strategy Document 2016 (ERLP) seeks to support the vitality and viability of town and district centres and states that these centres will function as the prime location for retail and other main town centre uses.

7. Supporting text to Policy EC3 states that it will be necessary to consider the potential impact of a proposal within a Town or District Centre that would involve the loss of a main town centre use. This could include consideration of the economic viability of the existing business and whether it has been appropriately marketed for a main town centre use and, if so, for how long (one year is usually expected).

8. It goes on to state that Secondary Shopping Frontages provide greater opportunities for non-retail town centre uses and that a balance between retail (class A1) and non-retail main town centre uses is required to maintain the vitality of Primary Shopping Areas. It also notes that the National Planning Policy Framework (the Framework) recognises that residential development can play an important role in ensuring the vitality of centres.

9. The proposal would allow the reuse of this currently unoccupied ground floor space, but it would do so at the expense of a potential retail function within a unit which is central to the parade of shops. Whilst the proposed change of use would retain a retail display, which could possibly be used by an operating retail business nearby and secured via a planning obligation, it would reduce the number of products and/or services on offer for purchase within this area. This would lessen the reason and desire for patrons to visit North Bar Within as a distinctive shopping location, which would weaken the retail function of the street, reduce footfall to the area and, ultimately, have an adverse impact on its vitality and viability.

10. I note the length of vacancy of the unit and I have had regard to the extended marketing exercise carried out by the appellant. However, from the evidence before me, I am not persuaded that these factors categorically prove that the

[2] Application Ref: DC/18/02223/PLB.

use of the appeal unit for retail would not be possible or viable. The form and extent of advertising the appeal unit, namely a small advertisement within the property section of a local paper, was very limited. Although the manner of any marketing is not prescribed in local or national policy, it would be reasonable to assume that, at the very least, appropriate marketing of the property in question would include being formally advertised through an estate agent. This does not appear to have been undertaken.

11. In addition, the reports upon which the advertised rental value was based, by Garness Jones Chartered Surveyors (which was referred to by the appellant but was not submitted as part of the appeal documents) and by PPH Commercial, were at least two years out of date from the time the appeal unit was advertised. On this basis, there is no guarantee that the rental value that the appeal unit was advertised at was sufficiently competitive to attract potential tenants.

12. It is asserted that the appeal unit was only able to operate viably in the past because the owners lived above the site. It is stated that, due to subsequent consolidations, this is no longer possible and, therefore, it is now unsuitable for retail use, which is illustrated by its patchy letting history, with attempts to lease it as a free-standing unit being beset by difficulties. However, no supporting information or substantive evidence is before me which corroborates these assertions.

13. As another measure of the poor economic viability of the appeal unit and area, reference is also made to the lack of footfall along the street and other vacant units in the vicinity. However, at the time of my site visit, although I observed some unoccupied units with to-let boards within the locale, these were limited in number in relation to those that were in active commercial use. Therefore, even though the area is located outside of the main commercial core and, as such, in a more challenging environment to attract and maintain footfall, there was no strong indication that this area was failing economically.

14. The appellant highlights that the 999 year lease for units 1 and 2, 43 North Bar Within, dated 6 August 2004, only allows the use of the premises as a retail shop within class A1 of the schedule to the Town and Country Planning (Use Classes) Order 1987 (notwithstanding any amendment or revocation of such Order whenever made) and, therefore, no other town centre use can be considered within the appeal unit. On this basis, I question how the proposed residential use would be permissible under the terms of the lease. Even if it is accepted that residential use would be permissible under the terms of the lease, given the central position of the appeal unit in this parade of shops and its location in the Primary Shopping Area, with reference to Paragraph 85 of the Framework, I do not consider that it would be an 'appropriate site' for residential use.

15. I am aware that the physical limitations of the unit's layout and the constraints of the building being listed create difficulties in relation to its occupation and use for retail purposes, which are even greater following the implementation of the consented works. However, the appellant would have been aware of these restrictions when agreeing the long-term lease for the unit and knew of the need to obtain permission for the change of use of the property. Therefore, just because the appeal unit is now declared to be structured as a residential unit and for practical reasons cannot operate as a commercial property, or that it is

contended that it would remain vacant and fall into a state of disrepair, which would not be in the appellant's interests, do not justify allowing the proposed change of use.

16. To conclude on this issue, in my judgement and notwithstanding the consented works, it has not been sufficiently demonstrated that a retail use within the appeal unit would not be possible or viable. The loss of the retail function within the appeal unit due to the proposed change of use would have a harmful effect on the vitality and viability of the town centre. As such, it would conflict with Policies S1 and EC3 of the ERLP which promote a presumption in favour of sustainable development and seek to support the vitality and viability of town and district centres. It would also not comply with the provisions within the Framework which aim to ensure the vitality of town centres.

Character and appearance of the area, with due regard to the BCA

17. The appeal property is located within the 'character area' of 'North Bar Within' in the BCA. Under Section 72(1) of the Act, I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Paragraph 193 of the Framework 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 the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

18. The BCA spans a large area encompassing the historic core of Beverley, with the 'character area' of 'North Bar Within' covering the whole of North Bar Within, with the exception of part of the block which runs from Saturday Market to Hengate. The significance of this character area is primarily derived from its street pattern, the buildings and their uses. The street was one of the primary routes associated with the development of Beverley as a market town in the medieval period. The buildings mainly date from the Georgian period, however, there are also buildings of earlier and later periods which add to the variety and visual interest of the street scene. The route is described in the conservation area character appraisal as a 'distinctive shopping street and of generally smaller but high quality shops and restaurants.' However, given its distance from the main town centre, it is recognised that it is a transitional area between the town's commercial core and its residential suburbs.

