
Appeal Decision

Site visit made on 6 January 2022

by P J Staddon BSc, Dip, MBA (Distinction), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 JANUARY 2022

Appeal Ref: APP/D0840/W/21/3278228

2 The Quay, Portscatho, Cornwall TR2 5HF

- 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 Mrs S Sims against the decision of Cornwall Council.
 - The application Ref PA21/02017, dated 25 February 2021, was refused by notice dated 19 May 2021.
 - The development proposed is 'change of use of ground floor from retail to residential, and associated works'.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of the ground floor from retail to residential, and associated works at 2 The Quay, Portscatho, Cornwall TR2 5HF, in accordance with the terms of the application, Ref PA21/02017, dated 25 February 2021, 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 permitted shall be carried out in accordance with the following approved plans: drawing number 1715_001 (site location plan); drawing number 1715_010 (proposed floor plans); and drawing number 1715_020 Rev PL1 (proposed elevations).
 - 3) None of the external alterations to the building shown on the approved plans shall be implemented until details of all external facing materials have been submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with these approved details prior to the occupation of the ground floor space for residential purposes and such materials shall be retained and maintained thereafter.

Background to the appeal

2. The appeal property is located on the seafront and adjacent to a public slipway off a no through road known as The Lugger, in the coastal village of Portscatho. It is within the Portscatho Conservation Area (CA) and the South Coast Central section of the Cornwall Area of Outstanding Natural Beauty (AONB).
3. The building is a 2 storey structure which comprises a first floor studio flat and a vacant shop at ground floor level, which was occupied as the village Post Office until it relocated to premises nearby at No 4 The Square in 2015. The

building is architecturally unremarkable, being of a flat roofed design and clad in timber at first floor level. Its simple and unobtrusive design appears to be a later addition within its surrounding context of traditionally designed coastal Cornish cottages.

4. In December 2018, Cornwall Council (the Council) refused an application¹ for a development bearing the same description as the current appeal proposal, although it involved more significant and noticeable external works.
5. An appeal² was lodged against that refusal and the Inspector identified 2 main issues. The first was the effect of the proposed development on the character and appearance of the area, with particular regard to the CA and the AONB. The second was whether the proposed development would result in the loss of protected commercial/business space, with particular regard to the effect on the vitality of Portscatho.
6. On the character and appearance main issue, the Inspector assessed that the external alterations would create a bold, explicitly modern appearance which would be discordant and insensitive, which would be harmful to the CA and the AONB. On the commercial space main issue, the Inspector assessed that the proposal would result in the loss of protected commercial space, and found that there was little substantive evidence that there was no market demand for the space, or that the reduction in available business space would not be to the detriment of the vitality of Portscatho. The appeal was dismissed for these reasons in August 2019 (the 2019 appeal dismissal).
7. The current appeal relates to the Council's refusal of a subsequent application which had sought to address both of the main issues identified at the earlier appeal.
8. The external alterations were minimised to address the first main issue. Having reviewed the proposal, I have no reason to disagree with the Council's assessment that the proposal is acceptable in terms of its effects on the character and appearance of the CA and AONB. Indeed, the minimal design alterations, in terms of revised fenestration and replacement timber cladding, appear to be well executed, and have the potential to improve the building's appearance and enhance the character and appearance of the CA. This means that the legal duty³ to pay special regard to the desirability of preserving or enhancing conservation areas would be satisfied.
9. Marketing evidence was presented in respect of the second main issue. The Council was not satisfied with the submitted evidence and refused the application for a single reason, concerning the loss of commercial space. The appeal is made against that refusal.

Main issue

10. The main issue is whether the proposed development would result in the loss of protected commercial/business space, with particular regard to the effect on the vitality of Portscatho.

