



Appeal Decision

Hearing held on 26 September 2023

Site visit made on 26 September 2023

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 October 2023

Appeal Ref: APP/F3545/W/23/3321624

28 Churchgate Street, Bury St Edmunds, Suffolk IP33 1RG

- 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 G Downes against the decision of West Suffolk Council.
 - The application Ref DC/22/2110/FUL, dated 28 November 2022, was refused by notice dated 27 April 2023.
 - The development proposed is 'change of use of ground floor and basement floor of premises from hairdressers to dwelling. Internal alterations. Remove modern shopfront and replace with new door and four windows to match architecture of upper floors.'
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Decision

1. The appeal is allowed and planning permission is granted for 'change of use of ground floor and basement floor of premises from hairdressers to dwelling. Internal alterations. Remove modern shopfront and replace with new door and four windows to match architecture of upper floors' at 28 Churchgate Street, Bury St Edmunds, Suffolk IP33 1RG in accordance with the terms of the application Ref DC/22/2110/FUL dated 28 November 2022 subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) Unless otherwise amended under the conditions below, the development hereby permitted shall not be carried out other than in complete accordance with the following approved plans: 4560 01 P1, 4560 02 P2 and 4560 03 P1.
 - 3) Demolition, preparation or construction works shall take place only between the hours of 0800 to 1800 on Mondays to Fridays and between the hours of 0800 to 1300 Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
 - 4) Before the development is first occupied, details of areas to be provided for the storage and presentation for collection/emptying of refuse and recycling shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out in its entirety before the development is first occupied and shall be retained as such thereafter.

Application for Costs

2. An application for costs was made by Mr G Downes against West Suffolk Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are (i) whether or not the proposal would result in an unacceptable loss of employment space; and (ii) the effect of the proposal on the vitality and viability of the Bury St Edmunds Town Centre.

Reasons

Employment Space

4. The appeal proposes the change of use of a commercial unit on the ground and basement levels of a three-storey over basement building to a dwelling. The commercial unit was vacant at the time of my visit, but the use could provide for some employment at the site.
5. The Council has therefore referred to Policy DM30 of the Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document 2015 ('the JDMPD'). This sets out that proposals for non-employment use on sites used for employment purposes which are expected to have an adverse effect on employment generation will only be permitted where one or more specified criteria has been met as appropriate to the site/premises and location.
6. The appeal premises were formerly occupied as a hairdressers. That business has relocated to other premises elsewhere within the town centre, and I have no firm reason to doubt the appellant's evidence that those premises are more suitable to the needs of the business and can support employment of more people than the appeal site. However, I heard that the new premises previously formed part of a larger commercial unit. The rest of that larger unit is still occupied, but I have not been provided with firm information on total job numbers or employment levels on the site. As a result, and given that the proposal would result in an overall loss of commercial space, I am unable to determine that employment generation would not overall be adversely affected by the proposal such that Policy DM30 would not be engaged.
7. However, the criteria listed in Policy DM30 include at a) that 'there is a sufficient supply of alternative and suitable employment land available to meet local employment job growth requirements'. The appellant's evidence includes details of alternative commercial floorspace that was listed as available at the time the appeal was submitted. At the Hearing, the Council commented that some of the premises may be let, and that some were outside of the town centre area, but no specific concerns were raised in relation to the availability or suitability of many of the identified premises which would appear to provide some alternative supply of land. Nor have I been provided with firm evidence to substantiate the Council's assertion of continued demand for retail/town centre use space in the town centre, or information to otherwise suggest that there is unmet need or demand. From the evidence before me, I find the appellant's position that there is a sufficient supply of premises available to be more compelling.
8. The criteria in Policy DM30 also include at b) that 'evidence can be provided that genuine attempts have been made to sell / let the site in its current use, and that no suitable and viable alternative employment uses can be found or are likely to be found in the foreseeable future'. At the time the appeal was submitted, the appellant's evidence indicated that marketing had been ongoing

for around 6 months and resulted in only two viewings. One offer was made, but the buyer later withdrew, and the agent noted factors likely to have affected levels of interest as including the location of the site outside of the established retail area and the wider economy.

