



Appeal Decision

Site visit made on 30 December 2021

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th January 2022

Appeal Ref: APP/Z1510/W/21/3283915

32 Trinity Street, Halstead CO9 1JA

- 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 G Day on behalf of DSG Developments Ltd against the decision of Braintree District Council.
 - The application Ref 21/01071/FUL, dated 26 March 2021, was refused by notice dated 1 July 2021.
 - The development proposed is change of use from Shop to Residential.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. It is apparent from the evidence before me that a Section 2 Local Plan (the S2LP) is emerging and has reached examination stage. However, on the basis that it has yet to be found sound, the S2LP is currently at a stage that attracts limited weight. I have seen nothing to clearly indicate otherwise and shall determine the appeal on this basis.

Main Issues

3. The main issues are:
 - The effect upon the vitality and viability of Halstead town centre; and
 - Whether or not acceptable living conditions would be provided for future residential occupiers, having particular regard to noise, disturbance and pollution.

Reasons

Vitality and viability

4. The appeal property is located within Halstead's designated Primary Shopping Area where, in accordance with the requirements of saved Policy RLP113 of the Braintree District Local Plan Review (July 2005) (the Local Plan), retail uses will normally be encouraged.
5. Emerging Policy LPP11 of the S2LP identifies primary and secondary retail frontages. As indicated in the supporting text to this policy, whilst flexibility is appropriate within secondary frontages (applicable here), it is still suitable to promote town centre uses in such locations. This is consistent with Policy CS6 of the Braintree District Core Strategy (September 2011) (the Core Strategy),

which promotes that Halstead town centre be one of the primary locations for retail, office, leisure and cultural provision within the District.

6. Upon inspection of the secondary frontage that contains the appeal property and the wider Primary Shopping Area (including Weavers Court), I witnessed, in broad terms, strong levels of commercial occupation at ground floor. Indeed, notwithstanding references made within the submitted evidence to available commercial properties elsewhere in Halstead, the town centre could be observed to function as a vibrant hub for the local community.
7. It is my understanding that the appeal property, which was last used in a retail capacity, has lain vacant for a considerable period. It has been set out that marketing of the premise first occurred in early 2019 (in advance of the Covid-19 pandemic) and ran through until July 2020, when the appellant acquired the appeal property. A link to the former advert has been provided. However, this information is not accompanied by supporting information to illustrate expressions of interest nor to demonstrate that the property was priced competitively when marketed.
8. Furthermore, it is notable that the premises have not been marketed since Use Class E was introduced through an amendment¹ made to the Use Classes Order in September 2020. Use Class E covers a broad range of commercial, business and service uses (including retail) and offers far greater flexibility (when compared to the former A1 Use Class) in terms of potential eligible occupiers. In this context, I find that the appeal property has not been robustly marketed to clearly demonstrate that there is no longer interest in its occupation for commercial purposes.
9. Reference has been made to a fallback position potentially offered by Class MA to Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), which indicates that development consisting of a change of use from a Use Class E use to a use falling within Use Class C3 (dwellinghouses) does not require planning permission.
10. However, Class MA is subject to various stipulations and conditions, which include that the developer must apply (before commencing development) for prior approval in connection to a variety of specified matters. To my knowledge, no prior approval application pursuant to Class MA has been submitted and/or determined.
11. Most particularly when noting the prior approval process that would need to be followed, it has not been clearly demonstrated that this route would represent a realistic or viable fallback position for the appellant. Indeed, for the avoidance of doubt, it is not my role here to consider in any detail the potential eligibility of the proposal (for which full planning permission is sought) against prior approval criteria set out in the GPDO. I thus attribute limited weight to the arguments that have been put forward in this sense.
12. For the above reasons, in the absence of clear evidence to demonstrate otherwise, the proposal would have a negative effect upon the vitality and viability of Halstead town centre. The scheme conflicts with saved Policies RLP113 and RLP116 of the Local Plan, Policy CS6 of the Core Strategy,

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

emerging Policies LPP10 and LPP11 of the S2LP and the Framework in so far as these policies promote the long-term vitality and viability of town centres.

Living conditions

13. The site is located alongside a mini roundabout where Trinity Street meets Kings Road. As could be observed upon inspection, both are well-used routes reflective of the site's central location. Accordingly, there would exist the potential for vehicular movements to influence the living conditions of future occupiers. This is most particularly through the associated noise.
14. However, it would not be unusual for residential accommodation to be set to the back edge of a highway and the traffic flows via the single carriageway routes in question are not so high to necessarily be the source of constant disturbance. It is also relevant to note that the proposed ground floor layout illustrates the provision of a sitting room setback from the highway, which would offer future occupiers of the proposed dwelling a genuine opportunity to relax in a ground floor location stepped away from the noise, lights and fumes ordinarily associated with vehicular routes. This opportunity would apply however the newly intended ground floor study be used ultimately.
15. For the above reasons, having particular regard to noise, disturbance and pollution, I find that acceptable living conditions would be provided for future residential occupiers. The scheme accords with saved Policy RLP90 of the Local Plan, emerging Policy LPP55 of the S2LP and the Framework in so far as these policies set out that residential developments shall provide a high standard of accommodation and amenity for all prospective occupants.

Other Matters

16. The site lies within the Zone of Influence of the Essex Coast, much of which is comprised of a Special Area of Conservation and various Special Protection Areas and Ramsar sites. The Conservation of Habitats and Species Regulations 2017 (as amended) require that, where a project is likely to have a significant effect on (a) European site(s) (either alone or in combination with other plans or projects), the competent authority must, before any grant of planning permission, make an appropriate assessment of the project's implications in view of the relevant conservation objectives. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to undertake an appropriate assessment. For the avoidance of doubt, if I had done so and a positive outcome had ensued it would not have affected the planning balance or my conclusions on this appeal.
17. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out a statutory duty to pay special attention to the desirability of preserving or enhancing the character and appearance of designated conservation areas when exercising planning functions. The significance of the Halstead Town Centre Conservation Area (the CA) as a designated heritage asset is drawn, in part, from its array of historic buildings and traditional architectural detailing. Without prejudice to any above finding, the proposal, which does not involve alterations externally, would not result in a loss of heritage significance. Notwithstanding the change of use that is intended, and consistent with the observations of the Council's Built Heritage Consultant, the CA's character and appearance would be preserved.

18. For the avoidance of doubt, whilst the Council has referenced conservation related matters in its appeal statement, it has not sought (in direct or clear terms) to retrospectively introduce an additional reason for refusing to grant planning permission. I have considered the appeal on this basis. I note here that a July 2020 appeal decision² submitted in evidence is of limited relevance. This is not least due to it relating to a site situated in an unrelated London Borough.
19. In terms of the scheme's benefits, one additional residential unit would be provided in an accessible central location whilst the Framework reaffirms the Government's objectives of significantly boosting the supply of homes and making an effective use of land. However, one additional unit would not make a clear or noticeable difference to the District-wide housing supply situation and is a benefit that attracts limited weight. The proposal would also provide support to the local economy and local community facilities once occupied. However, these benefits also attract limited weight due to the scale of development under consideration.
20. The scheme's benefits would not outweigh the harm and associated policy conflicts that I have identified. Indeed, the proposal conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

21. Whilst I have identified that acceptable living conditions would be provided for future residential occupiers, I have identified that harm would be caused to the vitality and viability of Halstead town centre. That harm is the overriding consideration in this case. For the above reasons, the appeal is dismissed.

Andrew Smith

INSPECTOR

² APP/L5240/W/20/3245939