



Appeal Decision

Site visit made on 15 July 2025

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2025

Appeal Ref: APP/U1105/W/25/3364573

34 Queen Street, Seaton, EX12 2RB

- 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 Charles Hankin against the decision of East Devon District Council.
 - The application Ref is 24/2715/FUL.
 - The development proposed is partial shop conversion into a ground floor flat and creation of 2 no. residential units with enlarged dormers and associated external works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have adopted the description of development from the Application Form.
3. The Appellant has raised concerns over the lack of engagement by the Council during the determination of the application. The Council have, in turn, drawn attention to their General Working Practices to support the approach they took. Even so, these are not matters that I can address or comment on in the context of an appeal that has been submitted under section 78 of the Town and Country Planning Act 1990 against a refusal of planning permission. The option remains open to the Appellant, if they have not done so already, to take these matters up directly with the Council under its normal complaints procedure.
4. In relation to any potential amendments to the appeal scheme, I can only consider the proposal that was determined by the Council and is now before me.

Main Issues

5. The main issues are: (a) whether the loss of commercial space on the ground floor would have a harmful impact on the vitality and viability of the town centre; (b) the effect of the development on the character and appearance of the conservation area; and (c) whether the development would secure an acceptable standard of accommodation for future occupiers.

Reasons

Loss of commercial space

6. Policy E9 of the East Devon Local Plan 2013 – 2031 (LP) seeks to ensure that town centres remain viable and competitive and sets out a criteria based approach

for promoting retail and non-retail uses where these would add variety and increase activity in the centre in question. Criterion 4 to the policy states that permission for a change of use of commercial premises to non-retail uses will not be permitted unless it has been clearly demonstrated that there is no longer a need for such uses and the building has been marketed for at least 12 months without interest. A similar approach is set out in Strategies 25 and 32 of the LP with the emphasis on resisting the loss of employment, retail and community uses that contribute to a town centre's fabric, viability and attraction to residents and tourists.

7. The appeal site forms part of an existing parade of largely commercial ground floor units with residential above located within Seaton Town Centre (STC). Part of the appeal proposal involves the change of use of the rear of the ground floor to the commercial unit into a 2 bedroom flat. Based on the submitted plans, it would appear that the size of the commercial unit would reduce from some 84.3 square metres to 26.6 square metres. I agree with the Council that this could lead to a significant loss of commercial space and associated economic activity within STC. No marketing evidence has been provided in support of the loss of this space and in the absence of any justification this aspect of the proposal would conflict with the aims and objectives of policy E9 and Strategies 25 and 32 of the LP.
8. The Appellant states that the commercial space has been marketed but has not submitted any marketing evidence to support that statement. The Appellant's Final Comments (AFC) suggests that this evidence is available on request. However, it is for the Appellant to demonstrate compliance with policy E9. If this evidence is available, it is unclear to me as to why it has not submitted it as the policy is very clear in setting out that this evidence is required as part of the justification for the loss of commercial space, as proposed. The Appellant also refers to interest from potential tenants for the smaller commercial space. Again, the Appellant has not provided any evidence of those tenants' interest, albeit that would not meet the requirement of criterion 4 to policy E9.
9. The Appellant refers to the alleged inconsistencies with the planning approval at 42 Queen Street, for a partial change of use of the commercial ground floor space to residential. I have not been provided with the full planning background to that case but note that the Council state that this approval was supported partly due to the existence of a fall back option whereby the lawful Class E use could be converted to residential under permitted development. As a legitimate fall back option, it was thus an important material consideration to which appropriate weight could be accorded. The lawful use of the ground floor to the appeal site is Sui Generis and it does not, therefore, benefit from similar permitted development rights. As such, this example does not affect my findings on this issue.
10. Moreover, the policies do not promote a "*blanket refusal*", as the Appellant implies, as the loss of commercial space may be acceptable where it is justified in line with the criteria to policy E9. It is for the Applicant to demonstrate that there is no need or interest for the commercial space that would be lost, not the Council. It is also for the Appellant to show that this would, to quote policy E9 "*not harm the diversity, viability and vitality of the centre.*" The AFC also refers to policy E10 and suggests that the Council have done so in error. I note that this is referred to in the Town Council's response. I have assumed that this is an error in that policy E10 relates to the primary shopping frontages and the correct policy in this case is policy E9.

11. I accept that the policies in the National Planning Policy Framework (NPPF) seek to boost the supply of new homes (paragraph 61), promote the effective use of land and buildings (paragraphs 124 – 125) and recognise that housing can play an important part in ensuring the vitality of town centres (paragraph 90). The latter paragraph also requires planning policies and decisions to support the role that town centres play at the heart of local communities, including promoting their long-term vitality and viability and meeting anticipated needs for retail, leisure, office and other main town centre uses. All of these considerations must be weighed up in the balancing exercise.
12. In addition, planning law requires applications to be determined in accordance with the development plan, unless material considerations indicate otherwise. The starting point is the relevant policies of the LP, which remain, in my view, broadly consistent with the NPPF. As I have found, this part of the appeal proposal would conflict with policy E9 and Strategies 25 and 32 of the LP. Whilst the NPPF is a material consideration its policies do not, in this instance, outweigh the conflict I have identified with the LP.
13. Accordingly, I find that the proposed loss of commercial space would conflict with the aims and objectives of policy E9 and Strategies 25 and 32 of the LP.

