
Appeal Decision

Hearing Held on 14 January 2021

Site visit made on 20 January 2021

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 08 February 2021

Appeal Ref: APP/K1128/W/20/3257265

**Start Bay Stores and Gifts, Torcross Point Service Roads Off A379,
Torcross TQ7 2TG**

- 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 Elliott of Start Bay Development Company against the decision of South Hams District Council.
 - The application Ref 3785/19/FUL, dated 19 November 2019, was refused by notice dated 7 February 2020.
 - The development proposed is the conversion into 2 No. 3 bedroomed dwellings including partial change of use.
-

Decision

1. The appeal is dismissed.

Main Issues

2. Although the Council has given three reasons for refusal on the decision notice, having reviewed the evidence and submissions I have considered it appropriate to identify four main issues. The main parties were provided with an opportunity at the hearing to comment on the division of the Council's third reason for refusal into two separate main issues and, consequently, the hearing proceeded on that basis.
3. Accordingly, the main issues in this appeal are:
 - Whether the proposed development would protect local shops and services with regards to Local Planning Policy,
 - The effect of the proposed development on the character and appearance of the host building and on the character and appearance of the surrounding area, having particular regard to the site's location within the South Devon Area of Outstanding Natural Beauty (the AONB), and the Undeveloped Coast,
 - Whether future occupiers would be likely to experience acceptable living conditions in terms of external amenity space provision and outlook; and,
 - The effect of the proposed development on the living conditions of nearby residents with regards to noise and disturbance.

Reasons

Local Shops and Services

4. The appeal site is located within the settlement at Torcross, adjacent to the A379 highway and within an area designated as part of the AONB and the Undeveloped Coast. The appeal building comprises two ground floor linked retail areas with separate access to the front, and with a four bedroom residential flat occupying space at first floor and attic level.
5. The overall aim of Policy DEV18 of the Plymouth and South West Devon Joint Local Plan (the JLP) is the protection of local shops and services. It sets out that, both within and outside of designated centres, consideration will be given to the loss of retail, local services and facilities, subject to meeting a number of provisions. The Plymouth and South West Devon Supplementary Planning Document (the SPD), which was adopted in July 2020 and after the Council's determination of the planning application, provides further guidance on the interpretation and objectives of Policy DEV18 of the JLP
6. Criterion 6 of Policy DEV18 of the JLP is of direct relevance to the appeal scheme and confirms that "the change of use to other uses of facilities of local community importance such as local convenience shops, post offices, public houses, cafes, restaurants and local community facilities, will only be supported where there is no significant harm to the level of service locally and where there is no reasonable prospect of the business or community use continuing".
7. Accordingly, assessment of the proposal with regards to compliance or conflict with Policy DEV18 of the JLP requires, firstly that the loss of the stores would not result in significant harm to the level of services provided locally and, secondly that there is no reasonable prospect of the business use continuing. It is clear from the wording of the policy that the proposal would be required to comply with both these elements in order to accord with the policy when taken as whole. I shall consider each element in turn below.
8. In my assessment, whilst the services and facilities at Chillington are noted, given the distance from the appeal site, they would not provide suitable alternatives to the stores at Torcross. Furthermore, in consideration of the evidence before me and from observations made on my site visit, while the Stokely Barton Shop provides similar types of goods and services, by reason of its location outside of and isolated from Torcross, and given that pedestrian access to that shop from Torcross would require walking along a section of highway without pavements, which at the time of visit during a national Covid-19 lockdown was still heavily used by vehicles, the loss of the stores with regards to local services would be, if not significant, then could properly be described as substantial and noteworthy. This finding is consistent with the comments and details received from local residents and interested parties.
9. As noted above, even in the event that the loss of the stores would not represent significant harm, Policy DEV18 of the JLP also provides that a change of use will only be supported where there is no reasonable prospect of the business use continuing. The SPD provides further guidance on this, confirming that in order to demonstrate that there is no reasonable prospect of the community facility continuing, the premises would need to be marketed for a period of at least twelve months and that owners of the business would need to

inform the Parish Council of the intended change of use, thereby allowing for the nomination of the premises as an Asset of Community Value.

