



Appeal Decisions

Site Visit made on 13 December 2022

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2023

Appeal A: APP/E2205/W/22/3290959

51 High Street, Ashford TN24 8SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Nicholas King against Ashford Borough Council.
 - The application Ref: 20/00999/AS is dated 31 July 2020.
 - The development proposed is change of use from commercial with accommodation above, to two separate dwelling houses.
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Appeal B: APP/E2205/Y/22/3292840

51 High Street, Ashford TN24 8SG

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for approval of details required by a condition of a listed building consent.
 - The appeal is made by Mr Nicholas King against Ashford Borough Council.
 - The application Ref: 20/01000/COND/AS, dated 18 December 2021, sought approval of details pursuant to condition No.3 of listed building consent Ref: 20/01000/AS granted on 12 March 2021.
 - The works permitted are work of conversion to provide two dwelling houses to include reinstatement of staircase and insertion of partition and party walls.
 - The details for which approval is sought are: *(a) 1:20 scale plan sections and elevations of all proposed new internal partitions, including details of their relationship to historic structure, and junctions with historic fabric. (b) Detailed drawings to scale 1:5 and 1:1 of typical details of all new joinery, to include new staircase, new rear window and internal doors. Sections, mouldings and glazing bars shall be to a scale of 1:1 or 1:2 and will show means of fixing glazing. Details of finishes shall also be included. (c) 1:10 scale sections showing the addition of both sound and fire insulation, where proposed. (d) A fully detailed schedule for each and every window it is proposed to repair, restore or replace, including methods of repair where applicable. (e) Details of mechanical ventilation or flues to be installed including location, dimensions, colour and material. (f) Details of the method to protect exposed historic timbers and plaster within the new bathrooms and kitchens from moisture damage.*
 - The reason given for the condition is: *To ensure that special regard is paid the interests of protecting special architectural and historic character of the Listed Building under Section 16 of the Planning (Listed Building Conservation Areas) Act 1990.*
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Appeal A

1. Appeal A is dismissed.

Appeal B

2. Appeal B is allowed and application Ref: 20/01000/COND/AS, dated 18 December 2021 with details submitted pursuant to listed building consent

Ref: 20/01000/AS condition No.3 granted consent on 12 March 2021, is approved, and the condition regarding further details is discharged.

3. The relevant drawings submitted and approved in relation to listed building consent 20/01000/AS condition No.3 are: Site Plan; 006 Rev.D Ground Floor Plan Proposed; 007 Rev.E.2 First Floor Plan Proposed; 010 Rev.G 32 Church Yard Elevation Proposed "Option 5"; 3001 Rev.A Ground Floor Elevation/Section Proposed; A-10001 Rev.A - High Street - Staircase Proposed Elevations - Section; A-10002 Rev.A - High Street - Ground Floor Partition Elevations; A-10003 Rev.A - High Street - Ground Floor Partition Elevations Contd; A-10004 Rev.A - High Street - First Floor Partition Elevations; A-10005 Rev.A - High Street - First Floor Partition Elevations Contd; A-20001 Rev.A - Church Yard - Ground & First Floor Partition Sections; A-20002 Rev.A Church Yard - Ground Floor Partition Elevations; A-20003 Rev.A Church Yard - First Floor Partition Elevations; B- W01-501 Rev.B; D02 Door Type 1 Details, Door Type 2 Details; PW-01 - Section through Party Wall between High St & Church Yard; Q2.1 - Detail 2 High Street - Ground Floor - Section B-B of Elevations 4-5; Q2.3 - Detail 1 High Street - Ground Floor - Detail of Section A-A Elevation 1; Q2.4+Q2.6 - Detail 3 - High Street - First Floor - Section C-C - Elevations 6-7; Q2.5+Q2.7 - Detail 5 + 7 - Section D-D & Elevations 4 + 7 + 11 Q2.8 - Detail 4 - Church Yard - FF - Section H-H of Elevation 13; S-C01 New Staircase to High Street Typical Details.

Preliminary Matters

4. As the proposal relates to a listed building and is in a conservation area, I have had special regard to sections 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

5. The main issues are

In Appeal A:

- The effect of the proposal on the vitality and viability of Ashford town centre; and
- The effect of the proposal on the integrity of the Stodmarsh Lakes Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site;

and, in Appeal B:

- Whether the submitted details would preserve the Grade II* listed building, 51-55 High Street (Ref: 1362831) or any features of special architectural or historic interest that it possesses.

