



Appeal Decisions

Inquiry Held on 19, 20 and 21 March 2019

Sites visits made on 19 March 2019 and 21 March 2019

by A J Mageean BA (Hons) BPI PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th April 2019

Appeal A Ref: APP/Z0116/W/18/3209837

15-16 York Street, Brunswick Square BS2 8NX

- 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 Nordic Star Investments Ltd against the decision of Bristol City Council.
- The application Ref 18/02305/F dated 30 April 2018, was refused by notice dated 25 July 2018.
- The development proposed is change of use of 15-16 York Street from the existing private members club (Sui Generis) at ground floor and lower ground floor with ancillary office use on upper floors to office floorspace (B1a) on all floors with associated provision of waste storage and bicycle parking facilities.

Appeal B Ref: APP/Z0116/Y/18/3209838

15-16 York Street, Brunswick Square BS2 8NX

- The appeal is made under of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to listed building consent.
- The appeal is made by Nordic Star Investments Ltd against the decision of Bristol City Council.
- The application Ref 18/02306/LA dated 30 April 2018, was refused by notice dated 25 July 2018.
- The works proposed are change of use of 15-16 York Street from the existing private members club (Sui Generis) at ground floor and lower ground floor with ancillary office use on upper floors to office floorspace (B1a) on all floors with associated provision of waste storage and bicycle parking facilities.

Appeal A Decision

1. The appeal is allowed and planning permission granted for change of use of 15-16 York Street from the existing private members club (Sui Generis) at ground floor and lower ground floor with ancillary office use on upper floors to office floorspace (B1a) on all floors with associated provision of waste storage and bicycle parking facilities at 15-16 York Street, Brunswick Square, Bristol BS2 8NX in accordance with the terms of application Ref 18/02305/F and the plans submitted with it, subject to the conditions set out in Schedule A.

Appeal B Decision

2. The appeal is allowed and listed building consent granted for change of use of 15-16 York Street from the existing private members club (Sui Generis) at ground floor and lower ground floor with ancillary office use on upper floors to office floorspace (B1a) on all floors with associated provision of waste storage and bicycle parking facilities at 15-16 York Street, Brunswick Square, Bristol

BS2 8NX in accordance with the terms of application Ref 18/02306/LA and the plans submitted with it, subject to the conditions set out in Schedule B.

Preliminary Matters

3. The Statement of Common Ground relating to Transport Development Matters (SoCGTM) addresses three points: that currently the single yellow line parking restrictions along the site frontage do not prevent loading and unloading, that there are no on-site cycle parking facilities, and that waste disposal bins are currently left permanently on the paved area outside No 15.
4. The SoCGTM includes two additional plans addressing cycle parking and waste storage. Plan reference 3199/PA/262a illustrates how a cycle store for up to 13 bicycles could be accommodated to the rear of the existing ground floor. Plan reference 3199/PA/261 illustrates the proposed replacement of the barrel lift within the lightwell to No 15 with an electric-hydraulic bin lift. These plans were not considered as part of the original applications in these cases. I am mindful of the Wheatcroft principle that if the development is so changed by these plans that to grant it would deprive those who should have been consulted on the opportunity of such consultation. However, my view is that these changes are relatively minor and do not amount to materially different proposals. I have therefore considered the appeals on this basis.
5. That being the case, the parties set out in the main Statement of Common Ground (SoCG) that reasons for refusal 2 and 3 of the planning application, and the single reason for refusal of the application for listed building consent, are able to be dealt with by appropriately worded conditions. On this basis the Council no longer defends the listed building consent decision.
6. With regards delivery vehicles, the main parties have agreed that the existing Traffic Regulation Order along the site frontage could be modified to allow loading and unloading outside peak periods (ie outside 0800-1000 and 1600-1800). A Unilateral Undertaking securing this obligation was included in draft form as part of the SoCGTM. As there was a delay in the completion of the signed agreement during the inquiry sitting, the inquiry remained open pending receipt of the final document. This was received on 29 March 2019, after which I closed the inquiry in writing.
7. The applications refer to the use of the buildings as a private members club. Whilst this is the lawful use of the buildings, I am aware that it ceased in 2016, and that during much of the intervening time they have been let on a short term leasehold basis to an artists' collective. This tenancy ended on 15 March 2019 and at the time of my site visits the buildings were unused.

Appeal B consideration

8. The appeals relate to two Grade II listed buildings located within the Portland and Brunswick Square Conservation Area. The issues associated with granting listed building consent for the proposed works have been resolved. Nonetheless, under Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I am required to have special regard to the desirability of preserving the buildings or their setting or any features of special architectural or historic interest they possess. What follows is therefore consideration of the heritage significance of the buildings and the effect of the works proposed.

i. Heritage significance

9. The appeal buildings were part of the original design composition for Brunswick Square, laid out in the second half of the 18th Century. This area with its regular grid of terraced streets and Squares is one of the oldest surviving examples of Georgian town planning in Bristol. This western side of the Square is formed of a terrace of three properties and was never fully completed.
10. These three storey plus basement and attic floor buildings exhibit characteristics typical of Georgian town houses. Their elegant and symmetrical brick with limestone frontages are largely as original from ground floor upwards, including pedimented front doors with raised key entablatures, sash windows with Gibbs surrounds and iron railings in front of lightwells. Unsympathetic alterations have been made to the front lightwells, including the blocking up of windows. The pantile mansard roofs are not original and appear to have been replaced in the 1970's. There are a range of replacement windows on the rear elevations.
11. Internally substantial alterations have been made to lower floors, most dating from the 1960's when the two units were amalgamated at ground and lower ground floor levels. Large openings were created associated with the creation of a single private members' club. In the late 1970's a large lower ground and ground floor extension was added covering the rear yard area. Nevertheless, the layout and features of joinery and internal ornamentation have largely been retained at first and second floor levels. The reconfiguration of the buildings has meant that the upper floors to No 15 have lain vacant and under-used for over 30 years and are in a state of significant disrepair.
12. The special interest and significance of these buildings relates largely to the extent of preserved fabric, particularly on their front elevations and also the configuration of the upper floors internally. More generally, whilst this largely original frontage is compromised somewhat by the unsympathetic painting of the façade to No 14, the appeal buildings form a significant component of the west side of Brunswick Square.

