



Appeal Decision

Site visit made on 28 April 2023

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Appeal Ref: APP/D1265/W/22/3312041

7-9 High Street, Gillingham, Dorset SP8 4AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GDPO).
 - The appeal is made by Mr P Langdown of Langdown Commercial against the decision of Dorset Council.
 - The application Ref P/PACD/2022/03965, dated 27 June 2022, was refused by notice dated 13 September 2022.
 - The development proposed is Change of use from Class E to Residential (C3) Under the Prior Approval Procedures set out in The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2021 Schedule 2 Part 3 Class MA.
-

Decision

1. The appeal is allowed and prior approval is granted for Change of use from Class E to Residential (C3) Under the Prior Approval Procedures set out in The Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2021 Schedule 2 Part 3 Class MA at 7-9 High Street, Gillingham, Dorset SP8 4AA in accordance with the terms of the application, Ref P/PACD/2022/03965, dated 27 June 2022, and the plans submitted with it, including drawing ref 01207-00-A and Sheet 01, 02, 03 and 04 of 01207-01-A.

Application for costs

2. An application for costs was made by Mr P Langdown of Langdown Commercial against Dorset Council. This application is the subject of a separate Decision.

Background and Main Issues

3. Class MA of the GPDO permits a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses).
4. Paragraph MA.1 of Class MA sets out a number of requirements, including (a), that the building 'has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval'. The Council considers that the development complies with the requirements set out in this paragraph. Based on the evidence before me, I see no reason to disagree.
5. However, further to this, Paragraph MA.2 sets out that development under Class MA is permitted subject to an application to the local planning authority for a determination as to whether prior approval is required in relation to the

conditions set out in Paragraph MA.2(2). One of these conditions is MA.2 (2) (e) which states that where the building is located in a conservation area and the development involves a change a use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area. The prior approval was refused on the basis that the proposal would not meet the requirement of this condition. I note that the Council considered in this case that the development complied with the other conditions set out in Paragraph MA.2 (2) of Class MA. Based on the evidence before me, I consider that there is no reason to disagree.

6. Accordingly, I consider the main issue in this case to be whether the proposal would be permitted development under Class MA, with particular regard to whether the proposal would satisfy condition MA.2 (2) (e), in regard to the impact of the change of use on the character or sustainability of the Gillingham Conservation Area (CA).

Reasons

7. The appeal site consists of 2 mid-terraced buildings situated at 7-9 High Street. The appeal premises are within the Gillingham CA, within the designated secondary shopping frontage within the Town Centre. The ground floors are vacant commercial units, with associated shopfronts on to the High Street.
8. The significance of the CA is derived primarily from the layout of the streets and buildings, including the age and architectural qualities of the buildings within the CA, as well as a number of listed buildings. Whilst the character of the CA is partly derived from the commercial premises within it, residential uses are also common in the CA, including the upper floors of the appeal premises and the retirement flats situated directly opposite the appeal site.
9. It is acknowledged that Policy 7 of the Gillingham Neighbourhood Plan (NP) (2018) states that the loss of retail outlets to residential use on the ground floor in areas of primary and secondary shopping frontages will be resisted. However, the Council accept that Nos 7-9 have been vacant for over 3 years, which is one of the requirements under Paragraph MA.1 of Class MA. Apart from a short term let to a computer gaming company between June 2014 and March 2015, the units have been vacant since 2007. The market signals are clear that there is a lack of interest in the premises for commercial use. I have been provided with little evidence that this would change in the future.
10. Whilst the NP has identified the secondary shopping frontage as an area to provide the flexibility for changes of use such as restaurants and wine bars, none of the evidence before me suggests that there has been any interest in the units for such uses. I also note the objective of the Gillingham Conservation Enhancement Plan (GCEP), to improve the quality of the town centre environment by, amongst others, improving footfall, boosting the night-time economy, and attracting visitors and tourism. However, the Council have confirmed that the GCEP is a 'working document' and that it will be finalised as part of a new Conservation Area Appraisal. Therefore, the objectives of the GCEP, as material planning considerations, can only be afforded limited weight in my decision.
11. On my site visit, which I acknowledge is only a snapshot in time, I noted that the footfall was higher in the primary shopping frontage, providing much more of the 'hustle and bustle' that the Council allege exists at Nos 7-9. Town

Meadow also provides a natural 'divide' between the shopping frontages. The existence of a residential dwelling next to the Scope charity shop, which is next door to the appeal premises, does not significantly break up the row of commercial properties. Furthermore, the proposal would not 'cut off' the bottom of the town as commercial premises would remain on either side so the primary and shopping frontages would still be connected. Due to the long term vacancy of the units, I am not convinced that the proposal would have a negative impact on the sustainability of Gillingham's retail offering or the character of the CA. This is particularly as residential uses are already common within the CA.

12. Furthermore, paragraph 86 of the National Planning Policy Framework 2021 (the Framework) recognises that residential development often plays an important role in ensuring the vitality of centres. However, the implication of the units being vacant is that in their present form, they do not provide any degree of human activity or interaction towards the character of the CA or the vitality of the town centre. They are not 'vibrant and active' shop frontages as alleged by the Council and have not been since 2007, aside from the short term let. The occupancy of the units would allow future occupants to support the viability and vitality of the town centre.
13. I note the allegation of the Council that there has been interest in the premises by a local technology company. However, no evidence has been provided to verify this claim. Nevertheless, just because there has been interest in the premises does not mean that this would automatically secure a tenant. This is confirmed by the correspondence provided by the appellant's marketing agents, Symonds and Sampson, regarding interest from another private individual, where this initial enquiry did not result in a viewing or an offer.
14. Given my findings, whilst not strictly in accordance with Policy 7 of the Gillingham NP, I conclude that the proposal would not harm the character or sustainability of the Gillingham CA, having regard to the specific circumstances of this case. Therefore, the proposal would satisfy condition MA.2 (2) (e) of the GDPO and as such, would be permitted development under Class MA.

Other Matters

15. The appeal site is within the setting of a number of listed buildings, including the Grade I listed building of St Mary's Church and the Grade II listed buildings of The Red Lion and Rawson Court. Their significance for the purposes of this appeal lies primarily within their architectural, historic and communal value. This is most perceptible at St Mary's Church, where the chancel dates from the 14th Century, the main body of the church from 1838-1839, the west tower from 1908-1909, and the south chapel and vestries from 1921. The setting within which all the listed buildings are experienced is heavily influenced by the Gillingham CA within which they are sited. Due to the modest scale of the proposal, and the lack of harm to the character or sustainability of the Gillingham CA, it would have a neutral impact on their significance and the settings in which they are appreciated. I also note the Council did not raise any concerns in regard to the setting of any of the listed buildings.
16. I note that the Town Council verbally objected to the proposal, on the basis that it would be in conflict with their adopted NP and the GCEP. However, I have not been provided with a copy of their objection and note that the Planning Officer's report states that 'no response' was received to their

consultation on the prior approval. I have considered the proposal against both of these documents and concluded that whilst strictly not in accordance with the NP, given the specific circumstances of this case, most notably the long term vacancy of the appeal premises, the proposal would be acceptable.

17. The allegation of 'deliberate neglect' of the appeal premises does not materially affect my consideration of the appeal proposal.
18. The Environment Agency (EA) Flood Map for Planning confirms that the appeal site is situated entirely within Flood Zone 3b. The site is at high risk of fluvial flooding, a high risk of surface water flooding, and a medium risk of groundwater flooding. The appellant's Flood Risk Assessment (FRA), prepared by TDS Consultancy Limited, identifies the site being at significant risk from flooding. The FRA sets out a number of mitigation measures, including installation of doors capable of receiving flood barriers, installing electrical sockets at high level and the use of low permeable floor materials. It is also noted that the appeal site benefits from the Gillingham Flood Alleviation Scheme. I note that the Council are satisfied that the change of use meets the objectives of the Framework's policy on flood risk. I have no reason to come to a different conclusion on this matter.
19. I note the Council's reference to another appeal on Caledonian Road, London¹ in relation to an Inspector's assessment of 'character' in a CA. However, no further details have been provided so I cannot be certain that it would be directly comparable to the proposal before me. Nevertheless, I have considered this appeal proposal on its own merits and concluded that it would not harm the character or sustainability of the Gillingham CA for the reasons set out.

Conditions

20. Development under Class MA is permitted subject to conditions at Paragraphs MA.2.(5) and (6) which include that the development must be completed within a period of 3 years starting with the prior approval date; and that any building permitted to be used as a dwellinghouse by virtue of Class MA is to remain in use as a dwellinghouse within the meaning of Class C3 of Schedule 1 to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the use as a dwellinghouse.
21. I have attached a condition to ensure that the development is carried out in accordance with the submitted plans, in the interests of certainty.

Conclusion

22. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

Laura Cuthbert

INSPECTOR

¹ APP/V5570/W/22/32900096