



Appeal Decision

Site visit made on 8 November 2023

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2023

Appeal Ref: APP/D1265/W/22/3309139

43-43a East Street, Blandford Forum DT11 7DX

- 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 Steve Thorne against the decision of Dorset Council.
 - The application Ref P/FUL/2021/02634, dated 19 July 2021, was refused by notice dated 10 June 2022.
 - The development proposed is the conversion of the building to provide residential apartments and reconfigured the retail space (Class E), external alterations including extension over outbuilding at first floor level; new doors, windows, rooflights and internal remodelling.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of the building to provide residential apartments and reconfigured the retail space (Class E), external alterations including extension over outbuilding at first floor level; new doors, windows, rooflights and internal remodelling at 43 East Street, Blandford Forum DT11 7DX in accordance with the terms of the application, Ref P/FUL/2021/02634, dated 19 July 2021, subject to the conditions in the Conditions Schedule below.

Procedural matters

2. An application for costs has been made by the appellant against Dorset Council (the Council), and that is the subject of a separate decision.

Main Issue

3. The main issue in this case is whether the loss of retail floorspace would harm the vitality and viability of the Primary Shopping Frontage, given the development plan context.

Reasons

4. This property is a former restaurant and take-away but is now empty and has been for, I understand, some 7 years. The older part of the building fronts onto East Street and has a wing that runs back along the western boundary. However, a modern extension sits between the wing and Common Lane to the east, and opens up into the front element to create a relatively large area of commercial floorspace. The proposal would retain a little under 25% of this commercial area, in a unit in the front part, with the modern extension and the rear wing being converted to 4 apartments.
5. The *North Dorset Local Plan Part 1*, which was adopted in 2016, identifies the site as within the town's Primary Shopping Frontage, showing it to be the last property in that frontage on the south side of the road. The appellant

contended that the nature and character of activity along this part of East Street meant it should no longer be treated as part of the Primary Shopping Frontage. However, given it is identified as such in the development plan, this clearly has to be the starting point in assessing the case.

6. Local Plan Policy 12 states that

Within the primary shopping frontages of town centres, development resulting in the change of use from an existing ground floor A1 Class use within a unit fronting a street or pedestrian thoroughfare will not be permitted where this would result in any loss of retail frontage or ground floor net retail floorspace.

7. Further guidance on this is found in the policy's supporting text, which says

Within primary and secondary shopping frontages, the Council will seek to retain, and resist the loss of, retail and other A Class units even when they become vacant, as explained in more detail below. (Paragraph 6.56)

In Primary Shopping Frontages it goes on to say it is important that the level of retail provision is maintained and enhanced, while *'the retail offer should not be undermined by the loss of retail shops (and other Class A1 uses)'*. It adds that existing shops will be retained and the Council will resist their loss, including to other uses in Class A of the *Town and Country Planning (Use Classes) Order 1987*, as it was then operative in 2016 (the 2016 UCO). Finally, in relation to this scheme, the Council will seek to retain active shopping frontages.

8. The supporting text to Local Plan Policy 12 goes on to say that within Secondary Shopping Frontages a mix of shops, financial and professional services and food and drink outlets will be encouraged on the ground floor. It adds that the Council will seek to bring vacant shops, financial and professional services and food and drink outlets back into use. This is reflected in the Policy text itself, which seeks to resist *'the change of use of an existing ground floor A Class use within a unit fronting the street'* in a Secondary Shopping Frontage. It therefore seeks to maintain and, by inference, protect the wide range of uses that fell within the A Class of the 2016 UCO in such frontages.

9. In contrast, in relation to Primary Shopping Frontages the principal text of the policy seeks only to not permit the change of uses in Class A1 of the 2016 UCO, including to other uses within Class A, while the supporting text talks about safeguarding *'the retail offer'* and maintaining *'retail provision'*. Therefore I consider that this is focussed on uses in Class A1 of the 2016 UCO only, and not the restaurant use before me, and I have been referred to no definition of *'retail'* that would lead me to find otherwise.

10. I accept that when Primary and Secondary Shopping Frontages are taken together, Local Plan Policy 12 does seek to resist the loss of retail and other A Class units, as stated in paragraph 6.56. However, when I look at the text following that paragraph, I see nowhere where it is said that the loss of units in the A Class of the 2016 UCO, other than those in Class A1, would be resisted in Primary Shopping Frontages. Rather, the reference to *'other A Class units'* appears to relate to the part of the policy concerning Secondary Shopping Frontages only. Had it been the intention that there would have been a wider application of restraint in Primary Shopping Frontages it would have been open to the Council to word the policy differently.

