

Ward Budleigh And Raleigh

Reference 22/0571/FUL

Applicant Mr Clayton

Location 1 Rolle Road Budleigh Salterton EX9 6JZ

Proposal Change of use of ground floor from use class E(b) (sale of food and drink for consumption on the premises) to use class C3 (dwelling house) including installation of 2no flues and extractor fan cowl.



RECOMMENDATION: Refusal



		Committee Date: 26th July 2022
Budleigh And Raleigh (Budleigh Salterton)	22/0571/FUL	Target Date: 17.05.2022
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EXECUTIVE SUMMARY

This application is brought before the Committee as the officer recommendation is contrary to the view of two of the ward members.

1 Rolle Road, located on the corner of its junction with Queen Street, is a two storey building comprising a currently vacant commercial unit, formerly a cafe/bistro, with residential accommodation, in the form of a two bedroom flat, above. Access to both is shared with the staircase up to the flat effectively splitting the commercial space into two areas.

The premises do not form part of the town's Primary Shopping Frontage or Town Centre Shopping Area but are located within the designated Budleigh Salterton Conservation Area.

Planning permission was granted in January this year for external alterations to the premises, including the partial removal of a rear single storey lean-to element that formerly housed the kitchen for the cafe/bistro use.

The current application proposal involves the change of use of the ground floor to create additional living accommodation to that existing at first floor level alongside the retention of two flues and extractor fan cowling that have been installed on the roof of the building.

The proposal mainly turns on the extent to which it complies with Local Plan Strategy 32 and the extent to which all options for the retention of the premises in their current lawful use have been fully explored without success for a sufficient

time period and it being demonstrated that there is a clear demonstration of surplus supply of provision in the locality.

In this case, the premises had been marketed for around 20 months prior to being purchased by the applicant as opposed to the more common scenario where the selling party is seeking permission for change of use having failed to market a premises for its current use for the requisite time period (in line with Strategy 32). The marketing carried out did not comply with the Council's marketing guidance.

However, in spite of the applicant's intentions to seek a residential use for the former commercial unit, seemingly off the back of an informal telephone conversation with a Council officer during which it is claimed that advice was provided to the effect that permission would be likely to be forthcoming in the event of an application being made, the fact remains that the building was sold with no permission in place for change of use and without adequate marketing in accordance with the relevant planning policy.

As such, taken together with the absence of any evidence to demonstrate that the premises were no longer viable as a cafe/bistro, and that there is a surplus of provision of these uses within the town centre, it is not accepted that these fundamental policy requirements can be regarded as having been properly satisfied at the present time. Moreover, whilst there is no reason to question the accuracy of the series of events claimed in this case, it is possible that they could be repeated, and accepted, elsewhere in the future without robust assessment against the provisions of Strategy 32 having been undertaken, thereby undermining its objectives and the Local Plan more generally.

Despite the support for the proposal offered by the town council and ward members therefore - and notwithstanding the third party objection on the basis of smell nuisance from smoke emitted from a wood burning stove via one of the flues which it is not considered could reasonably form the basis for objection - it is recommended that permission be withheld under the current circumstances.

CONSULTATIONS

Local Consultations

Parish/Town Council

This Council supports the application.

Budleigh Salterton – Cllr. A. Dent

Thank you for letting me have sight of this report.

I do not agree with the recommendation to Refuse for the following reasons:

1. This building housed the 'Slice of Lyme' restaurant for a number of years. It was popular locally but when the owners decided to retire there was no interest in taking on the business. The attempts to market the business spread over at least two years.

2. The officer report relies heavily on Strategy 32 in the current Local Plan. This focuses on 'Resisting Loss of Employment... Sires and buildings.
 - a. As the Slice of Lyme has been closed for nearly a year, the employees have now found other jobs.
 - b. In its existing configuration the ground floor premises were unsatisfactory for the customers: the kitchen staff and an expensive relay would have been needed to be practical for a new owner.
 - c. The officer's report says that Budleigh is under provisioned with cafes/restaurants. At the time of writing there are 19 such outlets in the immediate area as well as shops selling ice creams. The officer's remark in this respect indicates a lack of proper research and is misleading for the report reader.
3. My understanding from the report was that the new owner received pre-planning advice that encouraging him to believe the conversion to a dwelling would be looked upon favourably by the planning team. As a result, the building work has been largely completed and the building has been much improved both visually and in practical terms. For a formal report to be submitted at this stage reflects badly on the council and the recommendation to refuse is unreasonable under the circumstances.

