
Appeal Decision

Site visit made on 22 October 2020

by F Rafiq BSc (Hons), MCD, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2020.

Appeal A Ref: APP/D1590/W/20/3248841

9 Alexandra Street, Southend-on-Sea, Essex, SS1 1BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Saunders (Property Point KAS Ltd) against the decision of Southend-on-Sea Borough Council.
 - The application Ref 19/02229/PA3COU, dated 29 December 2019, was refused by notice dated 31 January 2020.
 - The development proposed is a change of use from existing shop (Class A1) to 4 bedroom dwellinghouse (Class C3).
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Appeal B Ref: APP/D1590/W/20/3249303

9 Alexandra Street, Southend-on-Sea, Essex, SS1 1BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mr Saunders (Property Point KAS Ltd) against the decision of Southend-on-Sea Borough Council.
 - The application Ref 19/02206/PA3COU, dated 29 December 2019, was refused by notice dated 31 January 2020.
 - The development proposed is the part change of use from existing shop (Class A1) to 4 bedroom dwellinghouse (Class C3).
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Decisions:

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. Notwithstanding the description of the proposal given on the application forms, I have used part of the descriptions from the respective decision notices and also on the appeal forms, which more concisely reflect the proposals under consideration
4. The relevant section of Schedule 2, Part 3, Class M to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants a deemed planning permission for change of use of a building from a use falling in Class A1 of the schedule to the Town and Country Planning (Use

Classes) Order 1987 as amended to a use falling within Class C3 (dwellinghouses) of that schedule, subject to conditions and limitations.

5. There is no dispute between the main parties that the criteria set out in paragraph M.1 of the GPDO are met on both appeals. Nevertheless, development permitted under Class M is subject to the condition that before commencement, an application must be made to determine whether prior approval is required in respect of the matters referred to in (a)-(e) of paragraph M.2(1). The Council has raised no concerns in respect of transport and highway impacts, contamination risks, flooding risks or the design or external appearance of the development on either appeal. Whilst I have had regard to the various views of interested parties, I have, on the evidence before me, no reason to come to an alternative view to that of the Council.
6. The main parties dispute the compliance of the proposal with the matter set out in M.2(1)(d) of the GPDO. Paragraph M.2(1)(d)(ii) states that prior approval must be sought as to whether it is undesirable for the building to change to a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order because of the impact of the change of use, where the building is located in a key shopping area, on the sustainability of that shopping area.
7. Reference has been made by the main parties to the development plan as well as the National Planning Policy Framework (NPPF). However, the principle of development is established through the grant of permission by the GPDO. I, therefore, take account of the referenced policies of the development plan as well the NPPF as material considerations, insofar as they relate to the prior approval matters.

Main Issue

8. Given the above, I consider the main issue in Appeal A is whether it would be undesirable for the building to change to a use as a dwellinghouse having regard to the effect on the sustainability of a key shopping area and in Appeal B, whether it would be undesirable for part of the building to change to a use as a dwellinghouse having regard to the effect on the sustainability of a key shopping area.

Reasons

9. Both appeals relate to the same site, a building which was used as a shop on the ground floor with offices above. Appeal A seeks to change the use of the whole building to a dwelling, with Appeal B seeking the same residential change of use but retaining part of ground floor for retail use.
10. The appeal property forms part of a group of properties on the southern side of Alexandra Street that have a variety of commercial uses on the ground floor. The site has been identified within the Secondary Shopping Frontage of the Town Centre Primary Shopping Area as defined in the Southend Central Area Action Plan (AAP).

Appeal A

11. The GPDO does not define what a 'key shopping area' is. The Appellant refers to the location of the appeal property within a secondary frontage rather than a primary frontage, to support the position that it is not a key shopping area.

Southend-on-Sea provides a wide range of goods and services with both primary and secondary frontages containing retail and other service uses that provide an important part of the offer of a town centre. I note reference to the article that Southend High Street has been struggling, but the location of the appeal site within a secondary frontage does not change the status of the town centre as a whole, within which this site is located. As such, I consider the appeal property is within a key shopping area for the purposes of Paragraph M.2(1)(d)(ii).

