



Appeal Decision

Hearing (Virtual) held on 21 March 2023

Site visit made on 22 March 2023

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 24th April 2023

Appeal Ref: APP/Z4718/W/22/3301885

Lydgate Sunday School, Holmfirth Road, New Mill, Holmfirth HD9 7LF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by C Whitworth against the decision of the Kirklees Metropolitan Council.
 - The application Ref: 2021/62/92434/W, dated 14 June 2021, was refused by notice dated 4 February 2022.
 - The development proposed is change of use of former Sunday school Class F(I)(f) to retail unit Class E(a), and alterations to boundary wall and vehicular access.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of former Sunday school Class F(I)(f) to retail unit Class E(a), and alterations to boundary wall and vehicular access at Lydgate Sunday School, Holmfirth Road, New Mill, Holmfirth HD9 7LF in accordance with the terms of the application Ref: 2021/62/92434/W, dated 14 June 2021, and the plans submitted with it, subject to the conditions on the attached Schedule A.

Preliminary Matters

2. The description in the banner heading above is taken from the appeal form and decision notice, as agreed with the parties, in the interests of precision.
3. The Grade II listed former Lydgate Sunday School appeal building is located on the south side of the A635 Holmfirth Road. As the proposal relates to a listed building I have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
4. The appeal building is a relatively compact, single storey church hall style building with a stage, kitchen and toilets. The site has a stone boundary wall, with a splayed access at the front with gate piers. The front of the site includes hardstanding with some limited space for on-site parking. Boarded-up windows at the building's rear, a past break-in reported by the appellant and littering in an exterior stairwell point to some security risk to the property that is likely to be exacerbated by it being vacant.
5. Approaching from the west on the A635 Holmfirth Road, there are relatively open views of the listed building for pedestrians and drivers. Also, viewed from the street in front of the property and approaching from the east, on the site and from some neighbouring property it has a noticeable identity as part of trio

of historic church buildings, together with the nearby Unitarian Chapel and parsonage.

6. A date stone commemorates the appeal building's opening in 1910, and a substantial, weathered stone panel with the building's name in carved lettering above its front entrance contribute to its crafted quality and character. Together with its Arts and Crafts style fusion of bowed frontage, flat roof profile, stone walling, tall chapel-style side windows and mullioned front clerestory windows, the above elements make for a building of some architectural charisma and prominence in the streetscene.
7. Given the above, I consider that the building's special interest and significance insofar as it relates to this appeal, derives from its early twentieth century Arts and Crafts style Sunday School architecture. I agree with the parties that the public benefits of the proposal would outweigh the minimal, less than substantial harm to the significance of the listed building that would arise from the slight alteration of the front access symmetry through the relocation of the access splay element of the proposal.

Main Issues

8. The main issues in this case are:

- Whether the proposal would result in an unacceptable loss of a community facility; and
- The effect of the proposal on the vitality and viability of Holmfirth Town Centre, Honley District Centre and New Mill, Brockholes and Shepley Local Centres.

Reasons

Community facility

9. Policy 9 of the Holme Valley Neighbourhood Development Plan 2021-2031 (NDP) requires proposals involving loss of community facility to be managed in accordance with Policy LP48 of the Kirklees Local Plan (LP). Policy LP48 seeks, among other things to retain valued community facilities that meet the needs of the community. For proposed loss of valued community facilities, Policy LP48 requires demonstration of satisfaction of at least one of several criteria, including c) that there is adequate, equally accessible alternative provision in the locality to serve the community.
10. The appeal building apparently ceased to be used as a church hall more than a quarter of a century ago, and was last used by a community group around a decade ago. Other community buildings exist in the area, including Wooldale Community Centre which is a short walk from the appeal site. This community centre has a larger carpark than the appeal site. Judging by its notice board, it has an active community association and caters for a range of community activity groups. It also hosts a pre-school group.
11. Together with the apparently low occupancy level of the appeal building over recent years, as reported by the Sunday School Trustees and appellant, the local Parish Council's support for the appeal proposal, and a lack of community clamour for retention of community use of the appeal building, the above

combination of factors indicates that community use needs are being met elsewhere in the locality.

