



Appeal Decision

Site visit made on 19 July 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 9th August 2017

Appeal Ref: APP/U4610/W/17/3172539

West Orchard House, 28-34 Corporation Street, Coventry CV1 1GF

- 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 J Li, Shunde Place Ltd against the decision of Coventry City Council.
 - The application Ref FUL/2016/1723, dated 28 June 2016, was refused by notice dated 28 September 2016.
 - The development proposed is the change of use and sub-division of premises from a retail unit (Use Class A1) on the ground floor with offices (Use Class B1) on the upper floors to a mixed use comprising 5 units (Use Classes A1, A2 and A3), office unit (Use Class B1) and gym area (student use only) on the ground floor and student accommodation to the upper floors comprising 62 self-contained flats/cluster flats providing 91 bedrooms. Extension of building at 3rd floor level, external alterations including new cladding and glazing to all elevations.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use and sub-division of premises from a retail unit (Use Class A1) on the ground floor with offices (Use Class B1) on the upper floors to a mixed use comprising 5 units (Use Classes A1, A2 and A3), office unit (Use Class B1) and gym area (student use only) on the ground floor and student accommodation to the upper floors comprising 62 self-contained flats/cluster flats providing 91 bedrooms. Extension of building at 3rd floor level, external alterations including new cladding and glazing to all elevations at West Orchard House, 28-34 Corporation Street, Coventry CV1 1GF in accordance with the terms of the application, Ref FUL/2016/1723, dated FUL/2016/1723, subject to the conditions in the attached schedule.

Procedural Matters

2. Work had already started on the cladding of the building at the time of my visit. For the avoidance of any doubt, I have determined the appeal on the basis of the submitted plans only. These include amended plans not referred to in the Council's suggested conditions. However, these relate only to the removal of outdoor seating from the Corporation Street frontage. This issue was discussed in the Council's officer report and I am satisfied that accepting these plans would not result in any injustice to interested parties.
3. The Council has provided me with its emerging Coventry Local Plan 2016. Whilst paragraph 216 of the National Planning Policy Framework (the Framework) states that weight can be given to policies in emerging plans following publication, the Council has not referred me to any specific policies

within this document as part of its appeal evidence or reason for refusal. Moreover, I have not been provided with any information relating to the number or nature of any outstanding or unresolved objections to the plan. As such, I have not given this plan significant weight in my decision.

Main Issues

4. The main issues are the effect of the development on the character, appearance and pedestrian accessibility of the area.

Reasons

5. The appeal relates to a vacant city centre building, which was formerly in use for retail on the ground floor and offices above. The site is within the defined City Centre Shopping Area (CCSA) in the Coventry Unitary Development Plan (UDP)(2001). The Corporation Street frontage faces the Grade II Listed Belgrade Theatre and a large open public square known as Belgrade Plaza. The Smithford Way frontage forms part of a shopping street and sits opposite a large indoor shopping centre.
6. Planning permission was granted for a similar scheme in 2015¹. The use of the upper floors and the design of the exterior cladding are identical to what is proposed here. However, the permitted scheme included a pedestrian link through the building on the ground floor to provide a more direct route from Smithford Way to Belgrade Plaza and retail units to be provided on the Corporation Street frontage. The Council's principle concerns appear to be that without the pedestrian link and an active frontage onto Corporation Street, the scheme would not result in a satisfactory form of design or provide adequate pedestrian accessibility.
7. Planning law² requires that decisions are made in accordance with the development plan unless material considerations indicate otherwise. The relationship between the appeal proposal and the development plan must, therefore, be the primary consideration and not how the permitted and proposed developments compare to one another.
8. While the Council's evidence suggests the previous scheme was only considered acceptable as a result of the pedestrian link, it has raised no objection to either the use of the upper floors of the building or the design and colour of the external cladding. These elements are largely identical to the previous proposal and the relevant conditions agreeing their details have been discharged. While I have noted the comments from the Council's Conservation Officer, the Council's appeal statement specifically states that the cladding is considered to be "*vibrant and acceptable*". There has been no suggestion that the development would unacceptably harm the setting of the Belgrade Theatre and I have seen nothing that would lead me to a different conclusion. In light of this, it is not entirely clear what harm the pedestrian link was seen to be outweigh in the planning balance with the previous scheme.
9. The building was predominantly behind scaffolding and some cladding had already been installed at the time of my visit. Nonetheless, from the elevations and written evidence provided, there is nothing to suggest the original façade

¹ Application reference FUL/2015/2187

² Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990

of the building contributed significantly or positively to the quality of the urban environment or served to create an attractive enclosure to the public square in its own right. It would also be reasonable to assume that the long term vacancy of the building would also add little in terms of the vitality of this part of the city centre.