11. The 2016 UCO was amended in 2020 (the 2020 UCO), with the former Classes A1 and A3 (along with others) being placed in a new Class E, and the contents of this Class roughly correlate with the description of main town centre uses in the *National Planning Policy Framework* (the Framework). The Council is of the view that, until the Local Plan is replaced or amended, it is reasonable and logical to interpret Local Plan Policy 12 to include the new single use Class E when assessing the loss of ground floor town centre use.
12. Class E of the 2020 UCO still identifies a retail shop separately (under Class E(a)), in a similar way to that found in the 2016 UCO. This is reflected in the Framework definition of main town centre uses, which also lists retail development as distinct from restaurants. Such a position seems to be accepted by the Council as it did not support a possible condition restricting the use of the commercial unit to a retail/shop only, but rather wanted an 'open' Class E permission to remain for greater flexibility.
13. Therefore, the approach the Council now advocates in relation to Class E of the 2020 UCO would, in my opinion, be a notable departure from the adopted development plan, as it would appreciably increase the width of the policy, and would do so in a manner that could have been incorporated in the original wording of Local Plan Policy 12 had the Council so desired. It would also blur the distinction between Primary and Secondary Shopping Frontages. For these reasons the application of the entire range of uses in Class E of the 2020 UCO is afforded little weight in my interpretation of the policy in relation to Primary Shopping Frontages. I am aware that the Framework says policy should make clear the range of uses permitted in primary shopping areas, and to my mind this is what my interpretation of Local Plan Policy 12 achieves.
14. The *Blandford+ Neighbourhood Plan (Modified Plan)* was 'made' in October 2023, and so post-dates both the Local Plan and the 2020 UCO. This plan also defines the appeal site as within the Primary Shopping Area in Blandford Forum town centre, albeit with the area shown as extending further eastwards along the road, well beyond No 43.
15. As such, the appeal site is subject to Neighbourhood Plan Policy B7, which states, amongst other things, that within the Primary Shopping Area the '*loss of established ground floor Retail floorspace or of an active frontage as a result of a change of use will be resisted*'. To my mind again retail floorspace does not include restaurant uses or similar. Indeed, later on in the policy, in relation to areas outside the Primary Shopping Area, it draws a distinction between '*shops and retail outlets (E(a))*' and '*food and drink (E(b))*', thereby accepting that the latter does not constitute a '*retail outlet*'. As such, Neighbourhood Plan Policy B7 does not seek to resist the loss of a restaurant use in a Primary Shopping Area. Although the Town Council expressed a concern about losing such a large area of hospitality floorspace in the town centre, I saw nothing in the policy that advocated its protection in this location.
16. Moreover, it is of note that, in relation to the Council contending Local Plan Policy 12 should be applied in relation to the wider range of uses in Class E of the 2020 UCO, it was not an approach the more recent Neighbourhood Plan opted to follow. Rather, throughout Policy B7 the Neighbourhood Plan clearly differentiates between retail uses and uses in Classes E(b), E(c), E(e) and E(g).

17. Accordingly, I consider that by changing much of this former restaurant to living accommodation, the proposal would not conflict with either Local Plan Policy 12 or Policy B7 in the Neighbourhood Plan.
18. In relation to wider issues about the effect of the scheme, the front part of the building at ground floor level would be a commercial unit of some 74 sqm. As such, an active frontage would remain. The appellant has suggested that this be restricted to retail use only by condition. Despite the Council's objections to this (see above), given my interpretation of the policy context such control would retain an active shopping frontage and bring the use under Local Plan Policy 12 and Neighbourhood Plan Policy B7. I therefore consider this condition would be justified.
19. I had little evidence about unit sizes across the town or the relative vacancy rates and take up rates. I recognise too that there is no policy requirement to market properties such as this before pursuing an application. However, I am aware of the submitted evidence from the appellant contending the acceptability of the size of the commercial unit proposed, especially when compared to the purported unattractiveness of the existing floorspace. I recognise that this position could have been more firmly shown through more extensive marketing, but that alone does not render the submissions in this regard as of no value. Although the Town Council said the remaining commercial space was too small to be viable, I had no firm reason to support such a view. Based on my observations when I visited, while there was a large shop next door selling clothing, fashion and household goods, and there was a relatively sizeable shop opposite occupied by a charity, otherwise, the units along East Street did not appear to be particularly large. Taking all this together, I have no basis to find that the proposal would undermine the vitality and viability of the Primary Shopping Frontage or Area.
20. In coming to this view I have noted the Council's concerns about the marketing exercise. However, as I have found no harm in any event, the acceptability of that exercise is not something I need to explore.
21. Accordingly, I have no basis to conclude the development would adversely affect the vitality and viability of the town centre, and I conclude it would not conflict with Policy 12 in the Local Plan or Neighbourhood Plan Policy B7.

