

Report for Resolution

Report to Planning Applications Committee
Date 10 November 2010
Report of Head of Planning Services
Subject Enforcement action - 20 Elm Hill

Item
6

SUMMARY

Description:	Unauthorised change of use from retail unit to residential.
Reason for consideration at Committee:	Enforcement notice
Recommendation:	That the enforcement notice be agreed
Ward:	Thorpe Hamlet
Contact Officer:	Richard Divey

INTRODUCTION

The Site

Location and Context

1. The site is located on Elm Hill.

Planning History

2. Planning permission for a change of use to a dwelling was refused planning permission for the following reasons.

- The loss of a retail premises at the site would have a detrimental impact on the vitality and viability of the surrounding area and Elm Hill as an individual street, and will cause a harmful impact on the Secondary Retail Area. As such, the proposal would be contrary to 'saved' policy SHO11 of the City of Norwich Replacement Local Plan (Adopted November 2004).

- The loss of a retail premises would have a detrimental impact on Elm Hill as a special shopping area and the attraction of Elm Hill as a tourist destination within Norwich. It would therefore cause a harmful impact on the Visitor Attraction Area and be a dis-incentive to tourism investment in this area. As such the proposal would be contrary to saved policy TVA4 of the City of Norwich Replacement Local Plan (Adopted November 2004).

3. The loss of this large retail shopfront, which is in a visually prominent location when approaching Elm Hill on foot from the City centre, would cause a negative impact on both the character and appearance of the Elm Hill and Maddermarket character area of the City Centre Conservation Area and would be contrary to the aim of

protecting the retail character of the street. As such the proposal would be contrary to saved policy HBE8 of the City of Norwich Replacement Local Plan (Adopted November 2004).

4. An appeal was lodged and was dismissed by the Planning Inspectorate on 26th November 2010. The Inspector concluded “it is obvious that the premises are no longer in active use as a shop.” “I consider it would be premature and unjustified to extinguish a shop use, which is of significance in the character and appearance of the Conservation Area”. The full letter is appended to this report. The Inspector fully supported the Council’s case. Almost 12 months have gone by and the occupier has made no attempt to re-introduce a retail operation.

Conclusions

5. Although the Council cannot require a shop to trade, and the appearance of a vacant shop in itself, does not contribute positively to the conservation Area, it is important that long standing Council policies to retain the special character of Elm Hill are pursued. The Inspector’s decision is very clear and upholds the longstanding policy. Even if the current occupier chooses to leave the premises vacant the Notice would run with the land and if the property is sold on in the longer term a retail use would be likely to be re-introduced at such a time. Failure to agree enforcement action will, in due course, mean that the premises is immune from any enforcement action.

RECOMMENDATIONS

To authorise the serving of an enforcement notice to require the owner to cease using the relevant part of the ground floor of the premises for domestic residential purposes.



Appeal Decision

Site visit made on 28 October 2010

by Frances Mahoney DipTP MRTPI IHBC

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

Decision date: 26 November 2010

Appeal Ref: APP/G2625/A/10/2121144

20 Elm Hill, Norwich, Norfolk NR3 1HG

- 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 Peter Bentley against the decision of Norwich City Council.
 - The application Ref 09/00774/U, dated 4 September 2009, was refused by notice dated 25 November 2009.
 - The development proposed is the change of use of the ground floor of 20 Elm Hill from retail to residential.
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Decision

1. I dismiss the appeal.

Procedural matter

2. At the time of my visit the ground floor shop area and back kitchen, which had been removed, was in use as a living/dining room and snug, in association with the existing residential accommodation on the floors above. The appellant has confirmed that the ground floor space has not been used for retail purposes since 2005, although pieces of art work are displayed in the existing shop window, but these pieces can not be purchased directly from the premises. Therefore, it is clear that notwithstanding the terms of the description of development the appellant has applied to regularise a change of use which has already taken place. I shall deal with this appeal accordingly.

Main Issues

3. The main issues are:
 - whether the character or appearance of the Elm Hill Conservation Area is preserved or enhanced by reason of the change of use;
 - the effect of the change of use on the vitality and viability of Elm Hill and the secondary shopping area; and
 - on tourism in the Elm Hill area.

