



Appeal Decision

Site Visit made on 25 February 2021

by Rory MacLeod BA(Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 March 2021

Appeal Ref: APP/K3605/W/20/3263420

16 High Street, Thames Ditton, KT7 0RY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Graham Hearl (FHG) against the decision of Elmbridge Borough Council.
 - The application Ref 2020/0266, dated 3 February 2020, was refused by notice dated 21 July 2020.
 - The development proposed is described as change of use from A1 to C3.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted as a change of use from Class A1 (Shop) to Class C3 (Residential) but also included operational development in forming front and rear basement terraces and the erection of railings around the lightwell openings. Subsequent to refusal of the application there has been a legislative change in which Class A (Shop) has been subsumed into a new broader Use Class E (Commercial, Business and Service)¹.
3. At the time the application was submitted the shop unit was vacant and had been since October 2017. Following its refusal, the appellant has let the unit to a 'pop up' bakery but states that *"the rent received is a small fraction of the market rent and is not sustainable in the long term"*.
4. The proposal is accompanied by a completed Unilateral Undertaking by the appellant in relation to making a financial contribution agreed with the Council towards the provision of affordable housing elsewhere in Elmbridge.

Main Issues

5. The main issues are:
 - (a) whether a retail or alternative commercial use would be viable in the interests of maintaining the vitality of the local centre,
 - (b) the effect of flood risk for proposed and neighbouring occupiers,
 - (c) the impact of the front lightwell on the character and appearance of a Conservation Area, and
 - (d) the adequacy of living conditions for future occupiers in relation to head height and natural lighting.

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

Reasons

Local centre vitality

6. The appeal site is located centrally along High Street and comprises a ground floor shop unit with a basement and two floors of residential use above. High Street is predominantly retail and commercial in character but also has some dwellings.
7. The appellant's Marketing Report provides evidence that the shop unit had been marketed unsuccessfully for over two years and concludes it to be unviable in its current or other commercial use. Yet the report confirms 42 enquiries/viewings over this period from a variety of potential commercial occupiers. This indicates interest in the premises although no acceptable offer was made; there were two offers that were withdrawn. Prohibiting factors to letting would appear to be the cost of premises repairs to enable the shop to be brought back into use and running costs thereafter including rent.
8. The recent successful operation of a bakery at the site also confirms interest in the site for commercial purposes. This is a use which has contributed to the vitality of the local centre. From my site visit it was evident that the premises remain in a poor physical condition but that the occupier had undertaken remedial work on matters such as damp-proofing and lighting commensurate with establishing the business. Further investment would be required for long term residential or commercial occupation. The proposed residential use would be more beneficial than prolonged vacancy and dereliction for the premises, but it would also extend a non-commercial frontage in a central position along High Street which would not enhance the vitality of the local centre.
9. From the evidence before me, it has not been sufficiently demonstrated that a retail or alternative commercial use would be unviable. The proposed change of use would be contrary to Policies CS1, CS18 and CS23 of the Elmbridge Core Strategy (2011) (ECS) and Policy DM11 of the Development Management Plan (2015) (DMP); these seek to retain retail uses wherever viable to provide an appropriate level of services to meet the needs of the local community, and require marketing for the loss of non-strategic employment sites to justify changes to other uses. There would also be conflict with Paragraph 85 of the National Planning Policy Framework (the Framework) which whilst encouraging residential development on appropriate sites states that planning decisions should support the role that town centres play at the heart of local communities and take a positive approach to their growth, management and adaptation.

Flood risk

10. The site is not far from the River Thames and its tributary the Rythe and lies within Flood Zone 2. The appellant has submitted a Flood Risk Assessment (FRA) which identifies the impact of fluvial flooding on living accommodation in the basement and sets out measures to mitigate this including creating a waterproof concrete shell and to line the walls and floor with a cavity drainage system with a sump pump. Bedrooms would be on the ground floor above modelled flood levels and the staircase from the basement kitchen and living room would provide a suitable means of escape. The mitigation measure would help the development to be flood resistant and resilient.

