



Appeal Decision

Site Visit made on 4 August 2021

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 24 August 2021

Appeal Ref: APP/F0114/W/21/3272185

29 Belvedere, Lansdown, Bath BA1 5HR

- 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 Amblehurst Development Ltd against the decision of Bath and North East Somerset Council.
 - The application Ref 20/03663/FUL, dated 8 October 2020, was refused by notice dated 26 February 2021.
 - The development proposed is change of use of ground floor from an existing workshop (Use Class E) to form a new live work unit (Class C3) over the ground and basement level and associated internal and external alterations.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 20 July 2021, during the appeal process, the Government published its revised National Planning Policy Framework (the Framework). Both parties have had an opportunity to comment on the revisions where they may be relevant to the case, and any comments received have been taken into account in determining the appeal.
3. The appeal building is grade II listed. The appellants application for listed building consent¹ for the proposal was granted by the Council.

Main Issue

4. The main issues are:
 - a) Whether or not the change of use would be acceptable in principle, in the context of the adopted Policy, and
 - b) its effect upon the character and appearance of the Bath Conservation Area.

Reasons

Whether or not the change of use would be acceptable in principle.

5. The ground floor of the building has been empty since it was last used as a jewellery workshop from 2008 to spring 2020. The workshop was not generally open to the public during that time. However, photos show that activity within the building would have been viewed clearly through its large front windows, and the appellant advises that there was a window display. The visible use of

¹ Council Ref 20/03664/LBA

- the shop area and the window displays would have contributed to the activity and interest of the character and appearance of the streetscene and complimented the appearance of other active shopfronts in the area.
6. The building is included within an area that is defined by Policy CP12 of the Bath and North East Somerset Core Strategy 2014 (CS) as a local urban centre. Policy CP12 states that uses which contribute to maintaining the vitality, viability and diversity of centres will be encouraged. Active ground floor uses will be maintained and enhanced.
 7. The proposal would see the ground floor changed from a separate unit to a live/work unit combined with the existing residential unit at basement level. The live/work unit would have two bedrooms, a bathroom and a living room at the basement level, with access onto a small courtyard garden. The ground level would provide a central Kitchen and Dining area, which would be open to an office at the front, with a separate office to the rear that would open out onto a flat roof garden.
 8. It is suggested that the front office, which would sit behind the large windows within the historic shopfront, would maintain a level of activity to the street. I find it highly unlikely however that the level of activity generated by the occupants of a dwelling working at home would be similar to that created by the previous use of the building as a jewellery workshop. Furthermore, as the front office is open to the Kitchen and Dining area beyond, future occupants are likely to want some privacy to this area, particularly as the windows will give full height views through the ground floor level from the street. Adding curtains or blinds would create a dormant shopfront which would fail to meet the objectives of Policy CP12.
 9. Additionally, as the front office is open to the Kitchen and Dining area and would also provide access to the dwelling it would be very difficult to ensure that its intended use as a work space is retained as such, or that it is used exclusively for that use. It would be difficult for the Council to enforce a condition. The light and airy character of the proposed front office would make a pleasant living area that would connect to the central Kitchen and Dining area. It would be very likely that future occupants would put this area to an alternative domestic use, rather than maintain this prime part of the dwelling as workspace, especially when alternative spaces would exist on the floor below that could be more suited to separate workspaces.
 10. The appellant suggests that Policy CP12 could be considered out of date. I am mindful that it is based on an evidence base from 2008 and is included for review in the partial local plan review that is currently underway. There is however no firm evidence before me that would lead me to conclude that a review of the Policy would result in a change to local urban centres or alter their protection. Remaining businesses in the area are largely specialist in nature, including the last use of the ground floor of the appeal building. This accords with the supporting text to the Policy, which recognises that rather than primarily serving local day to day needs the area plays a more specialist role.
 11. I note that many of the units within the designated area are vacant or have been converted to dwellings. However, since the application was refused and during a global pandemic a convenience store has opened within the area and another business just outside the defined area has also opened. Both make use