ii. Works proposed

13. The works proposed include the cleaning and repair of stonework, windows and iron gates/railings to the front elevations as necessary, the reinstatement of the windows and replacement of doors to the front lightwells, the removal of the somewhat makeshift canopy to No 16 and the barrel lift to No 15. To the rear upper level inappropriate windows would be replaced with sliding sash windows. Internally, the scheme would not make any further change to the current degree of vertical separation between the two buildings and would seek to retain/reinstate some features of ornamentation, including those to the staircases and cornicing. Many of the previous alterations to the configuration of the buildings would be retained, including the rear extensions. However, some of the later subdivisions, particularly those involved in creating the ground floor function spaces, would be removed and two new lightwells and a rooflight would be added.
14. A new bin lift would be inserted in place of the barrel lift. The details provided indicate that this could be sensitively designed and would be preferable to the current storage of bins on the flagged area in front of the buildings. Further details of the management of this aspect of the works could be controlled by condition.

ii. Conclusion on listed building consent

15. Overall, I conclude that the works would represent a sympathetic conversion which would preserve key elements of the buildings' special interest and heritage significance, including their front elevations and features of internal configuration. In this regard the scheme would not conflict with the requirements of section 16 of the National Planning Policy Framework 2019 (the Framework) which aims to conserve and enhance the historic environment.

Appeal A considerations

16. In the light of the discussions between the main parties to address reasons for refusal 2 and 3 of the planning appeal, I consider the outstanding main issues to be:

- Whether the change of use of the appeal buildings to B1 office use would lead to the loss of a community facility, which would be contrary to development plan policy seeking to protect such provision, and;
- If the proposal would lead to the unacceptable loss of a community facility, whether this harm would be outweighed by other considerations, including statutory duties in relation to listed buildings.

Reasons

Loss of community facility

i. Recent use of the buildings

17. The appeal buildings had been in use as a private members club known as the 'Brunswick Club' for around 130 years at the point it went into liquidation in 2016. Whilst falling into the Sui Generis category of use as a social facility for subscription paying members, this type of use is consistent with the broad categorisation of 'community facilities' set out within the Council's development plan. The recent occupation of the buildings on a temporary leasehold basis by two well established art, film and media collectives, also known under the wider name of the 'Brunswick Club', also falls within the definition of community facilities.
18. As planning permission for change of use had not been gained this most recent occupation cannot be regarded as lawful. Nevertheless, the Council's representative indicated that, if an application to regularise this use had been made, no significant impediments to the scheme in planning terms were foreseen.
19. During the relatively short period of occupation of the appeal buildings the new Brunswick Club, which is registered at the appeal address as a Community Interest Company (referred to hereafter as the CIC), has gained a significant following, as evidenced by the scale of objections to the appeal proposals. The accommodation has worked well for the CIC, with the function spaces at ground and lower ground level being used as shared rehearsal and event spaces, with dark room and sound studio spaces also being available. The upper level smaller rooms formed individual and shared studios. In total the buildings have accommodated over 40 artists.

20. Evidence presented by supporters of this facility during the inquiry indicates that during their tenancy the CIC hosted a diverse programme of events, and that over the past 12 months nearly 5,000 people attended this venue. Such events drew diverse audiences of both locals and those from the South West and London. More generally, I appreciate that this venue provided a catalyst for collaborative work across art forms. Within a short period of time this became a much-valued cultural venue, contributing to the diverse creative culture which is recognised as an important part of what makes Bristol unique.
21. The success of the CIC has been recognised through funding support provided by the Arts Council (£35,000 to support organisational development between June 2018 and March 2019) and Bristol City Council (£5,000 to support arts and events activity). The Arts Council funding has been used in part to support the development of a 'Cultural Enterprise Plan 2018-2020' (CEP), the aims of which include creating 'a long-term home for artist-led activity in Bristol'. This would allow for sustained and secure development of cultural activity without the uncertainty of short-term leases.
22. Representations received before and during the inquiry make it clear that the appeal buildings work well for the CIC, that they appreciate its heritage interest, and have a strong desire to continue to occupy the buildings. As such I am aware that approaches were made to the current freeholder with a view to gaining a long-term lease on the buildings. Nonetheless, recognising their uncertain future within these buildings, the CEP sets out three possible models for the CIC to acquire accommodation, with investment levels ranging from £500,000 to over £1,000,000.

