



Appeal Decisions

Site Visit made on 6 January 2021

By Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 January 2021

Appeal A, APP/U1105/W/20/3258150

26 & 26A Mill Street, Ottery St. Mary, Devon EX11 1AD

- 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 N.M Eyres against the decision of East Devon District Council.
 - The application Ref 20/0833/FUL, dated 6 April 2020, was refused by notice dated 10 August 2020.
 - The development proposed is sub-division of existing vacant retail shop unit, new internal staircase to modified flat unit together with alterations to existing shop front.
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Appeal B, APP/U1105/W/20/3258355

26 & 26A Mill Street, Ottery St. Mary, Devon EX11 1AD

- 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 N.M Eyres against the decision of East Devon District Council.
 - The application Ref 20/0943/FUL, dated 5 May 2020, was refused by notice dated 7 August 2020.
 - The development proposed is conversion of part existing vacant shop unit (26) and part first floor flat (26A) into one bedroom town house.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Main Issues

3. The main issues in both appeals are:
 - a) The impact of the development on the vitality and viability of the town centre, and its role as an economic focus; and,
 - b) Whether the development would preserve or enhance the character or appearance of the Ottery St Mary Conservation Area.

Background

4. The combined site of the two appeals lies on the corner of Mill Street and Tar Lane, in the centre of Ottery St Mary. It comprises a traditional two-storey building that fronts the main shopping street. It has a single storey flat-roofed extension to the rear that links it to another building, known as Colbert Hall. The entire ground floor of the appeal building, and Colbert Hall, was in use as a convenience store until its closure in 2017. Appeal A relates to the front part of the building, and proposes a new shopfront and external door to serve a

retained retail use on the ground floor, and a modified first floor flat. Appeal B proposes the conversion of the rear part of the building to a two-storey dwelling, including the removal of the flat-roofed extension to provide an entrance courtyard. Colbert Hall is the subject of a separate planning application for conversion to three dwellings that has not yet been determined by the Council.

Reasons

Vitality and viability of the town centre

5. The appeal sites lie within the Primary Shopping Frontage (PSF), as defined on the Proposals Map of the East Devon Local Plan 2013 – 2031 (the Local Plan). My visit coincided with a period of lockdown during the coronavirus pandemic, so was unlikely to provide a reliable impression of the normal vitality of the shopping area. However, the PSF is made up of largely commercial uses, many of which are retail. There is a high proportion of independent local traders, including butchers, greengrocers and fishmongers. It is therefore likely that, under normal conditions, the town centre would be a vibrant commercial focus for residents of the town and surrounding area.
6. Within the PSF, Policy E10 of the Local Plan seeks to maintain the vitality and viability of the town centre, by only permitting proposals to convert the ground floor of existing shops to non-retail uses where they would not undermine the retail function of the area. Permission will be dependent on it being demonstrated, through appropriate marketing, that there is no longer a need for the retail use. Policy NP18 of the Neighbourhood Plan for the Parishes of Ottery St Mary and West Hill 2017 – 2031 (the Neighbourhood Plan) aims to support Ottery St Mary as the economic focus for the parish, by, amongst other things, supporting proposals that retain and enhance primary retail frontages, or retain small scale employment in the town centre.
7. The evidence indicates that the previous convenience store had a retail floorspace in excess of 200 square metres. The combined effect of the two appeals would be to sever the frontage building from Colbert Hall at the rear, and to reduce the ground floor retail shop to 28.3 square metres. Separated from its town centre street frontage, it is unlikely that a retail use would be viable in Colbert Hall. Consequently, the development would lead to a very significant reduction in the retail floorspace of a building within the PSF, putting the proposals in conflict with Policy E10.
8. There has been no recent marketing of the property to demonstrate that there is no longer a need for the previous retail use. However, it was marketed for 15 months from October 2017 without success, and it has been vacant for three years. The recent opening of a large supermarket immediately to the north means that a further marketing exercise would be unlikely to result in the reopening of a convenience store of the previous scale. Because of the abnormally large size of the unit, its edge of centre location, and current economic conditions, an alternative retail user for the entire unit may not be forthcoming in the foreseeable future. A previous permission to convert the building to a vet's practice has not been taken up. The building is, therefore, likely to remain vacant without an alternative proposal.
9. Some reduction in the scale of the retail floorspace would be likely to make it more attractive to a wider range of users, including the type of local traders

that predominate in the town centre. However, the radical decrease proposed would result in a unit that would be so small that it is likely to exclude many potential occupiers. It would, essentially, be a lock-up unit with a tradable area of only 26 square metres. Apart from a toilet under the stairs, there would be no welfare facilities for staff, and no space for storage of stock, or for ancillary office accommodation. Provision of such facilities would further erode the already limited retail space.