In line with the town council, I support this application and if necessary, would be happy to present my reasons at a full Planning Committee meeting.

Budleigh Salterton – Cllr. T. Wright

Thank you for sight of the report. I do not agree with the recommendation to refuse. I know the premises well having been a regular customer. The previous owners have been trying to sell it for a number of years and due to its very limited space and tiny kitchen it is not able to provide what present day customers expect.

If it is not converted to a home it will not have a viable future. The town council know the circumstances very well and support the application as they are aware of the current situation in their town.

Technical Consultations

Environmental Health

I have considered the application and note that this site is close to nearby residents who may be impacted during the construction process. Construction working hours shall be 8am to 6pm Monday to Friday and 8am to 1pm on Saturdays, with no working on Sundays or Bank Holidays. There shall be no burning on site. We would request the applicant to consult and follow the council's Construction Sites Code of Practice prepared by Environmental Health and adopted by the council in order to ensure that any impacts are kept to a minimum. This is available on the council's website.

Other Representations

One representation has been received.

Summary of Comments

1. No objection in principle although concerned at the chimney for a wood burning stove in the lounge as there is a possibility of smoke entering the conservatory, hall, lounge, kitchen and top bedroom of neighbouring property.

PLANNING HISTORY

Reference	Description	Decision	Date
21/2684/FUL	External alterations including partial removal of rear lean-to	Approval - standard time limit	31.01.2022
77/C1190	PROPOSED CHANGE OF USE FROM RESTAURANT WITH DWELLING OVER TO WHOLLY AS ONE DWELLING	Approval with conditions	06.10.1977

POLICIES

Adopted East Devon Local Plan 2013-2031 Policies

Strategy 6 (Development within Built-up Area Boundaries)

Strategy 21 (Budleigh Salterton)

Strategy 32 (Resisting Loss of Employment, Retail and Community Sites and Buildings)

Strategy 46 (Landscape Conservation and Enhancement and AONBs)

Strategy 50 (Infrastructure Delivery)

D1 (Design and Local Distinctiveness)

EN9 (Development Affecting a Designated Heritage Asset)

EN10 (Conservation Areas)

Made Budleigh Salterton Neighbourhood Plan 2017-2031 Policies

B1 (Identity of Town and Seafront)

B3 (Heritage Assets)

Government Planning Documents

NPPF (National Planning Policy Framework 2021)

Site Location and Description

1 Rolle Road comprises a two storey building positioned on the corner of the junction of Queen Street with Rolle Road approximately 40 metres to the south of the

crossroads junction of the latter with High Street, Fore Street and Chapel Street and between the town centre and Coast Path. It is located within the designated Budleigh Salterton Conservation Area while the whole of the town is within the East Devon Area of Outstanding Natural Beauty (AONB). However, the building is not listed as being of special architectural or historic interest.

Its principal two storey section is oriented north/south with gable and hip ends, to north and south respectively, to a pitched slate roof over painted roughcast render walls. Its principal elevation abuts Rolle Road while the northern end gable abuts Queen Street. Attached to the rear (west) was, until recently, a single storey lean-to that extended the entire length of the building, the southern end of which abutted a neighbouring residential property to the south, no. 1 Cliff Terrace. This part of the building was also rendered and painted and incorporated a felt roof with a series of roof lights. A flue, positioned towards the northern end of the lean-to, also extended out of this part of the building.

Background

The premises latterly housed a cafe/bistro on the ground floor, incorporating a kitchen housed within the single storey lean-to element, with a two bedroom flat above. However, the ground floor premises are now vacant and were marketed, along with a detached single garage to the rear accessed off Queen Street, since November 2019 via two sales agents (at different times; i.e. not concurrently) until being purchased by the applicant in 2021.

Planning permission (ref. 21/2684/FUL) has since (Jan. 2022) been granted for a series of external alterations to the building, including the partial removal of the single storey rear lean-to element, retaining only the section at the southern end of the building that is connected to the rear of no 1 Cliff Terrace, to create an outside courtyard space accessed via a new arched pedestrian doorway to be created within the retained end wall of the lean-to abutting Queen Street.

