



Appeal Decision

Site Visit made on 11 October 2021

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 November 2021

Appeal Ref: APP/P2114/W/21/3272248

62 Regent Street, Shanklin PO37 7AE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town Country Planning (General Permitted Development) Order 2015, as amended (the Order).
 - The appeal is made by Ms B Rackett against the decision of Isle of Wight Council.
 - The application Ref 20/02172/3MPA, dated 9 December 2020, was refused by notice dated 3 February 2021.
 - The development proposed is a 2-bedroom ground floor flat.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading above is taken from the application form. I have excluded wording which is not itself development or which relates to the merits of the proposal.
3. At my site visit I saw that some internal alterations to the building had taken place. There was no indication that the proposed use had commenced.
4. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force. Various classes, including A1, were replaced by Class E in Part A of Schedule 2. The proposal therefore falls to be considered under Class MA of the Order.
5. However, paragraph 4 of the Schedule (the transitional and saving provision) to the Town and Country Planning (General Permitted Development etc.) (England) (Amendment) (No 2) Order 2021 states that where development would be subject to a new condition, and the application for prior approval was made before 1 August 2021, it may proceed subject to the conditions imposed by the previous provision.
6. Class MA of Schedule 2 of the GPDO introduces a new condition by requiring that the application for prior approval under this class be made on or after 1 August 2021. This is not substantially the same as a condition to which an approval under previous Class M was subject. It is therefore necessary for me to assess the proposal against the conditions imposed on development under Class M. This class includes a change of use of a building from a use falling within Class A1 (shops) to a use falling within Class C3 (dwellinghouses).

Main Issues

7. The main issues are whether prior approval should be granted, with particular regard to:
- the adequacy of services and the sustainability of the shopping area;
 - the design or external appearance of the building; and
 - the provision of adequate natural light in all habitable rooms.

Reasons

Services and shopping area

8. The appeal site is the ground floor of a 2-storey building (the building). It was last in use as a shop (the shop). It is within a parade of mainly retail units and other commercial uses, including some financial and professional services or for the sale of food or drink. These line both sides of Regent Street near the appeal site and extend further south along this road to the junction with High Street. Some of these other premises include flats at upper floor levels, as there is above the shop. The proposal would result in the permanent loss of a shop unit. The relevant condition (M.2(1)(d)) to which the proposal would have been subject under Class M requires consideration of whether it is undesirable for a building in Class A1 (shop) retail use to change to Class C3 because of the impact on (i) the adequate provision of services, or (ii) the sustainability of a key shopping area.
9. Considering the relatively large number and variety of retail and other commercial uses and services near the appeal site in Regent Street and High Street, the loss of the shop would not lead to inadequate provision of services in Regent Street or locally including High Street. However, while the shop has been vacant since March 2020, this was coincidental with the first Covid-19 pandemic national lockdown. Furthermore, there is no evidence of any formal marketing for its use as a shop since it closed, including after lockdowns have been relaxed — such as the method and period advertised, the price asked for sale or rent, the level of interest and reasons why any interest did not proceed any further. It has not therefore been demonstrated that there is no reasonable prospect of the appeal site being used as a shop. Consequently, the proposal would not comply with condition M.2(1)(d)(i).
10. There is no definition in the Order of a 'key shopping area'. The appeal site is within a defined town centre boundary, which mainly encapsulates the frontages of Regent Street and High Street. I have been referred to premises previously identified as vacant in both of these roads. While some of these remain vacant, most are now in beneficial retail or commercial use, though there are some other premises that are now vacant. However, these vacant premises are relatively few in number compared to occupied premises. Moreover, some fluctuation in this respect likely reflects the operation of the local commercial property market and is not unusual or unexpected in any town centre. I appreciate that some of the occupied premises may nonetheless remain closed to business due to the pandemic, but I am unable to determine this from visual inspection and, in any event, there is no evidence that these businesses will not re-open in the future.

