



Appeal Decisions

Site visit made on 19 August 2024

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Appeal A Ref: APP/U1105/W/24/3337549

H Carter And Sons, 50 High Street, Budleigh Salterton, Devon EX9 6LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Harry Carter of CBSM 2012 Ltd against the decision of East Devon District Council.
 - The application Ref is 23/0885/FUL.
 - The development proposed is First floor extension to provide 1 no. one bedroom studio/flat.
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Appeal B Ref: APP/U1105/W/24/3336569

50 High Street, Budleigh Salterton, Devon EX9 6LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Harry Carter of CBSM 2012 Ltd against the decision of East Devon District Council.
 - The application Ref is 23/1829/FUL.
 - The development proposed is Replacement shopfront / new UPVC windows to replace 2 no. existing bay windows.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary Matter

3. The Council refused Appeal A due to the failure to provide an appropriate mechanism to secure a contribution towards measures to mitigate the effects of recreational use of the Exe Estuary Special Protection Area (SPA) and Ramsar site and the East Devon Pebblebed Heaths Special Area of Conservation and SPA (the habitats sites) arising from future occupants of the proposed development. During the course of the appeal, the appellant made a payment for mitigation to the Council through an agreement under section 111 of the Local Government Act 1972 (as amended) (the s111 agreement). The Council has accepted this payment and has confirmed that it will no longer be contesting the appeal on this ground. I return to this in other matters below.

Main Issues

4. The main issue in both appeals is whether the proposed developments would preserve or enhance the character or appearance of the Budleigh Salterton Conservation Area.

5. Additionally, in Appeal A, a further main issue is whether the location would be suitable for the proposed development, with particular regard to flood risk.

Reasons

Conservation Area

6. The Budleigh Salterton Conservation Area (the CA) extends across a large part of the settlement, incorporating within it residential development and the densely developed commercial core of the town centre, along High Street, where the appeal site is located. Buildings here are traditional in appearance, dating back to the 1800s with some limited pockets of more recent development. The buildings retain many of their original architectural features with several having traditional shopfronts and timber framed windows. These positively contribute to the character and appearance of the CA.
7. Brook Road, also within the CA, runs parallel to the section of High Street upon which the appeal site is located. Development here is significantly more mixed, with several properties, including the appeal site, having been extended at the rear, some with flat roofs and varying designs. Car parking and service yards exist around these. There are some smaller, more modern dwellings and commercial developments along the road. Buildings display a range of materials including brickwork, render as well as more contemporary glazing, timber and metal cladding. This part of the CA has evidently evolved over the years as reflected in the built form now present. It makes a neutral, with some elements making a negative, contribution to the character and appearance of the CA.
8. Number 50 High Street is a traditional two-storey property. The ground floor is in retail use split into 3 separate units (Numbers 50a, 50 and 50b), each with their own shopfront. The traditional features of this property, including the timber framed shopfronts with recessed doors, contribute to the heritage value of the appeal building. The upper floors feature two bay windows which extend over the shopfront with additional smaller windows in two front facing gables at roof level and to the side additions at first floor level. These smaller windows have been replaced with UPVC, the bay windows have retained their timber framed sash windows. The property occupies a prominent position on a main commercial street and makes a positive contribution to both the character and appearance of the CA along High Street.
9. The rear of the appeal site is largely dominated by a single storey flat roofed extension of no particular architectural merit with the rear of the traditional building visible behind this. This extension adjoins a three-storey building at the corner of The Lawn and Brook Road and is set back behind a car parking area fronting the road. Whilst the rear elevation of the original building is partially visible, the existing single-storey extension dominates and I find that the appeal building has a neutral impact on the CA when viewed from Brook Road.
10. The proposed first floor extension would sit above the existing single-storey extension, extending the full width of that extension and above its parapet wall. It would have a flat roof. According to the application form, the external walls would be clad in zinc and cedar boarding although the drawings do not indicate where the boarding would be installed.

11. The extension would primarily be viewed at the rear of the property, from Brook Road, in the context of the varied development in this location. The palette of materials would be similar to those incorporated into a contemporary building at the corner of Brook Road and Ragg Lane which lies a short distance from the appeal property. The additional height above the parapet wall would further obscure views of the original building although its roof would remain visible. There would be little harm arising from this. Due to its modest height above the existing extension, its set back position and the surrounding development, the proposed extension would have a neutral impact on the character or appearance of the CA and would therefore preserve its significance.
12. The appellant has explained that the bay windows need to be repaired. Due to their poor sound and thermal qualities, it is proposed to replace these with UPVC to match other windows in the property.
13. I have not been provided with full details of the proposed windows other than a description stating to match the existing. During my site visit, I observed some windows along High Street which had been replaced with UPVC, including those to the appeal building. The detailing on these UPVC windows is not as fine as timber framed windows, with the frames appearing thicker and starker when viewed from the street. The presence of trickle vents adds to their modern appearance.
14. The bay windows are in a prominent position within the primary elevation of the building and fronting an important thoroughfare within the CA. Given my observations on site and the limited details provided, the replacement windows would detract from the traditional character and appearance of the building, cause harm to it and therefore its contribution to the CA.
15. The Council previously found that the replacement of traditional timber framed sash windows to the appeal building with UPVC windows acceptable. This was on the basis that the replacement windows were of good quality and replicated the key qualities of the original windows. Whilst I acknowledge this, I am mindful of the guidance provided by Historic England in respect of the use of UPVC windows and how these threaten the heritage value of historic areas because of concerns around their ability to match the sections and proportions of historic joinery. I share these concerns.
16. It is proposed to replace the shopfront to the retail unit at No 50. The replacement shopfront would retain the existing window proportions and the recessed door which are elements of the shopfront that positively contribute to its character. The increased height of the stallriser to match the adjacent unit at 50b is a common and traditional feature seen within shopfronts throughout the CA. In this regard, the replacement shopfront would preserve the character and appearance of the CA.
17. The appellant has suggested that the Council had no justification to say that there was insufficient information submitted with the application in order to fully understand the impact of the proposed changes to windows and shopfronts, given that these impacts would have been considered in relation to approved schemes in 2015¹ and 2017² respectively. However, those approvals