¹ Cornwall Council planning reference PA18/05368

² APP/D0840/W/19/3228504

³ Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

Reasons

11. Policy 5 of the Cornwall Local Plan Strategic Policies 2010 – 2030 (CLP) addresses the approach to 'business and tourism'. The accompanying text to the policy says that the CLP seeks to provide a positive policy framework, which supports jobs, business and investment.
12. Policy 5 is comprised of 4 parts. The second part, which is the relevant consideration for this appeal, seeks to protect existing business space from unnecessary loss. It sets out that proposals that would result in the loss of business space must: (i) demonstrate there is no market demand through active and continued marketing for at least a period of 9 months; or (ii) result in the provision of better quality employment space allowing for mixed use; or (iii) be necessary to meet a clear need for community facilities; or (iv) be unsuitable to continue as business use due to environmental considerations. The main parties contest the first of these exceptions, i.e. whether there is market demand. The other 3 exceptions are not applicable and are not contested.
13. The property was marketed by Miller Commercial, a firm of business property estate agents, between 17 January 2020 and 23 October 2020, a period of just over 9 months. They marketed the property as either a freehold sale of the whole building (vacant shop and flat above) at a price of £450,000 or for a leasehold of the shop space 'by negotiation'. Marketing included a sale board fixed to the property, entries on 5 separate website platforms (including Rightmove and Zoopla) and targeted mailshots.
14. Miller Commercial reported⁴ that during the marketing period, there were 29,482 browsings on Rightmove and 54 downloads of the property details from its website. It further reported that whilst there was a high level of interest, they received 2 enquiries of note for the ground floor leasehold opportunity, but both were for 'pop up' short term ventures which were stated to be 'not economical for either party'. A further letter from Miller Commercial⁵ reinforces these findings and asserts that the price asked was reasonable as referenced against other comparable properties.
15. The property was also marketed at the same price, in parallel, by Country and Waterside Prestige estate agents, from 16 January 2020 up until the submission of the application. The sales particulars produced by that agent described it as 'a shop premises with owner accommodation in a prime water front location in the highly desired harbour village' and included clearly dimensioned floorplans of the ground floor shop and store rooms and the separate living accommodation at the first floor level.
16. Based on the evidence before me, the commercial space has now been marketed continuously for a period in excess of the minimum required by CLP policy 5(2). I have noted the Council's submissions concerning the length of the marketing period and that the Miller Commercial marketing covered the 'bare minimum' period and that this occurred at a time when the market was impacted by the Covid-19 pandemic lockdowns. However, it was not the only marketing campaign and the Country and Waterside Prestige campaign

⁴ Miller Commercial letter dated 30 October 2020

⁵ Miller Commercial letter dated 30 June 2021

continued for a period of 14 months without success, and both campaigns covered initial periods prior to the first lockdown.

17. I am also mindful of the appellant's evidence which indicates that the local property market remained buoyant through the pandemic affected months and that agents remained operational and receptive to any interested party. Moreover, whilst the pandemic may not have been foreseeable at the plan making stage, the minimum marketing period prescribed in policy 5(2) must have taken account of a wide spectrum of possible economic conditions that might prevail within the plan period up to 2030.
18. I have also taken into account the submissions concerning the asking price for the property and evidence indicating that costs to repair, upgrade and refurbish the commercial space may have been a factor. I have noted the asking prices of claimed comparable properties submitted by the appellant, the Council's rebuttal of these, and some other claimed comparable property prices submitted by an interested party. These lead me to the view that, given the very limited number of commercial properties coming onto the market, and the diversity of their type and location, it is difficult to draw direct and meaningful parallels.
19. However, I must ascribe some weight to the appellant's professional agents' views on pricing and greater weight still to the fact that the marketing included an invitation to pursue lease term negotiations, without reference to a set price or lease term, for the commercial space and that this did not result in any successful offer. I have also noted a number of representations claiming that there are local businesses that would be interested in the space if the asking price was lowered, and that the Parish Council and Memorial Hall have been approached by businesses wanting to use their car parks for commercial ventures. However, these are somewhat anecdotal submissions and fall short of firm evidence of any commercial interest that could support a tenancy on reasonable economic terms.
20. Overall, on the main issue, the evidence confirms that the marketing effort has been professional, widespread and comprehensive and exceeds the minimum required by CLP policy 5(2). The marketing campaigns have been sufficient to demonstrate that there is no demonstrable market demand from businesses to occupy the space on reasonable commercial terms. I therefore find that the proposal would not conflict with CLP policy 5(2) with regard to the loss of commercial space.
21. As the proposal would be otherwise acceptable in planning terms, and would bring back the building into permanent and beneficial use, resulting in some limited social, economic and environmental gains, I further consider that it would constitute sustainable development. It therefore follows that I find no conflict with CLP policy 1 and the Roseland Neighbourhood Development Plan (adopted May 2015) policy GP 1, each of which require proposals to contribute to the achievement of sustainable development.

Other matters

22. The Council's case includes objections to the proposal based on CLP policy 4, which seeks to maintain the retail hierarchy by supporting centres to provide for the needs of the community. However, this objection does not feature in the Council's reason for refusal and the matter was previously considered by

the Inspector in the 2019 appeal dismissal. I have no reason to depart from the earlier Inspector's finding that the fact that the Post Office had relocated nearby, meant that there was no particular conflict with CLP policy 4.

Conditions

23. In addition to the standard time limit conditions, a condition specifying the approved plans is included for certainty. A condition requiring the approval of external facing materials is also necessary to ensure that the external alterations are of a high standard in the interests of the character and appearance of the CA and AONB.

Conclusion

24. Having regard to the above, I conclude that this appeal should be allowed, and planning permission is granted subject to the conditions listed above in paragraph 1.

P. Staddon

INSPECTOR