



Appeal Decisions

Site visit made on 8 June 2021

by Paul Jackson B Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 30th June 2021

Appeal A: APP/X1545/W/20/3253887

Appeal B: APP/X1545/W/20/3258925

The Old Cutting Rooms, Church Walk, Maldon CM9 4PY

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against refusals to grant planning permission.
 - The appeals are made by Mr Mark Salisbury against the decisions of Maldon District Council.
 - The applications Ref FUL/MAL/19/01225 and Ref FUL/MAL/20/00595, dated 12 November 2019 and 18 May 2020, were refused by notices dated 26 February 2020 and 3 August 2020.
 - The development proposed comprises conversion of commercial premises to 1 No. live/work unit and 2 No. self-contained maisonettes.
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Preliminary matters

1. The applications subject to appeal are identical except for the addition of 2 new windows in the west elevation of the ground floor (commercial) part of Unit A (appeal B). The second application was made following refusal of the first and includes additional marketing information. I have taken the additional, more up to date marketing information into account in considering appeal A.
2. Separate applications for Listed Building Consent refs 19/01226/LBC and 20/00596/LBC have been approved. I do not disagree that, with a condition relating to the refuse store, the proposals would not harm the architectural character or historic interest of the Grade II listed buildings, would not harm the setting of All Saints Church and would preserve the character and appearance of the Maldon Conservation Area.

Decisions

3. Appeal B is dismissed.
4. Appeal A is allowed and planning permission is granted for conversion of commercial premises to 1 No. live/work unit and 2 No. self-contained maisonettes at The Old Cutting Rooms, Church Walk, Maldon CM9 4PY in accordance with the terms of the application, Ref FUL/MAL/19/01225, dated 12 November 2019, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby approved shall be constructed in accordance with drawing nos. 01A, 02, 03.

- 3) No occupation of the development hereby approved shall take place until a scheme has been submitted to the local planning authority and approved in writing which ensures that windows facing east onto the garden of the adjoining property are obscured and non-opening below eye level (1500 mm above finished floor level or any other dimension approved by the Council in writing to suit the window configuration). The development shall be constructed in accordance with the approved scheme.
- 4) No occupation of unit B shall take place until details of the design and materials of the external refuse store have been submitted to the local planning authority and approved in writing. The external refuse store shall be constructed in exact accordance with the approved details.
- 5) No storage of materials or works shall take place which obstruct public footpath number 42 and this footpath shall remain unobstructed and open at all times where it passes the appeal site.
- 6) No occupation of the proposed dwelling shall take place until the occupants have been provided with a Residential Travel Information Pack for sustainable transport, approved by Essex County Council, to include six one day travel vouchers for use with the relevant local public transport operator.
- 7) The live/work unit A shall be occupied only as a single unit for residential/employment purposes. The use of the work unit shall be restricted solely to those purposes as defined within Class B1(a) & (b) of the Schedule to the Town & Country Planning (Use Classes) (Amendment) Order 2005 (or in any provision equivalent to that Class in any statutory instrument revoking or re-enacting that Order).

Main Issues

5. The main issues in both appeals are:

- The effect of the proposed development on the viability and vitality of Maldon town centre; and
- Whether a contribution towards mitigation measures to avoid a significant effect in terms of recreational disturbance on European Designated Sites in Maldon District is desirable or necessary.

Reasons

Background

6. The appeal properties comprise 3 separate 2 storey buildings on the edge of All Saints churchyard in the centre of Maldon. The upper floors are contained within a long mansard style clay tile roof. Each building is of similar floor area and designated Units A, B and C, unit A being proposed as a live/work unit closest to the High Street. The buildings do not have the appearance of commercial properties and I agree with the Council's conservation officer that the 3 units have the appearance of a typical row of Georgian cottages. The buildings are in commercial/retail use. The proposal would retain a mixed use but the amount of commercial space would reduce significantly, by about 164 square metres (sqm), leaving around 28 sqm of commercial space in the live/work unit.

7. Policy E1 of the Maldon District Approved Local Development Plan 2014–2029 (LP) advises that development which would cause the loss of an employment site will not be permitted unless it meets certain criteria, including that the site has been marketed effectively at a rate which is comparable to local market value for its existing use, or as a redevelopment opportunity for other Class B Uses or Sui Generis Uses of an employment nature, and it can be demonstrated that the continuous use of the site for employment purposes is no longer viable, taking into account the site's existing and potential long-term market demand for an employment use.

