



Appeal Decision

Site visit made on 8 August 2023

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16TH August 2023

Appeal Ref: APP/U1430/W/23/3315082

72a High Street, Battle TN33 0AG

- 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 M Law against the decision of Rother District Council.
 - The application Ref RR/2022/2472/P, dated 10 October 2022, was refused by notice dated 2 December 2022.
 - The development proposed was described as change of use from office to residential, proposing a new three-bed maisonette.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would result in the unjustified loss of a premises for employment or community use.

Reasons

3. The appeal building is the upper two floor part of a terraced building located in High Street in Battle town centre. It has been in residential use before but most recently was an office with planning permission, albeit currently vacant.
4. Policy DEC3(i) of the Council's Development and Site Allocations Local Plan 2019 (LP) seeks to make effective use of employment premises by retaining them for this purpose unless there is no reasonable prospect of continued employment use. LP Policy DCO1 requires evidence to meet two criteria; (i) a comprehensive and sustained marketing campaign which clearly indicates a lack of demand for the existing use or alternative commercial or community use, normally over at least 18 months with the premises offered for sale or rent at a realistic valuation, and (ii) that the building is not financially viable for any of these uses. In this context Policy BA1(vi) of the Council's Core Strategy 2014 (CS) aims to maintain Battle's vibrant and distinctive town centre.
5. The building has not been marketed for sale or rent for office use or for any other commercial or community use. Advice about its suitability to remain in commercial use only considered offices¹. In this respect, there is no evidence that disabled access is a regulatory requirement or cannot be achieved practically or cost effectively with reasonable adjustments, including to reflect that it is a Grade II listed building. There are convenient public car parks nearby for staff or clients, including at least one with disabled parking spaces accessible along pavements.

¹ 21 Letter by Hunt Commercial, 21 September 2022.

6. There has been investment in the building in that has been decorated and fitted out with carpets, a kitchen and a bathroom to a modern, high standard and could provide a high quality working environment. There were no apparent severely sloping floors to interfere with office furniture or equipment. There is no technical evidence that the structure or fabric of the building renders Wi-Fi use impossible (with range extenders if necessary) or prevents flexible arrangement of the space. There is no apparent reason why appropriate air conditioning apparatus could not alleviate high summer temperatures if this, or road noise, prevented opening windows. Individual rooms may be suited to some offices, such as solicitors for reason of confidentiality, or for use by directors or partners.
7. The last office occupier relocated but none of the matters outlined above were evidently fundamental barriers to office use of the building for many years. Upper floor office use in some similar buildings did not appear to be unusual or uncommon in High Street.
8. National economic recession and Covid-19 have restricted demand for offices generally. It is, though, widely reported in the public domain that staff are now required or encouraged to return to a place of work rather than exclusively work from home. Despite the other available office sites or premises referred to by the appellant and the rental values, there is no equivalent objective evidence about the total office market at or in Battle, or to show exactly how long these other sites or premises have been on the market. Consequently, comparisons cannot be made to establish if there is a 'substantial imbalance of demand compared to an oversupply of offices'. But even if there is, there is no indication about whether the snapshot relied on by the appellant is more sustained and innate at Battle than an expected churn in the office market. It is also not clear if High Weald House is in Battle and floor area at Bexhill Enterprise Park, even if at Battle, is not built so is not available.
9. I accept that any of the considerations outlined above may make the building less attractive to some office users or not be as conducive to some other commercial or community uses. But given that this has not been tested by marketing to ascertain the actual level of interest or reasons why any interest did not progress, and that there is no viability report, I cannot be reasonably certain that there has been no potential interested party. So, there is little compelling force of argument to what the appellant contends which is largely assertion or speculation no matter how well-informed.
10. Part change of use from a bank to flats in the upper floors of 80 High Street was granted planning permission prior to adoption of the LP². On the face of it CS Policy EC3(i) applied at that time and has similar objectives and requirements to LP Policy DEC3(i) but was not referred to in the Council's relevant officer report. Planning permission was also granted to change of the use of the ground floor of a vacant bank at 16 High Street. Albeit after the LP was adopted, the upper floor ancillary offices were no longer just vacant but rendered redundant to the former primary use of that site so the Council permitted change of use of those offices to flats³. Accordingly, neither case is directly comparable to the current appeal, which I have determined on its individual planning merits. It is not the remit of this appeal to review the basis of these previous Council decisions. I am required to determine the appeal in

² RR/2018/607/P

³ RR/2020/257/P

accordance with the development plan unless material considerations indicate otherwise⁴ and LP Policies DEC3(i) and DCO1 are part of the development plan.

11. Taking all the above into account, I am not satisfied that the appellant has clearly demonstrated a lack of demand for office use of the building or that there is no reasonable prospect of continued employment use or alternative commercial or community use of it. Nor has it been shown that any such use is not financially viable. On this basis, I find that the proposal would result in the unjustified loss of a premises for employment or community use. It is therefore contrary to the development plan policies specified above which otherwise seek to retain such uses and, in this way, maintain Battle town centre.

