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## Appeal Decision

Site visit made on 4 January 2021

by **Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 13 January 2021

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### Appeal Ref: **APP/R3325/W/20/3259965**

### **37 High Street, Castle Cary BA7 7AW**

- 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 and Mrs Tim and Jordan Oliver against the decision of South Somerset District Council.
  - The application Ref 18/02664/FUL, dated 21 July 2018, was refused by notice dated 25 March 2020.
  - The development proposed is described as change of use of ground floor to planning use class A3: food and drink, to include minor alterations.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. A related application for listed building consent (the LBC) covering the physical works outlined within the planning permission, has already been approved by the Council. I have taken this into account in my reasons below.

### Main Issues

3. The main issues are the effects of the development on:
  - the living conditions of the occupant of Bank Flat, with regard to noise and disturbance; and
  - a Grade II listed building.

### Reasons

#### *Living conditions*

4. The building in question consists of a combination of single storey and 2-storey elements, with some rooms also in the attic space. The ground floor currently serves a commercial use, and the first floor and attic space, a residential use as Bank Flat
5. The ground floor is currently occupied by a gallery, but for more than 100 years prior to this, was in use by a bank. The proposed use as a restaurant would thus entail an appreciable change in the character of use, both in current and historic terms. This change would necessarily include the potential for and type of noise likely to be generated, including its duration and timing.

6. In this regard, as proposed, the use would operate between 09:00 and 23:00 Tuesday to Friday, extending to 23:30 on Saturday, with more limited opening on Sunday. Whilst modest limitations on afternoon and Saturday evening opening have been considered, even if imposed, the use would operate well in excess of the hours and days typically associated with the current and historic uses.
7. The main dining areas of the restaurant would be located immediately below the living and drawing rooms of the flat above. These provide a substantial part of the flat's main living space. The flat's main bedroom would be located above a room within which a pizza oven is shown, and within which dining could also presumably take place. For these and the above reasons, the potential therefore clearly exists for changes in the character and nature of noise generation to disturb the occupant of the Bank Flat above.
8. With regard to the rating of sound insulation, the performance of the existing building fabric would meet or exceed the minimum standards applicable within the Building Regulations. This is an important consideration. However, within the broader and separate context of planning, it does not exhaust all reasonable consideration of the potential for changes in the acoustic environment to affect living conditions.
9. Evidence which seeks to comparatively model and to quantify the extent of likely changes in the acoustic environment, and the impact that this could have upon residential use of the Bank Flat, has not however been provided. In the absence of such evidence I cannot be satisfied that the performance provided by the existing building fabric would be sufficient to avoid any potentially adverse effects on the established residential use of Bank Flat.
10. Though the potential for mitigation has been addressed by both parties, in this case conditions could not be properly used to secure improvements in sound insulation. This is because there is insufficient evidence available upon which to base or justify such a requirement. The fact that the building is listed also means that no such condition could be implemented without the requisite listed building consent.
11. The site is located near to the centre of the town, in a location containing small businesses, including shops and a small café and restaurant in the building next door. Whilst the location is clearly not tranquil, the level of normal background noise is again unclear. So too is the bearing that this would have upon perceived changes in the acoustic environment associated with the proposed change of use. Indeed, the simple fact of the site's location cannot be held to render the development acceptable in the absence of any clear understanding of its specific impacts.
12. Differences of opinion are apparent within the specialist advice provided to the Council's case officer, partly reflecting changes in personnel which the application was determined. A change in recommendation also occurred. Be that as it may, the Council was entitled to reach the decision it did. Furthermore, I share the Council's concern.
13. For the reasons outlined above I conclude that the appellant has failed to demonstrate that the effect of the development on the living conditions of the occupant of Bank Flat would be acceptable. Consequently, I cannot conclude that the development would comply with Policy EQ2 of the Local Plan, which

requires development proposals to protect the residential amenity of neighbouring properties, or Policy EQ7 of the Local Plan, which seeks to restrict development that would have potential adverse effects, including with regard to noise.

*Listed building*

14. The building, is, as a whole, listed at Grade II, and continues to appear within the statutory list as the National Westminster Bank. It is thus a requirement for me to have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses. Paragraph 193 of the National Planning Policy Framework (the Framework) also states that great weight should be given to the conservation of designated heritage assets.
15. Insofar as it is relevant to this appeal, the special interest and significance of the listed building resides particularly in its formal design and prominent presence within the street scene, which each relate to its past function as a bank. The interior was not inspected when the building was listed, but this contains a variety of features, including some apparently historic plasterwork and fireplaces.
16. The appeal scheme does not outline any works to the building in excess of those for which consent has already been granted within the related LBC. In view of my findings in relation to living conditions above however, I cannot be satisfied that these represent the sum total of the works required in order to enable the proposed change of use to take place. Whilst the Council has speculated that such works might involve modification of the historic ceilings, both the works themselves, and their potential impacts, are, in effect, therefore unknown. In the absence of necessary evidence, I am thus unable to conclude that the proposed change of use would preserve the special interest of the listed building, or conserve its significance. Moreover, in the absence of an understanding of potential harm, the balancing exercises set out in paragraphs 195 and 196 of the Framework cannot be properly applied.
17. For the reasons outlined above I conclude that the appellant has failed to demonstrate that the development would have acceptable effect on the listed building. Consequently, I cannot conclude that the development would comply with Policy EQ3 of the Local Plan, which states that heritage assets will be conserved and where appropriate enhanced for their historic significance.

**Other Matters**

18. The appellant suggests that the current ground floor use is temporary, and that the building is not otherwise well suited to a viable use given the size and location of its windows, and the fact that it is listed. Little evidence has however been provided to substantiate these claims. In its absence they do not alter my findings above.
19. The site is also located within Castle Cary Conservation Area (the Conservation Area). It is thus necessary for me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
20. Insofar as it is relevant to this appeal, the significance of the Conservation Area resides in the historic layout of the town, and the collection and interrelationship of historic buildings and spaces it contains. Within this context

the listed building is an important feature which makes a positive contribution to the significance of the Conservation Area.

21. No objection has been raised by the Council with regard to the Conservation Area. Indeed, no external alterations are proposed, or likely to be necessary in the context of noise considerations. The use would not otherwise give rise to any obviously adverse visual effects within the streetscene. As such the character and appearance of the Conservation Area would be preserved, and its significance conserved.

**Conclusion**

22. For the reasons set out above I conclude that the appeal should be dismissed.

*Benjamin Webb*

INSPECTOR