Viability and vitality

8. Units A and B have direct access from the High Street via a short and narrow pedestrian close behind a café and a separate residential cottage 'Spindles'. Unit C can only be accessed from Bull Lane to the rear. None have a presence on the prime retail frontage. I consider that the location, limited public presence and the narrow or remote access would considerably limit opportunities for businesses to make their presence known to potential customers passing by. I also accept that the narrow floor plan and adjacent private garden running the whole length of units A and B would deter many commercial occupiers. Adding to this, the lack of any private parking for units A and B at the centre of Maldon would be a disadvantage for some office tenants and professional users.
9. The retail environment in Maldon is passing through a period of change following the opening of the Blackwater Retail Park in the Causeway Regeneration Area a short distance away on the other side of the River Chelmer. Free parking for 300 cars is available there as well as a choice of modern shopping outlets including Tesco, Home Bargains, Lidl and Sports Direct. The Regeneration Area is also intended to facilitate the provision of modern workspaces suitable for small and medium sized enterprises; start-up units; support for existing businesses that are seeking to expand and mixed-use developments which enable significant numbers of jobs to be created. At the same time, bespoke retail development in short closes off the High Street such as Brights Path and Wenlock Way have opened up opportunities for small retail businesses nearer one of the main public car parks in Butt Lane. These do not have the disadvantages of the appeal properties in terms of visibility and accessibility in the Maldon town centre.
10. The Council advises that the effect of the Causeway on vitality and viability in the Maldon area is to be monitored within the first 2 years after the start of trading and then evaluated, as set out in the explanatory text to policy E2 of the LP. As yet, there is no firm evidence available, but at the site visit, I saw that retail premises there are popular and busy. I have no reason to disagree with the appellant's observation that there has been a shift in retail activity away from Maldon town centre since the end of 2018 and that there would have been an associated decline in demand for office space in the town centre, not least due to the cost of car parking, evidenced by the submissions on vacancies.
11. The Council agrees there is a lack of frontage but considers the site has visibility across the graveyard. However this forms much of the historic setting of the 13-15th century Grade I listed All Saints Church, in which commercial activity or advertising is highly likely to compromise heritage significance and

the sense of quiet contemplation that I noted at the site visit. Whilst not essential for a business, many commercial enterprises would need easy access with the ability to make their presence known and that would be difficult, particularly for occupiers of units B and C. The argument that footfall is not necessary to run a business successfully is clearly true, but in a competitive market it may well be a factor limiting interest. Whilst public car parks may be within a short walk, they involve a cost. Amongst other points, the suggestion in marketing information that additional land may be available for parking behind unit C does not mean that it is a firm prospect.

12. Turning to the potential for office use, the private domestic garden running alongside the rear of Units A and B was cited as a concern for commercial occupiers. The Council accepts there is a potential privacy issue because of the large windows looking out into this space and notwithstanding the previous use as a hairdressers, that would be an issue whatever use the space is used for. The suggested internal screening would not make for a particularly pleasant working environment.
13. Marketing of the premises has been active since 2018 but even before the more recent COVID restrictions, which have had consequences for many businesses not yet fully known, there was limited interest, for all the reasons set out above. Commercial offers have been made at a low level and none have resulted in a sale or letting.
14. In conclusion on this issue, policies E1 and E2 are essentially permissive. Development plan policies generally recognise that a mix of uses is desirable in Maldon town centre including residential. The area covered by the policies is extensive and includes a great deal of residential property. The National Planning Policy Framework (NPPF) recognises at paragraph 85 that residential development often plays an important role in ensuring the vitality of centres and encourages residential use on appropriate sites. The evidence indicates that the premises have too many disadvantages to be attractive to buyers or tenants in the current market and that they would be more suited to a residential use. There is a convincing argument that the continuing use of the site for employment is currently unviable. The limited size of the premises and their location indicates that the proposed change of use of part of unit A, unit B and unit C would have no significant adverse impact on the vitality or viability of the centre as a whole. The change of use would not conflict with the employment protection aims of policies E1 and E2 of the LP or guidance in the NPPF.

Financial contribution

15. The appeal site lies within the Zone of Influence of the Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy, adopted in 2020, which aims to provide a simple and effective way of protecting and enhancing the internationally important wildlife of the Essex coast and includes a requirement for developers of new residential dwellings to provide a financial contribution towards this end. A signed and dated S106 Unilateral Undertaking (UU) has been provided in connection with appeal A which ensures the provision of a mitigation contribution which would help in accordance with the strategy. This would help to change the behaviour of people living in or visiting the SPA and thus avoid or mitigate potential adverse impacts on the ecological integrity of the SPA in accordance with development plan policy.

16. However the UU submitted in connection with appeal B appears to be a photocopy of that submitted in connection with appeal A but with adhesive stickers revising the date, amount and application references. It is unclear whether this UU has been independently signed and witnessed and for this reason, I can give it little weight. It may fail to provide a financial contribution, which would conflict with the environmental protection objectives of policies S1, D1, N1 and N2 of the LP. The financial figures differ in each UU by a small amount which it is assumed reflects inflation. The difference is non material in terms of the effect it would have on mitigation.
17. I consider that the provisions of the UU submitted in connection with appeal A are directly related to the proposed development, fairly and reasonably related in scale and kind, and would be necessary to make it acceptable. They meet the tests set out in paragraph 56 of the NPPF and Regulation 122 of the CIL Regulations (2010). The requirements of Regulation 123 and PPG have been satisfied. As such I give this UU significant weight.

Conditions

18. Apart from the usual time limitation, conditions are necessary to ensure the development takes place in accordance with the drawings and to protect the privacy of adjoining occupiers. Conditions requested by the County and by the Council's Environmental Health Department are non-specific and some are covered by other legislation. Most are unnecessary in this case which concerns an existing building with existing drainage and where internal alterations are proposed. A condition restricting use of the live/work unit is necessary to ensure it retains its live/work purpose. Due to the proposed refuse store outside the door to unit B, the design and materials used will need to be very carefully considered because of the adjacent graveyard setting to All Saints Church and its visibility by the public. A condition requests approval from the Council before construction. It is important that the adjacent public footpath remains unobstructed by materials or works. Future residents need to be provided with travel packs including travel tickets in order to encourage wider use of sustainable transport. Finally, another condition requires of privacy screening on windows facing the adjacent garden to be approved.

Conclusion

19. For the above reasons, appeal A should succeed and appeal B fails.

Paul Jackson

INSPECTOR