10. The cladding serves to add an element of colour and vibrancy to what might otherwise be a somewhat plain exterior. Other buildings in the area have also sought to inject colour into the urban landscape, in particular the nearby Study Inn building which is red and dark grey and prominent in the skyline. The materials differ to the hotel and gym at the far end of Belgrade Plaza, but the colour scheme proposed is similar. To an extent therefore the outward appearance of the building would complement other development in the area.
11. The Smithford Way frontage is more self-enclosed, but the cladding would nevertheless add a degree of visual interest to the shopping street. This would not be inappropriate in this location and would not result in significant harm to the street scene. The creation and use of the ground floor units is appropriate in this location and the potential for outside seating would add a degree of activity to the frontage. Taken together both the appearance and use of the building should help to attract footfall to the ground floor commercial units, which would be of a clear benefit to the vitality of this part of the city centre. Not only would the appearance of the building be improved as a result of the development, its use for predominantly residential uses would also complement and enhance the existing mixed-use character of the area.
12. In terms of pedestrian accessibility, the development would not alter the existing situation, which has clearly been in place for some time. It would be reasonable to assume that the development would lead to an increase in activity and more footfall. Nevertheless, these are already busy shopping streets and, when occupied in the past, the building would have generated a certain level of footfall and presumably could do so again with or without the development if it were reoccupied under its current lawful use. I saw nothing to suggest that pedestrian accessibility around the site, including the existing links onto Corporation Street, would be in any way insufficient to accommodate any additional pedestrian traffic or activity associated with the development. In coming to this conclusion, I have had regard to the concerns raised in relation to the entrance to Hillman House. However, any existing issues relating to obstructions within the passages could be addressed by other means and do not justify a new link in their own right. The highway authority also did not object to the proposal on safety or accessibility grounds, which I consider to be a material consideration of considerable importance.
13. The main entrances into the student accommodation would be on Corporation Street. While no doubt some occupants would use Smithford Way there are a wide variety of other destinations that they may either arrive from or wish to walk to. It is not inevitable that any and all additional pedestrian or cycling activity generated by the development would be focussed on Smithford Way. As such, I find the nature or level of activity from the development itself would not warrant the delivery of a new pedestrian link to address any resulting negative impacts directly related to the proposal.
14. Whilst a new link might well provide some wider benefits, the Council has not pointed me in the direction of any specific adopted policy which requires it to

be delivered as part of any change of use proposal. An interested party has made reference to a City Centre Action Plan. The Council has not referred to this or relied on it as part of their case. Without any information as to the stage the plan is at in its preparation or if there are any outstanding or unresolved objections to it, I have not given this significant weight in my decision. Moreover, the Council has not sought to dispute the appellant's assertion that the link as permitted is not viable or deliverable. If the argument put forward is that the scheme is unacceptable because it lacks a pedestrian link, then it must be material as to whether such a link is capable of being delivered. There is nothing before me to suggest that it is deliverable at this time.

15. The lack of a new pedestrian link would not therefore have any harmful effect on current levels of accessibility. I recognise that the creation of such a link might be an aspiration of some importance to the Council. Nevertheless, in lieu of anything before me which suggests that a link is necessary to mitigate a particular impact of the development, that it is a requirement of the development plan or which demonstrates it is deliverable, I do not consider that its omission from this proposal should be used as a reason for withholding planning permission. This is particularly the case where the proposal has other clear tangible benefits for the city centre.
16. Turning to the issue of the gym, the Corporation Street frontage is not identified as primary frontage in the UDP and is on the periphery of the CCSA. Policy CC13 does not address the issue of alternatives to retail use and the Council has not included any reference to a conflict with this policy in its decision notice or appeal statement. The main concern appears to be not with the principle of a leisure use in this location, but with the loss of a more active retail frontage facing Belgrade Plaza and the theatre in terms of the form and function of the public space.
17. The gym would be for student use only. It is not clear whether it would only be for residents of the development or whether the more general student population would be permitted entry. It would be reasonable to assume that a use that is not open to the general public would be less complementary to the public space, theatre or other shops and businesses along Corporation Street than a retail or other publically accessible use. Nonetheless, a gym does not have to result in a frontage with no visual interest or activity. The Council has suggested a condition which would require details of glazing to be provided. This is appropriate and should enable people to see activity taking place within the building. In this regard, the frontage would still be able to provide a display of visual interest that would complement the overall design and student use of the building.
18. Any harm that might result from the gym being closed to the general public in terms of the design or function of this area would not be significant. In addition, the current vacant state of the building and the prospect of it continuing to be vacant is a material consideration of significant weight. In such circumstances, the proposal is likely to be more successful at creating a high quality environment to enclose the public space than a vacant store with a completely dead frontage. Bringing some life into this unit, with a viable use which complements that of the upper floors would outweigh any limited harm or opportunity cost that might result. Similarly, any effect on the vitality and viability of the city centre is unlikely to be significant. Even if the units here