ii. Policy provisions

23. The relevant development plan provisions seeking to protect community facilities are set out at Policy BCS12 of the Bristol Core Strategy 2011 (Core Strategy) which sets out the general approach, with Policy DM5 of the Bristol Site Allocations and Development Management Policies 2014 (SADMP) setting out more detailed criteria. Both policies appear to refer to community 'facilities' and 'uses' interchangeably, though the explanatory text to BCS12 refers to the location of the community facility depending on its function and service users. This suggests a distinction between the venue itself, this being the 'facility', and the 'use' to which it is put. It appears reasonable to consider the relevant policy provisions on this basis. As such, in the present case, whilst the facility itself remains, both the lawful and most recent uses have ceased, and the consequence of the appeal proposal would be the loss of the facility to office use.
24. Policy DM5 states that the loss of community facilities 'will not be permitted' unless one of four scenarios are demonstrated. Addressing the first of these, criterion i., which concerns the need or demand for the buildings, as the buildings are not currently in use, the second limb of this criterion is engaged. This sets out the need to demonstrate 'that there is no need or demand for any other suitable community facility that is willing or able to make use of the building(s)'.
25. As set out in paragraphs 19-22 above, whilst the CIC have recently vacated the buildings, there is clearly a need and demand from this group who are 'willing' to make use of these buildings. Details of whether the CIC would be 'able' in a

commercial and practical sense to occupy the buildings are less clear. The recent marketing of the buildings has not resulted in any substantive proposals from community or other interest. However, the precise policy wording is whether such a use is willing 'or' able to make use of the building. As such the requirements of this criterion have not been demonstrated.

26. Criterion ii. relates to the suitability of the buildings for community use, or whether they could be sensitively adapted. Again, consideration of the most recent use of the buildings suggests that, in basic terms, they are suitable for community use.
27. It is also relevant to consider the suitability of the buildings in terms of their condition. The unused upper floors of No 15 have been closed off in recognition that they are not safe or fit for use. Nevertheless, the most intensive use of the buildings appears to have been associated with the ground and lower ground floors, which appear to be in reasonable condition and able to accommodate the range of activity associated with the CIC. Furthermore, the appellant's concern regarding the fire safety of the buildings appear to have been resolved, at least in the short term, following action to address an enforcement notice (EN/523/2018). As a result, a letter from Avon Fire & Rescue Service dated 23 July 2018 states that 'suitable and sufficient measures to satisfy the requirements of the above (Fire Safety) legislation' have been demonstrated. Also, there is no evidence before me of noise nuisance associated with the CIC occupation of the buildings.
28. Criterion iii. concerns whether the facility could be retained, enhanced or reinstated as part of any redevelopment of the buildings. Whilst I am aware that a 2016 refused application sought to retain community use at lower levels with residential conversion of upper floors (16/00023/F & 16/00224/LA), such provision is not made here. I therefore conclude that the appellant has not provided evidence to demonstrate that the requirements of criterion ii. or iii. are met.
29. The final criterion requires that appropriate replacement facilities 'are provided' in a suitable alternative location. Similarly, Policy BCS12 requires that where important facilities are lost 'alternative provision is made'. These policies do not clearly identify whether the applicant should make provision for such facilities, or simply identify their existence elsewhere. The supporting text to Policy DM5 sets out a little more specifically that community facilities that cannot be accommodated on the existing site should form part of any redevelopment or 'be provided' in a suitable alternative location. Similarly, the supporting text to BSC12 refers to 'proposals to relocate community facilities'. It therefore appears that the onus is on the applicant to clearly demonstrate the nature, suitability and availability of alternative provision, whether that be at currently existing facilities or through the provision of new facilities.
30. The Planning Statement submitted in support of the 2016 applications, at a time when the private members club was still occupying the buildings, indicates that whilst club facilities had been advertised for hire over the previous two years there was 'limited interest'. Nevertheless, the need and demand for this type of accommodation has subsequently emerged from the wide range of interests forming the CIC, and indeed has grown in popularity. Whilst this use has not been formally permitted within these buildings, its importance as part of the cultural infrastructure of Bristol is not in doubt. Furthermore, I am aware

that the CIC has not been able to find suitable replacement accommodation, with their current space described as being too small overall, and lacking in the provision of both cellular and public space.

31. The appellant has provided a list of community facilities within the St Pauls area. This provides the addresses for 11 venues which it is suggested could be used for community use purposes, with reference also to several performing arts centres, creative groups and numerous pubs. To my mind this is a limited and basic survey, which does not make comparison with the appeal property in terms of the nature, suitability and availability of this accommodation. Therefore, it does not demonstrate that adequate consideration has been given to meeting the requirements of criterion iv.
32. The supporting text to Policy DM5 at 2.5.4 sets out more detailed criteria to determine the importance of the community facility. However, the 'importance' of community facilities is not referred to within the policy itself, and as such caselaw has clarified that such explanatory text is just that. It is not in itself part of the policy. Nevertheless, such an evaluation could assist in identifying the weight to be attached to conflict with policy provisions.
33. Of relevance in this case is consideration of the viability of commercial community facilities, and the suggested need to demonstrate that the site is no longer viable for that use and has been adequately marketed. Whilst a viability assessment has not been submitted in this case, the freehold of the buildings has been marketed in accordance with the Council's guidelines. As a result, whilst there has been some interest in the acquisition of the buildings for alternative uses, no formal offers relating to either community-based or other uses have been received. Though this is not evidence of policy compliance, it does suggest the need to have regard to other considerations in this case.
34. Finally, the supporting text to Policies BCS12 and DM5 both describe the term 'community facilities' as being wide-ranging, including uses 'whose primary function is commercial but performing a social or community role i.e. sport, recreational and leisure facilities including local pubs'. In this respect a purely commercial use is not specifically excluded. As such, the appellant suggests that the appeal buildings would provide a range of small scale and flexible business spaces which would be let at below the headline office rents within the locality. In this sense there would be some community benefit through the provision of low cost and accessible employment space. It is also possible, though by no means certain, that this could be used to accommodate community-based initiatives.
35. In some circumstances employment uses can contribute to community cohesion. However, in such situations any community benefit would be of secondary importance to the primary object of letting commercial floorspace. This does not therefore accord directly with the spirit of these policies, which seek to protect those uses whose primary purpose is to create focal points for local people, generating community spirit and a sense of place. As such the appeal scheme would not itself achieve the protection of community facilities sought by these policies.

iii. Conclusion on community facilities

36. I conclude that policy requirements relating to the protection of community facilities have not been met. Therefore, the change of use of the appeal

buildings to B1 office use would lead to the loss of a community facility, which would be contrary to Core Strategy Policy BCS12 and SADMP Policy DM5. There would also be conflict with the provisions of the Framework which set out the need to promote healthy, inclusive and safe places, including at paragraph 92 the need to guard against the unnecessary loss of valued community facilities and services.

