Appeal Decision

Hearing Held on 26 and 27 January 2021

Site visit made on 9 March 2021

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 March 2021

Appeal Ref: APP/J4423/W/20/3253125
375-385 Glossop Road, Sheffield S10 2HQ

- 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 Primesite UK Ltd against the decision of Sheffield City Council.
- The application Ref 18/04524/FUL, dated 23 November 2018, was refused by notice dated 20 February 2020.
- The development proposed is described as: "the conversion and extension of the existing Grade II listed building to key worker accommodation with associated access, car parking and landscaping".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision was based on revised drawings submitted during the application, which included changes to the size and appearance of the proposed rear extension and to the external materials of the front porches. I have considered the appeal on the basis of the proposed development as shown on the revised drawings, which are those listed on the Council's decision notice[1].

3. A revised location plan and site plans were subsequently submitted by the appellant during the appeal. The changes compared to the decision drawings relate solely to the alignment of the red line boundary around the site access drive, which has been amended to accurately reflect the extent of the appellant's ownership. I understand that the University of Sheffield has access rights across part of the drive. Notice was served on the University by the appellant at the appeal stage. The University commented on the planning application and was notified of the appeal and the hearing. Therefore, and as the changes to the red line are very minor and do not alter the nature of the proposed development, I have considered the appeal on the basis of the amended red line as shown on those drawings[2] and am satisfied that no party would be prejudiced by my doing so. In all other respects my decision is based on the drawings listed on the Council's decision notice.

[1] At the hearing both main parties confirmed that there was a typographical error in the number of the Second Floor Demolition Plan listed on the decision notice and that the correct number is that which is on the Second Floor Demolition Plan drawing which was submitted by the appellant: 818-CPA-XX-02-DR-A-0143 Revision A. My decision is based on that submitted drawing.

[2] Location Plan Drawing No: 818-CPA-XX-ZZ-DR-A-0100 Revision B; Site Plan as Existing Drawing No: 818-CPA-XX-ZZ-DR-A-1001 Revision P1; and Site Layout – Proposed Drawing No: 818-CPA-XX-ZZ-DR-A-0102 Revision C.

4. A completed Unilateral Undertaking (UU), dated 12 March 2021, has been received from the appellant. I have had regard to the UU and return to this matter later in my decision.

5. The appeal relates to a grade II listed building in Hanover Conservation Area. The neighbouring building, 367-373 Glossop Road, is also grade II listed. I am mindful of my statutory duties under sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) and have considered the appeal accordingly.

6. Listed Building Consent has been granted for works to the building[3]. The appeal before me relates to an application for planning permission. Accordingly, notwithstanding references in the submissions and in interested parties' comments to other works including internal alterations, my decision is based solely on those operations comprising development for which planning permission is required.

Main Issues

7. The main issues are:

   - whether the scheme would make appropriate provision for affordable housing; and
   - the effect of the proposed development on biodiversity, with regard to a protected species (bats).

Reasons

Whether the scheme would make appropriate provision for affordable housing

8. Policy CS40 of the Sheffield Development Framework: Core Strategy (the Core Strategy) requires developers of all new housing developments to contribute towards the provision of affordable housing where this is practicable and financially viable. Policy GAH1 of the Council's Community Infrastructure Levy and Planning Obligations Supplementary Planning Document (the SPD) requires a contribution to affordable housing on all new housing developments of 15 or more dwellings. In this case, it is proposed to convert and extend the appeal building to create 27 apartments.

9. The site is in an area where Policy GAH2 of the SPD requires that 10% of the gross internal area of the development be transferred to a Registered Provider. However, in this case the Council has agreed that an equivalent financial contribution, to be used towards the provision of affordable housing elsewhere, would be acceptable *in lieu* of on-site provision. I have no reason to disagree with this alternative approach to the provision of affordable housing in this case.

10. Policy GAH2 states that the required level of provision will only be relaxed where an independent appraisal can show that the development would not otherwise be economically viable. The main parties agree that, in assessing the development's viability and thus its ability to provide an affordable housing contribution, it is reasonable to expect a minimum profit level for the developer of 15% of gross development value (GDV). That level of return is within the

[3] Application reference: 18/04525/LBC

range referred to in the Planning Practice Guidance[4] as suitable and I am thus content that it is reasonable.