11. The occupiers of the proposed flat would likely add to the footfall of potential customers in support of the other local shops and services. However, there is no evidence that any such 'spend' in this regard would outweigh the loss of the shop to the vitality of the local economy.
12. Moreover, as is evident on the ground, and albeit towards one end, the appeal site forms part of an almost continuous corridor of commercial activity along Regent Street, which includes many artisan and specialist shops and a primary retail frontage just to the south, on the appeal site side of this road. In addition, and in contrast to High Street, there is on-street parking, wide pavements, some roadside tables and chairs and low speed, one-way traffic movements. Consequently, Regent Street provides a safe, intimate and bustling cosmopolitan experience with significant footfall and a conducive shopping environment for local people. Whilst it is a relatively small, single unit, the shop is nonetheless an inherent and notable part of this activity.
13. On this basis, and while I note that Shanklin Town Council provided 'no comments' on the appeal application, I am satisfied that the appeal site and the shop contribute positively to the sustainability of a key shopping area. The proposal would not therefore comply with condition M.2(1)(d)(ii).
14. My findings with regard to both parts of condition M.2(1)(d) are consistent with the National Planning Policy Framework (the Framework) which indicates that significant weight should be placed on the need to support the economy, recognise the locational requirements of different sectors (such as retail) and support the role that town centres play at the heart of local communities and reflect their distinctive characters.

Design and external appearance

15. The front of the shop (the shopfront) includes plate glass display windows above stall-risers with glazed double entrance doors in-between, all capped by a fascia board. To one side is a domestic front door to the flat above, which has a four pane casement window with side shutters. The proposal would remove the shopfront and establish a ground floor residential front elevation (the proposed elevation) at the appeal site with a domestic front door and two sash windows. The relevant condition (M.2(1)(e)) to which the proposal would have been subject under Class M requires consideration of the design or external appearance of the building.
16. The retail units and other commercial premises in Regent Street are individual in detailed design and appearance, as is the shop. Nonetheless, the shopfront is, broadly, typical of the general design and appearance of a majority of the ground floor parts of these other buildings, including in the immediate vicinity of the appeal site. The retail purpose of the shop, and the ground floor retail or commercial use of these other units, and the individual pattern and sequence of this built-form along both sides of the road, is clearly evident and locally distinctive.
17. There is a 2-storey dwelling on one side of the shop. The proposed elevation, and as it would result in a residential appearance to the entire front of the building, would be viewed in the context of this dwelling. In this regard, and to that limited extent, it would be broadly compatible. However, this dwelling, and in particular, its residential design and appearance at ground floor level is a clear anomaly in the Regent Road streetscene. Consequently, establishing one

additional residential building would have no meaningful effect on the relative proportion of residential buildings in this road. The residential nature of the proposal would therefore be manifestly out of keeping with the prevailing design and appearance of properties in Regent Street.

18. Furthermore, the positioning and spacing of the proposed door and windows relative to the existing door and the windows at first floor level in the building, and to each other, as shown in the submitted plans, would be somewhat haphazard. Consequently, the detailed design would lack visual coherence and would not therefore be high quality in these regards.
19. Considering the above, the proposal would unduly undermine the positive visual contribution of the shop to the Regent Street streetscene. It would also unduly erode the perception of this part of Regent Street, and of the road as a whole, as a focus for shopping and other commercial or service uses and cause harm to the character and appearance of the area. It would not therefore be acceptable in design or appearance and the proposal would not comply with condition M.2(1)(e). It would also conflict with the Framework which seeks to ensure that development adds to the overall quality of the area, is visually attractive as a result of good architecture and sympathetic to local character, including the surrounding built environment, and maintains a strong sense of place.

