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## Appeal Decision

Site visit made on 21 January 2020

**by Paul Cooper MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 February 2020**

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### **Appeal Ref: APP/W4223/W/19/3240142**

### **Former RBS Bank, 1-5 Church Terrace, Oldham OL1 3AU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr Tariq Mushtaq against the decision of Oldham Metropolitan Borough Council.
  - The application Ref PA/343581/19, dated 15 July 2019, was approved on 18 October 2019 and planning permission was granted subject to conditions.
  - The development permitted is change of use from offices (Class A2) to 2no residential apartments (Class C3).
  - The condition in dispute is No 6 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development ) (England) Order 2015, or any Order revoking and re-instating that Order with or without modification, the use of the residential apartments hereby permitted shall be restricted to use within Class C3 of the Town and Country Planning (Use Classes) Order 1987, and to no other purposes including those within Class C4 of that Order.
  - The reason given for the condition is: To protect the amenity of the area and the character of the Oldham Town Centre Conservation Area.
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### **Decision**

1. The appeal is allowed and the planning permission Ref PA/343581/19 for change of use of offices (Class A2) to 2no residential apartments (Class C3) at former RBS Bank, 1-5 Church Terrace, Oldham OL1 3AU granted on 18 October 2019 by Oldham Metropolitan Borough Council, is varied by deleting Condition 6.

### **Application for costs**

2. An application for costs was made by Mr Tariq Mushtaq against Oldham Metropolitan Borough Council. This application is the subject of a separate Decision.

### **Procedural Matter**

3. I have substituted the description of development for that used on the Council's Decision Notice, as it describes the nature of the development more precisely than the application form. I note that the appellant has used the Council's description on the appeal form, and I am therefore satisfied that neither party is prejudiced by this course of action.

### **Background and Main Issue**

4. Planning permission had previously been granted for the conversion of the appeal property to 2no residential apartments. The appeal proposals seek permission to carry out the development without complying with Condition 6.

This condition restricts the development to uses within the C3 Use Class of the Town and Country Planning (Use Classes) Order 1987, and to no other purpose, including those within Use Class C4. The main issue in this case is whether Condition 6 is reasonable and necessary in the interests of the amenity of the area and the character of the Oldham Town Centre Conservation Area.

## Reasons

5. Paragraph 55 of the National Planning Policy Framework (the Framework) states that 'Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.' The Planning Practice Guidance (PPG) states that the 6 tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.
6. In accordance with the PPG a key question in respect of whether a condition is necessary, is that it must not be imposed unless there is a definite planning reason for it, i.e. it is needed to make the development acceptable in planning terms.
7. From the appellants Statement of Case, it would appear that the condition was added at Planning Committee at the request of a Committee Member. Subsequently, the Council have not submitted a Statement of Case for this appeal, and have relied upon the Officer report, which recommended approval of the whole scheme, and appears not to give any justification for the condition to be added. The reason for the condition is given as protecting the amenity of the area and the Conservation Area, however, no policy justification is included with the reason for the condition.
8. In their Officer Report, the Council have not raised objection to the principle of development and consider the development to be in a highly sustainable location. In addition, as the external fabric of the building would not be altered, then no objections were raised in terms of impact on the surrounding premises or the Conservation Area as a whole. I see no reason to dispute this line of assessment.
9. In terms of the effect on residential character and the living conditions of nearby residents, the character of single-family dwellings can be significantly different from those of an HMO. An HMO can increase the density of occupation which can, in turn, have an effect on the activity generated by both people and vehicles. The occupants of an HMO may have a different lifestyle, resulting in people movement, noise and disturbance at different times of the day and night in comparison with a single-family dwelling. It follows that the presence of an HMO, whilst not necessarily changing the appearance of the area, can be detrimental to its character. In addition, an HMO would be limited to six persons before planning consent would be required in any event, and I find the suggested restriction by the appellant to a maximum of four people is unnecessary and unreasonable in terms of meeting the six tests.
10. As the area is not residential in nature, I find that any disturbance that could be generated by the residents of an HMO would not be materially harmful to the area, or the character of the Conservation Area, given the commercial aspects of the area, and the factor of the night-time economy in the local area.

11. For the reasons outlined above, I conclude that the disputed condition is not reasonable or necessary from an amenity or character point of view. Therefore, I find that the deletion of condition 6 of planning application PA/343581/19 would not lead to any material conflict with the Oldham Local Development Framework (2011)

### **Conclusion**

12. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

*Paul Cooper*

INSPECTOR