11. The Council's decision was based on the Development Appraisal carried out by Avison Young on behalf of the appellant, dated 03 December 2019, and the Development Appraisal prepared by CP Viability Ltd on behalf of the Council, dated 20 December 2019. Further changes were made to those appraisals during the hearing to reflect matters discussed, and each party provided two further updated appraisals. However, the main matters in dispute, namely the assumed sales figures, were not changed in those updated appraisals compared with the appraisals on which the Council based its decision. Nor did the overall conclusions of either party's appraisals change with regard to the scheme viability and ability to provide an affordable housing contribution. I have based my decision on the latter of those updated appraisals from each party, which I refer to hereafter as the appellant's viability appraisal[5] and the Council's viability appraisal[6].

12. The appellant's viability appraisal concludes that, even with no affordable housing contribution, the development would fail to achieve a profit of 15% of GDV. However, the Council's viability appraisal concludes that, whilst the development could not viably provide the full affordable housing sum (around £582,800), a reduced affordable housing contribution of £82,500 could be provided whilst still maintaining 15% profit on GDV.

13. The main difference between the parties' viability appraisals relates to the assumed sales values of the proposed apartments. The appellant's assumes a sales value of £300 per square foot (psf) whilst the Council's assumes a sales value of £315 psf.

14. Both parties agree that there are no directly comparable existing developments on which to base assumptions about likely sales values, but that those most closely comparable are apartment schemes at Queens Buildings in Sheffield city centre and Broomgrove House/Mews, which is around half a mile from the site within the same postcode area (S10). I have no reason to conclude otherwise based on all I have seen and heard.

15. Queens Buildings is an historic building, not listed but in a conservation area on the edge of the city centre around 1¼ miles from the site. It has been converted into 24 apartments and is thus comparable in scale to the appeal scheme, which proposes 27 apartments. It is also similar in nature, as an historic building conversion, although the appeal scheme includes new-build elements which Queens Buildings did not.

16. At the hearing, I was advised that the target market for the Queens Buildings apartments was first time buyers and investors and that the appeal scheme would be aimed at a similar market, also including key workers. Given the size of the proposed apartments, the appeal site's location on a busy main road close to university and hospital buildings, and the somewhat limited outdoor space and parking proposed, I consider that a reasonable assumption.

[4] Paragraph Reference ID: 10-018-20190509
[5] Development Appraisal, Avison Young, 01 February 2021
[6] Development Appraisal Prepared by David Newham MRICS Director CPVIABILITY LTD 26 January 2021 (received by email from the Council 8 February 2021).

17. Queens Buildings is a large former office building surrounded mainly by other existing and former office buildings, some of which have been converted to other uses including residential, in an area on the edge of the city centre. It is located adjacent to the footways to the front and side and has very little outdoor space to the rear, that which exists being predominantly hard surfaced and laid out for parking.

18. In contrast, the appeal building is set back from the road behind a tree-lined site frontage. It would have more outdoor space and a higher proportion of parking spaces to apartments compared with the Queens Buildings scheme, whilst still being relatively close to the city centre with good public transport links. Taking those factors into account, I consider it would be likely to command slightly higher sales values than the Queens Buildings apartments.

19. However, the amount of outdoor space within the appeal site would still be quite limited and not all apartments would have a parking space. The site is also on a busy main road with commercial and other non-residential buildings nearby and a large multi-storey parking structure opposite. Those factors, and the likely spending power of its anticipated first time buyer and key worker occupants, would limit the extent of any increase in sales values compared with the Queens Buildings scheme to some degree.

20. The average sales value of the 24 apartments in Queens Buildings was £242.87 psf. However, such values can vary with the size of a unit, larger units generally commanding lower rates per square foot than smaller units for example. Although a number of the apartments in the Queens Buildings scheme were similar in size to some of those proposed in the appeal scheme, it also included several apartments in the 550-700 square foot (sqft) range and a smaller 366 sqft unit, which the appeal scheme does not. When those units are omitted, the average sales value of the remaining units, which are more comparable in size to some of the apartments in the appeal scheme, is slightly higher.

21. At the hearing the Council referred to Apartment 13 at Queens Buildings, which is similar in size to the 1 bedroom apartments proposed in the conversion part of the appeal scheme and achieved a sales value of £280.78 psf. However, the sales values of other apartments of a similar size varied, and included some which were lower. There was also some variety in the sales values of those apartments which are similar in size to the 2 bedroom apartments in the conversion part of the appeal scheme.

22. Nonetheless, even compared to the £280.78 psf value of Apartment 13, the £315 psf assumed in the Council's viability appraisal would represent around a 12% increase. For the reasons given, I consider it likely that the apartments in the appeal scheme would achieve higher values than those in Queens Buildings, but only to a somewhat limited degree. Furthermore, the appeal scheme includes several duplex apartments, which are not comparable in size to any of the Queens Buildings units. Based on the evidence presented, and having regard to their larger floor areas, I consider that those duplex units would likely achieve lower '£psf' sales values and thus bring down the average values for the development.