10. The written and verbal submissions made in this appeal confirms that the owner of the premises made every effort to retain the last business tenants at the stores and that the premises were, through two separate agents, marketed for sale or lease with a reduction in asking price being applied during that marketing campaign. Furthermore, I concur with the Appellant that sufficient opportunity and time had been given to the Parish Council to nominate the premises as an Asset of Community Value and that no such nomination was received.
11. The Appellant has put it to me that during the marketing of the premises, and after an initial offer which was accepted but which did not result in a completed sale, no realistic offers capable of being completed within a proportionate timeframe, were received. The owner confirmed that there was some interest, but that prospective buyers were not in a proceedable position given that purchase was dependent upon the sale of other property. In this respect, it is understood that an offer was made to purchase the premises by an owner of a business located within Totnes, but that did not proceed as the buyer would need to sell property in order to fund the purchase and that, in the owner's view, that business would not represent a viable use of the stores.
12. Notwithstanding the above with regards to the efforts of the owner and the compliance with the requirements of the SPD that the premises be marketed for a period in excess of twelve months, it is apparent that there was some genuine interest in continuing the business use of the appeal building. While I acknowledge that potential purchasers may require time to arrange finance and funding, it appears that only very limited consideration of providing a period of time to arrange such finance was given, whereas the Appellant had been provided with an extended period to allow for a planning application for the change of use to be constructed, submitted and assessed by the Local Planning Authority.
13. Nonetheless, I would concur with the main parties that it would not be reasonable to indefinitely prevent the owner of the appeal premises from considering alternative uses, and it does not appear that any further contact was made by the potential purchaser who was, at that time, operating from Totnes.
14. However, further to above, and whilst noting that the Appellant contends that no other realistic offers were made by anyone in a proceedable position, verbal submissions at the hearing of a local resident indicated that an offer was made during the marketing of the premises and that they were in a proceedable position where the purchase would not be dependent upon sale of other property. It was confirmed at the hearing that whilst the offer was communicated verbally to the owner of the premises, no offer was made to the acting agents.
15. At the hearing, the owner of the appeal building confirmed that she had been approached by the local resident with an offer to purchase the premises for continued use as stores. Furthermore, the owner confirmed that upon receipt of that offer, she advised the local resident to contact the acting agent directly and that no such offer was made to the agent. While I note the advice of the owner to contact the agent directly, it appears that the owner themselves did

not adequately communicate the offer to the agent for investigation or negotiation. In my experience it is not unusual for offers to be made directly to owners rather than agents, and in this regard I find that it would have been reasonable and proportionate for the owner to communicate the offer to their agents for further consideration and investigation to see if the potential purchaser would be in a proceedable position.

16. As noted above, criterion 6 of Policy DEV18 of the JLP requires that “there is no reasonable prospect of the business or community use continuing”. Whilst I acknowledge the efforts of the owner in maintaining the business as a going concern, and that the policy requirements set a high bar with regards to potential change of use of such facilities, even in the event that the owner of the business located within Totnes was not able to proceed, it is apparent that an offer was made for the continued use of the stores as a business by a potential buyer who did not need to rely on the sale of other property in order to fund the purchase.
17. While I have sympathy with the owner with regards to the period of time for which the premises have been unoccupied, for the reasons given above and based upon the written submissions of the main parties and the verbal submissions of interested parties given at the hearing, I find that there is a reasonable prospect that the business use of the appeal building could continue. I, therefore, conclude that the proposal would fail to comply with criterion 6 of Policy DEV18 of the JLP.

AONB and Undeveloped Coast

18. The National Planning Policy Framework (the Framework) is clear that Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty, and that great weight should be given to conserving and enhancing these qualities. Policy DEV25 of the JLP requires development proposals which are located within the AONB, to conserve and enhance the natural beauty of the protected landscape with particular reference to its special qualities and distinctive characteristics or valued attributes.
19. Policy DEV24 of the JLP concerns Undeveloped Coast and Heritage Coast and broadly confirms that development will not be permitted where it would have a detrimental effect on the character and appearance of these areas. This policy provides a set of criteria against which development proposals should be assessed and which, amongst other matters, requires that development protects, maintains and enhances the unique landscape and seascape character and special qualities of the area, and that it can be demonstrated that the proposal requires a coastal location.
20. Whilst it is acknowledged that the appeal building is not a designated asset, it, nonetheless, has a pleasing and simple appearance and symmetry which contributes somewhat positively to the character of the surrounding and nearby built form at Torcross.
21. The Council have put it to me that the proposed alterations to the front of the appeal building, specifically in relation to the incorporation of French doors and a Juliette balcony, would upset the pleasing symmetry of the appeal building described above and, thereby, would be harmful to the AONB and Undeveloped Coast and to the character and appearance of the host building. In this regard

and by reason of its location, character and appearance, I find that alterations to the built form of Torcross could have an effect on the scenic beauty of the AONB and the character and appearance of the Undeveloped Coast.

