

Appeal Decision

Hearing held on 7 September 2016 and 29 November 2016

Site visit made on 29 November 2016

by Andrew Owen BA(Hons) MA MRTPI

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

Decision date: 07 February 2017

Appeal Ref: APP/Z0116/W/15/3141401
11-13 Queen's Road, Clifton, Bristol BS8 1QE

- 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 3Sixty Real Estate against the decision of Bristol City Council.
 - The application Ref 15/02738/F, dated 29 May 2015, was refused by notice dated 17 September 2015.
 - The development proposed is a change of use from a retail unit (Class A1) to a cafe or restaurant (Class A3).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from a retail unit (Class A1) to a cafe or restaurant (Class A3) at 11-13 Queen's Road, Clifton, Bristol BS8 1QE in accordance with the terms of the application, Ref 15/02738/F, dated 29 May 2015, subject to the conditions in the attached Schedule.

Application for costs

2. An application for costs was made by 3Sixty Real Estate against Bristol City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Shortly prior to the opening of the Hearing the parties had agreed that Certificate A on the appeal and application forms had been incorrectly completed. At the Hearing it was confirmed by Mr Montgomery, on whose behalf the appellant acts, that he owns the freehold to the whole building at No 11-13, but that the Lockingham Group Limited had a long leasehold interest. The appellant had only formally notified the Lockingham Group Limited of the appeal on 1 September 2016, along with nine other parties who the appellant believed have a legal interest in the site.
 4. The Council had notified the occupiers of all the flats above the site and the occupiers of the ground floor unit, which is the appeal site, of the receipt of the application, the lodging of the appeal and the time, date and location of the Hearing. However the addressees to whom the appellant had written on 1 September 2016 were not included on the list of addressees notified by the Council. As such some persons with a legal interest in the site may not have been aware of the appeal until receipt of the appellant's letter, and would not have been aware of the Hearing at all. These persons should have been given
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the opportunity to take part in the Hearing. Accordingly I considered that proceeding with the Hearing at that time may prejudice these parties' interests and that therefore the Hearing should be adjourned to another date to enable such persons to have a full opportunity to comment on the appeal and be notified of the time, date and place of the recommenced Hearing. The Hearing was recommenced on 29 November with this notification having been done and the appellant having completed Certificate B.

Main Issues

5. The main issues are the effect of the proposal on the perceived retail function of the primary shopping frontage (PSF) and on the living conditions of the occupiers of the flats above the site in respect of odour, noise and outlook.

Reasons

Retail function

6. The site is located within the Park Street /Queen's Road primary shopping area (PSA), identified in Policy BCAP13 of the Bristol Central Area Plan (BCAP) as the city's second most significant location for shopping after the Shopping Quarter. Furthermore the site forms part of the PSF as identified in Policy BCAP16 of the BCAP.
7. Although the PSA is predominantly populated with A1 (shop) uses¹, it is supplemented throughout by A3 (food and drink) uses² and the supporting text to Policy BCAP13 highlights the mix of retail, restaurants, bars and cafes here. Park Street and Queen's Road, further west of the site, are two-way single carriageway roads and the A1 and A3 uses on both sides of these streets create a strong perception of a busy, compact retail area.
8. In contrast, the site and the terrace in which it sits (Nos 1-39), are located opposite the grandiose buildings of the Bristol Museum and Art Gallery and the Wills Memorial Building. This dilutes the strength of the retail perception at and around the site. Additionally the strength of the retail function in this part of the PSA is affected by the nature of the road layout with Park Street, Park Row, Queen's Road and Triangle Row all meeting in front of the terrace to create a dual carriageway road junction. As a result, despite being located in the centre of the PSA and close to bus stops, the retail character at the site and the terrace is weaker than that elsewhere in the PSA.
9. It is agreed between the parties that Caffé Nero, at Nos 7-9 adjacent to the site, is a mixed A1/A3 use, though I was made aware that no planning permission has been granted for an A1/A3 use here. Immediately to the west of the site is the entrance to the first floor All Star sports bar, a Subway sandwich shop and then The Berkeley Public House. Subway is a small A1 unit and is part of the same building which accommodates the larger premises of The Berkeley. Nonetheless, due to its bright fascia signage and its projecting sign it is not visually overdominated in the terrace by The Berkeley or the neighbouring units and it makes a positive contribution to the street scene. Accordingly, due to this neighbouring A1 unit, I do not consider the proposed A3 use would result in a significant break in the PSF which would lead to its fragmentation. Furthermore when standing outside the site, other A1 uses are

^{1, 2} As defined by the Town and Country Planning (Use Classes) Order 1987 (as amended)

close by and prominently visible in both directions and so the proposed use would continue to be seen in a retail setting.

