
Appeal Decision

Site visit made on 10 March 2020

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 June 2020

Appeal Ref: APP/N1160/W/19/3243502

1 Bath Place, Plymouth PL1 3NH

- 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 Mo Fawzi against the decision of Plymouth City Council.
 - The application Ref 19/01530/FUL, dated 19 September 2019, was refused by notice dated 18 November 2019.
 - The development proposed is described as converting former motorcycle repair workshop into 4x one bedroom flats and 1x A1/A2 commercial unit on the ground floor and an additional storey to form a third floor (re-submission of 18/01472/FUL).
-

Decision

1. The appeal is allowed and planning permission is granted for converting former motorcycle repair workshop into 4x one bedroom flats and 1x A1/A2 commercial unit on the ground floor and an additional storey to form a third floor at 1 Bath Place, Plymouth PL1 3NH in accordance with the terms of the application, Ref 19/01530/FUL, dated 19 September 2019, and subject to the conditions set out in the schedule to this decision.

Procedural Matters

2. The description of development in the heading above has been taken from the planning application form. I have used this description with the exception of the text in brackets because such words are not acts of development.
3. Amended plans were submitted with the appeal. In considering whether to accept them, I have had regard to the 'Wheatcroft Principles', including in relation to whether it materially alters the nature of an application and whether the amendments indicate that it is in substance different from that for which the application was made. I am also mindful that accepting amendments at appeal stage could potentially prejudice the interests of interested parties by depriving them of the opportunity to comment on the amendments.
4. The amended plans relate to an alternative internal layout. The change would not materially alter the nature of the appeal proposal nor make it different in substance from that for which the application was made. However, I cannot be certain that accepting amendments at this stage would not deprive parties of the opportunity to comment and who may have commented if the amended plans formed part of the original planning application which the Council consulted on. Taking the amended plans into account could therefore prejudice other parties' interests.
5. The Planning Inspectorate's Procedural Guide (Planning Appeals – England, 2020) sets out that the appeal process should not be used to evolve a scheme

and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. Consequently, and for the above reasons, I have determined the appeal on the basis of the proposed development determined by the Council and have not taken into account the amended plans.

6. The Council's evidence refers to potential effects of the proposed development on designated nature conservation sites. I have sought further information about this and have had regard to the responses received.

Main Issues

7. The main issues are:

- whether the living conditions of occupiers of the proposed development would be acceptable, with particular regard to outlook and light; and
- the effect of the proposed development on designated nature conservation sites.

Reasons

Living conditions

8. Situated in a built up environment, the appeal site is surrounded by a mix of commercial and residential properties. It contains a mid-terrace warehouse building which backs on to the rear of 55-57 Union Street.
9. The rear windows of the proposed flats would face north, towards No 55-57. There would be a limited degree of separation between the rear windows of the proposed flats 1-3 and surrounding buildings, including No 55-57. This would be particularly so for flats 1 and 2 given their height relative to surrounding built form and proximity to the rear wall of the projection of No 55-57. The proposed plans show that flats 1 and 3 would have vision inhibiting rear windows, which the Design and Access Statement clarifies would consist of obscure glazing to create privacy. Given that the rear window of flat 2 would face towards a kitchen, it seems to me that that window would also need to be obscured glazed in relation to privacy matters.
10. Accordingly, and given the height of surrounding buildings, the bedrooms of flats 1-3 would receive limited natural light and have restricted outlook. However, the proposed flats would be dual aspect, with the sitting/dining/kitchen area in all flats being served by reasonably sized south-facing windows. This would provide good levels of outlook, daylight and sunlight to the main living area of each flat and where occupiers are likely to spend most of their time when at home and not sleeping. Although outlook from the rear windows would be limited, the windows would be relatively large and the bedrooms in the flats would therefore receive some natural light.
11. Internal living conditions would therefore not be unacceptably oppressive and each flat would, as a whole, have sufficient light and outlook. The site is also located in a relatively built-up environment and it seems reasonable to me to expect that levels of natural light and outlook in such areas may sometimes not reach the levels that might be expected in less built-up contexts. Accordingly, I am satisfied that the limited outlook and levels of natural light in the bedrooms

would not result in an unacceptable living environment for occupiers of the proposed development.