12. While no substantive building survey is before me, from what I saw during my site visit, condensation and some effects of past water ingress and damp are evident in substantial patches of green mould and damp plaster on various parts of the appeal building's interior walls and ceiling. This indicates some established humidity and dampness issues, requiring more effective, occupancy-related ventilation and heating of the building, and some renovation and redecoration of parts of its walls and ceiling. Also, external window frames appear to need repainting, and some rusting of metal framed windows is evident. And, specialist contractor advice indicates the need for upgrading of the building's electrical system.
13. Over more recent years, building repair issues and relative lack of formal, evidenced marketing may have subdued what demand there might potentially have been for some community use of the appeal building. However, even with this possibility, the above combination of factors indicate that, while valued as a listed building for its historic Sunday School architecture, it is open to question whether the appeal property is a valued community facility that meets local needs. And even if it were, other alternative provision exists to serve the community, to satisfy exceptions criterion c) of Policy LP48 of the LP.
14. Therefore, even with the absence of substantive marketing evidence which LP supporting text paragraph 17.17 states would *normally* be required, I conclude that given the above, somewhat unique circumstances of the appeal building, the proposal would not result in an unacceptable loss of a community facility, and would not conflict with Policy LP48 of the LP and Policy 9 of the NDP.

Vitality and viability of centres

15. The proposal seeks the opportunity to retail household goods, specifically 'small decorative items (such as pictures and mirrors), small items of occasional furniture (both new and upcycled, such as chairs, side tables, chests)' and 'handmade gift items'¹. Together with its mullioned clerestory windows, the appeal building's tall arched windows form part of the appeal building's extensive fenestration, which noticeably allows natural light to flood in. This contributes to the building being a potentially attractive venue for displaying crafted furniture including of a vintage nature, and gifts of the type envisaged.
16. The proposed retail use on the appeal site would be located around 500m from New Mill Local Centre, approximately 2.5km from the boundary of Holmfirth Town Centre primary shopping area, and further beyond Honley District Centre and Brockholes and Shepley Local centres.
17. Supporting text paragraph 9.11 of the LP sets out that the definition of main town centre uses that is provided by the National Planning Policy Framework (the Framework) will be used in determining relevant proposals under Policy LP13 of the LP. The proposed changed use of retail would constitute a main town centre use as defined in the Framework. LP Policy LP13 requires that main town centre uses shall be located within defined centres and then in accordance with the sequential test. LP supporting text paragraph 9.12 sets out the expected elements of a sequential test. These expected elements are evidence

¹ As set out on page 3 of the appellant's Planning Statement.

of the development's business model and the appropriate catchment that the business would seek to serve, and an appropriate audit trail of any sequentially preferable sites that have been discounted, with robust justification.

18. National Planning Practice Guidance (PPG) on Town centres and retail sets out that the application of the sequential test needs to be proportionate and appropriate for the given proposal. The PPG also sets out that it is necessary to consider what contribution more central sites are able to make to accommodate the proposal. As the Court of Appeal observed in *Warners Retails (Moreton) Ltd v Cotswold District Council and others* [2016] EWCA Civ 606, sites should not be rejected on the strength of the self-imposed requirements or preferences of a single operator. Otherwise, the sequential approach would likely become a merely self-fulfilling activity, divorced from the public interest.
19. The most current Centres' survey evidence presented by the parties at the appeal hearing together indicates some availability of in-centre retail properties in the district. Given this, within the above policy, guidance and caselaw context, I find that some more central sites than the proposed out-of-centre site could potentially accommodate retail of the sort of range and type of home furnishing and gift item goods envisaged in this case.
20. I appreciate that the appellant has opted to link their retail offer to an arrangement to pay a 'peppercorn' rent in return for helping to keep the listed former Sunday School building secure, and managing its day to day upkeep and maintenance. I shall return to consider the potential benefits of this arrangement later in this decision. However, the appellant's proposed approach would not negate the need for a central focus on the protection of Centres' vitality, including through achieving locational suitability of retail use, in applying in the sequential test, as articulated by LP Policy LP13 and Framework Chapter 7.
21. Given the above combination of considerations, I cannot agree that the appeal proposal has decisively shown there to be no suitable sequentially preferable locations in the district for the proposed retail use. Nor does the proposal satisfy the sequential test.
22. That said, the recent survey of availability of Class E units across Brockholes, Holmfirth, Honley, New Mill and Shepley presented by the appellant at the hearing indicates a total percentage vacancy rate of such units across these centres that is approaching three times less than the regional and national average. This points to these centres being relatively vibrant and economically healthy. However, in failing to focus retail of the sort of range and type of home furnishing and gift item goods envisaged in this case in these centres, the appeal proposal would undermine their vitality. Albeit, by restricting the range of goods to be retailed at the site by planning condition, this adverse impact would be limited and is unlikely to harm the viability of these centres.
23. Drawing the strands together, I conclude that while not jeopardising the viability of Holmfirth Town Centre, Honley District Centre and New Mill, Brockholes and Shepley Local Centres, the proposed development would to a limited degree harm their vitality. As such, the proposal would conflict with Policy LP13 of the LP, and the Framework's sequential test approach to town centre vitality.