Other considerations

i. Heritage benefits

37. There has been under-investment in the fabric of the buildings for some considerable period of time, particularly evident in the abandoned upper floors to No 15, and ongoing water ingress from the roof and at various other points. Whilst a structural survey of the condition of the buildings is not before me, some harm to their significance has been caused through their neglect. That said, the lower floors appear to have been able to sustain considerable wear and tear without obvious detriment. Nevertheless, the buildings as a whole must be considered.
38. In simple terms the appeal scheme would achieve the restoration of the buildings, preserving and respecting the areas of original plan form, ornament and fabric. Details of the scheme are set out in the plans, including matters such as the cleaning and repair of stonework, windows and ironwork to the front elevations. Significant improvements to the thermal efficiency of the buildings would also be made. It is clear to me, therefore, that this scheme would halt and indeed reverse a period of underinvestment and decline.
39. In relation to the wider conservation area, the buildings occupy a prominent position on the western side of Brunswick Square. Their architectural form complements the southern and eastern sides of the Square and thereby supports an appreciation of the original design composition of this space, an important aspect of the wider conservation area. This also contributes to the setting of a number of other heritage assets, including Brunswick Chapel and Surrey Lodge on the northern side of the Square. At present the neglected appearance of the buildings is readily apparent when viewed from the Square, particularly with the introduction of metal security shuttering at ground floor level following the departure of the CIC. The appeal scheme would therefore deliver visible benefits to the wider conservation area.
40. Objectors may consider that the appeal scheme would turn these properties into 'ordinary' office buildings. However, whilst some of the more recent 'kitschy' décor would be lost, I believe that the buildings would be sensitively adapted, retaining much of their special interest, and opening up a significant portion of No 15 that has lain vacant for over 30 years. The appeal scheme would result in closing the interior of the buildings from general view. However, much of the areas of interest on the upper floors are currently unused, or already restricted to view by users only. I find that overall, the safeguarding and enhancement of these designated heritage assets would be significant benefits.

ii. Statutory duties and policy in relation to heritage assets

39. Whilst the main parties agree that the scheme would deliver some heritage benefits, they disagree on the weight to be attached to such benefits. Turning

to consider the relevant statutory provisions, the Planning (Listed Buildings and Conservation Areas) Act 1990 sets out at Section 66(1) that, in considering whether to grant planning permission for development which affects a listed building or its setting, the decision maker shall have special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest it possesses. With regards conservation areas, the parallel duty at Section 72(1) is to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

40. Caselaw has clarified that the nature of the duty is the same in both enactments, and that 'preserving' means 'doing no harm'^{1,2}. It is also clear that these duties must be given 'considerable importance and weight' in decision making. Further, the Palmer judgement refers to proposed development affecting a listed building or its setting in different ways, some positive and some negative, such that when taken together there is no overall adverse impact on the building or its setting³. However, from the evidence before me it is not clear how far these duties extend. Specifically, in the present case, it has not been demonstrated that the current condition of the buildings, and the fact that the proposed development would repair and restore these heritage assets, should attract considerable importance and weight.
41. Nevertheless, relevant local and national policy provisions set out the importance to be given to the conservation of heritage assets. For example, Core Strategy Policy BCS22 requires that 'development proposals will safeguard or enhance heritage assets'. Similarly, the Framework at paragraph 192a) sets out that local planning authorities should take account of 'the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation'. Paragraph 193 clarifies that 'great weight' should be given to the conservation of heritage assets.

iii. Optimum viable use

42. Paragraph 196 of the Framework indicates that securing the optimum viable use (OVU) of a designated heritage asset could be a public benefit. Whilst the specific reference in the Framework is in relation to balancing such considerations where less than substantial harm has been identified, it does not appear that this is the only situation where OVU can be regarded as a public benefit. Whilst this term is not defined in the Framework, more detailed guidance is provided by the Planning Practice Guidance (PPG). This guidance does not suggest that consideration of OVU is contingent upon finding less than substantial harm (paragraph 015 Reference ID: 18a-015-20140306).
43. The PPG sets out that the starting point for the consideration of OVU is the reality that most heritage assets are in private hands. Putting them into a viable use is likely to lead to the investment in the maintenance necessary for their long-term conservation. Further, the optimum use is the one likely to cause the least harm to the significance of the heritage asset. In this sense I take OVU to refer to a balanced consideration, starting with the significance of a designated heritage asset and the nature of any proposed or necessary changes on this. OVU should also include consideration of the assets current condition

¹ Barnwell Manor Wind Energy Ltd v East Northhants CC, English Heritage, National Trust and SSCLG [2014] EWCA Civ 137, para 16.

² Palmer v Herefordshire CC [2016] EWCA Civ 1061, para 5.

³ Ibid, para 29

and the cost of repair/restoration work, commercial market circumstances, development plan priorities, and an appreciation of the efforts made to put the asset to viable use. These considerations are set out below.