19. The appeal unit, although noticeably vacant with the shop windows partly screened, possesses a fine example of a mid-Victorian shopfront. This, along with its potential retail use in the parade of shops, make a positive contribution to the special architectural and historic interest of the listed building and the character and appearance of the BCA, and thus the significance of these designated heritage assets.

20. There is some inconsistency within the Council's delegated report and appeal statement, declaring that the proposed change of use and introduction of what would be, in effect, a 'dead frontage' would have a detrimental impact on and harm the character and appearance of the area, but also stating that as the intention would be to retain the appearance of a shopfront, there would be a neutral impact on the character and appearance of the surrounding area and the BCA, and no harm to the BCA or listed buildings on the site or in the vicinity as a result of the proposals.

21. I recognise that the unit has been vacant for a number of years and that the proposed use would be visually hidden behind a partition. However, in my judgement, the proposal would fundamentally alter the character of the area by changing the longstanding retail use of this ground floor unit to residential accommodation. This would subtly and detrimentally erode the identified nature of the BCA.

22. In addition, even though the proposed change of use would not alter the frontage of the appeal unit and would retain the impression of a retail shop to a certain extent, it would transform the outward appearance of its interior from one that is visually open allowing views through the large shop windows into the space behind, to a very restricted view of a small static display. In this respect, it would have an adverse impact on the appearance of the appeal unit, the townscape and thus the BCA.

23. The appellant has submitted a draft Unilateral Undertaking which would secure an 'active frontage' within the space. However, this would provide limited control over the content of any display. Moreover, even with the provision of an 'active frontage', it would be unlikely that a residential use within the space would generate the same level of footfall that you would associate with a retail use, further reinforcing my views above.

24. Consequently, I find that the proposed change of use would harm the significance of the designated heritage asset of the BCA. As it relates to a single ground floor unit within the Old Coaching House on North Bar Within, I consider that the harm would be 'less than substantial' in this instance but, nevertheless, of considerable importance and weight. Under such circumstances, Paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the proposal.

25. The appellant states that the proposal would ensure that the building remained in active use, providing additional residential accommodation within an accessible location. Furthermore, it would also retain the appearance of a shop unit which would potentially promote other businesses nearby which, in turn, would support the vitality and viability of the area. Nevertheless, the change of use and additional accommodation would principally be of private benefit to the appellant. Any public benefit would be limited and would not outweigh the identified harm to the designated heritage asset of the BCA. As such, the proposal would not comply with Paragraph 196 of the Framework.

26. Accordingly, I conclude that, on balance, the proposed change of use would have a harmful effect on the character and appearance of the area, would fail to preserve or enhance the character or appearance of the BCA and would cause less than substantial harm to its significance as a designated heritage asset. In the absence of any defined substantiated public benefit that would outweigh the substantial weight which is given to this harm, it would fail to satisfy the requirements of the Act and Paragraph 192 of the Framework. It would also conflict with Policies ENV1 and ENV3 of the ERLP insofar as they seek to ensure development proposals safeguard and respect the diverse character and appearance of the area, contribute to a sense of place and conserve those elements that contribute to the special interest of conservation areas. As a result, the proposal would not be in accordance with the development plan.

Other Matters

27. I am aware that the Council had no concerns about the proposal in relation to neighbouring uses and amenity or highway safety, and note that Beverley Town Council did not object to the proposal and that Beverley and District Civic Society declared whilst the loss of a retail unit would be regrettable, the retention of a retail display would have some merit. I have also had regard to the letter of support from the proprietor of Tyler and Black. However, these are neutral considerations in the balance and do not outweigh the harm that I have found.

28. I have been referred to other shop units within the local area and beyond which possess the type of display proposed as part of this appeal, one of which was used as a model for the partition. Whilst there may be other examples present within the locale and wider region, from the limited information provided, they appear to still possess commercial units behind the screens and so are not directly comparable to the appeal before me. In any event, I have judged this appeal on its own planning merits and the context of the site and found that it would cause harm.

29. The appellant declares that had the building not been listed it would not have required planning permission for the proposed change of use. The fact remains that the building is listed and planning permission is required. Therefore, I can only give this matter limited weight.

30. Although not included in its delegated report or reason for refusal, in its appeal statement the Council consider that the proposed internal layout would also result in an unacceptable level of residential amenity for the future occupants of the living accommodation, with regard to light. However, there is no substantive evidence before me which confirms that this would be the case and, given my conclusion on the main issues, this matter is not determinative in my consideration of the appeal.

31. I have had regard to the appellant's comments concerning the conduct of the Council in relation to the proposal. However, such matters are not material considerations to which I can give any significant weight in the context of an appeal under Section 78 of the Town and Country Planning Act 1990.

Conclusion

32. I have found that the proposed development would harm the vitality and viability of the town centre. In addition, it would have a harmful effect on the character and appearance of the area and would fail to preserve or enhance the character or appearance of the BCA. This is a matter which must attract considerable importance and weight against the proposed change of use. In relation to the Framework, the proposal would cause 'less than substantial harm' to the significance of this designated heritage asset. I must attach considerable importance and weight to that harm, which I find would not be outweighed by any defined substantiated public benefits.

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

F Cullen

INSPECTOR