10. No end-user for the unit has been identified, and no marketing exercise has been carried out to demonstrate it would be a viable proposition that would attract tenants. In the absence of such evidence, I conclude that the limited size and functionality of the unit would be a significant deterrent to many potential occupants. Therefore, although the proposal would retain a retail frontage within the PSF, the prospect of a user being found are limited. There is considerable potential, therefore, for the floorspace to remain unoccupied, to the detriment of the vitality and viability of the town centre.
11. I am mindful that recent changes to the legislation¹ allow retail uses to change to other commercial, business and service uses (Class E uses) without planning permission. Consequently, the Council will have less ability to restrict changes from retail use within the PSF, which affects the weight that I can attribute to Policy E10 of the Local Plan. The appellant highlights that the retail frontage could now be lost to a Class E use. However, the legislative changes have been made, in part, to allow town centres to adapt to the changing retail environment, including the rise in on-line shopping. The National Planning Policy Framework (the Framework) still aims to ensure the vitality of town centres, by meeting the anticipated needs for retail, leisure, office and other main town centre uses.
12. There is, therefore, a growing recognition that other commercial and leisure uses make an important contribution to town centre vitality and viability. The use of the premises for a Class E use would not, therefore, necessarily be harmful to the town centre as an economic focus. However, the limitations imposed by the size and functionality of the proposed retail unit would also limit the range of Class E users that could be drawn to occupy it. So, even under the more flexible legislation relating to town centre uses, the proposal would be likely to lead to a vacant frontage that would harm the vitality and viability of the town centre.
13. For the reasons given above, I conclude that the significant reduction in the retail floorspace of the building, within a PSF, would result in a unit that would be so restricted in its size and functionality, that it would be likely to remain unoccupied. As a result, there would be a loss of a commercial frontage that would be harmful to the vitality and viability of the town centre, and its role as an economic focus. The proposals would, therefore, be contrary to Policy E10 of the Local Plan and NP18 of the Neighbourhood Plan. The development would also fail to meet the Framework's aim of ensuring the vitality of town centres.

Character or appearance of the Conservation Area

14. The appeal sites lie within the Ottery St Mary Conservation Area (the CA). This part of the CA is characterised by the continuous form of historic buildings that line the road on both sides, resulting in a sense of enclosure. Despite individual

¹ Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020/757

- variations in the buildings, there is a general consistency in the form of the slate roofs, and the proportions of the upper floor window openings. Brick chimneys and traditionally proportioned and detailed dormers are also common features of the roofscape. In contrast, there is considerable diversity at street level, where the mixture of commercial and residential uses results in an assortment of facades. Some have domestic-scale openings, whereas others have fully glazed shopfronts right down to pavement level. Within this mix there are some traditional shopfronts with stallrisers and decorative surrounds.
15. The special interest of this part of the CA therefore lies in the uniformity of alignment, scale and form of the historic buildings, the coherence and rhythm of architectural features at the upper levels, and the diversity of elevational treatments at ground floor level. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
 16. Appeal A proposes the replacement of the existing fully glazed shopfront with two doors and two windows. The introduction of a low wall below the windows, together with the reduction in the scale of the fascia, would result in elevational proportions that are more characteristic of the traditional shopfronts in the CA. The use of uPVC framing reduces the benefits of these alterations, but as uPVC is a prevalent material within the CA, it does not negate the enhancement to the general form of the frontage.
 17. The proposals would result in a row of four doors, side by side. However, this would be little different to the existing street scene, as the sliding aluminium shop door is vertically divided, giving the appearance of two vertical doors when closed. The two doors on the adjacent building already exist, but as they are set back from the frontage they would not be seen in juxtaposition with the new doors in oblique views. Consequently, the four doors would not affect the rhythm of openings along the street frontage to a harmful degree. I therefore conclude that the proposal under appeal A would not harm the character or appearance of the CA.
 18. Appeal B proposes the demolition of the single storey flat-roofed structure that connects the frontage building to Colbert Hall, and its replacement with a much smaller lean-to extension. Due to the narrowness of Tars Lane, and the fact that the extension would be set back from the gable end of the building, the proposals would not be visible from Mill Street or Hind Street. The development would, therefore, only be seen from a short stretch of Tars Lane.
 19. The removal of the link would allow the historic form of both buildings to be better appreciated. The resultant open courtyard would also help reduce the intimidating atmosphere of the narrow passageway that links the supermarket carpark to the town centre, allowing better surveillance from the windows in the rear elevation of the proposed dwelling. Therefore, with suitable materials and detailing, and a more appropriate storage location for the refuse bins, the open courtyard and lean-to extension would result in a minor enhancement of the CA.
 20. For these reasons, I conclude that the developments proposed under both appeals would preserve or enhance the character or appearance of the CA. Consequently, the proposals would comply with Policies D1 and EN10 of the Local Plan, and Policy NP22 of the Neighbourhood Plan, which seek to ensure that all development is of a high-quality design that protects heritage assets.

The proposals would also meet the Framework's aim of conserving and enhancing the historic environment.

Conclusion

21. Although I have found that the proposals would preserve or enhance the character or appearance of the CA, this does not outweigh the harm that would result to the vitality and viability of the town centre, and its role as an economic focus. For the reasons given above, I conclude that the appeals should be dismissed.

Nick Davies

INSPECTOR