22. I observed on my site visit that there were a number of buildings within Torcross and close to the appeal site which exhibited a variety of balconies in terms of scale and appearance. The Appellant has further provided information that the Council, in 2018, approved a similar balcony arrangement on the neighbouring dwelling known as Seaside Cottage.
23. In my view, whilst the inclusion of French doors and a Juliette balcony would result in the change of cill height for a window at first floor level and to one side of the frontage, the proposed French doors and Juliette balcony would not disrupt the pleasing appearance of the building and would be consistent with local distinctiveness by reason of the other nearby examples of balconies within Torcross. In this respect, the resulting building would not be a discordant or visually intrusive element within the settlement, the AONB nor the Undeveloped Coast. I therefore find that the proposal would not result in harm to the character and appearance of the host building, and would conserve the landscape qualities of the AONB and the Undeveloped Coast.
24. Notwithstanding the above, Policies DEV24 and DEV25 also require that proposals enhance the special qualities of the AONB and Undeveloped Coast. In this regard, the Appellant maintains that the removal of advertisement signs and paraphernalia from the front of the existing building and the substitution of the proposed UPVC windows with timber casement windows would represent an enhancement. Furthermore, the Appellant has put it to me that, in the event that the appeal proposal was refused on these grounds, then they would be willing to accept a planning condition that would exclude the inclusion of the proposed French doors and Juliette balcony.
25. In my view, given that they have been long standing features associated with the appeal building, the removal of advertisements and other commercial clutter would not represent an enhancement but rather would have a neutral effect. Whilst I agree that the substitution of the proposed UPVC windows with timber casements would represent an enhancement, Annexe M of The Procedural Guide, Planning Appeals – England clarifies that the appeal should not be used to evolve the application. Consequently, the determination of this appeal has been concluded on the basis of the application, which was made to the Local Planning Authority, and upon which the opportunity for consultations has been provided.
26. For the above reasons, the appeal proposal would not result in harm to the character or appearance of the host building. The proposed scheme would conserve the landscape and scenic qualities of the AONB and the Undeveloped Coast. However, the proposed development would not result in enhancement to the special qualities of the AONB or the Undeveloped Coast and would therefore conflict with Policies DEV24 and DEV25 of the JLP when taken as a whole.

Living Conditions of Future Occupants

27. Amongst other things, Policy DEV10 of the JLP seeks to ensure that development provides adequate space to achieve good living standards by providing sufficient internal space to meet the needs of future occupiers and

that sufficient external space also be provided. Policy DEV1 of the JLP concerns protecting health and amenity and requires that proposals provide for, amongst other criteria, that new developments provide satisfactory outlook for new and existing residents.

28. Table 11 of the SPD sets out the standards of provision of external amenity space and advises that for a semi-detached dwelling a minimum of 75sqm should be provided and that for terraced dwellings the provision should be at least 50sqm of external amenity space.
29. The evidence before me indicates that the proposed unit 1 would have approximately 13sqm of useable outdoor amenity space and that the proposed unit 2 would have approximately 19sqm of useable external amenity space. The proposed units would also provide separate dedicated space for the storage of bins and bicycles.
30. Whether the proposed units can be considered to be terraced housing or semi-detached, the amount of available and useable external amenity space for both units would fall well below the minimum suggested requirements of Table 11 of the SPD. However, paragraph 4.140 of the SPD confirms that when assessing whether the amount of external space provided by development is acceptable, account would be taken of: the development's proximity to public open spaces, whether the site is located within an older more densely developed neighbourhood and the amount of bedrooms that are to be provided by the development.
31. The appeal site is located within an area which could be described as a densely developed neighbourhood and it is acknowledged that some of the properties near to the appeal site exhibited modestly sized gardens. Furthermore, the appeals site is located in close proximity to a significant amount of open space at Slapton Sands beach and with regards to the nature reserve at Slapton Ley.
32. On account of these factors and the flexibility provided by the SPD, whilst the amount of external amenity space for each of the proposed units would not be significantly different from each other, given the more open aspect arrangement of useable space at unit 2 and its outlook being predominately away from the row of dwellings neighbouring the appeal building, I conclude that sufficient external amenity space would be provided in respect of that residential unit.
33. However, in my view, the same cannot be said in respect of the proposed unit 1, where the amount of external space is extremely constrained, would be overshadowed by part of the appeal building and where outlook from the external amenity area would predominately be towards and over the modestly sized external amenity space which serves the neighbouring dwelling at Seaway. In this respect, and whilst accounting for the flexibility provided by the SPD, I conclude that the appeal proposal would not provide sufficient external amenity space at unit 1 and, consequently, the appeal scheme would conflict with criterion 5 of Policy DEV10 of the JLP. Soft Landscaping would not provide suitable mitigation for the poor level of usable space at unit 1.
34. Further to the above, the Council has also raised concerns with regards to outlook for future occupants of the proposed unit 1. In this respect, it is noted that the ground floor bedrooms at unit 1 would have openings which would either look out onto the constrained outdoor space described above, where

boundary treatments would be in very close proximity and would have, in my view, and overbearing impact, or would have outlook across the car park which is located to the rear of the appeal building. Whilst I acknowledge the Appellant's submissions regarding principle and habitable rooms, based on the evidence before me and on the observations made on my site visit, I conclude that future occupants of the proposed unit 1 would not experience acceptable living conditions in respect of outlook.

