



Appeal Decision

Site visit made on 4 October 2022

by J Symmons BSc (Hons) CEng MICE

an Inspector appointed by the Secretary of State

Decision date: 27 October 2022

Appeal Ref: APP/H0928/W/22/3300003

Blueberrys, Market Place, Alston, Cumbria CA9 3QN

- 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 Irene and Edward Robson against the decision of Eden District Council.
 - The application Ref 21/0835, dated 14 September 2021, was refused by notice dated 29 November 2021.
 - The development proposed is described as change of use of the ground floor from Class E(a) and (b) to Class C3(a).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the heading above is taken from the application form however, I have excluded wording which is not itself development or which relates to the merits of the proposal.
3. It has been confirmed that the external fabric of the listed building would not be altered and only interior decoration type work undertaken internally.
4. At my site visit I saw that residential use of the ground floor had commenced. I have considered this appeal on the basis that it is still available for its café/retail use.

Main Issues

5. The main issue is the effect of the proposed development on the vitality and viability of Alston town centre, having regard to demand for the property's retail use.

Reasons

6. The appeal property is known as Blueberrys and is a three storey building located within Market Place, Alston. Its ground floor was a café which ceased trading in August 2021 and its upper floors are used as a residential dwelling. The property has one front access serving the café and residential floors above. It is a Grade II listed building and is within both the Alston Conservation Area and the North Pennines Area of Outstanding Natural Beauty. The surrounding area is a mixed-use with a variety of commercial, retail and residential units evident.

7. In terms of the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 (UCO), the use class of the ground floor is identified as Class E(a) and (b) which is defined as retail sales of goods and the sale of food and drink for consumption (mostly) on the premises. The proposal seeks permission for a change to UCO Class C3(a) which is defined as dwellinghouses, which includes the use by a single person or a family. The appellant has advised that the ground floor would be used in association with the existing residential use on the upper floors and for single family occupation. The original application description confirmed that there are 'no external or internal works required by way of addition or alteration to the building'.
8. Policy EC7 of the Eden Local Plan 2014-2032 (Local Plan) seeks to maintain and enhance the vitality and viability of town and district centres. The appeal premise is located within Alston which is identified as a District Centre. The policy, amongst other matters, supports development which does not compromise the functional operation of existing town centre uses including essential service operations. It also requires that where proposals lie within the primary shopping area, the development assists in maintaining its existing retail function and does not lead to a concentration of uses which risk undermining the vitality and viability of town centres. This policy is in line with the aims of ensuring the vitality of town centres as set out in the National Planning Policy Framework (the Framework).
9. It is clear that Policy EC7 highlights the importance of the retail function of properties in town and district centres and the detrimental effect a loss could have on the vitality and viability of the shopping area. Whilst the appellant highlights that there is no test in the policy in relation to marketing the property for sale or let to test demand per se it is not unreasonable to consider what evidence is necessary to enable conclusion to be drawn on the effect on vitality and viability in the light of a potential loss of a commercial unit. One part of that is in my view to understand whether there is demand for a retail function, UCO Class E(a) and (b), amongst other matters, and that this can include marketing the property to understand whether there is demand for its continued use through either sale or letting.
10. The appellants have advised that the café/retail use of the ground floor was not economically viable and have submitted copies of their business accounts for the period to March 2020 and to March 2021 to support this. It is acknowledged that the business did make a financial loss during these periods however, this was during the impacts of the Covid-19 pandemic and the various lockdowns imposed. There is also some reference to a temporary road closure impacting on the business, but no details of this are provided. The consequence of these, in all likelihood, is that they would have significantly impacted on business, and as such the accounts do not necessarily represent the Blueberrys' true retail potential. Prior to the pandemic, Blueberrys did trade as a café/retail business for a considerable time and no evidence that it was unsuccessful during this period has been provided. It is therefore considered that the accounts provided do not sufficiently justify that the business could not be financially viable, and that there is no demand for it.
11. While there are examples of some similar businesses closing and some property vacancies within the surrounding area. The reasons and length of time for the closed and vacant properties are not detailed and there is no evidence that their UCO retail use is to change to residential use. There are however, a

reasonable number still trading. Even though a number have adapted to the changing customer market by limiting opening hours, it is evident that they are still trading and providing a retail function to the area. It is also true that there are alternative café/retail businesses trading in the area which would provide an alternative to the loss of Blueberrys and the appellants note that these are able to continue trading due to them offering a broader range of retail/food. While this may be the case, no explanation of why Blueberrys could not adopt a similar approach has been presented.