Character and appearance

14. The appeal site lies within the Seaton Conservation Area (SCA). Section 72(1) of the Planning (Listed Buildings and Conservation Area) Act 1990 requires, therefore, that special attention be paid to the desirability of preserving or enhancing the character or appearance of that area. Similar advice is to be found in the NPPF and in policy EN10 of the LP.
15. As there is no Character Appraisal for SCA I have based my assessment on the submitted evidence and my observations on site.
16. Whilst the retention of the shopfront and the associated renovation works would enhance the appearance of the appeal building, the Council contend that the proposed enlargement of the front and rear dormers would result in harm to this designated heritage asset.
17. The SCA includes various character areas such as the seafront and the town centre that include a mixture of 19th and 20th Century properties. The town centre area includes Queen Street and Fore Street, which represent the main commercial heart of the centre. Within these streets, there are a number of period properties that retain their original features and detail. These are interspersed with some poor modern infill developments and bland shopfronts, that fail to integrate with the more historic and architectural qualities of the area. Important features also comprise localised groups of original late 19th and early 20th Century shopfronts and largely unspoilt frontages, which include the appeal site.
18. Whilst it would appear that the character and appearance of the SCA has been harmed by piecemeal development and alterations, it still retains a large number of properties with important period detailing, as well as historical and architectural features, that contribute to the special interest of the area.
19. All of the above factors contribute to the significance of the SCA as a whole.

20. Within this context, the proposed enlarged dormers would be highly prominent and excessive in terms of their scale, bulk and form. They would appear overly large and out of character when compared to the modest size and scale of the existing dormers, which are replicated on the properties either side, No's 32 and 38 Queen Street. The enlarged dormers would represent a dominant feature within this part of the terrace whereas the existing dormers are more discrete and appear to form part of the original building's features.
21. As I observed on site, the appeal site, both its front and rear, are highly visible from various public vantage points within the SCA. From these viewpoints the proposed enlarged dormers would not sit comfortably on the appeal site. They would neither enhance or better reveal the historic value of the area or the contribution that the appeal site makes to the character and special interest of the SCA.
22. The Appellant refers to examples of large dormers/roof additions at No's 42 and 46 Queen Street. The Council accepts that there are developments within the SCA that undermine its historic and architectural qualities, but contend that this does not justify new development that would further undermine the area's special interest. I fully concur with those views. Even so, the Council indicate that an assessment of the planning history has not revealed any permission for the works at No.42, and it would appear that the planning permission for No.46 dates from April 1985, prior to the designation of the SCA in 1991.
23. Reference has been made to the current application for development in relation to 33 Queen Street, opposite the appeal site. However, no further details have been provided of this application. I understand this application relates to the PO Sorting Office, an example of one of the unsatisfactory and poorly integrated frontages within this part of the SCA.
24. None of these examples are, therefore, directly comparable to the appeal proposal and they do not affect my findings on this issue. Even so, each application should be determined on its individual merits and that is the approach that I have adopted in this case.
25. For the reasons set out above, I find that the proposed enlarged dormers would not preserve or enhance the character or appearance of the SCA. In view of this and as is required by the NPPF considerable importance and weight must be attached to the harm to this heritage asset. The appeal proposal would lead to less than substantial harm to the significance of this heritage asset, with the level of harm being at the lower end of less than substantial. As is required by paragraph 215 of the NPPF this harm must be weighed against any public benefits of the development.
26. This part of the appeal proposal would enable the existing single flat on the upper floors to be converted into two flats. The additional flat would be a public benefit, as would employment during construction. However, the contribution to housing supply would be small and the employment would be short term, and I would, therefore, only accord limited weight to these benefits. As such, these benefits would not be sufficient to outweigh the harm I have identified to the significance of the heritage asset.
27. Accordingly, I find that the proposed development would be contrary to policy EN10 of the LP and paragraphs 202, 210, 212 – 213 and 215 of the NPPF.

Living conditions – future occupiers

28. Policy D1 of the LP relates to 'Design Standards' and requires new development, amongst other matters, to have regard to the amenity of future occupants of residential properties with appropriate access to open space and storage for refuse bins, cycles and prams, particularly where the proposal involves a conversion into flats. Paragraph 135 f) of the NPPF requires planning policies and decisions to ensure that developments create places with a high standard of amenity for existing and future users, including making use of the nationally described space standards.
29. In relation to the nationally described space standards the Council state that the proposed second floor flat (Flat 3 on the submitted plans) would have a total floor area of some 49.4 square metres. As this would be marginally under the minimum of 50 square metres for a 1 bed 2 person flat in the national space standards, they consider the size of this unit to be acceptable. I concur with these findings.
30. In relation to the ground and first floor flats (Flats 1 and 2) these would have a total area of some 55.71 and 55.34 square metres respectively, well below the minimum for a 2 bed 3 person unit of 61 square metres (or 70 square metres for a 2 bed 4 person unit). All of these figures are taken from the submitted plans, albeit the annotations on these do not correlate with the bedroom layouts, with the former suggesting both units are for 2 people and/or 1 bed, whereas they are 2 bed units and show accommodation for 3 people (Flat 2) and 4 people (Flat 1).
31. Given the above, I agree with the Council that proposed Flats 1 and 2 fail to meet the minimum space standards and would not provide adequate amenity for future occupiers, resulting in substandard living accommodation.
32. The Appellant has referred to discussions with the Council where they allege it was confirmed that the nationally described space standards had not been adopted. The Council indicates that it has no record of these discussions, and that the Appellant has not provided any evidence to support this statement. Even so, the Council point out that had the Appellant entered into pre-application discussions then they would have been advised that these standards were taken into consideration, even though that they had not been formally adopted into development plan policy. As the NPPF is a material consideration and in the absence of any similar standards in the LP, I am satisfied that the Council's approach is not unreasonable and that it is appropriate to have regard to the national described space standards.
33. Accordingly, I find that the proposed development would result in a poor standard of amenity for future occupiers, contrary to policy D1 of the LP and paragraph 135 f) of the NPPF.

Conclusions

34. For the reasons given above and having taken all other matters raised into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR