

Appeal Decision

Hearing held on 10 May 2017

Site visit made on 10 May 2017

by Andrew Owen BA(Hons) MA MRTPI

Decision date: 26 May 2017

Appeal Ref: APP/Z0116/W/17/3166495

Somerset House, 18 Canynge Road, Clifton, Bristol BS8 3JX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Messers Cook, Calver, Fenton and Dixon against Bristol City Council.
 - The application Ref 16/03029/F, is dated 3 June 2016.
 - The development proposed is demolition of three storey office block. Erection of 8no. residential dwellings in two separate blocks with access and egress to Canynge Road. Block one comprises 1no. 3 bedroom and 2no. 4 bedroom town houses with two dedicated garage parking spaces per dwelling; block two comprises 5no. 2 bed flats with 8no. parking spaces (including 1no. disabled). Provision of secure refuse and bicycle spaces and associated hard and soft landscaping.
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Decision

1. The appeal is dismissed and planning permission refused.

Application for costs

2. An application for costs was made by Messers Cook, Calver, Fenton and Dixon against Bristol City Council. This application is the subject of a separate Decision.

Procedural matters

3. The application and appeal had been made by Messers Hartnell, Cook, Calver, Fenton and Dixon. However I was advised at the Hearing that Mr Hartnell had since deceased. As such the appeal has proceeded in the name of the other parties.
 4. A number of drawings were produced at the Hearing which represented updated versions of some of the plans submitted with the appeal documents. These showed the provision of photovoltaic panels on the roof of the flats only, instead of on the roof of the flats and houses as previously shown. The appellant and the Council agreed that these updated plans were those considered by the Members at the development control committee meeting on 19 October 2016. A number of local residents present said they hadn't seen these drawings, however on the basis that they were considered by Members and so were already in the public domain, I accepted the drawings.
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Main Issues

5. The main issues are:

- i) The effect of the proposal on the living conditions of the neighbouring residents with regard to their light, outlook and privacy;
- ii) The effect of the proposal on the character and appearance of the area including the Clifton and Hotwells Conservation Area (CHCA), the setting of the adjacent listed buildings and trees;
- iii) The loss of valuable employment floorspace.

Reasons

Living conditions

6. The site currently accommodates an 'L' shaped, part two and part three storey office building. It is mostly surrounded by residential properties. The rear of 1-6 Canynge Square directly faces the site and the proposed terrace of three town houses at the front of the site would be significantly closer to these neighbouring dwellings than the existing offices.
7. The Daylight and Sunlight Amenity Study provided by the appellant refers to the guidelines in the BRE Report¹ which advises that if the Vertical Sky Component (VSC) at the facing windows with the development in place is both less than 27% and less than 0.8 times its former value then occupants of the existing building will notice the reduction in the amount of skylight. The evidence from Mr Woodman-Smith suggests that the VSC should be no less than 27% notwithstanding the current amount of VSC achievable at these windows. However, I consider the guidance is clear that both criteria need to be satisfied to demonstrate a harmful loss of light. The Study shows that for all the windows assessed, in no cases are both of these criteria met, and I also accept that approximately 17% of the windows surveyed would experience an increase in the amount of daylight seen. Nonetheless, around a half of all the windows assessed would receive some reduction in daylight as a result of the development. Indeed, from my site visit, I saw that some of the rooms whose VSC would reduce are already poorly lit due to the small size of the windows in relation to the size of the rooms, and therefore they are sensitive to further losses.
8. In respect of sunlight to the garden areas, the Study advises that the BRE guidelines suggest that 50% of a garden should receive at least two hours of direct sunlight on 21 March, but that if the garden is already obstructed, any further loss of sunlight should not result in the amount of light received being less than 0.8 times its former value. The Study concludes that all the rear gardens to 1-6 Canynge Square already receive less than the recommended levels of sunlight, but that as a result of the development the gardens at Nos 1-3 would experience a further reduction in sunlight that would exceed the BRE recommendations. Indeed the effect on the garden of No 3 would be such that no part of the garden would receive two hours of sunlight on 21 March. These gardens are very small and provide the only private amenity space for the residents. As such, though the magnitude of the reduction in sunlight in these gardens would be small, it would be acutely felt, particularly at Nos 1-3.