44. It has already been established that the appeal proposals would deliver beneficial effects on the significance of the listed buildings in terms of restoring and maintaining their fabric, with benefits to the wider conservation area. Turning to their condition, the Budget Cost Estimate (BCE) presented by the appellant sets out an 'outline specification' 'to reinstate the building shell and to refurbish the property to provide basic office accommodation', with costs amounting to over £2m. The BCE does not set out the distinction between essential repairs and work associated with non-essential refurbishment. Nonetheless, the appeal proposals are relatively light touch, in that minimal alterations would be made to the fabric of the buildings. It therefore follows that a considerable proportion of this work would be required to restore the buildings for the long term, whatever use is proposed.
45. The marketing of the properties has been targeted at leisure operators, though it is evident that there was interest from alternative uses, including office and residential. Nonetheless there have been issues in securing a freehold purchaser, due in large part to the current condition and configuration of the buildings. However, I understand that the current leasehold market for office space is such that there is currently less than a year's supply in the City with only 3% vacancy rates. There is also evidence of 'good demand' for the sort of small scale, flexible and 'quirky' spaces, available at below the institutional or Grade A office space rates, which the appeal scheme would create. For example, I understand that the office conversion of No 1 Brunswick Square is 75% let, at rental levels of around £23.50 per square foot per annum. As the appeal buildings would have a total floorspace of around 12,000 square feet, and could generate a return of £20-£23.50 per square foot per annum, this suggests that the overall return would be upwards of £230,000.
46. I am aware that in the recent past the CIC has expressed a strong interest in securing a long-term lease of the buildings through discussions with the freeholder and potential funders. However, there is no detailed evidence before me to support the viability of this aspiration. The rent paid for the buildings previously by the CIC may have been above the current rateable value of the property, and above the level of rent for similarly sized community spaces in the City. However, at £28,800 per annum, even noting that the buildings were not occupied in full, this was clearly well below the market rate for office space in this area.
47. The CIC has attracted significant external funding in recent times, and a longer lease could unlock further funding. However, with an estimated turnover being £80,000 for 2018/19, it is difficult to see that a lease could be secured at a commercially realistic level. More specifically, the suggestion that the CIC could return to the appeal buildings and carry on as before does not reflect the fact that this use would be unlawful and that any application to regularise this would necessitate a range of alterations to reflect the requirements of planning and other regulatory regimes. The assumption that the costs associated with this should be borne by the freeholder does not reflect commercial realities, particularly the level of investment required to arrest the decline of these important buildings.

48. Whilst a viability assessment of the appeal scheme has not been submitted, the PPG on such matters relates in the main to situations in which development plan policies have set out the contributions expected from development, which is not the case in this appeal. The absence of such a document does not therefore undermine the appellant's case.
49. Turning to development plan priorities for this area, I have found that the appeal scheme would conflict with policies seeking to protect community facilities. Nevertheless, the appeal scheme would support a number of other policy provisions relating to development in the City Centre. At a general level, Core Strategy Policy BCS2 states that this will include 'mixed uses for offices, residential, retail, leisure, tourism, entertainment and arts and cultural facilities', with 'facilities and services, including those of a small scale' being 'encouraged and retained'.
50. More specifically, the most recent provisions are set out in the Bristol Central Area Plan 2015 (BCAP). Policy BCAP6 sets out that, alongside the need in the City Centre for large format office buildings to support business growth, an accompanying supply of small-scale flexible workspace suitable for a wide range of employment uses will be supported in areas including St. Paul's and Stokes Croft. BCAP45 sets out that within St. Paul's and Stokes Croft 'continued investment will be sought in small business space' with development also being expected to 'respect the historic scale and form of development'.
51. Finally, the recent planning history of the appeal buildings establishes that several efforts have been made to secure a viable use. The 2016 applications (16/00223/F & 16/00224/LA) to convert the upper floors of the buildings to residential whilst retaining club use below, sought 'much needed capital' to ensure the long term running of the club. This scheme failed on heritage grounds, mainly due to the proposal to knock through the wall between No 15 and No 16, as well as a failure to demonstrate compliance with sustainability and climate change objectives. As a result of this refusal, together with the lack of success in marketing club premises more generally, the club went into liquidation.
52. The 2017 applications (17/05568/F and 17/05569/LA) which sought conversion of the whole buildings to residential use were refused. Amongst the 7 reasons for refusal were the loss of a community facility, less than substantial harm to heritage assets, and issues associated with the proposed residential layout. It is therefore clear that over the recent past significant efforts have been made to secure a commercially viable future for the appeal buildings.
53. Pulling the threads of this consideration of matters relevant to OVU together, the appeal scheme would deliver heritage benefits through the retention and restoration of the historic fabric of the listed buildings, something which the previous proposals failed to achieve. Additionally, there is market evidence of demand for the sort of small scale and flexible space which, whilst likely to be beyond the means of the CIC, would secure the long-term future of these buildings. This use would also support development plan aspirations for this area.
54. Based on this evidence, I therefore conclude that the appeal scheme would represent the OVU as it would secure the active conservation of these designated heritage assets. This carries significant weight in favour of the

appeal scheme. This review also demonstrates compliance with Core Strategy Policy DM31 which requires that in relation to heritage assets 'all reasonable efforts have been made to sustain the existing use, find new uses, or mitigate the extent of harm to the significance of the heritage asset'.

iv. Fire safety matters

55. There is considerable contention between the main parties regarding the fire safety of the buildings. However, the appellant's concern in this regard relates to the retention of the buildings in their current state and layout, with the lawful use being Sui Generis. Whatever happens, securing the future lawful use of the buildings will require compliance with planning and other regulatory regimes. As such the need for clarity about the next stage in the life of these buildings is of paramount importance. Such considerations are therefore of neutral weight in this appeal.

v. Guardianship scheme

56. I understand that in this area it is common practice for development interests to seek the temporary use of recently acquired buildings whilst planning matters are addressed. Such 'guardianship' or 'meanwhile' arrangements have the advantage of ensuring that buildings remain in active use, avoiding the cost of physically securing the buildings, and generating some income whilst also providing temporary, low cost accommodation. From the email evidence submitted to the inquiry, it is clear that in the present case this was envisaged as a temporary arrangement pending a secure future for the buildings being identified.
57. This appears to me to be an eminently practical 'win-win' arrangement. As such the suggestion that this arrangement was a form of 'art-washing' whereby, as I understand it, a developer seeks to support artistic endeavours in order to prime an area for more profitable development, does not appear to hold true in this case. Furthermore, the tensions which have emerged between the freeholder and the CIC in this case could deter the similar operation of this type of scheme. Such considerations therefore weigh modestly in favour of the appeal scheme.