Other Matters

Residential use

12. The Council has not objected to residential use of the building in principle, just that its release from employment or a community use must be properly justified under the relevant LP and CS policies. While Policy HD8 of the Battle Neighbourhood Plan 2021 (NP) aims to retain and enhance existing businesses and resist the loss of ground floor retail space, it supports new housing above ground floors in the town centre. In this policy and plan these are not inconsistent or mutually exclusive objectives but while the NP post-dates the CS and LP the development plan must be read as a whole.

Designated heritage assets

13. The significance of this Grade II listed building includes that it is early 19th century with a stuccoed front elevation, stringcourse, cornice, parapet and intact window glazing bars. Most other buildings along High Street are listed buildings, including either side of the building and opposite. Their significance includes a narrow plot structure, vernacular design mainly dating from the 18th century or earlier with Georgian or Victorian refacing including shopfronts and historic or present day mostly commercial or residential use. The significance of High Street to this part of Battle Conservation Area (CA) includes the individual and collective worth of these listed buildings in the historic core of this market town.
14. The appellant states the Council has granted listed building consent for works to carry out the proposed change of use⁵. No plans or other details have been provided by either main party but it is anyway a separate regulatory matter. In this appeal there is no evidence of any required internal or external alterations to facilitate the change of use. This is also borne out by my site visit and that the configuration of the building has previously enabled residential use. On this basis, the proposal would not cause any harm to the significance of this listed building. This neutral effect would therefore preserve the listed building and also not diminish the way in which the other listed buildings are experienced so have a neutral effect on their settings and preserve the setting of these listed buildings. In these circumstances continued occupation of the building as proposed, and its upkeep, would have a positive effect on this part of the CA and on the CA overall so preserve and enhance the character and appearance of the CA.

⁴ Section 38(6) Planning and Compulsory Purchase Act 2004 as amended.

⁵ RR/2022/1397/L

Fall-back

15. Battle, thus the building, is within the High Weald Area of Outstanding Natural Beauty (AONB). But for this and that it is a listed building, subject to prior approval, development such as the proposal may be Class MA⁶ permitted development elsewhere. However, because these permitted development rights do not apply in this case there is no fall-back in this regard.

Other considerations

16. The proposal would be acceptable in its effect on the character and appearance of the area, including that its town centre location would have no adverse impact on the wider landscape and scenic beauty of the AONB so conserve the AONB. Nor would there be any adverse effect on the living conditions of future occupiers of the maisonette or the existing occupiers of other residential properties. This car free development would be near a wide range of services and facilities convenient for walking or cycling and close to bus stops. The absence of harm in these regards are neutral factors in my decision.

Planning Balance

17. The appellant contends that the Council has a 2.79-year housing supply⁷. This is not disputed by the Council. It cannot, therefore, currently demonstrate a 5-year supply of deliverable housing sites. Consequently, the development plan policies most important for determining the appeal are out-of-date and National Planning Policy Framework (Framework) paragraph 11(d) is engaged. The starting point is that planning permission should be granted.
18. The proposal would make effective use of previously-developed 'brownfield' land to help meet identified needs for housing and the maisonette could be established and occupied quickly. This would be aligned with objectives of the Framework to significantly boost the supply of homes and maintain the listed building in active use. Albeit in a small way, future occupants are likely to use services and facilities in Battle to support the vitality and viability of the town. While notable, and notwithstanding the significant shortfall in the supply of housing, these modest social, economic and environmental benefits from a single dwelling have limited weight in favour of the proposal.
19. On the other hand, the development plan seeks to achieve effective use of the existing stock of employment premises, including opportunity for community use. These aims are broadly consistent with Framework objectives to support economic growth in town centres taking account of local business needs and locational requirements to ensure a suitable mix of uses, including to enhance the sustainability of communities through community facilities. Unsubstantiated change of use of the building would be at odds with these local and national planning policies. Once taken out of office use the building may never come back into employment use or be in community use and be permanently lost. As such, these considerations have significant weight against the proposal.
20. In this appeal the application of policies in the Framework that protect areas or assets of particular importance (the listed buildings, the CA and the AONB) do not provide a clear reason for refusing the development. However, in my view

⁶ The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

⁷ Rother District Council Housing Land Supply and Housing Trajectory, April 2022 position statement published October 2022.

the adverse impacts of granting planning permission in the circumstances set out above would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply in this case.

Conclusion

21. The proposal does not accord with the development plan taken as a whole and conflicts with relevant provisions of the Framework. There are no other material considerations which override these findings. Consequently, for the reasons given above the proposal is unacceptable and the appeal does not therefore succeed.

Robin Buchanan

INSPECTOR