¹ Building Research Establishment Report 209; Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice

9. In addition to the reduction in sunlight and daylight, the outlook from the properties in Canynge Square would be affected. The development would be approximately six metres closer to these neighbouring dwellings than the existing building, retaining a gap of around 10 metres. The two and a half storey nature of the proposed houses, their slight elevation above the ground level at the Canynge Square houses as a result of local topography, and the proximity and massing of the, largely blank, facing side wall would combine to result in the development appearing unacceptably prominent, particularly when seen from the rear of 1-3 Canynge Square. Furthermore it would fail to accord with the recommended separation distance in the Council's Guide for Designing House Alterations and Extensions Supplementary Planning Document. Though the proposal is clearly not an extension or alteration, I consider the principles of maintaining a sufficient distance to avoid an overbearing impact are applicable.
10. The proposed flats would be in a single block towards the rear of the site and would generally respect the footprint and height of the rear part of the existing offices. As such there would be no material difference in the outlook from the neighbouring houses towards this part of the site.
11. There is a block of flats at 14-16 Canynge Road which abuts the southern boundary of the site. There are windows in these flats which directly face the site and which serve habitable rooms. Although the proposed town houses would not be any closer to these flats than the existing offices, they would project slightly further forward than the offices. As such the proposal would affect the outlook from these facing windows; primarily the windows serving the sitting rooms which currently have a view past the front of the offices along Canynge Road. However, because the forward projection of the development would not be significant and because these sitting rooms are served additionally by a front facing window, I do not consider the effect on the outlook would be significantly harmful.
12. With regard to privacy, the north elevation of the terrace would include a dormer window which would serve a stairwell and which could be obscurely glazed and fixed. The other north facing windows on the terrace would be at ground floor level and would face the garden wall at the rear of the neighbouring units.
13. The windows on the south elevations of the town houses and on the rear of the flats would also face nearby residential properties. However I give considerable weight to the fact that planning permission exists for the change of use of the offices to 20 flats². The proposed windows would be in similar positions to the existing windows on the offices which could serve the 20 flats. As such I do not consider any overlooking impact would be materially different to that which could occur were the extant planning permission implemented.
14. Similarly, I do not consider the minimal forward projection of the development, in comparison with the extant permission, combined with the loss of the London Plane tree at the front of the site, would be likely to lead to a loss of privacy for the houses opposite the site any greater than that which would result from the implementation of the extant planning permission, as it is likely that there would be pressure for the removal of the tree in that scenario also.

² Ref 16/03127/COU

15. The potential for overlooking from the elevated gardens serving the proposed houses would be mitigated by boundary fencing whose provision and retention could be secured by condition. As such, as a whole, I do not consider the development would result in any loss of privacy for the neighbouring residents.
16. In summary, I do not consider the development would result in unacceptable overlooking to neighbours and I accept the scheme would improve the amount of daylight received by some adjacent properties. Nonetheless I do consider that due to the scale and massing of the town houses and their proximity to the properties in Canynge Square, particularly Nos 1–3, the development would appear overbearing and overdominant, would materially reduce the sunlight received in their rear gardens and so would harmfully affect the outlook from these properties. I recognise the suburban nature of the vicinity means that houses locally are often tightly arranged. Nonetheless, this should not justify a development which has a harmful effect on resident's living conditions, which is the case here. Consequently the proposal would be contrary to Policy BCS21 of the Core Strategy (CS) and Policies DM27 and DM29 of the Site Allocations and Development Management Policies (SADMP) which all aim to safeguard the amenity of existing development through good design.

