



Appeal Decision

Site Visit made on 16 March 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31st March 2021

Appeal Ref: APP/F0114/W/20/3261665

Town Mills, Mill Road, Radstock BA3 3PB

- 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 Tim Gregory, Radstock Building and Roofing Supplies Ltd, against the decision of Bath and North East Somerset Council.
 - The application Ref 20/00807/FUL, dated 25 February 2020, was refused by notice dated 12 October 2020.
 - The development proposed is described as Proposed conversion of a storage and office building into 2 No Flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the living conditions of future occupiers of the proposed development would be satisfactory, with particular regard to noise and disturbance; and
 - Whether the proposed development would result in the loss of a use protected by the development plan.

Reasons

Living conditions

3. Amongst other aspects, the appeal site contains a two-storey building set within the yard serving the builders' merchant currently operating from Town Mills. As shown on the submitted plans, the proposed flats would be situated adjacent to and accessed via the Builders Yard. The flats' living rooms would also be positioned on the side of the site facing the Builders Yard.
4. A planning condition, as suggested by the Council's Environmental Protection Team, could ensure that the development is constructed to provide sound attenuation against external noise. Likely to involve, amongst other aspects, suitable window glazing, this would in theory ensure an acceptable internal noise environment in both proposed flats despite the use of the Town Mills site as a builders' merchant. However, future occupiers of the proposed development would be likely to want to open their windows on occasion. Were this to happen during the operating hours of the builders' merchant, occupiers of the proposed flats would essentially be subjected to unattenuated noises associated with the use of the adjacent Builders Yard. Although this may not result in exposure to prolonged and/or significant peak noise events, it seems

to me that the general activity of a successful builders' merchant would create noises on a relatively frequent basis which would be disturbing to residential occupiers living in close proximity, as would be the case here.

5. Located on the first-floor, the proposed two-bedroom flat would be sufficiently elevated above the Builders Yard to mean that future occupiers of it would not be directly subjected to the activity of the adjacent Builders Yard. However, positioned on the ground-floor, the proposed three-bedroom flat would effectively be situated immediately adjacent to the Builders Yard. Occupiers of that flat would therefore, despite its slightly raised position, be directly exposed to the disturbance associated with the comings and goings of customers and the collection and movement of goods at the builders' merchant. This would lead to a poor quality living environment for occupiers in the ground-floor flat.
6. I recognise that there is housing nearby, including to the north, west and south of the site. In addition, there are four flats in the main Town Mills stone building which, with the exception of approximately 50% of the ground floor, is in residential use. It has been put to me that there have also never been any noise issues raised by the existing occupiers. Be that as it may, the submitted evidence and my site visit observations indicate that the proposed flats, particularly the three-bedroom unit on the ground-floor, would have a more direct and closer relationship to the working Builders Yard than the existing residential units on and near the Town Mills site. The fact that the Council did not raise concerns regarding noise when permitting planning application 17/04866/FUL does not lead me to a different conclusion.
7. I note that the appellants are looking to relocate the builders' merchant to a different site. However, there is nothing to indicate that either the Town Mills site as a whole or the part of the Builders Yard that would be closest to the proposed flats would cease to be used as a builders' merchant prior to the occupation of the proposed development. Accordingly, I have determined the appeal on the basis that it would result in the creation of two residential units located adjacent to the working Builders Yard serving the builders' merchant.
8. For the above reasons, I conclude that the living conditions of future occupiers of the proposed development would not be satisfactory, with particular regard to noise and disturbance. I therefore find that it conflicts with Policy D6 of the Bath and North East Somerset Local Plan 2011-2029 (Placemaking Plan) which, amongst other aspects, requires development to provide for appropriate levels of amenity.

Protected use

9. The site is located within the Strategic Industrial Estate of Mill Road, Radstock, as defined by the Placemaking Plan. Policy ED2A of the Placemaking Plan states that "proposals for light industrial, heavy industrial, warehousing (classes B1c, B2, B8), builders merchants will be acceptable in principle" in identified Industrial Estates and, amongst other aspects, sets out that "there is a presumption in favour of retaining them [the identified Industrial Estates] for the aforementioned B1c, B2 & B8 uses."
10. It has been put to me that the lawful use of the site as a builders' merchant falls within the B8 use class as storage or distribution. To support this, the Council sets out that it granted a lawful development certificate in 2013 (Ref 13/03719/CLPU) for the replacement of an existing storage building on the

Town Mills site on the basis that the building to be replaced was an industrial building or warehouse under a B8 use, as identified on the application form accompanying that application.