23. Therefore, I am not persuaded that the benefits of the appeal site relative to the Queens Buildings scheme are sufficient to generate an increase in sales

values to the average of £315 psf across the development as a whole as assumed in the Council's viability appraisal.

24. The appellant's £300 psf sum would represent around a 7% increase compared to the £280.78 psf value referred to by the Council. Having regard to the similarity in target markets, the nature of the appeal site's surroundings and the inclusion of the larger duplex apartments in the appeal scheme, I consider the appellant's £300 psf sum a more realistic expectation.

25. The scheme at Broomgrove House/Broomgrove Mews involved the conversion of a Georgian mansion to apartments and an extension providing several new-build apartments to the rear. The converted building is similar in age to the appeal building and also has a frontage onto a main road. There is more variety in the size of the apartments in Broomgrove House/Mews and several are notably larger than those proposed in this case, thus limiting the usefulness of their sales values in drawing comparisons. However, the apartments referred to as Flat 2 and Flat 6 Broomgrove House are similar in size to the 2-bedroom and 1-bedroom apartments proposed in the conversion part of the appeal scheme, thus allowing some comparisons. Those two apartments achieved sales values of £315 psf and £311 psf respectively, some of the highest values attained amongst the apartments within that development.

26. However, notwithstanding the comparable sizes of some of those existing apartments and some of those now proposed, and despite their relative proximity and location within the same postcode area, there are notable differences between Broomgrove House/Mews and the appeal development.

27. Broomgrove House/Mews related to the conversion of a large detached mansion rather than terraced housing. It also has fewer apartments, is sited in larger landscaped grounds and has a higher proportion of parking spaces than the appeal scheme. Its wider surroundings are also more domestic, and characterised mainly by large residential villas in substantial landscaped grounds, some of which have been converted to offices and nurseries. Broomgrove House faces a main road and there are non-residential uses nearby. However, the larger residential buildings around it, and their more substantial landscaped grounds, create an appreciably more spacious and secluded character to the apartments at Broomgrove House/Mews and their surroundings than the more varied and densely developed surroundings of the appeal site. I was advised that the Broomgrove House/Mews scheme was also aimed at older residents downsizing from large family homes, rather than first-time buyers or key workers as the appeal scheme would be.

28. Taking all of those factors together and having regard to the differences between the appeal site and Broomgrove House/Mews, I am not convinced that the proposed apartments would achieve sales values as high as those at Broomgrove House/Mews.

29. The Council suggested at the hearing that inflation should be applied to the sales figures cited because of the time which has passed since the Broomgrove House/Mews apartments were sold. However, as was agreed during the application, the £300 psf and £315 psf sales values assumed in the appraisals before me do not include or allow for inflation. Accordingly, I have not taken likely inflation into account as a factor in considering the cases made by the parties for the sales value figures which have been put to me.

30. Having regard to the differences between the appeal site and Broomgrove House/Mews, comparisons with that scheme do not support the Council's assumed sales value of £315 psf, which is identical to or greater than those apartments at Broomgrove House/Mews most directly comparable to those now proposed. The appellant's assumed value of £300 psf, at around 4-5% lower than that of Flats 2 and 6 Broomgrove House, represents a more realistic assumption.

31. Reference was also made to Botanical House, a large Victorian residential building which has been converted and extended to create apartments. However, that development is located slightly further from the site and is directly opposite the Botanical Gardens, with several of the apartments having large windows overlooking the gardens' entrance. I was also advised that it achieved unprecedentedly high sales values. Consequently, its likely comparability to the proposed development and thus the weight I afford to it in that regard is more limited.

32. The submissions also refer to Broomgrove Gardens, close to Broomgrove House/Mews. However, that scheme is a new apartment development rather than a conversion, it includes balconies as well as outdoor space and, I was advised, many of the apartments are larger than those proposed in this case. Therefore, I afford limited weight to comparisons drawn between it and the development now proposed.

33. Drawing those threads together, I consider the evidence for the appellant's assumed sales value figure of £300 psf to be the more persuasive and that there is insufficient evidence to justify the higher £315 psf figure assumed by the Council. I am therefore satisfied that the appellant's £300 psf figure can be relied upon for the purposes of considering the scheme viability.

34. The other main difference between the parties' viability appraisals related to finance costs. However, this is partly attributable to the differences in assumed sales values, the Council's higher figure meaning that the development would reach profitability sooner and thus not require finance for as long. That was not the only reason for the difference in finance costs. However, the disparity between the parties' viability appraisals arises principally from the difference in the assumed sales values and thus the overall income from the scheme as a whole. From all that I have seen and heard I am not led to conclude that those other differences in assumptions regarding the finance costs would alter the overall outcome of the respective appraisals with regard to the scheme's viability.