had been retail, they are unlikely to have been major attractors for visitors when compared to the bulk of the shopping/leisure offer elsewhere in the city centre. The gym is unlikely to detract from this broader attraction.

19. Reference is made to another area within the city centre which remained vacant for some time before being occupied by uses deemed appropriate by the Council. However, I have not been provided with any details about this alternative location and thus cannot comment with any certainty on whether the two are directly comparable or that there is a similar likelihood of units here being occupied in the same way. There is nothing before me to suggest that there is a realistic likelihood of such occupiers coming forward in a reasonable timescale. When considering the length of time the unit has been vacant, there would seem to be little advantage either in economic or design terms to maintaining the vacancy in the hope that an alternative use may come forward at some time in the future.
20. Taking all of the above matters into account, I consider that the development would serve to enhance the character and appearance of the area, including its effect on the design and functionality of the Corporation Street frontage. In addition, it would not have an unacceptable impact on pedestrian activity in the area or levels of accessibility across the city centre. Accordingly, I do not see any conflict with UDP Policy BE2 which seeks to promote high quality urban design which takes account of enhancing townscape, promoting diversity through mixes of use which work together to create vital and viable places and which ensures developments are sustainable. There would also be no conflict with Policy AM8 which seeks to promote a network of convenient pedestrian routes.
21. The Council has not specified which element of the Framework it considers the development conflicts with its decision notice. Nonetheless, I see no conflict between the development and the Core Planning Principles of supporting sustainable economic development, securing high quality design and a high standard of amenity or actively managing patterns of growth to make fullest possible use public transport, walking and cycling.

Other Matters

22. The Council raised no objections in relation to the effect on living conditions or the amenity of business operators in the area. The use of the upper floors for student accommodation appears to be a wholly appropriate use of the building in a highly sustainable location. With the Council's suggested conditions in place, there is no reason in principle why the re-use of the upper floors should result in any unacceptable impact on the living conditions of nearby occupants. I am satisfied with the suggested approach and thus these concerns do not therefore alter my overall conclusion.

Conditions

23. I have considered the suggested conditions from the Council in accordance with the Planning Practice Guidance (PPG). In addition to the standard condition which limits the lifespan of the planning permission, I have imposed a condition specifying the relevant drawings as this provides certainty. These are slightly different to those suggested, as they include reference to amended plans which omit the seating on the Corporation Street frontage. These are referred to in

the Council's officer report and respond to the reasonable concerns of the highway authority in terms of pedestrian safety.

24. Conditions 3 and 4 are necessary in the interests of the character and appearance of the area. Condition 5 is necessary to facilitate the use of alternatives to the car. Condition 11 is necessary in the interests of highway safety and the living conditions of future occupiers. Conditions 6, 7, 8, 9, 10, 12, 13, 15 and 16 are necessary in the interests of the living conditions of existing and future occupiers, with particular regard to noise and disturbance, odours, refuse storage, security and protection during construction. Condition 14 is necessary to ensure pedestrian safety relating to on-street tables and chairs.
25. I have amended the suggested wording to condition 10 to remove what I consider to be superfluous detail describing the factors that would form part of the agreed management plan. I have made other minor amendments to a number of conditions in the interests of clarity and precision. I have not imposed the suggested condition relating to the area outside the appellant's ownership as it is not considered necessary. There is no requirement to carry out the cladding elsewhere on the building and no reason why this area should be addressed differently.