35. For the above reasons, whilst I have found that the appeal scheme would not have an unacceptable impact on the living conditions of future residents at the proposed unit 2 with regards to external amenity space or outlook, given the constrained nature of useable external amenity space and the poor level of outlook for future residents at the proposed unit 1, as a whole the appeal scheme would conflict with Policies DEV1 and DEV10 of the JLP. Given the emphasis placed on achieving well design places within the Framework and by reason of the importance of the social objectives of sustainable development, in my view the physical upgrade of the building would not outweigh the harm to the living conditions of future residents as described above.

Living Conditions of Nearby Residents

36. In part, criterion 1. of Policy DEV1 of the JLP requires that development provides satisfactory protection from noise disturbance for both new and existing residents. The Council have put it to me that, by reason of the limited amount of external space at the proposed units and the increased frequency of use associated with residential occupation, there would be an unacceptable impact on nearby residents with regards to disturbance and noise.
37. In this respect, given the above conclusion with regards to the constrained nature of external amenity space at the appeal building, in my view it is unlikely that the outdoor space would be used more frequently or more intensely than its current use in association with the commercial activities of the stores. The surrounding and nearby residential properties are arranged relatively densely, and, in such circumstances, it would not be unusual for outdoor amenity spaces to be located in very close proximity to neighbouring dwellings.
38. Whilst residential occupation of the proposed development may result in new sources of noise and disturbance for existing nearby residents, the site is located within a residential area and the noise generated would not be unusual in this context. Consequently, overall levels of noise and disturbance generated from the proposed units are unlikely to be of a scale or intensity that would cause harm to the living conditions of existing nearby residents.
39. For the above reasons, I conclude that the appeal scheme would not result in unacceptable living conditions for nearby residents with regards to noise and disturbance. The proposal would not, therefore, conflict with criterion 1 of Policy DEV1 of the JLP.

Other Matters

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.

41. The appeal scheme would provide benefits in the form of two additional residential units towards housing supply, thereby helping to support the intention to significantly boost the supply of housing nationally. The proposal would provide for a wider choice of housing within the area. Furthermore, the proposal would provide some economic benefits in the form of employment opportunities during the conversion phase and through the spend of future occupants within those businesses which are located within Torcross. It is also acknowledged that the proposal would allow for the upgrade of the appeal building with regards to thermal efficiency, thereby providing environmental benefits.
42. In addition to the above, I attach weight to the initial efforts of the owner with regards to their attempts to keep the business as a going concern and to the extended period of marketing which was conducted. However, the weight to be attached to these factors is significantly reduced by reason of the consideration and procedure taken with regards to the offer to purchase the appeal building for the continuation of a business as made by the interested local resident.
43. With regards to the benefits of the scheme described above, cumulatively I attach only limited weight to the above considerations in the determination of this appeal, by reason of the scale of the proposal. Against this, the harm resulting from the conflict with the development plan as described above, weighs significantly against the proposal, and I conclude that the identified substantial harm with regards to the loss of the stores and the impact on the living conditions of future residents, would outweigh the limited benefits that the scheme would provide.
44. Interested parties raise additional objections to the proposal on the grounds of overlooking and loss of privacy. These are important matters and I have considered all of the evidence before me. However, given my findings in relation to the main issues above, these are not matters that have been critical to my overall decision.

Conclusions

45. For the reasons given above, the scheme conflicts with the development plan when considered as a whole and there are no material considerations to outweigh the identified harm and subsequent development plan conflict. For the reasons given above I, therefore, conclude that the appeal should be dismissed.

A Spencer-Peet

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr P Elliott	Appellant
Mr G Dimeck BTP MRTPI	Mark Evans Planning
Mr P Bettesworth BSc.(Hons) MRICS	Bettesworth Commercial Property Agents & Chartered Surveyors
Mrs A Dunlop	Owner

FOR THE LOCAL AUTHORITY

Mrs G Bristow	South Hams District Council
Mr P Baker	South Hams District Council

INTERESTED PERSONS

1. Mr M Laithwaite
2. Mr A Marsden