Character and appearance

17. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the 'Act') requires me to have special regard to the desirability of preserving the setting of listed buildings. Similarly section 72(1) of the Act states I must pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Furthermore, in *Barnwell Manor Wind Energy Ltd v East Northants District Council*, English Heritage, National Trust and Secretary of State for Communities and Local Government [2014] EWCA Civ 137 it was found that if harm to heritage assets is found, considerable importance and weight must be given to that harm.
18. The site is located within the CHCA which covers a large part of suburban Bristol. It is predominantly residential in character and a significant proportion of the buildings date from the Victorian era or earlier. Indeed the houses in Canynge Square and most of those in this part of Canynge Road are early to mid-Victorian. All the dwellings in Canynge Square are Grade II listed as are the properties to the south of the site at 2–12 Canynge Road.
19. With the exception of the flats at Nos 14–16, which appear prominently in the street scene, the other dwellings in the vicinity of the site are terraced, narrow and have a vertical emphasis. The terrace at 1–6 Canynge Square and that opposite the site are different in their detailing, but both have their own strong uniformity. The terrace at Nos 2–12 has less consistency as the houses within it display a variety of bay windows, metal balconies, different colour finishes, dormer windows and even an additional storey in one case. Also, the existing offices are of a more contemporary form and design than their surroundings and it was agreed by many of the parties at the Hearing that they contribute negatively to the character and appearance of the area. Consequently, the site's immediate setting is not as ordered as other parts of the CHCA.
20. The short terrace of three town houses at the front of the site would generally reflect the proportions of the other dwellings locally in terms of their width and vertical emphasis. They would be lower than the houses opposite, but the development would be perceived as being generally consistent with the height

of the houses in Canynge Square and the neighbouring flats due to the dormer windows' proximity to the front of the building.

21. The window design differs in terms of the number of glazing panels from the windows at Nos 2- 12, the flats at Nos 14-16 and the rear elevation of 1-6 Canynge Square, but they reflect the general scale and shape of these windows. Moreover, the windows in the houses opposite the site are of a different style, and therefore the proposed glazing would not detract from the local character. Conversely the design of the proposed bays and glazed balconies would contrast with the nearby examples of bay windows and metal balconies. The use of render would reflect that used on the adjacent building to either side, but in any case details of finishing materials can be secured by condition, including those relating to the front boundary treatment.
22. So, whilst the development would generally reflect the character and appearance of the vicinity and the wider CHCA, some of the design details would conflict with its immediate surroundings. However I give significant weight to the negative contribution the existing building makes to the CHCA.
23. With respect to the setting of the listed buildings, the development would be seen in the context of the rear and side elevations of the adjacent Canynge Square dwellings. However the main significance of these buildings is their attractive frontage and uniform appearance. Indeed no reference is made to their rear elevation in the listing description. As such, although the proposal would come much closer to them than the existing offices, I do not consider this would harm their significance or setting. The listed buildings at 2-12 Canynge Road are separated from the site by the flats at Nos 14-16 and so, whilst they would be seen in the same street scene, the effect of the development on their setting is minimal and not harmful.
24. Turning to the London Plane tree, this stands prominently in front of the site and makes a positive contribution to the street scene as do the smaller trees to its side. It not disputed that these trees are healthy and would have a considerable remaining life. However the London Plane is close to the front of the existing offices and it was suggested by the appellant's arboriculturalist that although the development may not physically harm the tree, its proximity to the façade of the town houses means there would be firm pressure for the removal of the tree in the medium term.
25. Canynge Road is fairly verdant road with a variety of mature trees in the street scene including in the front gardens of some of the properties opposite the site. The landscaping scheme proposes to replace all the trees on site with 21 new trees including three semi-mature fastigate trees along the frontage. Such a provision could not be ensured through the extant planning permission. Also a unilateral undertaking has been provided to make a financial contribution to the provision of street trees elsewhere locally. So, despite the loss of a prominent tree, I consider the provision of a number of semi-mature replacement street trees would result in the verdant character of the street scene being retained.
26. I note the concern that these trees, and other species proposed in the landscaping scheme, would be alien to the area. However I have no evidence to demonstrate that these species would not compliment the variety of existing species in the area.

27. As such, on balance, I consider the development would preserve the character and appearance of the CHCA. The lack of an objection from Historic England supports my view on this. Accordingly the proposal would accord with Policy BCS21 of the CS and Policies DM26, DM27, DM29 of the SADMP which all generally expect development to respond and contribute appropriately to an area's character. It would also conform with Policy BCS22 of the CS and DM31 of the SADMP which requires development to safeguard or enhance heritage assets and their setting.