12. The rear bedroom windows of flats 1-3 would be situated closer to other windows and/or significantly closer to a blank wall than the minimum distances set out in the Council's Development Guidelines Supplementary Planning Document First Review 2013 (DG SPD). Despite the guidance in the SPD, some of the bedroom windows would also be obscure glazed. However, the DG SPD sets out that it does not aim to be overly prescriptive and that the Council recognises that the characteristics of each site will be different and that what is inappropriate at one location could be appropriate in another.
13. In this instance, the main outlook from the proposed development would be provided by the south-facing windows. Serving the main living areas in the flats, the development would, in relation to its context, maximise the benefits of sunlight and daylight, as sought by the DG SPD. The flats would also be dual aspect, with the front and rear windows being large enough to provide adequate daylight for each flat. Consequently, I find that the proposed development would, overall, provide an acceptable living environment, as per one of the considerations set out in the DG SPD in relation to conversions.
14. For the above reasons, I conclude that the living conditions of occupiers of the proposed development would be acceptable, with particular regard to outlook and light. I therefore find that it accords with Policies DEV1 and DEV10 of the Plymouth and South West Devon Joint Local Plan 2014-2034 (JLP). Amongst other aspects, these require housing development to be high-quality, achieve good living standards and provide for satisfactory daylight and outlook. The proposal would also be consistent with the provisions in the National Planning Policy Framework (Framework) in relation to ensuring safe and healthy living conditions and a high standard of amenity for future users.

Designated nature conservation sites

15. The proposed development falls within the Zone of Influence¹ for new residents having a recreational impact on the Tamar European Marine Site (EMS), comprising the Plymouth Sound and Estuaries Special Area of Conservation (SAC) and the Tamar Estuaries Complex Special Protection Area (SPA). In combination with other residential development in the area, the appeal proposal would therefore be likely to have a significant effect on these sites. Accordingly, under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations), Appropriate Assessment of the implications of the project for the Tamar EMS in view of its conservation objectives is required.
16. The qualifying features of the Plymouth Sound and Estuaries SAC include large shallow inlets and bays, estuaries, subtidal sandbanks, intertidal mudflats and sandflats, Atlantic salt meadows, reefs, the communities associated with these habitats, Allis Shad and nationally important Annex 1² bird populations. The Tamar Estuaries Complex qualifies as an SPA for its populations of Avocet and Little Egret. The conservation objectives for both sites seek to, in summary: maintain or restore the extent, distribution, structure, function and supporting processes of each of the qualifying features; and maintain or restore the distribution and population of each of the qualifying features within the site.

¹ As detailed in the Habitats Regulations Assessment of the Plymouth and SW Devon Joint Local Plan (V.07/02/18).

² Of the Council Directive 79/409/EEC on the conservation of Wild Birds.

17. The available evidence indicates that without mitigation it would not be possible to ascertain that the residential accommodation proposed would not adversely affect the integrity of the Tamar EMS through the indirect effects of increased recreational disturbance. However, the Council secures the measures necessary to mitigate the effects of such development through the Community Infrastructure Levy (CIL). The Council does this by drawing down the appropriate amount to mitigate for recreational impacts arising from relevant development from its CIL fund based on the total number of residential units delivered as identified through the annual monitoring process. The Council then commits these funds to the delivery of relevant mitigation measures and provides an annual statement to the Tamar Estuaries Consultative Forum to identify how much has been allocated based on housing completions.
18. The mitigation measures, often termed Strategic Access Management and Monitoring Strategy (SAMMS), are identified in the Tamar Estuaries Management Plan, the Yealm Estuary Environmental Management Plan and the Recreation Mitigation and Management Scheme for Plymouth Sound and Estuaries European Marine Site November 2019. The collection of CIL is detailed in The Plymouth CIL Charging Schedule (2013) and the Regulation 123 List identifies the Tamar EMS as an infrastructure project to be funded through CIL. The Council's approach to securing the necessary mitigation measures is set out in its Planning Obligations and Affordable Housing Supplementary Planning Document 2nd review (SPD, 2012) and the draft JLP Supplementary Planning Document (November 2019). The necessary CIL mitigation contribution does not therefore need to be captured by condition as the above documents secure the Council's approach of providing the contribution required from the CIL fund. However, the Council's suggested informative setting out that the appeal proposal is CIL liable has been sent to the appellant.
19. For the above reasons and from the available evidence, I am satisfied that the relevant financial contribution that the Council would draw down from the CIL fund would provide sufficient mitigation for the recreational effects arising from the proposed development on the Tamar EMS. The evidence before me also indicates that the mitigation would be secured and implemented in a proper and timely manner. As required by the Habitats Regulations, I have consulted Natural England, who indicated that appropriate financial contributions for SAMMS from the CIL fund would be sufficient to avoid an adverse impact to the integrity of the Tamar EMS. On this basis, I am able to ascertain, as the competent authority undertaking Appropriate Assessment, that the integrity of the Tamar EMS would not be adversely affected by the proposed development. Consequently, I find that it would accord with the Habitats Regulations.

Other matters

20. The site is located within the Union Street Conservation Area (CA). I note that Council officers raised some concerns with the design, materials and appearance of the development when the planning application was being determined. However, the Council's Decision Notice neither alleges that the appeal proposal would have an adverse effect on the character or appearance of the Union Street CA nor identifies any alleged conflict with legislation or policies in the JLP and the Framework that seek to preserve or enhance such designated heritage assets. Having visited the site and considered the proposed development and the available evidence, I am satisfied that the

appeal proposal would preserve the character and appearance of the Union Street CA and its significance.