35. Therefore, as I find that the evidence supports the appellant's assumed sales figures and in the light of the appellant's viability appraisal based on those figures, I conclude that the scheme could not viably support an affordable housing contribution.

36. Nonetheless, the appellant has provided a completed UU which provides for a reappraisal of the economic viability of the development before the last of the 27 apartments was occupied. The reappraisal would use the same values and assumptions used in the Council's viability appraisal except for the sales values and construction costs. Those figures would be replaced, respectively, with the actual average '£psf' sales value of the first 26 apartments sold and an updated

construction cost adjusted in line with changes in the BCIS[7] index. If the reappraisal were to demonstrate that the scheme generated a return of at least 15% of GDV, the UU requires the appellant to pay as much of the affordable housing contribution as could be paid whilst maintaining that minimum level of return, up to the maximum sum agreed by the Council based on its adopted policy requirement.

37. Although I find the appellant's case more persuasive regarding expected sales values, those figures were based on schemes which are not directly comparable to the appeal scheme. The UU would allow the scheme viability to be assessed based on the actual sales values and also take account of any changes in construction costs since the parties' viability appraisals were carried out. It would thus ensure that a proportionate and scheme-specific affordable housing contribution was made, provided an acceptable rate of return was achieved.

38. The UU would therefore be directly related to the development, fairly and reasonably related in scale and kind to the development and necessary to make the development acceptable in planning terms. It would thus meet the tests for planning obligations in the CIL Regulations and paragraph 56 of the National Planning Policy Framework (the Framework).

39. Therefore, I conclude that the scheme would make appropriate provision for affordable housing, factoring in viability. It would thus accord with Policy CS40 of the Core Strategy and Policies GAH1 and GAH2 of the SPD as set out above, which are consistent with the Framework requirement that the housing needed for different groups, including those who require affordable housing, should be assessed and reflected in planning policies.

Biodiversity

40. The appeal relates to an historic building which has been vacant for a number of years. A Preliminary Ecological Appraisal (PEA) in June 2018[8] identified a low number of features on the building, including areas of missing mortar and exposed wooden fascia boards, as creating suitable voids behind which bats could roost or shelter. On that basis, the survey concluded that the building had low roost suitability for bats.

41. A subsequent bat activity survey in June 2018[9] recorded no evidence that the building was being used by bats and deemed it unlikely that it was being used for roosting or as a place of shelter. It also recorded no bats emerging from the property. It thus concluded it unlikely that bats were using the building for roosting or as a place of shelter at that time. It also found that the site had negligible potential for use by hibernating bats since it lacked suitable thermal stability. Bat activity in the surrounding area was also recorded as low. On that basis, and as the trees along the site frontage are proposed to be retained, the June 2018 bat activity survey concluded that no formal mitigation was required with regard to bats.

42. However, over 2½ years have now passed since that activity survey was carried out. Cracks in the brickwork and gaps in the fascia boarding, as shown in photographs in the original PEA, were evident at the time of my visit. It

[7] Building Cost Information Service
[8] Preliminary Ecological Appraisal (PEA) Survey Report Reference: PRIME.7.6.2018, Estrada Ecology Ltd, dated 25 June 2018.
[9] Bat Activity Survey Report Reference: PRIME.ACT.25.6.2018, Estrada Ecology Ltd, dated 28 June 2018.

appeared from my site visit that some works had been carried out within the building. However, the nature and extent of such activity is not clear and the building remains vacant. Consequently, the possibility that further features that could allow bats access to the building or provide roosting opportunities having arisen, or that bats may have colonised some areas in the absence of activity in the intervening period cannot be ruled out.

43. On that basis I consider that there is a reasonable likelihood that bats may be present and affected by the proposed development. In the absence of an up to date survey or details of any necessary mitigation, I cannot be certain as to the likely effect on bats, that the development could be undertaken without harm to that protected species or that any necessary mitigation could be incorporated within the scope of the specific proposal before me.

44. At the hearing the main parties agreed that, given the time that has passed since the original surveys, further survey work was necessary. Both parties suggested that further surveys and mitigation proposals could be dealt with by condition. However, Circular 06/2005[10] (the Circular) states that it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development is established before planning permission is granted, and that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances.

45. I recognise that it is not currently a suitable time of year to carry out bat surveys, nor was it at the time of the hearing. However, such circumstances are not unusual and do not amount to exceptional circumstances to justify dealing with the matter by condition. I must determine the appeal on the basis of the evidence before me.

