



Appeal Decision

Site Visit made on 12 January 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2021

Appeal Ref: APP/Z0116/W/20/3254102

1st & 2nd Floors, 9A Union Street, Bristol BS1 2DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Southey Aylward LLP against Bristol City Council.
 - The application Ref 19/06113/F, is dated 9 December 2019.
 - The development proposed is described as Change of use of first and second floors from a Class A1 use (shops) to a House in Multiple Occupation (sui generis).
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Decision

1. The appeal is allowed and planning permission is granted for Change of use of first and second floors from a Class A1 use (Retail) to a House in Multiple Occupation, with 7no. bedrooms (sui generis) and proposed solar panel array at roof level at 1st & 2nd Floors, 9A Union Street, Bristol BS1 2DD in accordance with the terms of the application, Ref 19/06113/F, dated 9 December 2019, and subject to the conditions set out in the schedule to this decision.

Application for costs

2. An application for costs was made by Southey Aylward LLP against Bristol City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The address of the appeal site and the proposal's description are taken from the appeal form, which better captures the location and scope of the proposed development than that on the application form.
4. The evidence before me indicates that an amended version of the 'existing and proposed floor plans' was submitted to the Council after the planning application was submitted but before the appeal was made. The amended drawing (Sheet 01 Rev A) shows a slightly revised proposed first floor plan, with a new refuse store cupboard accessed off the hallway taking up a corner of the lounge/kitchen/dining room. I am satisfied that the amendments made to the drawing did not materially alter the nature of the proposed development nor did they make it different in substance from that for which the planning application was made. I also note that the Council refers to this amended plan in their appeal statement. I have therefore determined the appeal proposal on the basis of the amended plan and the other plans submitted with the application.

5. The 2020 Housing Delivery Test (HDT) results were published on 19 January 2021. The results indicate that, when applying footnote 7 of the National Planning Policy Framework (Framework), the presumption in favour of sustainable development contained within paragraph 11d) of the Framework will apply. However, as I have found that the proposed development accords with the development plan, it is not necessary for me to assess the appeal proposal against the approach to decision-taking set out in paragraph 11d).

Background and Main Issue

6. The appeal is against a failure of the Council to give notice of its decision on the planning application Ref 19/06113/F within the prescribed period. As such, there is no decision notice. However, the Council's appeal statement sets out its concerns with the proposed development and includes the refusal reason it would have provided had it made a formal decision.
7. Accordingly, I consider the main issue is whether the proposed development would provide acceptable refuse storage facilities, with particular regard to the living conditions of existing and future occupiers, the character and appearance of the City and Queen Square Conservation Area, and highway safety.

Reasons

8. The appeal site fronts on to Union Street, which is identified by the local plan as being within Primary Shopping Frontage in the Bristol City Centre Primary Shopping Area and Shopping Quarter. It is located within the City and Queen Square Conservation Area (CA). Last in use as a hairdressers, the site – on the first and second floors of the post-war building – is now vacant. Being well-used by pedestrians, vehicles and other highway users, Union Street is relatively busy and is identified by the highway authority as a primary pedestrian route.
9. As shown on the proposed floor plans (Sheet 01 Rev A), an internal, enclosed storeroom for refuse/recycling generated by the future occupiers of the proposed house in multiple occupation (HMO) would be provided on the first floor. It would be accessed from the communal hallway, near to the stairs and first-floor entrance door into the HMO. It would therefore be sufficiently accessible for occupiers of the HMO and for servicing purposes. Its location, off the hallway, means that it would also not harm the main private or communal habitable living areas within the HMO.
10. The first-floor storeroom would be relatively small. However, the appellant indicates that it would be serviced on a frequent basis, with the refuse/recycling being moved by the management company to the basement of the building – which lies within the appellant's ownership – and stored there until collected privately. The transfer of the refuse/recycling materials from the first-floor store to the basement store would be relatively convoluted and lengthy, involving the stairs to the ground-floor entrance, walking along Union Street, down the steps to Fairfax Street, and then along that street and through Pithay Court.
11. This might well deter residents of the proposed HMO from taking the materials to the basement and could therefore result in refuse/recycling building up inside the HMO and/or being left outside on the Union Street footway by the ground-floor entrance to the site. Leaving such materials on the footway would

appear unsightly and also interfere with the movement of pedestrians and other highway users on Union Street. Such a scenario would therefore harm the living conditions of existing and future occupiers, highway safety and the character or appearance of the surrounding area and CA.