Conditions

24. The conditions suggested by the Council have been considered against the tests of the Framework and advice provided by Planning Practice Guidance. They have been broadly found to be reasonable and necessary in the circumstances of this case. I have made some minor drafting changes to suggested conditions in the interest of precision.
25. In addition to the standard commencement condition, a condition is necessary requiring that the development is carried out in accordance with the approved plans, in order to provide certainty. A condition restricting the range of goods for sale is required to safeguard the vitality of Town, District, and Local Centres. A condition regarding hours of operation is necessary to safeguard the living conditions of local residents. Conditions covering boundary wall materials and construction are required to preserve the heritage asset. A tree protection condition is necessary to protect tree stock. An electric vehicle charging point condition is required in the interest of environmental sustainability.
26. I have not attached a condition covering a scheme of security measures for the premises, suggested by the Council, as the insurance and commercial requirements of the retail operation are likely to ensure this. I have not attached a condition suggested by the appellant for reversion of the premises to Class F(I)(f) use, in the event of cessation by them of the proposed retail use. This is not necessary as another condition covers the safeguarding of centres' vitality. Also, I have not attached a condition suggested by the appellant for removal of permitted development rights, as I find no clear justification to do so.

Planning Balance and Conclusion

27. The proposal would facilitate the intended arrangement of the Trustees for Lydgate Sunday School to secure help from the appellant to maintain the building, as a condition of a smaller peppercorn rent. As such, it would provide for occupancy of the listed building for the retail use, which would help contribute revenue, and maintenance and repair work for the upkeep of the fabric of the historic building. This would help address damp-related deterioration and security-related risks to the fabric of the listed building.
28. Moreover, the proposal would re-animate a relatively accessible suburban site that has apparently been under-utilised for some time. Also, the boundary wall alteration element of the scheme would improve the appeal site's access and so help to support future use of the site. And it would support entrepreneurship and development of a local independent business. Together, the above would contribute positively to the local streetscene and provide socio-economic benefits in the area.
29. I agree that the public benefits of the proposal would outweigh the minimal, less than substantial harm to the significance of the listed building that would arise from the slight alteration of the front access symmetry through the relocation of the access splay element of the proposal.
30. Moreover, the proposal would provide a readily deliverable alternative to the continued vacancy, and associated risk of deterioration and vandalism of this somewhat unique, charismatic and locally prominent Arts and Crafts former Sunday School listed building which would likely occur without the proposed

development. Also, it would increase opportunity for the local community to experience and appreciate the special interest of listed building, compared to the continued closure of the building that would likely occur without the proposed development. These are compelling material considerations in favour of the proposal.

31. Taken all together therefore, despite the breach of development plan policy identified above in relation to vitality of several Centres and the significant weight attributed to this, the adverse impacts do not outweigh the substantial combination of benefits that the scheme would bring when assessed against the policies of the Framework, and of the development plan as a whole.
32. For the reasons given above I conclude that, subject to conditions, the appeal be allowed.

William Cooper INSPECTOR

Schedule A) 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 drawing: 001 Proposed Change of Use.
- 3) The premises shall be used for the sale of decorative interior household items, household furniture and (non-food and drink) handmade gift items and for no other purpose (including any other purpose in Class E(A) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 4) Hours of operation of the retail use hereby permitted shall not exceed 10:00 to 18:00 Monday to Friday, 10:00 to 17:00 on Saturdays and 10:00 to 16:00 on Sundays and Bank Holidays.
- 5) The boundary wall ends at the entrance to the site shall be made good after the gate posts have been removed. Any damage to the stonework shall be repaired using indents from the demolished matching stonework, or for small repairs using lime mortar coloured to match the stonework.
- 6) Pointing to the boundary wall shall be in lime mortar and finished flush, not strap pointed, and copings removed from the demolished section of wall shall be used to repair other damaged or missing copings on the boundary, with demolished stonework retained on site for future repairs.
- 7) Prior to commencement of the works to the front boundary wall, there shall have been submitted to and approved in writing by the local planning authority an Arboricultural Method Statement (AMS). This shall detail measures for protection of the tree on the site during said works. The AMS shall be implemented as approved.

- 8) Prior to the first use of the development hereby permitted, one electric vehicle charging point (EVCP) shall be installed at the site, to serve its parking area. Cable and circuitry ratings shall be of adequate size to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32Amps. The EVCP so installed shall be retained thereafter.

APPEARANCES

FOR THE APPELLANT:

Andy Rushby
Carl Whitworth

Assent Planning Consultancy Ltd
Appellant

FOR THE LOCAL PLANNING AUTHORITY:

John Holmes

Kirklees Metropolitan Council