Employment floorspace

28. The development would result in the loss of the existing offices which total around 13,500 square feet and have the potential to employ around 100 people. At present around 4,500 square feet of the building is vacant and around 70 people presently work at the site. The part of the building that is vacant has been marketed for around 18 months but there has been little interest. The building as a whole has not been marketed.
29. It was suggested that the building's position on a residential street outside the commercial centre of Clifton and some distance from the major commercial locations of central Bristol and north Bristol mean the building would not be likely to attract any sizeable occupiers. Furthermore, I was advised that only a sizeable occupier on a long term lease of around 10 years would be able to generate the security for the building's owners to allow them to undertake the improvements that the building needs to bring it up to modern standards. In addition, from my site visit, I noted very little available car parking either on site or in the vicinity which, in my view, would affect its attractiveness to businesses.
30. It was not disputed that Bristol as a whole is experiencing a growth in the demand for office space. Also the evidence provided by ETP property consultants on behalf of Mrs Edwards states that there is some demand for office space in Clifton. However the examples quoted of recent lettings generally relate to small scale lets. Indeed it was not disputed that there is some demand for small offices on short term lets.
31. The details provided by Mrs Edwards at the Hearing demonstrated that a local agent, Williams Gunter Hardwick, is looking for offices for its clients comparable to those at the site. However I heard that this company are fully aware of the offices at the site. Indeed the same agent had commented, in July 2015, that any letting of the building would most likely be to smaller occupiers which would not be likely to allow the investment needed in the fabric of the building. As such although no wholesale marketing has been carried out, it is unlikely that there is a demand for the current building in a form that would allow for its long term operation.
32. Also, Policy BS8 of the CS and Policy DM12 of the SADMP advises that employment land will be retained where it makes a valuable contribution to the economy and employment opportunities. I accept the presence of the offices do provide a contribution to the economy locally, to the shops and services in Clifton, and to the city. Nonetheless I give substantial weight to the fact that the extant planning permission already allows for the complete loss of the offices at the site. As such I do not consider it could be considered valuable employment land as it has no long term security. Consequently the proposal

would not result in the unacceptable loss of valuable employment floorspace and so would not conflict with Policies BCS8 and DM12.

Other matters

33. I accept that the provision of eight dwellings, comprising a mix of sizes, would be a benefit to the Council's housing requirements. Nevertheless the extant permission for 20 flats would provide a greater benefit to housing supply. Therefore I give limited weight to this consideration.

Planning balance and overall conclusion

34. The development would preserve the character and appearance of the CHCA, would not result in the loss of valuable employment floorspace, and would provide a limited contribution to housing supply.
35. However I consider these aspects are demonstrably outweighed by the harm to the living conditions of the occupiers of the neighbouring properties for the reasons given above. As such, and taking account of all other considerations, I conclude that the appeal should be dismissed and planning permission refused.

Andrew Owen

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Jim Tarzey BA(Hons) MRTPI	Pegasus Group
Jonathan Coombs	Pegasus Group
Ian Jenkins	AWW Architects
Alex Robinson MRTPI IHBC	Pegasus Group
Andrew Cunningham	Arboricultural Consultant
Graham Calver	Appellant

FOR THE LOCAL PLANNING AUTHORITY

David Grattan

INTERESTED PERSONS

Linda Edwards	Canynge Road Residents Group
Judy Enticknap	JME Conservation
David Haigh	JME Conservation
Michael Woodman-Smith	Clifton & Hotwells Improvement Society
Chris Jefferies	Clifton & Hotwells Improvement Society
Heather Day	Local resident
Keith Eltringham	Local resident
Duncan Ogilvie	Local resident
Fredelin Bohin	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

Details of search requirements for offices by Williams Gunter Hardwick

Policy BCS9 of the Core Strategy

Policy DM17 of the Site Allocations and Development Management Policies

Bristol Tree Replacement Standard

Planning Obligations Supplementary Planning Document

A Guide for Designing House Alterations and Extensions - Supplementary Planning Document 2

Drawing Nos: 100 AC, 101 AD, 103 AC, 206 AC, 302 AC, 303 AC, 304 AC, 305 AC, 306 AC, 400 AC and 401 AC