11. Be that as it may, as part of a later Prior Approval application (Ref 14/03894/ODCOU) for a change of use of part of the builders' merchant site to two flats, the Council subsequently identified the builders' merchant as falling into a Sui Generis use. Agreeing with this, the Inspector for the subsequent appeal (Ref APP/F0114/A/14/2229371) determined that a use as a builders' merchant also falls into a Sui Generis use.
12. It has been put to me that the appeal decision for the 2014 Prior Approval application is not a decision as the lawful status of the land. Be that as it may, the Council and Inspector at that time were clear in the use of the builders' merchant as Sui Generis and I have little substantive evidence which leads me to come to a different conclusion now. Furthermore, I observed on my site visit that the builders' merchant included not only the storage of building materials but also the direct supply of such materials to customers and a shop/reception area to facilitate this.
13. If the builders' merchant at Town Mills and/or the appeal site were operating as a B8 storage or distribution use, then the requirements under parts 2 (a-e) and 3 of Policy ED2A would be applicable to the appeal scheme. However, for the above reasons and with little substantive evidence to indicate otherwise, I am satisfied that the appeal site, which forms part of the builders' merchant at Town Mills, cannot reasonably be considered to be in use as storage or distribution under the B8 use class. It instead falls into a class of its own. With part 2 of Policy ED2A listing only B1c, B2 and B8 uses as protected in identified Industrial Estates, and with builders' merchants being identified separately from those listed uses in part 1 of the policy, the Sui Generis builders' merchant is not therefore a protected use in the Strategic Industrial Estate.
14. Accordingly, I conclude that the proposed development would not result in the loss of a use protected by the development plan. I therefore find that it does not conflict with Placemaking Plan Policy ED2A. The proposal would also be consistent with the provisions in the National Planning Policy Framework in relation to building a strong, competitive economy.

Other matters

15. The Council considers that the proposed development would preserve the appearance of the Radstock Conservation Area. Having considered the development and visited the site, I concur and find that the appeal scheme would preserve the character and appearance of the designated heritage asset.
16. The Design and Access Statement sets out that due to the success and expansion of the business and access issues associated with large delivery trucks, the owners of the builders' merchant have decided that they need to relocate to larger premises. However, the appeal scheme relates to the conversion of a storage and office building serving the existing business into two flats and does not propose either the cessation of the builders' merchant use of the Town Mills site or its relocation for example. The appellants' broader intentions in relation to the business are therefore not determinative as to the acceptability of the appeal proposal, which I have determined on its merits, based on the submitted evidence.

Planning Balance

17. I have found that the living conditions of future occupiers of the proposed development would not be satisfactory, with particular regard to noise and disturbance. Although I have found that the appeal scheme would not conflict with Policy ED2A of the Placemaking Plan in relation to protected uses, the conflict I have identified with Policy D6 in relation to the first main issue means that it would be contrary to the development plan.
18. The proposal would provide two additional sufficiently sized residential units which would contribute to housing supply in the area. In addition to providing parking spaces and refuse and cycle storage for the proposed flats, the appeal scheme would provide parking spaces and refuse and cycle storage for the existing flats in the Town Mills stone building. It has been put to me that the external appearance of the building the subject of the proposed development would also be improved through for example removing the existing bright red windows, doors and roller shutters and replacing them with grey coloured frames and coursed rubble stone to match the original mill building and recent houses to the west of the site.
19. However, given the scale of the development, I am satisfied that the totality of its benefits would be relatively limited. The provision of two additional residential units would also have only a limited effect on the supply of housing in the area. In addition, although the Design and Access Statement refers to a shortage of residential accommodation in the area, the submitted evidence does not indicate that the appeal scheme is needed in order to ensure a sufficient supply of housing land in the district. The harm I have identified above, which could not be overcome by the imposition of reasonable planning conditions, and the conflict with the development plan is therefore not outweighed by these considerations.

Conclusion

20. For the above reasons, the appeal is dismissed.

T Gethin

INSPECTOR