12. Reference has been made to a number of retail units being vacant on Alexandra Street and I was able to see these at the time of my visit. However, other properties closer to the appeal site were in use and occupied by a variety of different uses that provided an active frontage and contributed to the commercial vibrancy of the Town Centre. This appeal proposal, even when taking account of the nature of the former 'Private Shop' use that didn't offer views internally, as well as not seeking any external alterations and retaining the current frontage, would disrupt the visual continuity of shopping and other commercial frontages on this part of Alexandra Street. I accept that residential uses can bring in additional people and play an important role in ensuring the vitality of centres. Paragraph 85 f.) of the NPPF does however make clear that it encourages residential development on appropriate sites. In this appeal case, it would introduce a non-active residential use at ground floor level which would reduce vibrancy and dilute and detract from the retail and commercial character of the area.
13. The proposal would result in the loss of a retail use and the Council have raised concern that evidence has not been provided to show there is no reasonable prospect of the re-use of the premises for services. Whilst this is a consideration set out at Paragraph M.2(1)(d)(i) of the GPDO, I am satisfied that given the range of services in the town centre area, that an adequate provision does exist. I agree with the Appellant therefore that the loss of the retail unit would not unduly affect the ability of local people to undertake shopping or access retail facilities.
14. Nevertheless, to conclude, given the introduction of a discordant residential use at ground floor within an established frontage with a commercial character, the proposal would have a harmful effect on the sustainability of this key shopping area and it would therefore be undesirable for the appeal building to change to a use falling within Class C3 in the context of Paragraph M.2(1)(d)(ii).

Appeal B

15. Appeal B sought the part conversion of the appeal building to a residential use, retaining part of the ground floor as a retail unit. I have already found that the appeal property, as set out in under Appeal A, is within a key shopping area for the purposes of Paragraph M.2(1)(d)(ii).
16. This proposal would retain a retail unit, but the Council are concerned that its small size would mean it is likely to remain unoccupied. Although the Appellant references the property already being let, no evidence or other details have been provided other than reference to the name of a business. In addition, at the time of my visit, I wasn't able to see evidence of any signage or other advertisements. The Applicant considers that viability is not solely dependent on floor area. Whilst I accept this, and also appreciate the changing nature of retail activity with greater levels of online shopping, at just 12.9 sqm, I

consider the size of the proposed unit would be exceptionally small and provide very little space for the sale of products or indeed the provision of services.

17. Although the Appellant considers that the size of the proposed retail unit would be suited to small entrepreneurs, no cogent evidence has been provided that the example uses referenced, would be attracted to this site and I cannot be certain that a retail unit of the size proposed would be able to operate successfully. The effect of this appeal development would therefore be materially harmful to the character of the key shopping area. This is despite, as with Appeal A, there not being any external alterations and taking into account the former 'Private Shop' nature of the retail use at this site. The benefits the Appellant raises in terms of remaining an active frontage and bringing employment opportunities, would not therefore arise if the building cannot realistically be used for retail purposes for the aforementioned reasons.
18. I have already found in Appeal A that there would be adequate provision of services and I am also satisfied with Appeal B in relation to Paragraph M.2(1)(d)(i) of the GPDO.
19. To conclude however, this appeal proposal by reducing the size of the retail unit and making it less likely to attract a retail use, would have a harmful effect on the sustainability of this key shopping area and it would therefore be undesirable for part of the appeal building to change to a use falling within Class C3. I note the concerns on lack of a separation between the retail unit and residential use on the plans submitted to the LPA, as well as the amended plans provided with the appeal that show separate entrances. Given my conclusion on the main issue, it is not necessary for me to consider this further.

Other Matters

20. Reference has been to a number of appeals to show that secondary shopping areas are not generally considered key. Other than the provision of the appeal decisions, I have not been provided with the full circumstances of those cases. I can confirm that I have considered both Appeal A and Appeal B on their own merits and concluded that they would cause harm for the reasons set out.
21. I note the differing views by the main parties on whether there has been proactive working on the appeal applications by the Council as well as the reference that has been made to Paragraph 38 of the NPPF for LPA's to approach decisions on proposed development in a positive and creative way. I also note the Appellant's reasons for submitting alternative schemes. These matters do not have a bearing on the planning merits of the proposals before me and I can confirm that I have dealt with the appeals accordingly on their own merits.
22. The changing nature of town centres has been raised and the effect the current pandemic is having. In the case of these two appeals however, I consider the proposals would undermine and weaken the Town Centre and the proposals would give rise to unacceptable harm to the sustainability of the key shopping area.
23. I have taken into account other matters raised, but none would lead me to different decisions on the subject appeals.

Conclusion

24. For the reasons given above and having regard to all matters raised, I conclude that the appeals should be dismissed.

F Rafiq

INSPECTOR