The application originally included proposals for the change of use of the ground floor commercial space to create additional living accommodation to enable the whole building to be used as a two storey three bedroom dwelling. However, for CIL-related reasons these were omitted from the scheme, leaving only the external operations to be approved.

Proposed Development

This current application seeks to re-introduce the intended change of use of the ground floor of the building to form living accommodation to be used in addition to that existing at first floor level. This would comprise a combined kitchen/dining room, bedroom and en suite bathroom with a new, repositioned staircase at the southern end of the building enabling access to an enlarged living room at first floor level; an existing study above the present staircase would be removed to also facilitate this enlargement. The retained section of the rear lean-to would house an entrance porch and a toilet.

The proposals also include further external alterations to the building in the form of the retention of a flue serving a wood burner installed in the southern hip end of the roof and a boiler flue and extractor fan cowling in the roof of the retained rear lean-to.

Considerations/Assessment

The principal issue that is material to consideration of the proposal in this case is the loss of the commercial floor space/use of the building and its effect upon the viability and vibrancy of the adjacent town centre and wider community.

In this regard, the provisions of Strategy 32 (Resisting Loss of Employment, Retail and Community Sites and Buildings) of the adopted East Devon Local Plan form the key policy consideration for assessment. These fundamentally resist the loss of employment, retail and community uses and only allow for change of use where it would avoid harming, among other things, business and employment opportunities unless one or more of four specified criteria are satisfied.

Although three of these would not be applicable in this case, it is thought that the potential loss of the cafe/bistro use would have a harmful effect upon business and employment opportunities within the town and therefore it would be necessary to engage the remaining criterion.

This requires that "all options for the retention of the site or premises for its current or similar use have been fully explored without success for at least 12 months (and up to 2 years depending on market conditions) and there is a clear demonstration of surplus supply of land or provision in a locality".

In this case, it has been advised that the premises were initially marketed at a valuation of what is understood to have been £495,000 by Stonemiths commercial property agents from November 2019 until June 2020 whereupon Ware Commercial took on the marketing effort, initially with an asking price of £475,000. This was then reduced, in August 2020, to £450,000 and then again, in April 2021, to £419,000.

During this period, six viewings were carried out with three offers ranging from £330,000 - £350,000 - each for slightly different set ups to that being sold - tabled and rejected by the former owners.

However, the current applicant's offer of £372,000 was eventually accepted in July 2021 with the sale completing in September 2021.

Officer enquiries have established that only the freehold of the whole building was offered during the entire marketing exercise, as opposed to various other options in relation to the commercial floor space alone, owing to the inability to separate it off from the residential accommodation above and the shared nature of the access arrangements for customers of the former and occupiers of the latter. In other words, the flat could only be accessed via the entrance to the former cafe/bistro and a staircase to it that splits the commercial space into two separate dining areas.

As such, following a substantial drop in value between the initial valuation and the eventual sale price for the premises, which is stated by the applicant's agent to have

been agreed following favourable informal verbal enquiries made to the Council as to the likelihood of a planning permission being granted for a residential use of the ground floor, the premises were purchased by the applicant. Planning Officers have no record/recollection of this verbal conversation with the applicant, and in any case such conversations are non-binding and officers would in no way encourage the purchase of a property for a change of use on the basis of a telephone conversation only if this did occur due to the risks involved and need for consultation on such applications.

Notwithstanding the above however, the fact remains that the sale proceeded following the premises having being marketed for mixed business and residential accommodation only and, clearly, without any planning permission in place for the change of use of the commercial ground floor space to residential; hence this current application. It is also relevant that a considerable amount of the marketing took place during the COVID19 pandemic which one of the Agents states had an impact upon interest being received in the premises. The premises have not been marketed for a year during the time when the impact from the pandemic lessened.

As such, irrespective of any understanding that may have been received or provided as to the likelihood, or otherwise, of securing permission for such a change prior to this present submission being made, the premises sold as a cafe/bistro. There has been no subsequent marketing for other potential uses of/for the premises, including residential.