46. In the absence of certainty regarding the likely effect of the proposal on bats or whether adequate mitigation could be incorporated within the scheme as necessary, I conclude that the proposed development could give rise to an unacceptable risk of harm to biodiversity, with specific regard to a protected species (bats). It would therefore conflict with Policy GE11 of the Sheffield Unitary Development Plan, which states that the natural environment will be protected and requires that development should respect and promote nature conservation. It would also conflict with the Framework, which requires planning decisions to minimise impacts on biodiversity, and with the terms of the Circular as set out above. This is a matter to which I afford very significant weight in the overall planning balance.

Other Matters

47. The effects of the proposed development on the grade II listed building, including any of the features of special architectural or historic interest that it possesses, on the setting of the neighbouring grade II listed building and on the character or appearance of the Hanover Conservation Area, Broomhill Conservation Area and Broomhall Conservation Area did not form a reason for the refusal of the application. Based on all I have seen and heard I am satisfied that the benefits of the proposed development, including the removal of the existing unsympathetic rear additions, reinstatement of historic openings to the rear elevation and repairs to the building, would outweigh any harm to those

[10] Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System.

designated heritage assets which may arise from the extensions proposed. In any event, even were the harm to the heritage assets to outweigh the benefits, I have found the development unacceptable for other reasons in this case.

Planning Balance and Conclusion

48. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires this appeal to be determined in accordance with the development plan unless material considerations indicate otherwise.

49. I conclude that there is an unacceptable risk of harm to a protected species and that the scheme would thus conflict with development plan policy GE11, the aims of which are consistent with those of the Framework as set out above. Accordingly, and having regard to the high level of protection afforded to bats as a protected species, I attach very significant weight to that potential harm and to the conflict with that policy.

50. The development would provide 27 new apartments in an accessible location close to local facilities and public transport links. It would thus positively boost the supply of housing. However, this would be in the context that the submissions indicate that the Council can currently demonstrate a 5 year supply of deliverable housing land. From all that I have seen and heard I have no reason to conclude that the 'tilted balance' in Paragraph 11 d) of the Framework should be applied on the basis that the Council is currently unable to demonstrate such a supply, or for any other reason.

51. The development would bring a vacant listed building back into use and include measures to remedy unsympathetic works and address structural issues. It would create employment opportunities during construction and future occupants would support local facilities and services. These matters, and the scheme's contribution to local housing supply, are benefits which weigh in favour of the proposal. However, they do not outweigh the unacceptable risk of harm to a protected species that I have identified.

52. The UU would provide a mechanism for securing a financial contribution towards affordable housing provision if that was demonstrated to be viably possible. However, as it is not certain at this stage that such a contribution could be made I afford the potential benefits in that regard limited weight. Nonetheless, even if I were able to quantify the final extent of an affordable housing contribution, that would not overcome the overriding concern relating to the effect on a protected species or my conclusion that it is not possible to satisfactorily address that matter by way of a planning condition.

53. Taking all of the above factors together, I conclude that the benefits of the scheme would not outweigh the harm I have identified in respect of the effect of the development on bats, a protected species. The development would therefore conflict with the development plan taken as a whole. There are no material considerations that indicate that the decision should be made other than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

Jillian Rann

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

William Marshall MPlan MRTPI	Senior Planner, Urbana Town Planning
Adam Murray BA (Hons) DipTP MRTPI	Managing Director, Urbana Town Planning
Scott Hinchliffe	Appellant and Director, Primesite Group Ltd
Nicola Spencer MARLA	Managing Director, Spencers Estate Agents
James Dinsley MRICS	Senior Surveyor, Avison Young

FOR THE LOCAL PLANNING AUTHORITY:

Chris Heeley PGDip Urban & Regional Planning	South Team Manager, Development Management, Sheffield City Council
David Newham MRICS Registered Valuer	Director, CP Viability Ltd
Victoria Clayton	Planning and Highways Lawyer, Legal and Governance, Sheffield City Council
Zoe Mair BA (Hons) Town Planning IHBC	Conservation Officer, Sheffield City Council

DOCUMENTS SUBMITTED DURING AND AFTER THE HEARING

1. Updated viability appraisals from Avison Young and CP Viability Ltd.
2. Details of other properties suggested for viewing as part of site visit.
3. Copy of front cover of Sheffield Unitary Development Plan.
4. Boundary maps for Broomhall Conservation Area, Broomhill Conservation Area and Hanover Conservation Area.
5. List of permit parking zones in the vicinity of the site.
6. Agreed alternative wording for suggested conditions 3 and 4.
7. Signed, completed Unilateral Undertaking dated 12 March 2021.