Reasons

Town centre vitality and viability

6. The appeal property is part of a Grade II* listed building located in Ashford Town Centre Conservation Area (CA). The front part of the appeal property comprises a two-storey, timber-framed, plastered building with hipped tiled roof, that dates from the fifteenth to sixteenth century. Its rear part is a two-storey hip roofed, stuccoed building dating from the eighteenth century.

The appeal property and listed building are within Ashford Town Centre's Secondary Shopping Frontage, as categorised by the LP.

7. Policy SP3 of the Ashford Local Plan 2030 (LP) sets out that job growth and economic prosperity will be supported. Policy SP3 seeks to achieve this through, among other measures, c) maximising employment opportunities in accordance with the LP's strategic approach to the town centre. LP Policy EMP7 sets out maintaining or enhancing the centre's vitality and viability through attracting pedestrian activity and footfall as the objective within the Secondary Shopping Frontage of Ashford town centre. To help preserve the economic health of the town centre¹, Policy EMP7 stipulates that residential development will not be permitted on the ground floor within the Secondary Shopping Frontage. Also, criterion h) of LP Policy HOU3a opposes residential windfall development within the settlement which displaces an active use such as employment, unless meeting the requirements of other policies in the Plan.
8. The appellant's Design and Access Statement for Appeal A (DAS) indicates that the ground floor of the appeal property was previously let as a coffee shop before being vacated several years ago. It is set a little off the main thrust of High Street, within an area of townscape of more intimate scale, that reflects the historic street pattern in the environs of St Mary's Church. The presence of some empty shop units in the locality, including at the appeal property indicates a need to reenergise this part of the town centre, to bring various buildings back into occupancy. Also, the DAS indicates that more adaptable modern units are available in the town centre. And the Council's Ashford Town centre reset programme, under Objective TG5 of its Corporate Plan, points among other things to potential to review viability of use of premises, including through engagement with businesses and residents, to help revitalise parts of the town centre.
9. However, that said, with ground floor shop front facing onto the High Street loop, and the pedestrian route around St Mary's Church Yard passing its rear facade, the appeal property and listed building are centrally located within the characterful, historic heart of Ashford town centre. It is within the Ashford Town Centre's Secondary Shopping Frontage, as categorised by the LP. This is within the context of the town centre that, as set out in the LP plays a key role as the commercial centre for Ashford and the surrounding rural area, attracting visitors from across the borough and beyond. Even on the wintry, snowy day of my site visit, I saw that a variety of shops, including a prominent branch of Boots and various other businesses operate in the vicinity of the appeal property, bringing footfall into the locality.
10. The appeal property is noticeable in various views from public thoroughfares in the town centre, from High Street to the north, and from the west. Its distinctive, historic architecture, attractively set against the backdrop of the church adds to the visual draw of the appeal property.
11. Furthermore, while the DAS refers to the property as having been advertised and marketed without success, it is not supported by, for example substantive detailed evidence of the premises having been marketed for letting or sale for commercial use for a sufficient length of time and at a sufficiently realistic price to decisively support a finding of lack of future viability. Also, a substantive, independent business consultant's viability assessment of the premises and

¹ As explained in supporting text paragraph 7.65 of the LP.

locality, and submission of detailed audited financial statements from previous business operation at the premises, for example, are not presented. Thus, I have no certainty that options other than the appeal proposal have reasonably been explored as potential solutions for future operation of the premises. As such, it is not decisively demonstrated that absence of the appeal proposal would prevent future viable commercial use and maintenance of the building.

12. Also, while residential occupation of the proposed two one-bedroom dwellings would generate some economic activity in the area, this would be limited by the scale of development, and tempered by loss of commercial use class, and associated potential future economic activity at the appeal premises. As such, the proposed change of use is likely to erode footfall in the part of the High Street loop to the south of Middle Row, and the vitality of this part of the town centre.
13. I appreciate the appellant's intention to generate fresh income and residential occupancy of the appeal property to help preserve the listed building. However, for the above reasons, I conclude that the proposal would not demonstrably maintain or enhance Ashford town centre's vitality and viability. This would undermine the objective of robustly-evidenced, strategically-driven revitalisation of Ashford town centre. As such, the proposal would conflict with Policies SP3, EMP7 and criterion h) of Policy HOU3a of the LP, which together seek to maximise employment and preserve the economic health of the town centre.

