



Appeal Decisions

Site visit made on 19 December 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 January 2018

Appeal A: Appeal Ref: APP/N1160/W/17/3178676

9 Parade, Plymouth PL1 2JL

- 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 Ivo Hesmondalgh of Londonwide Properties PLC against the decision of Plymouth City Council.
 - The application Ref 16/02312/FUL, dated 22 November 2016, was refused by notice dated 2 March 2017.
 - The development proposed is the conversion of warehouse to commercial premises (Class A1, A2 & A3) on the ground floor & residential premises (Class C3) on the first, second & roof spaces.
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Appeal B: Appeal Ref: APP/N1160/Y/17/3178683

9 Parade, Plymouth PL1 2JL

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Ivo Hesmondalgh of Londonwide Properties PLC against the decision of Plymouth City Council.
 - The application Ref 16/02315/LBC, dated 22 November 2016, was refused by notice dated 2 March 2017.
 - The works proposed are conversion of warehouse to commercial premises (Class A1, A2 & A3) on the ground floor & residential premises (Class C3) on the first, second & roof spaces.
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Decisions

1. The appeals are dismissed.

Preliminary Matters

2. Notwithstanding the description of the works which is taken from the application form it is clear that they relate to internal and external works to enable the proposed development described in the banner heading above. The Council determined the application relating to Appeal B on that basis and so shall I.
3. Both parties refer to the Sutton Harbour Area Action Plan but I have not been supplied with a copy of that document. As such, I give it little weight in the determination of these appeals.

Main Issue – both appeals

4. The main issue is whether the proposed development/works would preserve the Grade II listed buildings known as 56 Vauxhall Street (No 56) and 9 Parade (No 9) or any features of special architectural interest that they possess and whether it would preserve the significance of the heritage assets.

Reasons

5. The appeal site comprises 2 buildings back to back that are both grade II listed and the dividing wall between them has had openings inserted within it, at some time in the past, to allow the buildings to be used as one building. The site is within the Barbican Conservation Area (BCA) and adjoins Custom House which is a grade II* listed building. It is also within close proximity to Sutton Harbour and the surrounding area is characterised by a mix of commercial and residential uses.
6. Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) require special regard to be had to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. Section 72(1) of the Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conservation area.
7. I acknowledge that the list descriptions do not mention the interiors of the buildings as they state that the interiors were not inspected. In my experience this is not unusual as list descriptions at that time were mainly intended for identification purposes. From the details available to me, including the list descriptions, and my own observations it is apparent that the buildings' special interest and significance mainly derives from their age, architectural form, both internal and external, their fabric and features and their use. Both buildings were used for warehouse purposes and this is evident through their open and spacious interiors.
8. Even though the buildings have been altered internally there is an appreciable amount of historic fabric and features remaining within the buildings. This includes staircases and timber joinery within No 9, timber floor and roof structures, shutters and doors throughout the buildings and 2 hoists within the roofspace. These internal features make a considerable contribution to their significance through their evidential and aesthetic value.
9. It is not disputed that the proposed external alterations to the 2 facades would not harm the special interest of the buildings. The ground floor would remain largely as one space and the public would have access to this part of the building. A new first floor would be inserted where there currently is a void. There is evidence within the building that there was a first floor at some time in the past over that area. As such these works would not harm the significance of the buildings.
10. However, the staircases in No 9 that extend down to ground floor level would be removed. Both of these staircases appear to date from the 19th Century with the one being highly decorative and moulded and the other being of utilitarian design. The decorated staircase leads to a room that contains panelled and glazed partitions and timber joinery. In my experience these features are evident that this was a high status room probably used by the owner or manager of the warehouse. There is no indication on the submitted evidence that these features would be retained.
11. On the upper floors the sub-division into 6 apartments would entail the construction of a lightwell through the roof and down to first floor level each side of the central dividing wall. The lightwell would enable light penetration into the centre of the building but it would entail the removal of part of the roof

materials and part of the 2 upper floor structures. All 3 upper floors would also be sub-divided by stud partitions into numerous rooms. New staircases would require the removal of additional floor structure and would add to the sub-division of the space.