Conclusion

26. For the reasons given above I conclude that the appeal should be allowed.

S J Lee

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved documents: 1428-12_C, 1428-01_E, 1428-02_K, 1428-13_B, 1428-11_D, 1428-P-03_A, 1428-P-04_B, 1428-P-05_B.
- 3) The development shall be carried out only in full accordance with sample details of the facing materials which have been submitted to and approved in writing by the local planning authority under application reference DC/2016/1629 on 18th August 2016.
- 4) The development shall be carried out only in full accordance with sample details of the glazing to Corporation Street which shall have first been submitted to and approved in writing by the local planning authority.
- 5) No residential accommodation hereby permitted shall be occupied unless and until the approved cycle parking facilities have been provided and made available for use in accordance with the details on drawing number 1428-01_E and thereafter those facilities shall remain available for use at all times unless alternative measures have been approved by the local planning authority.
- 6) No residential accommodation hereby permitted shall be occupied unless and until details of a scheme for works to minimise the transmission of noise and

- vibration through party walls and floors between the ground floor commercial uses and the upper floor residential accommodation (in accordance with British Standard 8233 - Sound Insulation and Noise Reduction for Buildings) have been submitted to and approved in writing by the local planning authority. The works shall be completed in full accordance with such approved details and thereafter shall not be removed or altered in any way without the prior written approval of the local planning authority.
- 7) No residential accommodation hereby permitted shall be occupied unless and until all party walls and floors between individual units of residential accommodation have been insulated to minimise the transmission of noise and vibration in full accordance with Approved Document E of the Building Regulations and thereafter such insulation shall not be removed or altered in any way without the prior written approval of the local planning authority.
 - 8) No units of residential accommodation hereby permitted which have windows facing Corporation Street shall be occupied unless and until those windows have been fitted with acoustic glazing and acoustic ventilation which have an overall minimum sound reduction specification of at least RW 38dB and the indoor ambient noise levels for those units (table 4, 7.7.2 in BS8233:2014) shall be achieved for reasonable resting/sleeping conditions (for day and night-time) and to safeguard against individual (peak) noise events which should not normally exceed 45dB L_{Amax}. Thereafter such acoustic glazing and acoustic ventilation shall remain in place at all times.
 - 9) No external plant shall be installed within the application site in connection with the development hereby permitted unless and until details of such plant have been submitted to and approved in writing by the local planning authority. Such details shall include a noise assessment using the methodology of British Standard BS4142:2014 to demonstrate that noise from the plant shall not exceed the existing background (LA₉₀) noise levels at any time at a distance of 1 metre from the nearest residential façade and include details of any noise attenuation measures necessary to achieve this. Mitigation must be based on the plant working at 100% capacity and any corrections for impulsive and/or tonal noise must be included.
 - 10) No units of residential accommodation hereby permitted shall be occupied unless and until a noise management plan, which shall have been submitted to and approved in writing by the local planning authority, has been implemented in full. Thereafter all measures in the approved noise management plan shall continue to be implemented at all times.
 - 11) No external lighting or illumination of any part of the building shall be installed or operated unless and until details of such lighting or illumination have been submitted to and approved in writing by the local planning authority. Thereafter such lighting or illumination shall be installed and operated at all times in full accordance with the approved details.
 - 12) No ground floor accommodation shall be used for restaurant purposes unless and until details of fume extraction/odour control equipment for such accommodation has been submitted to and approved in writing by the local planning authority. Thereafter such equipment shall remain in place at all times and shall be operational whenever the cooking of food takes place.
 - 13) No commercial or residential accommodation hereby permitted shall be occupied unless and until the refuse storage area shown on approved

drawing number 1428-02_K has been provided. Thereafter this refuse storage area shall remain in place and available for use at all times.

- 14) The external seating areas at ground floor level identified on the approved plans shall not be used unless and until they have been enclosed by screens in full accordance with the approved application documentation. Thereafter the screens shall remain in place at all times when the outdoor seating areas are in use.
- 15) Prior to the commencement of development a Construction Environment Management Plan (CEMP) shall be submitted to and approved in writing by the local planning authority which shall include details regarding those hours during which construction/conversion works will be carried out on the site, other measures aimed at reducing noise pollution to nearby residents during construction work and details on how the transmission of dust from construction/conversion activities will be controlled. Thereafter, the approved CEMP shall be implemented in full for the duration of construction/conversion works within the application site.
- 16) The upper floor student accommodation hereby permitted shall not be occupied unless and until CCTV and other crime prevention measures have been provided in respect of such accommodation in full accordance with details which shall have been submitted to and approved in writing by the local planning authority. Thereafter such CCTV infrastructure and other approved measures shall remain in place at all times.

Schedule Ends