Reasons

4. Elm Hill is a most attractive historic narrow, cobbled street with stone flagged footways, running close to the River Wensum. The buildings which line Elm Hill, mainly in road side terraces vary considerably in their design, scale, roofscape and historic detailing, but all are listed buildings contributing to the

creation of an intimate sense of enclosure to the street. Jettied timber framed buildings are of particular prominence and interest. The almost unblemished historic character, appearance and condition of the buildings and the streetscape along Elm Hill is a clear expression of the history and evolution of the City, maintaining the atmosphere and distinction of a street of importance and status within the City over the centuries.

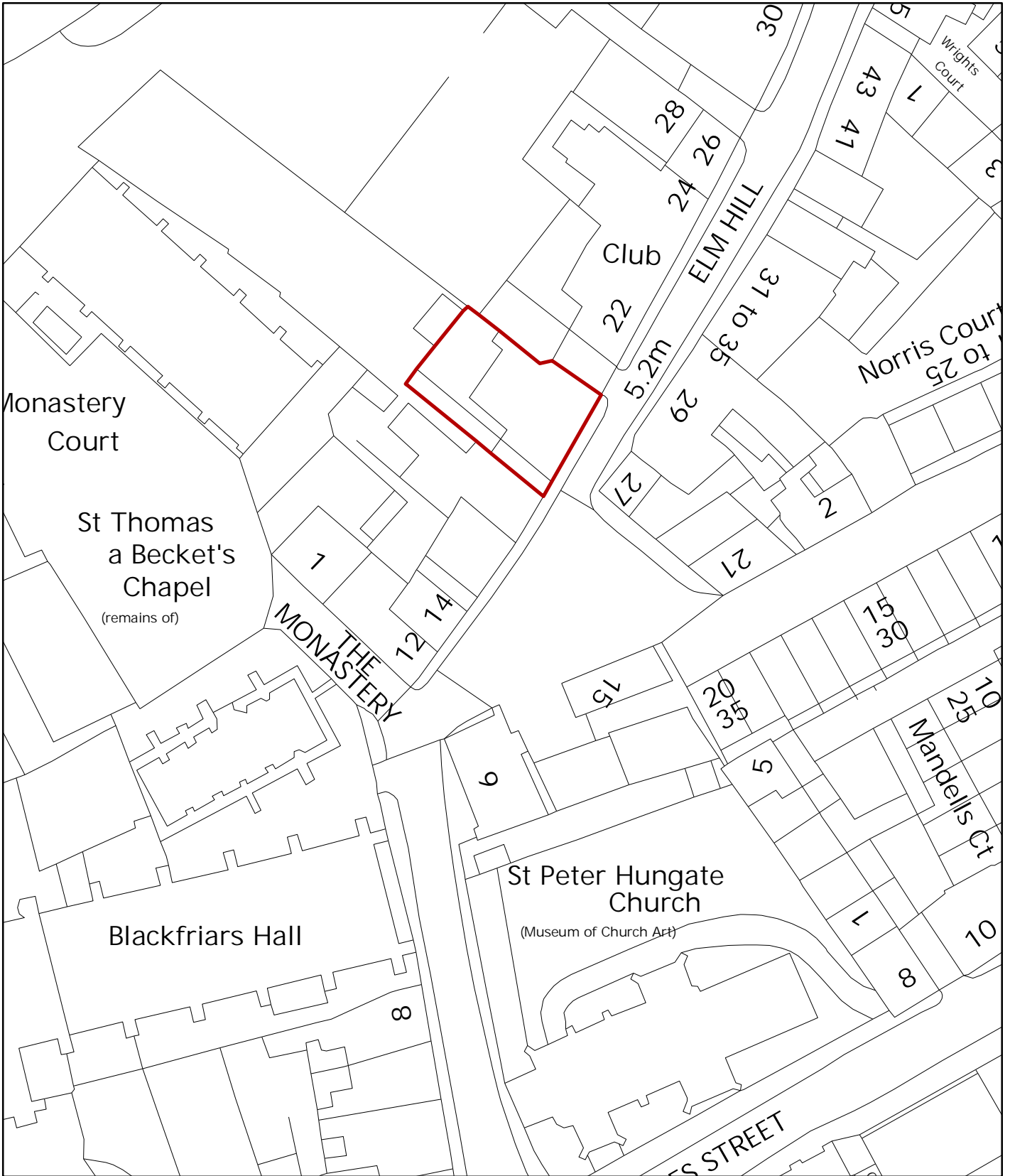
5. Elm Hill has a mixture of uses at street level. Specialist shops selling antiques, books and art are particularly common. Residential buildings are interspersed between the commercial premises, but it is fair to assess the ground floor character of Elm Hill as being firmly based within a dignified and elegant sense of retail commerce.
6. No 20 Elm Hill is a jettied 2 storey building with large front gabled dormers in the roof space. The origins of the Grade II Listed Building are evidenced by the 15th century pointed barrel vaults within the cellar. Alterations and additions to the timber framed building attributable to the following 4 centuries can be identified. The building at ground floor level has a 19th century shop front with a central doorway and large shop windows either side, last occupied by an appointment only art gallery. The building has been restored with considerable sensitivity and care, exposing a number of important historic features within the building.
7. Elm Hill enjoys a sense of vitality and vibrancy, drawing people to it for a combination of reasons. Firstly, the splendour, authenticity and state of preservation of the buildings and streetscape of Elm Hill, evoke a feeling of stepping back into historic Norwich. The restoration, ongoing maintenance and resultant condition of No 20 undoubtedly make a significant contribution to the appearance of the street, particularly when viewed from the junction with Waggon & Horses Lane.
8. Secondly, Elm Hill is characterised by the predominance of fine shop windows generally serving small specialist shops. Whilst the shop premises are interspersed with non-retail uses, glimpsed views of shop windows at intervals along the length of Elm Hill entice the passer-by to stop and interrogate the window and possibly to enter. The resultant activity in the sense of the movement of people within the street; the attraction and content of the shop windows; and the carrying on of commerce, express the vitality and viability of the area.
9. The vitality and viability of the area are inextricably linked with the attraction of the area for visitors and the preservation and enhancement of the character or appearance of the Conservation Area. It is the combination of all of these elements which defines the nature, quality and importance of this historic area.
10. Whilst the shop front of No 20 is used for display purposes, it is obvious that the premises are no longer in active use as a shop. The art work displayed, I understand, is regularly changed, but the windows lack the vigour and purpose of actively seeking engagement with passers-by to draw them into the shop to buy. An inquisitive passer-by would be aware that the internal shop space is no longer in use and that access via the shop doorway is prohibited.
11. The appellant has explained that the shop was last tenanted in 1993 and, other than a period of 4 years when it was opened as a "by appointment only"