12. The timber roof structure is expressed within the roof space with the trusses having sloping struts that extend into this space. One of the struts would need to be repositioned to allow access to the head of the stairs. Both winches within the roof space would be removed with one being repositioned in the ground floor space and the other being offered to a museum. There is no indication that historic doors that appear to have been reused within modern partitioning around a modern staircase in No 56 would be retained within the building.
13. The Planning Practice Guidance¹ (PPG) states that substantial harm is a high test, and that an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. Although theoretically reversible, in this case the harm from the sub-division of the upper floors into many smaller spaces and the loss of almost any sense of the internal spatial qualities and completeness of the warehouses, including that of the roofspace and its attractive roof trusses, would be substantial. This would be compounded by the loss of a considerable amount of internal architectural features and historic fabric that contribute evidential and aesthetic value to the significance of the buildings.
14. The preservation of the buildings' envelopes, with their exteriors largely intact, the removal of blocked openings and the public access to the ground floor are important considerations that offer some mitigation. Furthermore, some aspects of the works would individually constitute less than substantial or negligible harm. However, overall the impact of the proposed scheme would still represent substantial harm.
15. Listed buildings are all nationally important and possess special interest. Paragraph 132 of the Framework states that when considering the impact of a proposal on a designated heritage asset, great weight should be given to the asset's conservation. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to a grade II listed building should be exceptional. Paragraph 133 of the Framework goes on to say that substantial harm to a designated heritage asset should be refused, unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh the harm or that four further tests all apply.
16. The preservation of these prominent buildings' envelopes and the commercial use of the ground floor allowing public access to it are public benefits. However, I have already assessed that they would not prevent my finding of substantial harm to the assets' significance. The proposal would generate temporary economic benefits from the construction of the scheme and further economic benefits from its occupation and use. The provision of 6 apartments adding to the mix and choice of housing in an area with a considerable shortfall in its housing supply would be a social benefit. The proposal would also attract a Community Infrastructure Levy payment. There would be accessibility benefits associated with the proposal specifically, the appeal site is

¹ Paragraph: 017 Reference ID: 18a-017-20140306

within the built up area of Plymouth where there is a range of services, facilities and employment opportunities available.

17. These benefits would amount to a significant public benefit. Nevertheless, I consider that an alternative, less intrusive, way of converting the building to a mixed use could be possible and could secure similar public benefits. Consequently, this limits the weight that I give to these benefits. In summary, I am not convinced that the public benefits of the particular scheme put forward would outweigh the substantial harm to the heritage asset.
18. Moving on to the four tests in paragraph 133, the first is whether the nature of the assets prevents all reasonable uses of the site. I accept that the properties present a number of constraints, including their deep narrow plan, narrow staircases, timber floors and attendant maintenance burden which restrict the range of functions for which they would be ideally suited. Taking into account the marketing of the site for warehouse purposes it is evident that the original use of the buildings is no longer viable. The appellant's evidence also indicates that office use would have energy loading, ventilation and plant requirements that would result in more harm to the buildings than the residential use.
19. Nevertheless, I have little evidence before me to indicate that there has been an investigation of alternative conversion scenarios for residential and commercial uses that would enable the retention of a greater amount of the buildings' architectural features and historic fabric and a greater preservation and appreciation of its spatial qualities. As such, there is no strong evidence that all reasonable use of the buildings is prevented by the very nature of the assets.
20. The second test is that no viable use of the asset itself can be found in the medium term through appropriate marketing that will enable its conservation. The PPG² advises that the aim of marketing is to reach all potential buyers. I note that the building has been empty for some time and that previous planning and listed building applications have not been approved. However, the only evidence of marketing before me is in relation to the site's use as a warehouse. As such I am not convinced that the marketing would have reached all potential buyers and that potential interest for viable uses in the medium term has been exhausted.
21. Regarding the third test, I accept that, in the current climate, grant funding, with or without public or charitable ownership, would be likely to be very difficult if not impossible to access for the appeal properties. Whilst I have been given no evidence of any serious effort to investigate such options, the Council has not suggested a possible source of funding or ownership.
22. The final test is whether the harm to the heritage asset is outweighed by the benefit of bringing the site back into use. The Council says that it is prepared to countenance a mixed use and I have no reason to disagree. However, it has not been demonstrated that a mixed use conversion of the kind and intensity proposed is the only viable way of bringing the site back into use. Overall, therefore, I am not convinced that the benefit of bringing the site back into use would outweigh the harm in this case.