10. The use class of Pret a Manger at Nos 27-29 is disputed and was discussed at the Hearing. However from my site visit it was apparent that due to a slight curve in the road, the distance between this unit and the appeal site, and the number of A1 uses that are between these two properties, the use class of Pret a Manger has little bearing on the retail perception at the site.
11. The site does accommodate a relatively wide plot and the building is taller than the other properties in the terrace. However the ceiling level of the unit at ground floor appears lower than that at the adjacent units to the west. As such, despite its tall and wide facia, the ground floor of the property does not appear particularly prominently in the street scene.
12. The footfall surveys demonstrate that a large number of pedestrians walk past the site, as they do along the rest of Queen's Road and Park Street. Though this survey was conducted in November 2015 during poor weather, I have no reason to consider that the figures are not representative of pedestrian flows generally in the area. The survey shows that this part of the PSA forms an important link between Park Street and the western parts of Queen's Road. Due to the high volume of footfall past the site, the site's location in the centre of the PSA and the number of A1 uses that are in sight of the property, I do not consider the proposal would materially affect the pedestrian footfall in the area.
13. Indeed the patronage survey suggests that the site was poorly patronised compared to other A1 and A1/A3 uses in the vicinity, and both parties agree A3 uses can contribute positively to the vitality and viability of the shopping area during the day and the evening due to their patronage. Although the current occupier of the site is different to the occupier at the time of the survey, I heard from the appellant that there is no reason to suggest patronage is currently materially different to that demonstrated by the survey and I have no evidence before me to suggest otherwise. Therefore the proposal could represent an opportunity to boost the vitality of the PSF.
14. I note the proposal would result in the loss of an A1 unit that any future A1 user could occupy and who might have a higher patronage than the current occupier. However I heard from the Letting Agent that there has been little demand from potential A1 users for this site. Though no firm evidence of this was provided, the Council have not disputed the lack of demand and I have no reason to come to a different view.
15. In summary I consider that despite its location centrally within the PSA, the retail perception of this part of the PSA is already compromised to a degree by the road layout and the non-retail uses opposite the site. I acknowledge this part of the PSA does provide an important link between the other parts of the PSA but I do not consider the proposal would affect the footfall of this link as there are a number of A1 uses in proximity of the site, including at Subway which is the next ground floor unit, which would maintain the retail function of the PSF. Moreover, the site does not appear prominently in the street scene and the development could boost the vitality of the PSF. As such, the proposed change of use would not result in a significant break in the PSF and its retail perception would prevail.

16. Additionally, between the date the Hearing opened and the date it closed, planning permission was granted for a Class A1/A3 use at the appeal site³. The Council considered the likely A1 element of this proposal (around 40% of trade) was sufficient for it not to result in a fragmentation of the PSF. Whilst clearly the A1 aspect of that proposal would be significant, the A3 aspect would be more visually prominent due to the floor area devoted to accommodating tables. Indeed this extant permission allows for seating on the pavement in front of the building which would further add to the visual prominence of the A3 aspect. Accordingly, I do not consider the proposed A3 use would appear materially different to the consented A1/A3 use when seen in the street scene and therefore, its effect on the perception of the retail function of the PSF would not be materially different.
17. In conclusion, the development would accord with Policy BCS7 of the Core Strategy (CS) which seeks to retain the vitality, viability and diversity of centres, and would accord with policies which seek to maintain a retail focus in the primary shopping areas (Policy BCAP13), in the primary retail frontages (Policy BCAP16) and in the West End (Policy BCAP42).

Living conditions

18. The future occupier of the proposal is currently unknown. Plans were provided with the application, and further details provided with the appeal, to illustrate the type of extraction and ventilation plant that may be necessary for an A3 use of this size. The appellant was clear at the Hearing that these plans should be considered as indicative.
19. There are thirteen residential flats above the site. From my site visit it was apparent that a number of windows serving these flats are located on the rear of the building where extraction plant would most likely be located. Four of these windows are on part of the rear elevation which projects further rearwards than the rest of the building. These four windows are very close to existing plant which serve nearby commercial units. As such the occupiers of the flats served by these windows may already experience a degree of odour and noise from this existing plant. The other rear windows are further from the existing plant, but still have a view of it and of other plant locally.
20. I recognise the size of the proposed A3 use would be such that any extraction or ventilation equipment would need to have a substantial capacity. It would most likely be larger than the equipment needed to serve the A3 uses recently granted planning permission at Nos 79 and 83 Park Street⁴ which were granted subject to conditions requiring details of such equipment to be submitted. Therefore the proposed plant may be noisier than that provided at these nearby A3 properties.
21. However in view of the existing environment at the rear of the property, which is well populated with plant serving some sizable commercial operations, I have no persuasive evidence to suggest that the extraction equipment that would be required at the site would have any greater effect on the nearby residents than that already prevalent in the vicinity and which would necessarily result in an unacceptable impact in terms of noise or odour. Moreover the fact that there are a large number of flats above the site, and more so than above Nos 79 or

³ Ref 16/03185/F

⁴ 16/05020/F and 15/02216/F respectively

83 Park Street, does not mean the protection of living conditions needs to be more stringent as an unacceptable impact on one resident is equally as important as an unacceptable impact on many.