gallery, the shop has remained closed. However, no evidence has been submitted to show whether the availability of the shop premises has been actively promoted in the market via a reasoned and robust marketing campaign for an appropriate means of tenure and at an agreed market rate to pragmatically attract a retail business use. I consider it would be premature and unjustified to extinguish a shop use, which is of significance in the character and appearance of the Conservation Area; as an integral part of the generation of the viability and vitality of the shopping street; and as an element of the magnetism of the area for visitors, unless it could be shown that there was no longer a realistic possibility of finding a user for the shop premises.

12. The submitted evidence shows no sign of any testing of the market in respect of a demand for the shop premises, only that the shop had been vacated, boarded up, restored, used as a gallery and has remained empty for the last 5 years.
13. Whilst I acknowledge the contribution the appellant has made to the safeguarding and long term well being of an important listed building along Elm Hill, the unjustified loss of a street level shop use, which is part of the history and development of this historic building, neither preserves nor enhances the character or appearance of the Conservation Area (HBE8); has a harmful impact on the vitality and viability of Elm Hill and the surrounding area as an important shopping area (SHO11); and diminishes the attraction of the area for visitors (TVA4). This is contrary to the *City of Norwich Replacement Local Plan* saved policies HBE8, SHO11 and TVA4. In these circumstances the appeal should fail.

Frances Mahoney

INSPECTOR



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Planning Application No 09/00774/U
Site Address 20 Elm Hill
Scale 1:500



NORWICH
City Council

PLANNING SERVICES