- of existing shopfronts. The introduction of these new uses alongside remaining business uses maintain the role that the area plays as a local centre.
12. Although footfall in the area is likely to be low as a result of the small number of businesses and their largely specialist nature, I am not satisfied that it should be considered dormant. The road is busy but moving traffic does not dominate the site or result in an area that is not attractive for people to use. Indeed, the high quality of the buildings and streetscape, including wider views of the surrounding countryside, make it an attractive area. On this basis, and without knowing the outcome of the local plan review, I am of the view that the Policy should not be considered out of date and that the area still has the characteristics that make it worthy of its designation as a local urban centre.
 13. The floor of the current ground floor is not sound proofed, which has resulted in complaints in the past from tenants of the basement flat. The appellants suggest that upgrading the current floor to reduce the transmission of sound would be cost prohibitive. However, there is no evidence before me to support this claim. Indeed, there is nothing before me to suggest that the insertion of a new floor over the level of the existing ground floor in the manner proposed to create fire and acoustic separation would be difficult to achieve or cost prohibitive.
 14. There is no evidence to suggest that the ground floor of the building has been marketed in its current use to justify the claim that there is no foreseeable prospect that it would be re-let. In addition, there is nothing to suggest that the previous tenant left because of any inherent problems with running her business from the building.
 15. I am mindful that the Use Class Order has been recently amended. The current use of the ground floor of the building would fall into Use Class E. This is a broad class, however a use falling within the new Class E would still be more likely to generate a greater level of activity than the proposal, and occupants would be highly likely to make use of the large and attractive shopfront area to display goods or to advertise services.
 16. I accept that the national direction of travel is towards greater flexibility to allow buildings to change from commercial to residential uses. However, such provisions do not apply to the appeal building, and I have found that Policy CP12 of the CS, which seeks to protect local urban centres, is not out of date. The proposal should be determined in accordance with the development plan, and I am not satisfied that the material considerations before me should indicate otherwise.
 17. In summary, the proposal would be contrary to Policy CP12 of the CS, which among other things seeks to ensure that active ground floor uses within local urban centres will be maintained and enhanced.

Conservation area

18. The appeal building is within the Bath Conservation Area (BCA). Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
19. The BCA covers a broad area that takes in the historic core of the city, surrounding suburbs and areas of significant landscape. The appeal building is

in an area that is characterised by mainly 18th century terraced buildings. Buildings are often individually designed, but adopt significant consistency in terms of overall scale, materials and proportions, to give the area a strong identity.

20. The appeal building dates from circa 1760-1770 and was built in a style typical of the area. It is dominated by its later ashlar stone shopfront of 1876, which extends forward of the building's original façade at ground level. This element is referred to in the building's list description as an unusually elaborate example of a high Victorian chemist, replete with classical imagery. The prominent stone shopfront stands amongst other simpler shopfronts to this side of the road. The shopfront, appreciated within its historic commercial setting, is a significant contributor to the character and appearance of the street and thus the wider BCA.
21. For the reasons set out in the first main issue I am of the view that the proposal would see the shopfront take on a largely dormant appearance, with the glazing most likely covered from behind with curtains or blinds to give privacy to its occupants. At my visit I saw the harmful impact of other shopfronts nearby that have been retained for their aesthetic value but with a significantly compromised appearance resulting from the need to make them sufficiently private for residential use. Extending this dormant appearance to the appeal building, taking into account the quality of its shopfront and large areas of glazing, would have a harmful impact on the character, appearance and vitality of this part of the BCA.
22. In terms of the Framework the harm identified would be less than substantial. Paragraph 202 of the Framework establishes that any harm should be weighed against the public benefits of the proposal. The proposal would see the existing sheet glass to the shopfront replaced with a carefully considered design of small panes and the ashlar stone cleaned, including the removal of modern paint. Improving the building's appearance in this way would be a public benefit that would attract significant weight, as would the work to the stonework, which would also be likely to better preserve the building's fabric.
23. The proposal would also see a new stair formed to provide improved access to the existing basement level accommodation, which combined with the extension of the residential accommodation to the ground floor level would result in a dwelling that would be well laid out. Taking into account the deficiency of the access to the existing basement flat I am of the view that improving this arrangement would constitute a public benefit. However, as it would not deliver an additional dwelling this benefit would attract only moderate weight.
24. I give the harm I have identified considerable importance and weight in the planning balance of these appeals. Indeed, paragraph 199 of the Framework establishes that great weight should be given to the conservation of a heritage asset. The proposal would result in a harmful change to the character and appearance of the BCA. Although the public benefits weigh significantly in favour of the proposal, I find that, even when taken in combination, they are not sufficient to overcome the harm identified to the historic commercial area of this part of the BCA, especially when I take into account the quality of the shopfront and its prominence within the streetscene.

25. In summary, the proposal would fail to preserve the character and appearance of the BCA. It would thus fail to meet the requirements of the LBCA and would not accord with Policy HE1 of the Bath and North East Somerset Local Plan Placemaking Plan District-wide Strategy and Policies 2017, which seeks to ensure that development proposals will only be permitted where they would preserve or enhance those elements which contribute to the special character or appearance of the conservation area.

Conclusion

26. For the reasons above, the appeal should be dismissed.

A Tucker

INSPECTOR