It cannot therefore be concluded that the remaining criterion of Strategy 32 has been met, regardless of any information that might have been received - on any basis - suggesting that planning permission might be forthcoming for any change of use of the ground floor of the building for residential purposes.

Indeed, it may be regarded as proceeding with more than an element of risk to complete on a purchase of property in the belief that permission could be secured for an alternative use thereafter purely on the strength of a telephone enquiry, particularly given the importance of Strategy 32 and the emphasis that it places upon the retention of employment, retail and community uses without robust evidence that all options for ensuring the same have been explored over a sensible time period.

Furthermore, despite an officer request, no additional evidence has been provided to demonstrate that the cafe/bistro use of the premises had itself become unviable as a means of bolstering the duration of the marketing effort (noting that the previous owner retired), the reduction in the valuation of the premises during this time or the level of interest received as strands of an argument in favour of the loss.

The current scenario is therefore one that could, without a more detailed and robust demonstration as to the non-viability of the former use, be readily repeated elsewhere, thereby undermining the objectives of Strategy 32.

In addition, no evidence has been provided to demonstrate that consideration has been given to the second part of the Strategy 32 criterion, namely that there is a surplus supply of land or provision of current or similar uses within the town. Whilst it may be that this might be a relatively straightforward case to put together, with the comments from the Ward Member with regard to 19 premises appreciated, it has not

been made to the Council in support of the proposal and officers are reluctant in the absence of adequate information to accept the loss of a commercial use simply because there are other units in a town as this does not reflect what demand they may be for new/additional premises and simply results in the loss of more units and potential harm to commercial and job opportunities. In the absence of information to address this criterion of the Strategy, therefore, officers consider there to be no option but to seek to resist the proposal at this stage.

The proposal therefore fails against the Strategy 32 test and therefore, as a matter of principle, it is considered that any change of use to residential should be resisted, on this ground, at this time.

Visual Impact

Turning to the effect of the proposed external alterations upon the character and appearance of the building and the wider conservation area, it is considered that these would be minor in nature and would not result in any material harm justifying objection to the proposal on this ground. Although the site and building have a degree of visual prominence within the street scene, this is essentially localised and the positioning and sizes of the various flues and cowl relatively discreet so as to avoid any significant visual intrusion. In addition, the flue on the southern hip end, whilst of a height that extends above the ridge of the roof of the application building, is both slender in profile and black in colour and has a limited effect upon the building and surrounding area. The other proposed interventions to the roof of the single storey rear lean-to element would be barely visible from Queen Street given the shallow nature of the roof and the screening provided by the retained end wall and nearby outbuildings, including the garage within the site.

Equally, whilst the issues and concerns raised by the interested third party, the occupier of no. 1 Cliff Terrace, are acknowledged, again it is not considered that they amount to a material or sustainable ground upon which to resist the proposals. Indeed, the Council's Environmental Health officers have been consulted on the application with particular regard to these elements of the scheme and raise no objections on the basis of adverse nuisance to neighbours from smell, fumes, etc. As such, no further concerns are considered to be justified in this regard.

RECOMMENDATION

REFUSE for the following reason:

1. In the opinion of the Local Planning Authority, the proposal would involve the loss of a business premises that would harm business and employment opportunities in the town. It has not been satisfactorily demonstrated that the use of the premises for their current lawful use or other appropriate business or commercial uses is, or would be, no longer viable or that there is a surplus supply of provision of such uses within the town. The proposed change of use of the premises to residential use would therefore be contrary to the provisions of Strategies 21 (Budleigh Salterton) and 32 (Resisting Loss of Employment, Retail and Community Sites and Buildings) of the adopted East Devon Local Plan 2013-

2031 and guidance contained in Section 2 of the National Planning Policy Framework (2021).

NOTE FOR APPLICANT

Informative:

In accordance with the aims of Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 East Devon District Council seeks to work positively with applicants to try and ensure that all relevant planning concerns have been appropriately resolved; however, in this case the development is considered to be fundamentally unacceptable such that the Council's concerns could not be overcome through negotiation.

Plans relating to this application:

AHA-05	Proposed Floor Plans	22.03.22
AHA-01	Location Plan	11.03.22
AHA-02	Block Plan	11.03.22
AHA-06	Proposed Elevation	07.04.22

List of Background Papers

Application file, consultations and policy documents referred to in the report.