Other Matters

22. Having regard to section 66 of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, No 43/43A is Grade II listed. It was built in the mid 18th Century, and its distinctive roof form, detailing and windows reflect its era of construction and add not only to its significance, but also to its special architectural and historic interest. Moreover the outbuildings behind No 43A are separately listed as Grade II. These date from the 18th Century and again their detailing reflects their origins and contributes to their significance and to their special architectural and historic interest.
23. The external and internal alterations arising because of this proposal are primarily to the modern element, and, in my opinion, would not cause harm to the significance of either of these 2 listed buildings. Similarly, any alterations to their older parts would be sympathetic. As such, neither the significance nor the special architectural and historic interest of either would be harmed.

24. Mindful that I have found no harm would be caused to the significance of No 43/43A, I have no grounds to find the scheme would adversely affect the settings of the various other listed buildings around, or the significance of the Blandford Forum and Approaches Conservation Area in which it is located.
25. The Council has raised no objections to the standard of amenity to be created, and in the absence of any evidence to the contrary I have no reason to come to a different view.
26. The site is in Flood Zone 2 but near to Flood Zone 3. A condition requiring the imposition of flood resilience barriers should allay concerns in that regard. However, it is unclear as to which plans show the proposed barriers. Despite this though from the submitted information I am satisfied that appropriate measures can be delivered, and so it is reasonable to impose a condition that confirms precisely what is intended.
27. Finally, the Council said it could now show a 5 year supply of housing land. However, I have found the development does not conflict with the policies cited and the site is within a town, and I am aware that the delivery of 5 years' supply is not a maximum. Consequently, the housing land supply position has not had a material bearing on my decision.

Conditions

28. Conditions concerning the commencement of development and it being implemented in accordance with the approved plans should be imposed. As well as the flood mitigation condition and the condition restricting the use referred to above, a cycle/bin store should be required in the interests of the appearance of the area and sustainable transport measures. Having regard to biodiversity, mitigation and enhancements should also be secured.

Conclusion

29. I therefore conclude the appeal is allowed.

JP Sargent

INSPECTOR

Conditions Schedule

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless otherwise modified under the conditions below, the development shall be in accordance with the following drawings:
 - Block And Location Plan 152 GA.01b
 - Site Plan 152 GA.02d
 - Existing Floor Plans 152 GA.03c 43a
 - Existing Elevations 152 GA.04c
 - Existing side, front and rear elevation 152.GA.04b
 - Proposed Ground Floor Plan 152 GA.05f
 - Proposed First Floor Plan 152 GA.05.01e
 - Proposed Roof Plan 152 GA.05.02a
 - Proposed Elevations 1 152.GA.06.01e
 - Proposed Elevations 2 152.GA.06.02d
 - Proposed Elevations 3 152.GA.06.03f
 - Proposed Window Details 152.GA.06.04d
 - Proposed Flood Resilience Barriers Ground Floor Plan 152 GA.06.05c
 - Window and Door schedule 152.GA.06.06b
 - Roof Light Schedule 152 GA.06.07
 - Door Details 152 GA.06.09
- 3) Before first occupation of the residential units hereby approved, flood resilience barriers shall be installed and fully operational in accordance with details that have first been submitted to and approved in writing by the local planning authority. Thereafter the approved flood resilience barriers shall be retained, kept free from obstruction and made available for the purposes specified.
- 4) Before first occupation of the residential units hereby approved, the bin storage and cycle parking facilities shown on Drawing Number 152.GA.02d shall be constructed in accordance with elevations and materials that have first been submitted to and approved in writing by the local planning authority, and thereafter maintained, kept free from obstruction and available for the purposes specified.
- 5) The works shall be undertaken in accordance with the Recommendations in chapter 4 of *Bat Survey Report* prepared by Phlorum Limited dated May 2022. Before the first occupation of the residential units hereby approved, details of biodiversity enhancements, along with a timetable for their implementation, shall be submitted to and agreed in writing by the local planning authority. The biodiversity enhancement measures shall be installed in accordance with the agreed details and timetable and thereafter maintained.
- 6) The commercial unit hereby approved shall only be used for purposes falling under Class E(a) of the *Town and Country Planning (Use Classes)*

Order 1987 (as amended) and for no other purpose in Class E of that Order.