² Paragraph 016 Reference ID: 18a-016-20140306

23. Taking into account all of the above the proposal would not comply with paragraph 133 of the Framework and Policies C02 and C03 of the Plymouth Local Development Framework Core Strategy (CS) which, amongst other things, seek development to be well designed and safeguard historic environment interests and the character of listed buildings.
24. The proposal would also conflict with Policy DEV21 of the emerging Plymouth and South West Devon Joint Local Plan (JLP) which seeks, amongst other things, to protect the character and special interest of heritage assets. In relation to paragraph 216 of the Framework the JLP appears to be at an advanced stage of preparation and this policy is broadly consistent with the Framework. However, I have no evidence to indicate whether there are any outstanding objections to this policy. Consequently, I consider that moderate weight can be given to the conflict with this policy.
25. I have no evidence before me to indicate that conserving the historic environment is not a key principle of the development plan. As such, I consider that the proposal would conflict with the policies of the development plan when taken as a whole, which seeks similar aims to those sought by the Framework.

Other matters

26. Whilst the Council make no reference in their reason for refusal to the effect of the works on the character and appearance of BCA or the setting of Custom House, as a statutory consideration, I am required to have regard to these matters when determining the appeal. From my observations at the site visit, and the details available to me I consider that that the significance of BCA is mainly drawn from its mixed character, the range of built development within it, including the number and quality of historic buildings and the relationship of the buildings to each other and the adjoining harbour.
27. As stated above, the external alterations to the fabric of the building would not harm the significance of the listed building and the re-use of this prominent building is a benefit of the scheme. As such, I consider that the proposal would preserve the character and appearance of BCA.
28. I have very little detail before me in relation to the special interest/significance of Custom House. However, it appears that the special interest/significance of this listed building is largely derived from its age, form, fabric, architectural features and use. Furthermore, it would appear that the elements of setting that contribute to its significance include its relationship with the Parade and Vauxhall Street. In that context, I consider that the appeal site contributes little, if anything, to the significance of this building, or its setting. Taking into account my finding in relation to BCA the scheme would have little impact on the ability of the public to interpret or experience its significance. Accordingly, the proposal would not harm the setting or significance of Custom House.
29. I note the appellant's concern regarding the Council's decision notices in relation to the wording of the reasons for refusal. However, that is not a matter for my consideration in the context of this appeal decision.

Overall Balance and Conclusions

30. Both parties agree that the Council cannot demonstrate a 5 year supply of housing land (HLS) as required by paragraph 47 of the Framework and that

only a HLS of around 2 years can be demonstrated. Where the Council is unable to demonstrate a 5 year HLS, paragraph 49 of the Framework indicates that relevant policies for the supply of housing should not be considered up-to-date. Furthermore, paragraph 49 of the Framework states that all housing applications should be considered in the context of the presumption in favour of sustainable development.

31. Paragraph 14 of the Framework explains that there is a presumption in favour of sustainable development at the heart of the Framework, and that this should be seen as a golden thread running through both plan-making and decision-taking. It goes on to indicate that where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole; or unless specific policies in the Framework indicate that development should be restricted.
32. Having regard to my findings above and footnote 9 of the Framework, I find that the final bullet point of paragraph 14 of the Framework is engaged, as specific policies in the Framework indicate that development should be restricted. As such, the presumption in favour of sustainable development does not apply.
33. The harm that would be caused to the special interest/significance of the heritage assets also leads me to conclude that the proposal would conflict with the development plan as a whole. In accordance with S38(6) of the Planning and Compensation Act 2004, and as set out in paragraph 12 of the Framework, development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. In this case there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.
34. The appellant has referred to a court judgment³ in relation to the fact that although a proposal may not meet some of the development plan policies a proposal should be considered as a whole and with any other material considerations taken into account. Whilst the proposal meets some development plan policies I consider that taking into account all of the above that it would conflict with the development plan as a whole and that the court judgement supports the approach taken in this decision.
35. For these reasons, and having had regard to all other matters raised, I conclude that the appeals should be dismissed.

D. Boffin

INSPECTOR

³ Tesco Stores Limited v Dundee City Council [2012] UKSC 13