



Appeal Decision

Site visit made on 10 July 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2023

Appeal Ref: APP/V0510/C/22/3308231

Land known as 23 Forehill, Ely Cambridgeshire CB7 4AA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
 - The appeal is made by Mrs Jenny Burgoyne against an enforcement notice issued by East Cambridgeshire District Council.
 - The notice was issued on 8 September 2022.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the material change of use of the ground floor of the building to a dwellinghouse.
 - The requirements of the notice are to:
 - i. *Cease the use of the ground floor of the building as a dwellinghouse*
 - ii. *Remove all beds and associated residential paraphernalia that are not ancillary to the primary use of the property as a shop.*
 - The period for compliance with the requirements is 12 months for both i and ii.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal on ground (a)

2. The ground of appeal is that planning permission ought to be granted for the matters alleged in the notice.

Main Issue

3. The main issue is whether the proposal would result in an unnecessary loss of a commercial community facility.

Reasons

4. The appeal site lies within Ely's town centre and as defined by Map 7.1 of the East Cambridgeshire Local Plan 2015 (ECLP), in the Ely Secondary Shopping Frontage.
5. Policy COM 2 of the ECLP states that within the Ely Secondary Shopping Frontage, change of use schemes from A1 to other uses may be permitted provided that the proposed use provides a service that compliments the shopping function of the city centre; there is no adverse impact on residential amenity; and the proposal does not involve ground floor residential development.

6. In addition, Policy COM 3 of the ECLP states that proposals that would lead to a loss of a commercial community facility will only be permitted if it can be demonstrated that the community use is not financially viable; the proposal involves the provision of an equivalent community facility; or the proposal would involve the provision of an alternative community facility which brings demonstrable greater benefits to the settlement or neighbourhood.
7. Correspondence from a marketing agent confirms that they commenced marketing the appeal property from 29 July 2020. There are no details however of active marketing, including registering with multiple commercial property agents, advertising of the premises, and details of any offers or interest from prospective tenants or buyers. It has not been adequately demonstrated that all reasonable efforts have been made to sell or let the property at a realistic price for at least 12 months.
8. I note that the appellant has owned the property for more than 40 years with a business being ran at ground floor whilst occupying the residential unit above, and since retiring the appellant had used the rental income from the commercial unit as part of her pension. It has been described that the pandemic has led to financial hardship with several other units in the area being empty. There is no compelling evidence before me, such as financial business statements, to demonstrate that the appeal premises is not financially viable as a commercial operation.
9. Accordingly, the change of use of the property to residential is an unnecessary loss of a commercial community facility which has a harmful effect on the vitality and viability of the Ely Secondary Shopping Frontage. The change of use conflicts with Policies COM 2 and COM 3 of the ECLP which seek to resist the unnecessary loss of retail and commercial community facilities from the Ely Secondary Shopping Frontage.

Other Matters

10. There have been minimal structural alterations to the ground floor of the appeal premises and reverting back to a commercial use would not be complicated. The external appearance as a shop front has been retained which preserves the character and appearance of the Ely Conservation Area.
11. The appellant indicates that the use of the premises as residential would be permitted development under Schedule 2, Part 3, Class MA of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), if the premises was vacant. Paragraph MA.1(1) of the GPDO states that development is not permitted under Class MA unless 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. It is clear from the submitted evidence, as well as observations during my site visit, that the premises is occupied. Whilst the appellant claims that the appeal premises could be changed to a residential use under Class MA if the property was sold, there is no compelling evidence to convince me that all the criteria detailed in Class MA would be met to allow a permitted change of use to residential. I therefore do not consider this a fallback position sufficient enough to outweigh the harm I have described under the main issue above.
12. The appellants statement of case describes the appellants age and health with there being an onus on the treatment of people with additional needs to be

dealt with sympathetically and allowing the continued use of an accessible home. The enforcement notice provides a 12 month period for compliance which would be ample time for the appellant to arrange alternative residential accommodation. It is stated in the evidence that the first floor residential unit is in the ownership of the appellant. There is no compelling justification to indicate that the appellants age and health warrants a specific need for the ground floor premises to remain as residential.

Conclusion

13. I recognise that the failure of this appeal could affect arrangements for the appellant. Having regard to the circumstances drawn to my attention, this would represent an interference with their rights under Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. However, having regard to the legitimate and well-established development plan policies which aim to safeguard retail and commercial community facilities, in this case I consider that greater weight is attached to these. Dismissal of the appeal is therefore necessary and proportionate, and it would not result in a violation of the human rights of the appellant.
14. For all the above reasons, I conclude that the use of the ground floor premises as residential does result in an unnecessary loss of retail and commercial community facilities from the Ely Secondary Shopping Frontage and the harm this causes outweighs the benefits described above. As such, it conflicts with the development plan as a whole and there are no other considerations, including the provisions of the National Planning Policy Framework, which outweighs this finding.
15. The appeal fails on ground (a) and the appeal should be dismissed.

Chris Baxter

INSPECTOR