Natural light

20. The appellant sought prior approval for a 2-bedroom flat, consistent with the submitted 'proposed plan layout' plan (the proposed layout plan). It was the basis on which the Council made its decision. The relevant condition (M.2(1)(f)) to which the proposal would have been subject under Class M requires consideration of the provision of adequate natural light in all habitable rooms of the dwellinghouse.
21. As defined in the Order, a bedroom is a habitable room. As shown in the layout plan, proposed 'bedroom 1' would be a new room positioned centrally within the ground floor of the appeal site. It would be accessed by an internal door and would have a window. However, the door would open into a narrow, corridor part of the proposed 'dining area'. Moreover, the window would not be inset into an external wall. While it would face towards the proposed lounge windows at the front of the building, it would be set-back a significant distance from those windows. Furthermore, it would be a narrow, high level window.
22. Consequently, daylight and sunlight received through this window into this bedroom would be severely restricted. As a result, future occupiers would be overly reliant on artificial lighting, including during a significant part of the daytime. No matter how bright such lighting might be, it would nonetheless be artificial and would not replicate natural daylight or sunlight. These circumstances would not be conducive to use of this room and at odds with normal domestic living standards and expectations.
23. Considering the above, this habitable room (bedroom 1) would not be provided with adequate natural light. The proposal would not comply with condition M.2(1)(f) and it would have an unacceptable adverse effect on the living conditions of future occupiers. It would also conflict with the Framework which seeks to create places with a high standard of amenity for future users.

24. The appellant has suggested that a condition could restrict occupation of bedroom 1 so that it was not used as a bedroom, or as any other habitable room, but for storage; and, that approval is now sought for 'a [one] bedroom (up to two person) residential unit'. However, the appellant has not promoted any amended plan in this regard and the description of development that was applied for states that it is for a 2-bedroom flat. Such a condition would therefore fundamentally contradict the terms of the prior approval that was sought, would materially alter the nature of the development and would unduly conflate the plain reading and understanding of the proposed layout plan in these regards. Moreover, as the appeal site would be in a dwellinghouse (residential) use, the Council would need to give twenty-four hours prior notice of an intended visit to inspect the use of this room and would need to have reasonable grounds to do so¹.
25. While it would not therefore be impossible for the Council to detect a breach of such a condition, the use of the room as a habitable room could be concealed and it would, in any event, be unduly onerous for the Council to monitor compliance. Such a condition would not therefore be reasonable, precise or enforceable and consequently would not meet all of the tests or the advice in Framework paragraph 56 and in Planning Practice Guidance². Notwithstanding the above, the condition suggested by the appellant would not, in any event, be material to my findings on the first and second main issues above. Consequently, it would not be a determinative factor in my consideration of the appeal or, therefore, alter my decision.

Other Matters

26. The appellant suggests that the Council does not have a 5-year housing land supply, though there is no evidence in this respect before me in this appeal. In any event, while the proposal would contribute to housing supply in the area (and be aligned with the objectives of the Framework to significantly boost the supply of new homes) a single home would make a limited contribution in this regard and the benefit of this is implicitly recognised in the permitted development rights for the change of use sought. Moreover, the relevant conditions for the application of these rights require that I assess the effect of the change of use on the specific matters set out in the main issues above.
27. I appreciate that, nationally, the pandemic has led to increased on-line retailing and a decline in demand for retail premises. However, the implications of this for planning purposes, if any, for Shanklin town centre is a matter that the Council may pursue through the plan-making process. Moreover, the proposed planning reforms that I have been referred to³, including with regard to permitted development rights and change of use, do not yet have any statutory effect, or change the Order. It anyway remains to be seen in what final form any reforms may be published or enacted.
28. The Council has referred to 'The Solent Special Protection Area' (the SPA) and to a unilateral undertaking (the UU) dated 8 February 2021. I note that the Council suggests that the UU, in conjunction with an additional deed to update the value of a financial contribution, would mitigate the impact of the development on the SPA. However, there is no UU or deed before me in this

¹ Town and Country Planning Act 1990, as amended - s196A(1) and (4)

² Paragraph ID: 21a-003-20190723

³ Prime Minister's statement, 30 June 2020

appeal, nor has the appellant referred to this matter. I am therefore unable to consider it any further.

Conclusion

29. The proposed loss of the shop has not been justified and there would be an undesirable significant negative impact on the sustainability of a key shopping area. The external alterations proposed would be incompatible with the building and the Regent Street streetscene and have a significant negative effect on the character and appearance of the area. Bedroom 1 would be provided with inadequate natural light and this would be harmful to the living conditions of future occupiers of the flat.
30. The change of use sought would not therefore comply with the relevant conditions required for conversion of Class E to C3, under the previous provision of the Order relating to Class M.
31. For the reasons given above, I therefore conclude that the appeal should not succeed.

Robin Buchanan

INSPECTOR