



Appeal Decision

Site visit made on 15 December 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2021

Appeal Ref: APP/D1780/W/20/3259428

43-49 London Road, Southampton SO15 2AD

- 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 I Bajar against the decision of Southampton City Council.
 - The application Ref 20/00845/PAC3, dated 30 June 2020, was refused by notice dated 20 August 2020.
 - The development proposed is the prior approval for a change of use of part of the ground floor of the building from financial and professional services (Class A2) to 4 x studio flats (Class C3).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr I Bajar against Southampton City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application has been made under Class M of Part 3 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The proposal seeks to retain a section of commercial use at the front and provide 4 units of residential accommodation in a rear section of the ground floor of the building which presently forms part of the Class A2 (financial and professional services) use of the premises.
4. I am satisfied that the proposal would meet the conditions and limitations of permitted development as set out in paragraph M.1.(a)-(g). The Council when considering the prior approval matters¹ determined that, under M.2.(d), it was undesirable for the building to change to a use falling within Class C3 (dwellinghouses) because, in summary, of the impact of the change of use on the adequate provision of services of the sort that may be provided by a building falling within Class A1 (shops), Class A2 (financial and professional services) or Class A5 (hot food takeaways) but only where there was a reasonable prospect of the building being used to provide such services or where the building is located in a key shopping area, on the sustainability of that shopping area.

¹ The provision of natural light in all habitable rooms is only a prior approval matter for applications made on or after 1 August 2020

5. I am aware of the recent revisions to the Use Classes Order and the new Class E (Commercial, Business and Service)². However, transitional arrangements require that if an application has been submitted under the earlier list of use classes then the application must be determined by reference to those uses and use classes.
6. The reason for refusal refers to Policy AP10 of the City Centre Action Plan (2015) and the Council has indicated that this was included in error. Nothing turns on this matter. Also referenced is Policy REI34 of the City of Southampton Local Plan Review (2015) (the Local Plan) and the Council's statement confirms that this should have read Policy REI4 of the Local Plan. I do not consider that any party has been prejudiced by this correction as the concerns of the Council are clear from the reason for refusal and the appellant had the opportunity to make further submissions at the final comments stage.
7. At the appeal stage, indicative layout plans for the front commercial space have been provided which show options as to how the frontage area could be used and this includes hairdressing and a takeaway. I have had regard to these layouts as options for the use of the space.

Main Issue

8. The main issue is whether or not it is undesirable for the change of use to take place because of the impact on the adequate provision of shopping and other establishments providing services to visiting members of the public within this area, having regard to whether there is a reasonable prospect of the building being used for such services, and the sustainability of the shopping area.

Reasons

9. The Council consider that the site falls within a secondary shopping area. With the range and extent of shops and other establishments providing public services and facilities in these parades within this part of London Road, I agree. Furthermore, because of these circumstances, the site should be considered to fall within a key shopping area for the purposes of paragraph M.2.(1)(d) of Class M.
10. I noted at my site visit, and while only a snapshot in time, that there was a fairly regular footfall from people passing through the area along both sides of the road. With the other evidence before me I consider that this situation is likely to be reasonably representative of other occasions. I also noted that some premises were empty and being marketed with external boards, including some units in the parade near the appeal site, although the majority of premises appeared to be open and trading.
11. This part of London Road is close to a number of sizeable office and other commercial premises, areas of housing and with a bus stop allowing links to other areas. The facilities and services in this area therefore potentially serves quite a range of customers and I consider is likely to play a valuable role in meeting the needs of these various local communities. Consequently, I consider that decisions should not generally allow the loss of floorspace which could potentially undermine the viability of individual units and would thereby incrementally affect the viability of the commercial area as a whole.