9. The Council confirmed at the Hearing that its principal concern related to the period of marketing being less than 12 months. I was not directed to any policy requirement or guidance specific to Policy DM30 specifying a 12 month timescale, but I agree with the Council that sufficiently testing demand would generally require marketing over a reasonable period. That said, I was informed that marketing of the premises had continued since the submission of the appeal without interest. Marketing has therefore been ongoing for around 12 months in total which I consider generally adequate in this case to assess the likely prospect of an alternative occupier being found.
10. The Council also raised at the Hearing that it was unclear how the asking price had been arrived at and that details of comparable properties had not been provided. However, the asking price would not have prevented lower offers being made. Moreover, the appellant commented that the marketing was carried out by an established agent, and there is no alternative valuation or compelling evidence before me to suggest that the asking price, which was reduced during the marketing, has been inappropriate or unduly high to lead me to find that it was unreasonable.
11. On the strength of the evidence before me, I consider that there have been genuine attempts to market the site in its current use, and prospects of suitable and viable alternative employment uses being found in the foreseeable future seem to me to be limited.
12. The development would result in a non-employment use on a site that could currently support employment, but I find for the above reasons that the criteria at a) and b) of Policy DM30 would be met and I conclude that the proposal would not therefore result in an unacceptable loss of employment space.

Town Centre Vitality and Viability

13. The JDMPD identifies that the site is located within the boundary of the Bury St Edmunds Town Centre, albeit that it is outside of the Primary Shopping Area. Within town centres, Policy DM35 of the JDMPD sets out that support will be given to proposals for main town centre uses, as well as to uses including residential on upper floors. The supporting text to the policy notes that town centres provide a focus for shopping, leisure, business and cultural activities for the towns themselves and the surrounding smaller settlements, and highlights a desire to manage and guide the mix of uses within town centres to maintain and improve their vitality and local distinctiveness.
14. Policy DM35 does not explicitly preclude residential use on lower floors such that there would be direct conflict with this policy. Nevertheless, the proposed dwelling is not a form of development that would be generally supported by Policy DM35. The proposal would also result in the loss of the commercial function of the site. I appreciate that the business which formerly occupied the site has relocated to other premises within the town centre, and the appellant referred to other hairdressers in the vicinity. Even so, there would be a loss of an established commercial unit that could accommodate other occupiers or main town centre uses that would contribute to the focus of shopping, leisure,

business and cultural activities within the town centre as sought by Policy DM35. While the National Planning Policy Framework ('the Framework') advises that residential development often plays an important role in ensuring the vitality of centres, the proposal is for only one dwelling. In my view, some overall reduction in activity and footfall to this part of Churchgate Street would therefore be likely.

15. Notwithstanding that the site is not part of a primary shopping area, the reduction in footfall would be detrimental to the vitality and viability of the area. The effect of the appeal proposal alone would be modest, but could contribute to more significant cumulative effects if repeated which I consider would be contrary to the aims of Policy DM35 of the JDMPD.
16. Be that as it may, there are a mix of ground-floor residential and commercial uses on Churchgate Street currently so that the use would not stand out. In addition, I have already noted the limited interest that has resulted from marketing of the site and an absence of information of clear or unmet demand for retail/town centre use spaces. These factors limit my confidence that the site would realistically be occupied by another main town centre use occupier so as to make a contribution to town centre vitality and viability that would be otherwise diminished by the proposal. I also note that the Our Bury St Edmunds Business Improvement District has not objected to the proposal, noting that residential use would bring additional potential customers to other businesses, albeit that I consider the number of potential customers would be small.
17. In this context, I find that although the proposal would be contrary to the aims of Policy DM35 of the JDMPD, it would not materially harm the vitality or viability of the Bury St Edmunds Town Centre.

Other Matters

18. The appeal building is located within the Bury St Edmunds Town Centre Conservation Area ('the CA') and is itself a Grade II listed building. I have therefore had special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest that it possesses and paid special attention to the desirability of preserving or enhancing the character or appearance of the CA in accordance with sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
19. The CA includes a significant number of historic buildings, and the mix of uses and building forms provide for attractive and varied streets. The quality of the buildings themselves together with the pattern of streets, development and spaces and the mix of uses make a considerable contribution to the character, appearance and significance of the CA.
20. The listing description identifies that the appeal building has a C16/C17 core and was formerly two houses. It has a timber frame, a double gabled C17 wing and a Regency extension with large two-storey semi-circular bay to the rear, and a later brick frontage including projecting cornices and a regular arrangement of 12-pane sashes in deep reveals to the upper floors. In my view, the architectural interest of the building contributes much to its special interest. It also has historic interest derived from the illustration of the phasing of the building and how it has changed and adapted over time.