Obligation

58. The obligation provided, in the form of a unilateral undertaking, relates to the modification of the existing Traffic Regulation Order to deter loading and unloading at peak times but to maintain servicing for the development. I agree that this provision is required to manage the impact of delivery arrivals on local infrastructure. I therefore agree that it is directly related to the development, is necessary to make it acceptable in planning terms and that it is fairly related to it in scale and kind. As such it complies with paragraph 56 of the Framework.

Conditions

59. The parties tabled a list of conditions for both appeals, which I have considered in the light of the advice set out in the Government's PPG. I have made minor amendments in the interests of precision and enforceability.
60. Conditions requiring development to be carried out in accordance with approved plans are required as this provides certainty. Detailed drawings relating to

windows, doors, roof treatment and the bin lift, amongst other things, as well as the details of the exact location of the photovoltaic panels, are required to safeguard the special interest of the listed buildings and the character and appearance of the wider conservation area. Conditions which require all new external and internal works and finishes to match the existing fabric are necessary to safeguard the special interest of the listed buildings, as are conditions requiring that existing internal decorative features be protected during works, and partitions scribed around existing ornamental plaster mouldings.

61. A condition requiring the reporting of contamination found during development is necessary to ensure that any risks from contamination are minimised. Conditions relating to the submission and implementation of a refuse management strategy are required to clarify responsibility for the management of these facilities to protect the appearance of the buildings and area, to safeguard the amenity of the occupiers of nearby properties, and in the interests of highway safety.
62. A condition relating to the provision of cycle parking is required in the interests of supporting sustainable travel. The requirement that the development be implemented in accordance with the submitted Energy Statement is necessary to ensure sufficient contribution towards mitigating and adapting towards climate change is made. A condition restricting delivery times is required to safeguard the amenity of the area and the impact on local infrastructure. A condition restricting noise from plant and equipment is required to safeguard the amenity of the area.
63. I consider the pre-commencement conditions to be so fundamental to the development that it would have been otherwise necessary to refuse permission. At my request, following the coming into force of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the appellant submitted their written agreement to the terms of these conditions.

Balancing and conclusions

64. On the first main issue I have found harm in relation to policies which set out the presumption against the loss of community facilities. Specifically, the recent value of the buildings in hosting the development of the CIC as a significant component of the City's cultural profile is not underestimated. Furthermore, I appreciate that the City's creative culture has an important role in helping to facilitate economic diversification, inward investment and growth, as set out in Bristol's Culture Strategy.
65. However, it is clear to me that the recent temporary use of the buildings has not arrested the decline of their fabric, and that this use was only ever intended as a stop-gap measure. As such, on the second main issue I have identified a number of considerations which weigh significantly in favour of the appeal scheme, including the heritage benefits associated with the appeal proposals, to which I must give great weight. I have also found that these proposals would represent the OVU for these designated heritage assets.
66. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions be made in accordance with the development plan unless material considerations indicate otherwise. In this case, the loss of a community facility must be balanced against the need to preserve and secure a commercially

viable future for these designated heritage assets, following a period of neglect and underuse. As such, the appeal scheme would protect and restore the special interest and significance of the buildings, whilst drawing in the investment necessary for their long-term maintenance, as well as supporting a number of development plan priorities. Such considerations clearly outweigh policies seeking to protect community facilities.

67. I therefore conclude that the appeals should both succeed.

AJ Mageean

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Christiaan Zwarts of Counsel	Instructed by Frances Robinson of Bristol City Council
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He called:

Damian Barry	Council's agent
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FOR THE APPELLANT

Nina Pindham of Counsel	Instructed by Michael Orr Director, CSJ Planning Consultants
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She called:

Robert O'Leary	Director, O'Leary Goss Architects
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Kevin Conibear	Divisional Director, Fleurets
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Michael Orr	Director, CSJ Planning Consultants
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INTERESTED PERSONS

Elise Hurcombe	Bristol City Council Culture Team
Oliver Sutherland	The Brunswick Club CIC
Leigh Dennis	Local resident
Peter Bullard	Local resident
Michael Bertelsen	Appeal property freeholder

DOCUMENTS SUBMITTED AT THE INQUIRY

INQ1	Opening submission on behalf of the appellant
INQ2	Bristol City Council Culture Team comments
INQ3	Statement from Brunswick Club CIC, with supporting documents including lease documents, evidence of investment funds and business plan.
INQ4	Officer report and Planning Statement relating to 16/00223/F
INQ5	Emails relating to CIC tenancy of the appeal buildings
INQ6	Copies of additional policies referred to during the course of the Inquiry: Core Strategy BCS2, BCS8, BCS20, BCS22 and BSC12 SADM Policies DM31 and DM32 Bristol Central Area Plan BCAP6, BCAP45
INQ7	Closing submissions LPA
INQ8	Closing submissions appellant

Schedule A: Appeal A Conditions:

1. The development hereby permitted shall begin before the expiration of three years from the date of this permission.
2. The development shall be carried out in accordance with all aspects of the plans and details shown in the application as listed below, unless variations are agreed by the Local Planning Authority in order to discharge other conditions attached to this decision:
 - 3199-PA 200 - Site location plan, 30 April 2018
 - 3199-PA 201 - Block plan, 30 April 2018
 - 3199-PA 202 - Existing lower ground floor plan, 30 April 2018
 - 3199-PA 203 - Existing ground floor plan, 30 April 2018
 - 3199-PA 204 - Existing first floor plan, 30 April 2018
 - 3199-PA 205 - Existing second floor plan, 30 April 2018
 - 3199-PA 206 - Existing third floor plan, 30 April 2018
 - 3199-PA 207 - Existing roof plan, 30 April 2018
 - 3199-PA 208 - Existing east elevation, 30 April 2018
 - 3199-PA 209 - Existing south elevation, 30 April 2018
 - 3199-PA 210 - Existing west elevation, 30 April 2018
 - 3199-PA 220 A - Proposed lower ground floor plan, 9 July 2018
 - 3199-PA 221 A - Proposed ground floor plan, 9 July 2018
 - 3199-PA 222 - Proposed first floor plan, 30 April 2018
 - 3199-PA 223 - Proposed second floor plan, 30 April 2018
 - 3199-PA 224 - Proposed third floor plan, 30 April 2018
 - 3199-PA 225 - Proposed roof plan, 30 April 2018
 - 3199-PA 226 - Proposed east elevation, 30 April 2018
 - 3199-PA 227 - Proposed south elevation, 30 April 2018
 - 3199-PA 228 - Proposed west elevation, 30 April 2018
 - 3199-PA 229 - Proposed section A-A, 30 April 2018
 - 3199-PA 230 - Proposed lower ground floor demolition plan, 30 April 2018
 - 3199-PA 231 - Proposed ground floor demolition plan, received 30 April 2018
 - 3199-PA 232 - Proposed first floor demolition plan, 30 April 2018
 - 3199-PA 233 - Proposed second floor demolition plan, 30 April 2018
 - 3199-PA 234 - Proposed third floor demolition plan, 30 April 2018
 - 3199-PA 235 - Proposed roof plan demolition, received 30 April 2018
 - 3199-PA 236 - Proposed east elevation demolition, 30 April 2018
 - 3199-PA 237 - Proposed south elevation demolition, 30 April 2018
 - 3199-PA 238 - Proposed west elevation demolition, 30 April 2018
 - 3199-PA 240 - Proposed thermal upgrade plans, 30 April 2018
 - 3199-PA 241 - Proposed door to escape route, 30 April 2018
 - 3199-PA 242 - Proposed section B-B, 30 April 2018
 - 3199-PA 250 - Proposed lower ground floor fire plan, 30 April 2018
 - 3199-PA 251 - Proposed ground floor fire plan, 30 April 2018
 - 3199-PA 252 - Proposed first floor fire plan, 30 April 2018
 - 3199-PA 253 - Proposed second floor fire plan, 30 April 2018
 - 3199-PA 254 - Proposed third floor fire plan, 30 April 2018
 - 3199 PA 255 - Proposed bicycle rack location plan, 9 July 2018
 - 3199/PA/261 - Lift to Lightwell Proposed, 18th December 2018

- 3199/PA/262a – Ground Floor Plan with proposed Cycle Store, 15th Feb 2019
3. Prior to the commencement of the relevant part of the development hereby approved drawings to a minimum 1:10 scale (also indicating materials, treatments, and finishes) of the following items shall be submitted to and approved in writing by the Local Planning Authority unless otherwise agreed in writing by the Local Planning Authority:
- a) All new windows, doors and rooflights (including sectional profiles)
 - b) All new railings and balustrades (including sectional profiles and method of fixing)
 - c) Proposed bin lift (including sectional profiles and method of fixing)
 - d) Sectional drawings showing how the toilets at ground floor level will meet the existing ceiling including the treatment and preservation of decorative cornicing

The detail thereby approved shall be carried out in accordance with that approval.

4. No building or use hereby permitted shall be occupied or the use commenced until all building alterations have been completed in accordance with the approved plans.
5. Prior to the commencement of the relevant part of the development hereby approved details relating to the photovoltaic panels (including the exact location, dimensions, design/ technical specification and method of fixing) shall be submitted to and agreed in writing by the Local Planning Authority. The approved equipment shall be installed and operational prior to the first occupation of the use which they serve and retained as operational thereafter in perpetuity.
6. In the event that contamination is found at any time when carrying out the approved development, it must be reported immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11', and where remediation is necessary a remediation scheme must be prepared which ensures the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

7. Prior to the commencement of the use hereby approved, a written refuse management strategy shall be submitted to and approved in writing by the Local Planning Authority. The scheme should to include the following unless otherwise agreed in writing by the Local Planning Authority:

- a) How refuse and recycling will be transferred to and from the approved internal store and the pavement
- b) How refuse and recycling is to be collected from the site and how often
- c) Who is responsible for bringing receptacles up to street level and returning them to the internal store immediately after
- d) How the refuse lift will be maintained and contingency if it breaks down

The development shall then be undertaken in full accordance with the approved strategy and maintained as such in perpetuity unless otherwise agreed in writing by the Local Planning Authority.