Conditions

21. I have had regard to the various planning conditions that have been suggested by the Council, including the list submitted during the appeal and the conditions referenced in the Officer Report and by other Council officers. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance (PPG). I have made such amendments as necessary to comply with those documents and to ensure that details are submitted to and considered by the Council where relevant.
22. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the submitted plans and the Design and Access Statement in the interests of certainty and clarity. Following consultation with the main parties, I have also imposed a pre-commencement condition requiring submission of drainage details. Supporting the requirements of JLP Policy DEV35, and given the proposed development would introduce residential use on the site which is within a critical drainage area and is at risk of surface water flooding, the condition is necessary in order to reduce the risk of flooding and pollution of surface water and ensure adequate drainage is provided before development commences.
23. A condition securing the provision of cycle storage is necessary in the interests of sustainable transport. A condition requiring the installation of bird bricks or bat boxes is necessary and reasonable in the interests of wildlife and biodiversity gain, as per JLP Policy DEV26. A condition covering contamination is necessary to ensure that any contamination issues arising from the development can be sufficiently dealt with. In the interests of the safety of the occupiers of the proposed development, it is necessary and reasonable to impose a condition requiring that the proposed development includes measures to help design out crime. To maintain the privacy of adjoining occupiers, a condition requiring obscure glazing and limited opening of the rear windows of flats 1-3 is necessary and reasonable.
24. A condition ensuring acceptable internal noise levels is reasonable and necessary given the proposed commercial use of the ground floor and land uses in the surrounding area. However, I have little substantive evidence that it would be reasonable and necessary to impose a condition requiring the submission of a noise verification report which demonstrates compliance with the internal noise level condition. Given the Council's code of practice covers hours of working, a condition restricting hours of construction is also not necessary. I have therefore declined to impose those conditions.

Conclusion

25. For the above reasons, the appeal is allowed.

Tobias Gethin

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 plans and the Design and Access Statement submitted to the Council with the planning application: Site Location Plan (drawing no DBD0868/SLP); Block Site Plan (drawing no DBD0868/BSP); As Existing Plans (drawing no 868-DBDL-A 02 Rev A); Proposed Plans (drawing no 868-DBDL-A 03 Rev D); and Proposed Sections (drawing no 868-DBDL-A 04 Rev 03).
- 3) No development approved by this permission shall be commenced until details of a scheme for the provision of surface water management has been submitted to and approved in writing by the local planning authority. The details shall include a separate surface water drainage strategy which includes evidence of opportunities that have been explored to reduce the discharge rate from the property. The proposed surface water drainage details shall be developed with reference to and in accordance with the City Council's Flood Risk Management Strategy requirements. The scheme shall be completed in accordance with the approved details.
- 4) The development hereby permitted shall not be occupied until space has been laid out within the site in accordance with the approved plan for 4 bicycles to be securely parked. The secure area for storing bicycles shown on the approved plan shall remain available for its intended purpose.
- 5) The development hereby permitted shall not be occupied until two enclosed bird bricks or bat boxes have been installed within the fabric of the development hereby permitted.
- 6) The development hereby permitted shall be built in such a way that it meets BS8233:2014 Good Room criteria, meaning there must be no more than 35 dB LAeq for living rooms and bedrooms (0700 to 2300 daytime) and 30 dB LAeq for bedrooms (2300 to 0700 night-time), with windows shut and other means of ventilation provided. Levels of 45 dB LAf.max shall not be exceeded in bedrooms (2300 to 0700 night-time).
- 7) The development hereby permitted shall not be occupied until details of how the development achieves a Silver Standard of the Secure by Design award have been submitted to and approved in writing by the local planning authority. The approved details shall be provided prior to occupation and thereafter retained.
- 8) Notwithstanding the provisions of Article 3 and Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the rear windows at first floor level serving flats 1 and 2 and the rear window at second floor level serving flat 3 (as shown on drawing no. 868-DBDL-A 03 Rev D) shall at all times be obscure glazed with an obscurity rating of not less than level 5 and non-opening unless the parts of the window which can open are more than 1.7 metres above the floor of the room in which the window is installed.

- 9) In the event that contamination or ground conditions are found when carrying out the development hereby permitted that were not previously identified, expected or anticipated, they must be reported in writing immediately to the local planning authority and an investigation and risk assessment must be undertaken. The report of the findings must include:
- (i) A survey of the extent, scale and nature of contamination.
 - (ii) An assessment of the potential risks to: human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; groundwaters and surface waters; ecological systems; and archaeological sites and ancient monuments.
 - (iii) An appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site is suitable for use and 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 any required remediation measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the local planning authority prior to occupation of the development hereby approved.

END OF SCHEDULE