21. The shopfront to the ground floor of the appeal building is a modern addition with large expanses of glazing which does not contribute to the special interest of the building, and which is somewhat conspicuous against the finer detailing and quality of the host building and historic shopfronts in the CA. Its replacement with a door and windows in keeping with the architecture and proportions of the upper floors would be a sensitive response that would enhance the cohesiveness of the front of the building. The reinstatement of residential use would also reflect the historic function of the building, and the proposal would further provide for a more traditional layout of internal rooms than the existing large open plan space to the ground floor. In these ways, I agree with the main parties that the proposal would enhance both the special interest of the appeal building and the character and the appearance of the CA overall, benefitting their significance.
22. The Breckland Special Protection Area ('SPA') is a European Site designated under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') for the presence of 3 qualifying species (Stone curlew, Nightjar and Woodlark). In accordance with the Habitats Regulations, a competent authority must, before deciding to give permission to any plan or project which is likely to have a significant effect on a European site (either alone or in combination with other plans and projects), make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives. This duty would now fall to me.
23. The conservation objectives for the SPA seek broadly to avoid the deterioration of the habitats of the qualifying features and significant disturbance of the qualifying features, ensuring the integrity of the site is maintained. From the information before me, harmful recreational pressure could pose a threat to the SPA.
24. However, the appeal site is within the built up area of Bury St Edmunds within close proximity to areas of open space provision, including the Abbey Gardens and River Lark corridor very close to the site. The West Suffolk Council Open Space Assessment Report December 2021 indicates that there is sufficient open space in the ward including the site to meet recommended quantity standards for play and open space. The Council is satisfied that this provision would be adequate to meet the recreational needs of new residents including for dog walking, and I have no firm reason to disagree. The Habitats Regulation Assessment Screening for the Bury St Edmunds Vision 2031 document was also able to rule out likely significant effects on the SPA from development within Bury St Edmunds on the basis of likely visitor numbers, patterns and effects. The screening took into account windfall development and potential for in-combination effects, and I note that Natural England agreed with its conclusion.
25. From the information before me, I agree with the Council that the development would not be likely to result in significant effects on the SPA, either alone or in combination with other development. As such, it is not necessary to go on to undertake an Appropriate Assessment.
26. I have noted examples of other permitted developments referred to by the appellant, but these do not alter my assessment of the appeal proposal which I have considered on its own merits and found in the overall balance to be acceptable for the reasons set out elsewhere in this decision.

Planning Balance

27. I have found that the proposal would be contrary to the aims of Policy DM35 of the JDMPD. However, it would not materially harm the vitality or viability of the Bury St Edmunds Town Centre.
28. Moreover, the Framework highlights the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation, and of making a positive contribution to local character and distinctiveness. The proposal would enhance the character, appearance and significance of the CA and the special interest of the host listed building including through the reinstatement of residential use as well as the replacement of the shopfront. I consider this an important benefit of the proposal that attracts significant weight. Policy DM18 of the JDMPD also advocates the re-use of historic buildings where proposals would protect their significance, and I agree with the Council that this lends some further support to the proposal.
29. The contribution would be small, but the development would additionally provide a new dwelling on a previously developed site within Bury St Edmunds which Policy CS1 of the St Edmundsbury Core Strategy notes is a main focus for new development.
30. In my judgement, these are material considerations sufficient to outweigh the failure to accord with the aims of Policy DM35 of the JDMPD.

Conditions

31. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. A condition in respect of hours of work during construction is necessary to safeguard the living conditions of nearby occupiers, and a condition relating to provision for the storage and collection of refuse and recycling is necessary to ensure adequate provision and avoid obstruction of the public highway.
32. A condition suggested by the Highways Authority relating to the provision of cycle storage was not proposed by the Council. Having regard to the location of the site within the town centre, as well as the limited outdoor space available and that the site includes a listed building, I consider that the condition would not be necessary or reasonable, and I have not imposed it. Nor have I imposed a condition suggested by the Public Health and Housing consultee regarding burning which would duplicate other regulatory controls and which I agree with the Council would not therefore be necessary.

Conclusion

33. For the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Philip Cobbold
Mr G Downes
Mrs Downes

Phil Cobbold Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Sarah Drane
Jo-Anne Rasmussen

West Suffolk Council
West Suffolk Council