



Appeal Decision

Site visit made on 27 September 2022

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2022

Appeal Ref: APP/U1430/W/21/3283375

85-86 High Street, Battle TN33 0AQ

- 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 Duncan McIntyre of Crowhurst Farm Developments against the decision of Rother District Council.
 - The application Ref RR/2021/116/P, dated 8 January 2021, was refused by notice dated 31 August 2021.
 - The development proposed is described on the application form as the 'change of use and adaptation from use of existing ground floor disused shops to holiday lets'
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was submitted, Policy EM13 of the (saved) Rother District Local Plan (LP, 2006) has been superseded by Policy HD8 of the Battle Civil Parish Neighbourhood Plan (2021). The appellant has been given the opportunity to comment on this and I address the policy below.
3. The appeal property is a Grade II listed building and the proposed development is the subject of a separate application under reference RR/2021/115/L. This is dealt with in further detail below.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the attractiveness and economic vitality of Battle town centre; and
 - the effect of the proposal on the special interest of the Grade II listed building and whether the proposed development would preserve or enhance the character or appearance of the Battle Conservation Area.

Reasons

Attractiveness and economic vitality of Battle town centre

5. The appeal site comprises two ground floor commercial units within a mid-terraced building. The commercial units, which are currently combined to form a single unit, are vacant. The site forms part of a continuous row of ground floor commercial units and is positioned within a designated shopping area and Battle town centre. Residential uses exist on the upper floors.

6. Policies BA1 and EC7 of the Rother Local Plan Core Strategy (CS, 2014) encourage vibrant and distinctive town centres within the district. Policy DCO1 of the Development and Site Allocations Local Plan (DSALP, 2019) sets out that proposals for the loss of shops must be backed up by evidence of a comprehensive and sustained marketing campaign, which clearly indicates the lack of demand for the existing use. This, amongst other things, should normally be based on marketing for at least 18 months at realistic levels.
7. I acknowledge that the local plan policies often make reference to 'retail', rather than more general commercial or town centre uses. Nevertheless, CS Policy BA1(vi) makes specific reference to restaurants, cafes, retail, convenience and comparison shopping floorspace and CS Policy EC7 refers to retail *and* related service uses. Policy HD8 of the Battle Civil Parish Neighbourhood Plan refers to town centre uses and shopping and commercial development, as well as retail. Consequently, whilst the appeal site was most recently used for formerly classified Use Class A2¹ purposes as an estate agent's office, and now falls within Use Class E² which includes retail uses, I am satisfied that these policies are all relevant in this case.
8. The appellant has submitted a viability report from a local estate agent and the associated marketing particulars for the property. I have taken this evidence into consideration. The viability report, dated January 2021, sets out the marketing exercise that has been undertaken at the site and provides a professional opinion on the demand for the commercial space. The report makes reference to the loss of banks and estate agents in the town centre due to technical advances, changing trading methods and difficult economic conditions. It also lists other vacant commercial units throughout Battle.
9. I appreciate that economic conditions have not been favourable in respect of some town centre uses during the past few years, particularly when considering the effects of the COVID-19 pandemic. I also accept, based on my site observations, that a number of the commercial properties and units within the town centre are vacant. This includes some of those listed within the report. However, I also noted that other units within that same report have been let and occupied since it was produced. Moreover, I do not have the full details of those properties before me, including their marketing history or comparable rent levels. Notwithstanding this, neither the evidence before me nor my observations indicate significant vacancy levels within Battle town centre. Indeed, at the time of my mid-week site visit, the town centre appeared relatively busy in terms of footfall with a high number of occupied commercial units.
10. I have sympathy for the appellant, who has presided over a commercial property with no tenant during a time of unprecedented market conditions. I also note that the site is positioned towards the edge of the town centre where commercial uses begin to peter out shortly beyond the site. On the other hand, the unit has proven to be successful in the recent past, as have others within the same commercial frontage and is located very close to Battle Abbey.
11. Although the property has now been marketed for in excess of 18 months, and to a reduced sum relative to the previous tenant, the evidence before me does not clearly indicate the level of interest from potential tenants or whether the

¹ The Town and Country Planning (Use Classes) Order 1987.

² The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020.

marketed price of the appeal site is realistic, taking into account for example factors such as location, size and condition.

