



Appeal Decision

Site visit made on 20 May 2020

by R Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2020

Appeal Ref: APP/K1128/C/19/3242704

Land at 1 Exeter Road, Ivybridge, Devon PL21 0BN

- 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 Directors Pyne Estates Ltd Pyne Estates Ltd against an enforcement notice issued by South Hams District Council ('the notice').
 - The enforcement notice, numbered 019862, was issued on 1 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from uses within Classes A1 (Shops) and A2 (Financial and Professional Services) of the Town and Country Planning (Use Classes) Order 1987 to use for two single dwelling-houses within Class C3 (Dwelling-houses) of the 1987 Order.
 - The requirements of the notice are cease the residential occupation of the land.
 - The period for compliance with the requirements is 3 months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed, 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.

Procedural Matter

2. Given the issues raised by Covid-19 and the nature of the appeal, parties were asked for their views on whether the site visit might be undertaken on an unaccompanied basis. Neither party objected and, after taking these responses into account, the visit was undertaken on this basis as there would be no injustice caused.

Ground (a)

Main Issue

3. The main issue is the effect of the development on the vitality and viability of Ivybridge town centre.
4. Policy TTV1 of the Plymouth and South West Devon Joint Local Plan 2014-2034 ('JLP') identifies Ivybridge as a Main Town. The policy sets out that they will be prioritised for growth to enable them to continue to thrive, achieve strong levels of self-containment, and provide a broad range of services for the wider area. The parties agree that the site lies within the town's primary shopping

area. I note that the Inspector in an earlier appeal¹ on the site ('the previous appeal'), was provided with evidence from the JLP that showed this and I have, therefore, taken this to be the case. The proposals map for the Ivybridge Neighbourhood Plan shows the site lies within the town centre.

5. Although the Inspector in the previous appeal was unclear as to whether the appeal site comprised primary or secondary frontage, she found it to be the latter. In their initial grounds of appeal, the appellants stated that this was the case. However, this was written before the decision on the recent appeal was issued. In their later Supplementary Planning Comments, written after that appeal decision, they provided an extract² from a consultation on the Council's emerging Supplementary Planning Document (SPD). They say this shows that the Council's view is that the site is in a primary frontage. This was not countered by the Council. Although the SPD is an emerging document³ I give it due weight and, from this and what I saw on site, I consider the site to be within the primary frontage.
6. The overall aim of JLP Policy DEV18 is the protection of local shops and services. It sets out that consideration will be given to the loss of retail, local services and facilities, subject to meeting a number of provisions. Amongst these it states that development proposals should maintain the vitality and viability of the centre; and that there should be no unacceptable fragmentation or isolation of retail premises or of a frontage.
7. Provision 4 of JLP Policy DEV18 relates to settlements within the Thriving Towns and Villages Policy Area, which includes Ivybridge, and provides support for proposals that meet a range of criteria. Criterion iii refers to uses outside Classes A1, A2 or A3⁴ in ground floor premises within primary frontages. Its support for these is reliant on the proposed use providing a significant improvement in the vitality and viability of the centre. Although the residential use that has been created in the building would complement the town centre, with occupants using local services for their daily needs, this does not equate to a significant improvement to the centre's vitality and viability. Rather, the loss of the ground floor unit within Class A1 unacceptably fragments the retail frontage leading to the undermining of the centre's overall vitality and viability. The proposal is therefore contrary to JLP Policy DEV18.
8. Although not referred to in the notice, my attention has been drawn to Policy INP1a of the Ivybridge Neighbourhood Plan, October 2017 (NP). As its terms broadly reflect those of JLP Policy DEV18, the development also conflicts with this policy.
9. The ground floor of the property presently has a residential appearance and that little alteration has been made to it. Although a new shopfront would be likely to be unviable, I am sure that with appropriate signage the ground floor would nonetheless be readily seen as a commercial unit.
10. The appellant's evidence informs me of the difficulties in finding commercial tenants. The Inspector in the previous appeal remarked that the evidence before her did not clearly demonstrate the period that the property was marketed for before the conversion took place. The evidence before me, which

¹ APP/K1128/W/19/3231970

² Figure 1 - Appellant's Supplementary Planning Comments

³ The consultation period reportedly ended on 20 January 2020

⁴ As defined in the Town and Country Planning (Use Classes) Order 1987, as amended

includes letters from Millington Tunnicliff and Bruton Knowles is, again, scant. I am variously told that it was actively marketed for two years from 2015, constantly advertised through a number of estate agents, marketed by Bruton Knowles to rent from 30 November 2015 and that instructions were given to market on the Rightmove Commercial and Zoopla Commercial websites.

11. However, I have not been provided with evidence from these websites nor, definitively, of the entire length of marketing or the rental price asked. I have, however, been provided with a local online advert and a Facebook page that refer to the property. Details of the cost of providing a new shopfront have also been submitted. Whilst I can see that this might prove to be unviable, the evidence as a whole does not persuade me that the conflict with JLP Policy DEV18 I have referred to, caused by the loss of the ground floor retail unit, is outweighed.

Ground (f)

Protected Areas

12. The appellant has suggested that, should it be found that the loss of the ground floor retail unit would be harmful, the flat created at first floor level should be allowed to be retained.
13. The evidence shows that the two flats are self-contained with independent accesses to the street. They are, therefore, readily separable. The terms of Policy DEV 18 that relate to the ground floors of premises within primary frontages are not relevant to the flat that has been created at first floor level. I have not been provided with evidence to show that the creation of the first-floor flat has had a harmful effect on the vitality and viability of the town centre or the street frontage, (provisions 1 and 2 of the policy). As such, I find that the first-floor flat accords with the terms of Policy DEV 18 and is an appropriate use in this location.
14. However, the site lies 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). Both are habitats recognised under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') as being of international importance for the mudflat and marine environment which provide feeding and roosting habitat for, amongst other wildlife, rare and vulnerable species of birds.
15. The evidence before me shows that the flats would introduce new residents who would be likely to use the SAC and SPA for recreational activities. This would in turn, both individually and cumulatively with other developments, be likely to result in disturbance to birds and their habitat within the SAC and SPA. JLP Policy SPT14 requires developments to provide for appropriate management, mitigation and monitoring on site, and/or financial contributions towards off-site mitigation and management.
16. The Council's suggests a condition that requires the submission, approval and implementation of a scheme of mitigation prior to the first occupation of any residential unit following the approval of the development. The appellant finds this acceptable. I consulted Natural England on the matter, and it does not object to this approach.

17. It is, however, contrary to the terms of JLP Policy SPT14, which requires that this mitigation will need to be agreed and secured prior to approval of the development.
18. Furthermore, amongst its terms, the Habitats Regulations require that before competent authorities grant consent for a plan or project, they carry out an appropriate assessment (AA) to establish whether there would be adverse effects on the integrity of the features of a European site and if there are, how they could be modified through mitigation. Following this, it should demonstrate whether there are any alternative solutions that would avoid or reduce the effects on the site while achieving the same outcomes as the proposed development.
19. It has been established that there would be ill-effects to integrity of the European sites. In my position as the competent authority, I can only allow the appeal if I am certain, beyond all reasonable scientific doubt, that the decision would not result in adverse effects on the integrity of the SAC and SPA. Here, I do not have full details of what is required in terms of the mitigation of the impact of the development on these areas and whether this would be delivered through the use of the condition. Therefore, I do not have the required degree of certainty.
20. For the above reasons I cannot allow the appeal under ground (f).

Conclusion

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Curnow

INSPECTOR