² The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020

12. In this case, it appears that more than half of the commercial floorspace would be lost to residential use on the ground floor. As a matter of principle I consider that in this area this would be undesirable, if there was a reasonable prospect of the ground floor of the site, or much of this floorspace, being retained in shopping or other uses providing services to visiting members of the public.
13. I have carefully considered the evidence from the chartered surveyors who are familiar with the market conditions and operate within the area. The evidence sets out the local trading and letting conditions and this shows that smaller units, which are said to be more economical to run, are being let and that larger units are much more difficult to find tenants, with empty premises locally available. It is said that the recent pandemic has made trading conditions more difficult. I also note that there is evidence that a hairdresser is willing to take on the reduced frontage space if the appeal was to be allowed.
14. Supplementary comments from the chartered surveyors at the final comments stage provides further support to these submissions with it being explained that the market demonstrates a greater demand for smaller units at an affordable rent. However, there are larger units within the parades which are operating and the chartered surveyors have indicated that a larger unit on the Lower Banister Street site is now under offer having been on the market for about 19 months, although the other larger unit remains available.
15. The appeal site was formerly a bank and I noted the other former banks and their uses at my site visit. It is said that the floorspace has been vacant for some time, however, it does not appear to have been marketed to see whether there was any interest by a tenant to take on the space. I consider that the marketing of the property is a good way to help assess whether there is a reasonable prospect of the building being able to be put to a shop or other establishment providing services to visiting members of the public.
16. The site is well located within London Road and while I appreciate that there may be less demand for this size of unit, there are some other premises operating which appear to be of a similar or larger size. Consequently, I cannot be certain that if the premises had been marketed for a reasonable period and at an appropriate rent that the space would not have been taken up. The lack of marketing and the reliance on general market conditions and the examples of other sites, which in all likelihood would have their own circumstances, is a significant weakness in the evidence presented to seek to demonstrate the case at this site. I am therefore not satisfied that there is robust site specific evidence that demonstrates that there is not a realistic prospect that the existing, larger space would not be taken up following an appropriate marketing campaign.
17. The proposed smaller commercial space would be provided at the front of the site. It seems reasonable that most traders would need some secure and convenient storage space. Even if this was not the case with some initial operators, it may be necessary to have storage in the future to attract a wide range of potential tenants. The indicative plans show a storage structure could be positioned in the rear yard area. This would be some distance from the commercial floorspace, be in an outside area and of limited size. I am not satisfied that the evidence clearly demonstrates that this would meet the needs of most future tenants. The limited provision of convenient and sufficient

storage could affect the range of tenants that could be attracted and therefore the viability of the site in the longer term.

18. I have noted that if the appeal is refused then the rear of the commercial area may be partitioned and not used. However, it would still fall to be considered as commercial use, could be used for storage and once lost to residential is unlikely to be brought back into commercial use in the future. Consequently, I attribute this suggestion limited weight in my overall considerations as to whether it is desirable to allow the alternative use of this space at the present time.
19. I have taken into account the appellant's comments regarding the changes and, it is argued, the general decline of shops and services to visiting members of the public in London Road and that this has resulted in anti-social behaviour. There are some vacant units and I have noted the evidence specifically with the difficulties resulting from the bank closures in this area and the resulting empty spaces. At my site visit I visited Bedford Place and saw the size and nature of the shops and other businesses that are operating close by in that area, and I have had regard to this in my considerations.
20. Drawing all these matters together, the general marketing case regarding shops and other premises in the area, and the comments on the wider trading position in high streets, are not without merit. However, I consider that the lack of specific marketing of the premises is such that it has not been adequately demonstrated that there is not a reasonable prospect that a tenant for the site could be found. In such circumstances, it would be undesirable to allow a substantial loss of floorspace from the site, notwithstanding that smaller premises with a street frontage would remain and could potentially be let quite quickly. The loss of retail and similar space to the proposed extent, if allowed without adequate justification, could undermine and adversely affect the sustainability of this shopping area which is convenient for many people.
21. I am also concerned with the level and quality of the proposed storage space and I am not satisfied that this would allow the premises to be attractive and suitable for a wide range of potential tenants in the future, thereby in all likelihood harming its viability in the longer term.
22. It follows that I conclude that the prior notification requirement under Schedule 2, Part 3, Class M, paragraph M.2.(d) of the GPDO has not been met and that it would be undesirable in this case for the floorspace as proposed to be lost for the studio flats, notwithstanding the boost to housing supply that this would deliver. This conclusion would accord with the approach set out in Policy CS3 of the Southampton Core Strategy Development Plan Document (2015) and Policy REI4 of the Local Plan which seek, in this respect, to support the role of town and district centres in providing shops and local services in safe, accessible locations.

Conclusion

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

David Wyborn

INSPECTOR