11. However, the site is vulnerable to surface water flooding and is within an area of high ground water vulnerability. The FRA states that there is no record of either surface water or ground water flooding at the site or in the local area but does not demonstrate how such flood related events would be managed given the site's vulnerability to them. Neither does the FRA address the impact of mitigation measures on neighbouring properties. It does not demonstrate that there would not be an increase in flood risk elsewhere as a result of the development.
12. Notwithstanding the detailed flood mitigation measures specified the proposal would not comply fully with Policy CS26 of the ECS which requires development to be designed so that the risk from flooding is minimised whilst not increasing the risk of flooding elsewhere. Similarly, the site-specific FRA would satisfy many measures listed in Paragraph 163 of the Framework, but not the requirement to ensure that flood risk is not increased elsewhere.

Character and appearance

13. The site is within the Thames Ditton Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid in the exercise of planning functions to the desirability of preserving or enhancing the character or appearance of Conservation Areas. The proposal would require the excavation of the forecourt to the shop to enable provision of a terrace and lightwell to the basement living room with black painted railings erected around the opening at street level.
14. The railings would be similar in height and design to railings in front of other properties along High Street and would not be out of keeping with the character of the area or appearance of the street scene. The lightwell would be an unusual feature in High Street but not unduly conspicuous, visible only from close positions. It would not be disruptive to the "*tightly enclosed robust townscape*" for High Street identified in the local character appraisal², nor would it result in material harm to the character and appearance of the Conservation Area.
15. Moreover, Paragraph 196 of the Framework states that where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The proposal would result in the public benefit of securing an additional dwelling and this would outweigh any minor harm arising from formation of the lightwell.
16. The proposal would not be contrary to Policies DM2 and DM12 of the DMP which require all new development to achieve high quality design and to protect, conserve and enhance the Borough's historic environment. It would satisfy the requirement of the special duty to preserve the character or appearance of the conservation area.

Living conditions

17. According to the appellant's measurements, the ground floor currently has a head height of 2276mm, and construction of the new tanking would reduce the basement floor level by 30mm. This would enable provision of a 2.3m head height for both ground and basement floors which would be satisfactory. If the

² The Thames Ditton, Long Ditton, Hinchley Wood and Weston Green Character Appraisal (2012)

appeal were to be allowed in other respects, a planning condition could have been imposed to require approval of a more detailed plan to confirm this.

18. The appellant has submitted a Daylight Assessment which verifies an Average Daylight Factor in excess of the standards put forward by the British Standard Code of Practice for Daylighting (BS 8206-2) as a suitable measure of the amount of natural daylight received by a room. The front and rear basement lightwells would ensure provision of adequate natural lighting to the basement kitchen and living rooms.
19. The proposal would provide acceptable living conditions for future occupiers in relation to head height and natural lighting. It would not be contrary to Policies DM2 and DM10 of the DMP which require new residential accommodation to offer an appropriate standard of living with adequate natural lighting. The issue of living conditions in relation to flood risk is addressed separately.

Other Matters

20. I have noted the many representations at the appeal stage seeking to retain the baker's shop; the retention of this business does not necessarily follow from rejection of the appeal proposal for a change to a residential use. There has been support for the proposal through perceived raising of property values, but this is not a relevant planning consideration.

Planning balance

21. The Council admits that it does not currently benefit from a 5 year housing land supply. The tilted balance at Paragraph 11 of the Framework is therefore engaged. The proposal would provide a two bedroom dwelling in a location with good access to everyday services. There is a particular need for such small sized dwellings in Elmbridge. The proposal would be in accordance with the Government's objective to significantly boost the supply of homes.
22. However, this would be just one dwelling in relation to overall housing need; the benefit of one additional dwelling therefore attracts modest weight. The scheme would also lead to a small and time-limited economic benefit during the refurbishment phase, which may give rise to extra local employment.
23. Conversely, as it has not been demonstrated that a retail or an alternative commercial use of the premises is unviable, there would be harm arising to the vitality of the Thames Ditton local centre from the non-commercial use. Also, the FRA has not satisfied requirements to ensure that the risk from all flooding is minimised whilst not increasing the risk of flooding elsewhere. These matters significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would also conflict with the development plan and there are no other considerations that outweigh this conflict.

Conclusion

24. For the reasons given above I conclude that the appeal should be dismissed.

Rory MacLeod BA(Hons), MRTPI

INSPECTOR