22. Without detailed plans of the proposed equipment, the concerns relating to an unacceptable effect on outlook cannot be substantiated. Indeed, due to the size of the building I consider it is likely that any extraction or ventilation equipment could be provided somewhere on the elevations or within the building envelope without adversely affecting the outlook from the flats.
23. Nonetheless, the extraction and ventilation equipment would need to be approved by the Council before the occupation of the unit so that issues of noise, odour and outlook could be carefully assessed, and an appropriately worded condition attached to this planning permission achieves this.
24. As such, with an appropriate planning condition, the proposal would not conflict with Policies BCS21 and BCS23 of the CS and Policy DM10 of the Site Allocations and Development Management Policies document which all aim to protect existing residential and environmental amenity

Other Matters

25. The Bristol Museum and Art Gallery and the University Tower and Wills Memorial Building opposite the site are both Grade II* listed buildings, as is the terrace at Nos 20 – 30 Berkeley Square behind the site. The functional appearance of the rear elevation of the building and its neighbours contributes little to the significance of any of the nearby listed buildings and, with careful design, the extraction or ventilation plant would not be likely to affect their setting.
26. Also the site is located within the Park Street and Brandon Hill Conservation Area. As the Conservation Area is characterised, in part, by the mixture of shops, cafes and restaurants along Park Street and Queen's Road, including the plant at the rear of some of the properties, the proposed development would preserve the character and appearance of the Conservation Area.

Conditions

27. I have considered those conditions suggested by the Council against the requirements of the Planning Practice Guidance (PPG) and the Framework. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect this guidance.
28. In accordance with the requirements of the PPG and the Framework I have imposed the standard condition relating to the commencement of development. I have also imposed a condition specifying the relevant plans in order to provide certainty and, as agreed at the Hearing, this excludes those plans labelled as indicative.
29. I have altered the wording of the suggested condition requiring details of extraction and ventilation equipment to reflect that agreed at the Hearing. This condition is necessary to ensure the living conditions of the occupiers above the site are protected. Also, I have amended the suggested condition relating to refuse storage and recycling facilities so that it refers to drawings at the scale agreed at the Hearing. This condition is necessary in order to prevent obstruction of the pedestrian highway.

30. In order to protect the living conditions of nearby residents, particularly those above the site, I have attached the other suggested conditions relating to sound insulation, which I have amended to refer to the current standards, and opening hours.
31. Some conditions require compliance prior to the commencement of development so that the effects of the proposal are properly mitigated in order to make the development acceptable.

Conclusion

32. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be allowed.

Andrew Owen

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: BRS.5811_02, CP-KAT-001-001 Existing elevations and sections, CP-KAT-001-001 Existing floor plans, CP-KAT-001-001 Existing RCP Floor plans.
- 3) The use, hereby permitted, shall not commence until details of all the means of ventilation and extraction for the development, including details of its method of construction, odour control measures, noise levels, its appearance and finish (including plans, elevational and sectional drawings at a minimum scale of 1:25) have been submitted to and been approved in writing by the Local Planning Authority. The ventilation and extraction equipment shall be installed before the use hereby permitted commences and shall thereafter be permanently retained and operated and maintained in accordance with the manufacturer's instructions.
- 4) The use, hereby permitted, shall not commence until a detailed scheme of noise insulation measures between the A3 use, hereby approved, and the residential accommodation above has been submitted to and been approved in writing by the Local Planning Authority. The scheme of noise insulation measures shall be prepared by a suitably qualified consultant/engineer and shall take into account the provisions of BS 8233:2014 "Sound Insulation and Noise Insulations for Buildings – Code of Practice". The approved scheme shall be implemented prior to the commencement of the use and be permanently retained thereafter.
- 5) The use, hereby permitted, shall not commence until floor plans, at a scale of 1:50, showing internal refuse and recycling storage have been submitted to and approved in writing by the Local Planning Authority. The storage shall be provided before the use, hereby approved, commences. Thereafter, all refuse and recyclable materials associated with the development shall be stored within this dedicated store/area, as shown on the approved plans. No refuse or recycling material shall be stored or placed for collection on the public highway or pavement.
- 6) No customers shall remain on the premises outside the hours of 07:00 to 23:30 Mondays to Sundays.

APPEARANCES

FOR THE APPELLANT

Jim Tarzey BA(Hons) MRTPI	Pegasus Group
Katie Priest MPLAN MRTPI	Pegasus Group
James Findlay QC	Cornerstone Barristers

FOR THE LOCAL PLANNING AUTHORITY

Anna Schroeder	Planning Officer
Paul Chick	Team Leader (29 November only)
Kate Cottrell	Planning Officer (7 September only)

INTERESTED PERSONS

Stuart Montgomery	Owner of the freehold of the site
Andrew Smallman	Letting agent

DOCUMENTS SUBMITTED AT THE HEARING

On 7 September:

Photo of the rear elevation of the site

Extraction and ventilation details

Updated land use plan (drawing no BRS.5811_01F)

On 29 November:

Marketing details of the unit currently occupied by Subway

Email correspondence (dated 22 June 2015, 24 November 2016 and 25 November 2016) relating to extraction and ventilation details, and accompanied by the officer report for 16/05020/F and planning permission refs: 15/01563/X, 16/04894/F, 16/03878/F and 16/03852/F.