- 8. No building or use hereby permitted shall be occupied or the use commenced until the refuse store, and area/facilities allocated for storing of recyclable materials, as shown on the approved plans, have been completed in accordance with the approved plans. Thereafter, all refuse and recyclable materials associated with the development shall be stored within the 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, except on the day of collection and receptacles shall be immediately returned to the store after collection.
- 9. No building or use hereby permitted shall be occupied or the use commenced until the cycle parking provision shown on the approved plans has been completed. Thereafter, this area shall be kept free of obstruction and be available for the parking of cycles only.
- 10. All new external and internal works and finishes, and any works of making good, shall match the existing original fabric in respect of using materials of a matching form, composition and consistency, detailed execution and finished appearance, except where indicated otherwise on the drawings hereby approved.
- 11. The development hereby permitted shall be carried out in complete accordance with the Energy & Sustainability Statement prepared by Melin and dated 24th April 2018 unless otherwise agreed in writing by the Local Planning Authority.
- 12. Activities relating to deliveries shall only take place outside the peak periods of 0800-1000 and 1600-1800 each day.
- 13. The rating level of any noise generated by plant & equipment as part of the development shall be at least 5 dB below the background level as determined by BS4142: 2014 Methods for rating and assessing industrial and commercial sound.

Schedule B: Appeal B Conditions:

1. The works hereby permitted shall begin before the expiration of three years from the date of this permission.
2. The works shall conform in all aspects with the plans and details shown in the application as listed below, unless variations are agreed by the Local Planning Authority in order to discharge other conditions attached to this decision:
 - 3199-PA 200 - Site location plan, 30 April 2018
 - 3199-PA 201 - Block plan, 30 April 2018
 - 3199-PA 202 - Existing lower ground floor plan, 30 April 2018
 - 3199-PA 203 - Existing ground floor plan, 30 April 2018
 - 3199-PA 204 - Existing first floor plan, 30 April 2018
 - 3199-PA 205 - Existing second floor plan, 30 April 2018
 - 3199-PA 206 - Existing third floor plan, 30 April 2018
 - 3199-PA 207 - Existing roof plan, 30 April 2018
 - 3199-PA 208 - Existing east elevation, 30 April 2018
 - 3199-PA 209 - Existing south elevation, 30 April 2018
 - 3199-PA 210 - Existing west elevation, 30 April 2018
 - 3199-PA 220 A - Proposed lower ground floor plan, 9 July 2018
 - 3199-PA 221 A - Proposed ground floor plan, 9 July 2018
 - 3199-PA 222 - Proposed first floor plan, 30 April 2018
 - 3199-PA 223 - Proposed second floor plan, 30 April 2018
 - 3199-PA 224 - Proposed third floor plan, 30 April 2018
 - 3199-PA 225 - Proposed roof plan, 30 April 2018
 - 3199-PA 226 - Proposed east elevation, 30 April 2018
 - 3199-PA 227 - Proposed south elevation, 30 April 2018
 - 3199-PA 228 - Proposed west elevation, 30 April 2018
 - 3199-PA 229 - Proposed section A-A, 30 April 2018
 - 3199-PA 230 - Proposed lower ground floor demolition plan, 30 April 2018
 - 3199-PA 231 - Proposed ground floor demolition plan, received 30 April 2018
 - 3199-PA 232 - Proposed first floor demolition plan, 30 April 2018
 - 3199-PA 233 - Proposed second floor demolition plan, 30 April 2018
 - 3199-PA 234 - Proposed third floor demolition plan, 30 April 2018
 - 3199-PA 235 - Proposed roof plan demolition, received 30 April 2018
 - 3199-PA 236 - Proposed east elevation demolition, 30 April 2018
 - 3199-PA 237 - Proposed south elevation demolition, 30 April 2018
 - 3199-PA 238 - Proposed west elevation demolition, 30 April 2018
 - 3199-PA 240 - Proposed thermal upgrade plans, 30 April 2018
 - 3199-PA 241 - Proposed door to escape route, 30 April 2018
 - 3199-PA 242 - Proposed section B-B, 30 April 2018
 - 3199-PA 250 - Proposed lower ground floor fire plan, 30 April 2018
 - 3199-PA 251 - Proposed ground floor fire plan, 30 April 2018
 - 3199-PA 252 - Proposed first floor fire plan, 30 April 2018
 - 3199-PA 253 - Proposed second floor fire plan, 30 April 2018
 - 3199-PA 254 - Proposed third floor fire plan, 30 April 2018
 - 3199 PA 255 - Proposed bicycle rack location plan, 9 July 2018
 - 3199/PA/261 – Lift to Lightwell Proposed, 18th December 2018

- 3199/PA/262a – Ground Floor Plan with proposed Cycle Store, 15th Feb 2019
3. Prior to the commencement of the relevant part of the development hereby approved drawings to a minimum 1:10 scale (also indicating materials, treatments, and finishes) of the following items shall be submitted to and approved in writing by the Local Planning Authority unless otherwise agreed in writing by the Local Planning Authority:
- a) All new windows, doors and rooflights (including sectional profiles)
 - b) All new railings and balustrades (including sectional profiles and method of fixing)
 - c) Proposed bin lift (including sectional profiles and method of fixing)
 - d) Sectional drawings showing how the toilets at ground floor level will meet the existing ceiling including the treatment and preservation of decorative cornicing

The detail thereby approved shall be carried out in accordance with that approval.

4. All existing internal decoration features, including plaster work, ironwork, fireplaces, doors, windows, staircases, staircase balustrade and other woodwork, shall remain undisturbed in their existing position, and shall be fully protected during the course of works on site unless expressly specified in the approved drawings.
5. All new external and internal works and finishes, and any works of making good, shall match the existing original fabric in respect of using materials of a matching form, composition and consistency, detailed execution and finished appearance, except where indicated otherwise on the drawings hereby approved.
6. All new partitions shall be scribed around the existing ornamental plaster mouldings.
7. No building or use hereby permitted shall be occupied or the use commenced until all building alterations have been completed in accordance with the approved plans.