12. However, I have little substantive evidence which indicates that it would not be feasible for someone employed to transfer the materials from the first-floor store to the basement to do so via the route described above. In coming to this view, I have taken into account the Council's supplementary guidance 'Waste and Recycling' (2010, updated 2017) and the Manual for Streets regarding the maximum distances for residents to move waste. Whether or not an internal route through the building to the basement would have provided a shorter, simpler route does also not lead me to a different conclusion.
13. The documents submitted by the appellant include a 'Management Strategy, Refuse and Recycling Collection' and a section 106 Unilateral Undertaking. However, the former sets out waste management arrangements for nearby sites and only provides limited details regarding the proposed management of refuse/recycling for the development proposed, while the legal agreement is only in draft form and has not been signed. Accordingly, neither document secures the servicing of the refuse/recycling that would be generated by the future occupiers of the HMO in the manner indicated by the appellant.
14. I therefore give them limited weight, and the Planning Practice Guidance indicates that a condition which requires the applicant to enter into a legal agreement – which has been suggested by the appellant – is unlikely to pass the test of enforceability and is unlikely to be appropriate in the majority of cases. However, a planning condition could secure a full waste management plan for the proposed development, ensuring that refuse/recycling generated by the proposed use would be suitably and permanently managed.
15. Such a condition could be sufficiently precise, practicable and enforceable. It would therefore ensure that the materials would be moved from the internal store to the basement rather than being left to potentially build up inside the HMO and/or being left out on the street. The waste management plan secured by the condition could also cover the frequency of the servicing of the first-floor and basement refuse/recycling stores in order to avoid a build-up of materials. On this basis, the proposed development would not harm the living conditions of existing and future occupiers, highway safety and the character or appearance of the City and Queen Square CA. In coming to this view, I have taken account of the Council indicating that it has not approved the refuse/recycling arrangements for 5-7 Union Street.
16. For the above reasons, I conclude that the proposed development would provide acceptable refuse storage facilities, with particular regard to the living conditions of existing and future occupiers, the character and appearance of the City and Queen Square Conservation Area, and highway safety. I therefore find that it accords with Policies BCS10, BCS20, BCS21 and BCS22 of Bristol Development Framework Core Strategy and Policies DM2, DM14, DM23, DM27, DM28, DM31 and DM32 of the Site Allocations and Development Management Policies Local Plan. Amongst other aspects, these require development to: provide sufficiently sized and accessible refuse and recycling facilities and not harm the character of the locality due to inadequate recycling/refuse storage; create high quality, well-designed environments, safe streets and usable,

inclusive public spaces; provide safe, convenient and adequate access for all sections of the community and a high-quality, healthy living environment for future occupiers; and safeguard or enhance heritage assets, including preserving those elements which contribute to the special character or appearance of Conservation Areas. The proposal would also be consistent with the provisions in the Framework in relation to conserving and enhancing the historic environment and highway safety.

Other matters

17. I note reference in the appeal documents to the potential removal of the building's external canopies. However, the Council has not suggested their removal be secured by condition and I am satisfied that their removal is neither necessary to make the development acceptable nor directly relevant to it.
18. The proposed development includes the erection of solar panels on the roof. The Council do not identify this as harmful to the CA, and having considered the development and visited the site, I concur with that view. Accordingly, and for the reasons above, it is my view that the development would preserve the significance and the character and appearance of the designated heritage asset, whose conservation I give great weight to.
19. I note the concern raised by a neighbour regarding rubbish at the rear of the site. However, the evidence before me indicates that the open area in question is not connected to the appeal site and would not serve as refuse/recycling storage for the proposed development.

Conditions

20. Although the Council did not include a list of suggested conditions in its appeal statement, I note that the Council's Pollution Control Officer suggested a condition relating to noise insulation. Given the site's context and the use proposed, this condition would be reasonable and necessary. I have therefore imposed it. However, as I have little substantive evidence that it needs to be a pre-commencement condition, I have amended it accordingly.
21. In addition, I have imposed the standard time limit condition and a condition requiring that the development is carried out in accordance with the approved plans. These are required in the interests of certainty. As set out above, it is also necessary to impose a condition covering a waste management plan.

Conclusion

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

T Gethin

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site plans (Sheet 02); Conversion to HMO (existing and proposed floor plans, Sheet 01 Rev A); and Conversion to HMO – Roof Plans (Sheet S2).
- 3) Prior to occupation of the development hereby permitted, a scheme for the management of refuse/recycling waste generated by the HMO shall be submitted to and approved in writing by the Council. The approved waste management scheme shall be implemented prior to occupation of the development hereby permitted and shall be maintained for so long as the site is occupied and in use as an HMO.
- 4) Prior to occupation of the development hereby permitted, a scheme of noise insulation measures for the development shall be submitted to and approved in writing by the Council. The scheme of noise insulation measures shall include details of: sound insulation between the ground floor use and the residential parts of the development; and the glazing and ventilation specification for all bedrooms and living rooms. The scheme of noise insulation measures shall be prepared by a suitably qualified acoustic consultant/engineer and shall take into account the provisions of BS 8233: 2014 "Guidance on sound insulation and noise reduction for buildings".
The approved scheme shall be implemented prior to occupation of the development hereby permitted and be permanently maintained thereafter.

END OF SCHEDULE