12. It is recognised that the property is the appellants home, and they want to remain. Furthermore, if they do stay and do not want to continue the café/retail use, they would need to consider other interested parties taking it over. If this was the case, it may necessitate separation of the ground floor from the rest of the floors so that each was self-contained. As I saw at my site visit, this separation may be difficult and would need to consider any heritage impact, given the buildings status as a Grade II listed building. However, there is no evidence that the appellants have fully investigated this. While I acknowledge the potential difficulties and expense that could be incurred to separate the property, no evidence has been provided to substantiate that this would be overly prohibitive.
13. It is accepted that there would be no obligation for the appellants to operate the café/retail use of the ground floor and as such, unless it was changed to residential use, it could remain empty and be at potential risk of deterioration. Nevertheless, this would not outweigh the need to preserve the opportunity for its café/retail use in the future.
14. Reference is made to similar planning applications in the area where change of use was permitted. In these cases, more detailed information justifying that change including information on the lack of demand for the retail use was provided. In relation to reference to the Post Office on Front Street, Alston, it is understood that this was withdrawn and therefore not determined. I therefore afford limited weight to these examples.
15. For the reasons given above I conclude that the proposed development would compromise the functional operation of an existing town centre use and risk undermining the vitality and viability of the district centre. It therefore conflicts with Policy EC7 of the Local Plan and the Framework.

Other Matters

16. The appeal site is located within Alston Conservation Area (ACA). In accordance with Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special regard to the desirability of preserving or enhancing the character or appearance of the ACA. The area's significance is derived from it being a part cobbled front street and most of the buildings around the market square date from the late 17th and early 18th centuries. The Council do not object to the proposal on the basis of any harm to the ACA and, given that there would be no effect on the external appearance of the building and only minor interior cosmetic changes, I agree. The character or appearance of the ACA would therefore be preserved.
17. Furthermore, the appeal site is in the North Pennines Area of Outstanding Natural Beauty (AONB). Given that no effect on the external appearance of the building and only minor interior cosmetic changes are proposed then there

would be no harm to the AONB. The proposal would not conflict with the principles within Chapter 12 and Chapter 15 of the Framework. These policies aim for proposals to be to a good design which would be sympathetic to the local area and conservation and enhancement of the landscape and scenic beauty within the AONB.

18. Turning to the appeal site being a Grade II listed building, Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering applications which affect listed buildings that special regard is paid to the desirability of preserving the building or its setting. The Council do not object to the proposal on the basis of any harm to the significance of the listed building and, given that the proposal would have no effect on the external appearance of the building and only minor interior cosmetic changes, I concur with this view. As such it would preserve the special interest and setting of it.
19. The appellant raises several issues regarding the Council's handling of this application, including lack of response and late issue of the decision. Similarly concerns about the inconsistency and suitability of comments made by the Parish Council have also been raised. These matters are between the appellant and the Council and Parish Council. Despite the attempts made by the appellant to address the concerns raised by these parties, it will be seen that I agree with the Council's findings in respect of the change of use.
20. It is appreciated that the intention of the Town and Country Planning (General Permitted Development etc) (England) Order 2021 (GPDO) is to allow certain developments to be completed without planning permission where it would be out of proportion to the impact of the works carried out. However, the GPDO sets limitations and conditions as to its use to protect against development impact. In this case, as the appeal site is a listed building and within a conservation area then the permitted development allowances referred to by the appellant do not apply, and a planning application was required. This approach was therefore in the 'spirit and intent' of the GPDO.
21. Careful consideration of comments received from other interested parties supporting the application has been taken. The majority of these have been considered as part of the discussion above. In relation to the low customer numbers and the appeal property being for sale for a number of years prior to the appellants taking it over, no evidence of these aspects was presented for my consideration. I have taken careful account of the representations and concerns regarding mental wellbeing and appreciate that different people respond differently to various situations. However inherent in my reasoning above is that, in material planning terms, there is sufficient evidence to identify risk to the vitality and viability of the town centre, including insufficient justification to demonstrate that there is no trading demand for the retail use.

Conclusion

22. For the reasons given above, having considered the development plan as a whole, along with all other relevant material considerations, I conclude that the appeal should be dismissed.

J Symmons

INSPECTOR