SPA, SAC and Ramsar site

14. The change of use proposal would be located within the Stour River Catchment. The River Stour feeds into Stodmarsh Lakes which are a Special Protection Area (SPA), Special Area of Conservation (SAC) and Ramsar site located to the east of Canterbury. Within this context, as I am dismissing Appeal A for other reasons, I have not undertaken an Appropriate Assessment of the proposal. Accordingly, it is not necessary for me to address this matter in further detail, in this instance.

Listed building

15. As a remaining example of Ashford's medieval and post-medieval townscape, in the locality of St Mary's Church and High Street, and with an evolved eighteenth century part to the appeal property, the listed building embodies evidential, historic and aesthetic values. Given the above, the special interest of the listed building, insofar as it relates to the appeal, is primarily associated with the legibility of its fifteenth to eighteenth century architecture, at the heart of this historic Kent town High Street.
16. It is undisputed that the details submitted pursuant to discharging condition 3(a), 3(b) (stairs only), 3(c) and 3(d) are acceptable. Regarding 3(b) (non-stairs), 3(e) and 3(f) I find as follows.
17. Regarding condition 3(b) (non-stairs) detail, the proposed internal timber doors would be sufficiently simple in design and unfussy in appearance to avoid distracting from the historic character of the interior of the appeal building. Also, the proposed 28mm glazing bar on the rear window would adequately visually blend in with the windows above, while providing strength to help reduce the likelihood of vandalism and associated unsightly repair work.

Together, these aspects would help the rear window to sympathetically blend in with the historic building.

18. Regarding condition 3(e) detail, clarifying annotations to Floor Plan drawings² confirm that flues would not be ducted through the chimneys, thereby avoiding damage to and sterilisation of the historic brick chimney. Also, the small plastic flue and vent would be of such limited size and prominence as to avoid distracting from the historic architecture of the building. Regarding condition 3(f) detail, the appellant confirms that no new finishes will be installed to the historic wall behind the sink and toilet at first floor level.
19. Therefore, I conclude that the details provided are sufficient to preserve the listed building and its special interest.

Planning Balance and Conclusion

Appeal A

20. The Council confirms that it cannot demonstrate a five year supply of deliverable housing sites. Judging by the evidence presented³, for the purposes of making the current appeal decision, I take the shortfall to be in the region of between 0.5 and 1.5 years. As such, policies which are most important for determining the application are to be considered out of date. The tilted balance, as set out within paragraph 11 of the National Planning Policy Framework (the Framework), would normally apply. The tilted balance would be disengaged if I were to find that there would be unmitigated harm to the SPA, SAC and Ramsar site. However, having not undertaken an Appropriate Assessment of the proposal for the purposes of making my decision, I have applied the tilted balance.
21. The proposal would modestly contribute two new one-bedroom dwellings to local housing supply in the heart of the town centre, with associated socio-economic benefits during and after construction, including custom for local businesses, public transport and facilities. Albeit tempered by the identified economic detriment of loss of commercial use at the appeal property. The benefits would be limited by the scale of development. Furthermore, I have identified significant harm to promotion of the economic vitality and viability of Ashford town centre.
22. I appreciate that the Framework sets out a presumption in favour of sustainable development but even where the tilted balance is engaged, the benefits of additional housing do not necessarily outweigh all other concerns. Moreover, case law has found that even where policies can be considered out of date, this does not mean that they carry no weight. The balancing exercise remains a matter of planning judgement.
23. As such, given the harm identified above, I conclude that the adverse impacts of the proposed development would significantly and demonstrably outweigh the relatively modest scale of benefit, when assessed against the policies in the Framework taken as a whole. The proposal would fail to comply with the relevant policies of the development plan and national guidance, and therefore Appeal A should be dismissed.

² As shown on pages 7 and 8 of the Appellant's Response to the LPA Statement of Case.

³ In the Five Year Housing Land Supply section of the Council's Appeal Statement of Case.

Appeal B

24. For the reasons given above, in respect of the third main issue I conclude that appeal B should be allowed.

William Cooper

INSPECTOR