12. For the above reasons, the loss of the commercial unit, within Battle town centre and a designated shopping area, has the potential to harm the economic viability of the town centre, undermining its function and attractiveness within its wider catchment area.
13. I acknowledge that this loss would likely be to a limited extent in the context of the large number of units that exist within the town centre as a whole. I also acknowledge that the use of the units as holiday let accommodation could add to the number of people using the property and its guests potentially helping to increase local spend. However, this benefit is relatively limited and is unlikely to outweigh the harm of the loss of the retail unit.
14. Consequently, I conclude that the proposed change of use would likely harm the attractiveness and economic vitality of Battle town centre. As such, it would be contrary to the relevant provisions of CS Policies BA1 and EC7 and DSALP Policy DCO1, which in summary seek to sustain or improve the vitality of the town centre. This is in a similar vein to the objectives of policy HD8 of the Battle Civil Parish Neighbourhood Plan (2021, NP) insofar as town centre uses are concerned. As noted above, Policy EM13, referenced in the Council's decision notice, has been superseded by Policy HD8 of the NP.

The Effect on Heritage Assets

15. The site is located within the Battle Conservation Area. Statute³ places a duty on me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The significance of the CA lies, insofar as the appeal is concerned, in its historic core, focussed around a long central street with the Abbey Gate House at its south eastern end. The CA appraisal (CAA) makes specific reference to shopfronts, noting that these are an important part of the streetscape character of Battle, adding interest and articulation to the street scene at ground floor level. The CAA notes that the concentration of retail provision largely within the High Street contributes to the vibrancy and bustle of the place.
16. The proposed development would comprise the change of use of the two established ground floor commercial units. This would involve no external alterations to the building, including to the existing shopfronts. Although the current commercial use, which is considered within the CAA to contribute towards the vibrancy of the town centre, would be lost, the shopfronts and therefore commercial character and appearance of the property and street, would be retained. The contention that the units may be less active as a result of their residential use is noted, particularly insofar as regular comings and goings are concerned. However, this could be the case with a range of potential commercial uses here and I do not consider this to be harmful to the character or appearance of the CA.
17. The appeal property is a Grade II listed building and the internal alterations required to facilitate the change of use are the subject of a separate application under reference RR/2021/115/L (granted in August 2021). For this reason, together with the fact that there would be no external alterations as part of the

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

proposed development, I am satisfied that the change of use would not, in principle, harm the special character of the heritage asset. Furthermore, I note that the CA contains a number of listed buildings. Insofar as the proposed development would not comprise any external alterations and would not harm the character or appearance of the area, it would have a neutral effect on these assets.

18. My attention is drawn to another case for the change of use to a residential dwelling near to the site, which was approved by the Council. This concerned the change of use from the ground floor of a former bank to ancillary living accommodation for an existing adjoining dwelling and involved largely internal alterations. Whilst I have taken this case into consideration, I note that that site retains a more residential character relative to the appeal site with a smaller domestic style window rather than more traditional shopfront features like neighbouring properties. I do not consider the sites to be directly comparable. Nevertheless, I have identified no harm in respect of this main issue, as reasoned above, and those cases do not lead me to an alternative conclusion.
19. For the reasons given above, I conclude that the proposed development would have a neutral effect on, and thereby preserve, the character and appearance of the Battle CA. The proposed development would therefore be in accordance with the relevant provisions of CS Policies BA1, EN2 and EN3, which in summary seek to preserve or enhance the character and appearance of the conservation areas. This is in a similar vein to the objectives of the Battle Civil Parish Neighbourhood Plan insofar as heritage is concerned.

Other Matters

20. I have carefully considered the comments made by the appellant and third parties including in respect of heritage matters, the scheme's compliance with other policy objectives, the alleged lack of consistency between similar cases and the lack of objection from the Town Council.
21. I have reasoned above matters in respect of heritage and why I have identified harm to the economic vitality of the town centre based on the evidence before me and my observations on site. The lack of objection from the Town Council is a neutral factor in my determination of this appeal. These factors, including any benefits of the proposed development, either individually or cumulatively, would not outweigh the harm that I have identified above.

Conclusion

22. For the above reasons, and taking account of all other matters raised, I conclude that the appeal should be dismissed.

A Price

INSPECTOR