¹ Council Ref: 15/2365/FUL

² Council Ref: 17/0115/FUL

were some years ago. I note that limited information in respect of the impact on the heritage asset was submitted with the current scheme for replacement shopfront and windows. I have nonetheless made my own assessment of these alterations.

18. The replacement windows would be harmful. Thus, the proposal in Appeal B would fail to preserve or enhance the character or appearance of the CA and would harm its significance. I attach considerable importance and weight to the desirability of avoiding any such harmful effect in accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
19. The harm the proposal would cause to the significance of the conservation area would be less than substantial. Paragraph 208 of the National Planning Policy Framework (the Framework) states that where a proposal would lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal.
20. The benefits of the proposal would be limited to repairs and environmental improvements within the building. Although the replacement windows would be new and in good condition, they would not enhance the character and appearance of the building. Thus, the public benefits of these would be very limited. They would not outweigh the less than substantial harm I have found.
21. I therefore conclude that the proposed development in Appeal B would fail to preserve the character and appearance of the CA. It would therefore conflict with Policies EN8 and EN10 of the East Devon Local Plan, adopted 2016 (the EDLP) and the Framework. Together these require sufficient information to understand the potential impact of the proposal on a heritage asset and seek development within conservation areas that would preserve or enhance the appearance and character of the area.
22. The proposed development in Appeal A would not harm the character or appearance of the conservation area. It would therefore accord with Policies Strategy 6, D1, EN9 and EN10 of the EDLP, Policies H2, H3, B1 and B3 or the Budleigh Salterton Neighbourhood Plan 2017-2031 (made 2017) and the Framework. Together and amongst other things these policies require development to avoid harm to historic character and preserve or enhance the character and appearance of the CA.

Flood risk

23. According to the appellant's submitted Flood Risk Assessment, the appeal site is located within Flood Zone 3 with a high probability of flooding. This arises from the potential risk of flooding caused by reservoir failure, the reservoir being around 3 to 4 kilometres (2 miles) northwest of the appeal site.
24. The proposal is for a single dwelling. The Framework sets out that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. It explains that the aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. It goes on to explain that if it is not possible for development to be located in areas with a lower risk of flooding, the exception

test may have to be applied. Policy EN21 of the EDLP also requires the application of these tests in order to guide development to areas at least risk of flooding, and accords with the Framework.

25. The Planning Practice Guidance (PPG)³ explains how the sequential test should be applied to planning applications. It confirms that the test should be applied to both major and non-major development proposed in areas at risk of flooding, with some limited exceptions, none of which are applicable to the appeal scheme. It sets out that for individual planning applications, the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed.
26. The Council has stated that an appropriate area of search for this type of development would be the entire District of East Devon. The appellant has not undertaken a search to determine whether there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding, as required by the Framework. Consequently, there is no evidence to demonstrate that the sequential test has been met.
27. I appreciate that the proposal is for development at first floor which reduces the vulnerability of future occupants during times of flooding as this in itself would provide a refuge. I also acknowledge that reservoirs, which is the identified source of the flood risk in this location, are less likely to flood than flooding from other sources, they are regularly inspected and maintained and that there is no record of flooding in this location. These factors do not override the requirement to avoid inappropriate development within Flood Zone 3.
28. Given my findings in this regard, it has not been necessary for me to go on to consider whether or not the proposed development would satisfy the requirements of the exception test.
29. I conclude that the location would be unsuitable for the proposed development with particular regard to flood risk. It would therefore conflict with Policy EN21 of the EDLP, the Framework and PPG as referred above.

Other Matters

30. St Peter's Church lies to the north of Brook Road. It is a Grade II listed building. Section 66(1) of the Act requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. The extension would not be readily visible from the church due to the intervening vegetation and buildings. It would also merge into existing development close to the church which forms part of its urban setting. In view of this, it would not harm the setting of the listed building.
31. The appeal site lies within the contribution zone for the habitats sites, which are subject to statutory protection under the Conservation of Habitats and Species Regulations 2017. Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the protected sites. I am the competent authority for the purposes of this appeal. However, notwithstanding the payment made under the s111 agreement, there is no need for me to consider the implications of the proposal

³ Paragraph: 027 Reference ID: 7-027-20220825

on the protected habitats sites because the scheme in Appeal A is unacceptable for other reasons.

32. The appellant has suggested that the Council's planning officer did not visit the site due to inaccuracies in the description of the building, notably in respect of the shopfront and windows. It is the appellant's view that the proposals for the replacement shopfront and windows have therefore not been given proper consideration. I have no substantive evidence in this regard. In any event, I have visited the site and fully assessed the scheme.

Conclusion

33. I find that the proposed development in both Appeal A and Appeal B would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeals should be dismissed.

Rachael Pipkin

INSPECTOR