



Appeal Decision

Site visit made on 15 June 2021

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 6 July 2021

Appeal Ref: APP/F0114/W/21/3269657

1B Trafalgar Road, Upper Weston, Bath, BA1 4EW

- 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 Chung Yein Pang against the decision of Bath & North East Somerset Council.
 - The application Ref 20/03407/FUL, dated 21 September 2020, was refused by notice dated 2 December 2020.
 - The development proposed is the change of use from office (Class B1) to residential (Class C3).
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Decision

1. The appeal is dismissed.

Preliminary matter

2. The Government reformed the Town and Country Planning (Use Classes) Order 1987 (as amended) from 1 September 2020 to, among other things, revoke Class B1 and create a new 'E' use class to provide greater flexibility for high streets. However, the existing rights continue to have effect until 31 July 2021, and the reference to Class B1 in the description above is therefore still valid.

Main issues

3. The main issues are the effect of the development on:
 - the living conditions of future occupants, with respect to daylight, outlook, disturbance, noise and overlooking, and
 - the living conditions of residential neighbours, with respect to disturbance.

Reasons

4. The host building is a disused, one-storey, L-shaped office building located in the rear corner of a courtyard behind the High Street in Upper Weston. It is timber clad and opens onto the enclosed courtyard. The structure is built into a high walled boundary, and there are therefore no openings on the rear sides.
5. The courtyard is accessed via an arched carriage entrance that runs beneath a 2- to 3-storey terrace of houses on Trafalgar Road, the walled back yards of which are within the courtyard. The rear of shops and accommodation along the main road, including the 'Weston Fish Bar and Chinese Takeaway' at 135,

High Street back onto the other side of the courtyard. Tall retirement flats form a backdrop to the courtyard beyond the appeal building.

Living conditions of future occupants – daylight and outlook

6. The proposed study is below ground and for daylight would rely on partial exposure to the skylight in the storey above. I do not consider this to be an appropriate level of daylight and outlook for a room in which a large amount of time could be spent. In addition, the bathroom and toilet would not have any natural light.
7. With the exception of the French windows in the lounge, the configuration of the partly covered windows means that the outlook from the main living rooms would be minimal. The bedroom would be reliant on a skylight from which no outlook could be obtained. In addition, the small size of the external amenity area and height of the surrounding walls and trellis would cause the outlook from the outdoor space to also be extremely limited.
8. I consider that the overall low level of daylight in the property and negligible outlook would not provide an appropriate level of amenity for future occupants, as required by Policy D6 of the Bath and North East Somerset Local Plan (2011 – 2019) Placemaking Plan (adopted July 2017) (the 'LP').

Living conditions of future occupants – disturbance and noise

9. The occupants of Trafalgar Road have a right of access to the rear of their houses, the path for which is approximately 3 metres distance from the appeal building at its closest point. I anticipate use of this access to be occasional and of short duration, and that any disturbance caused would be within the reasonable expectations of urban living.
10. The activity associated with the takeaway, including use of the courtyard for refuse storage and parking, has the potential to create noise and cause disturbance to future occupants, including at unsociable hours. I have had regard to the appellant's Noise Assessment¹, which quantified the background noise and specific noise sources, including the extraction fan for the takeaway. This concluded that the level of noise is typical of an urban location and I have no reason to come to a different conclusion.
11. Policy D6 of the LP requires that the development must not cause significant harm to the amenities of proposed occupiers by reason of noise or other disturbance. Given the small scale of the commercial activity and the urban context of the site, in which some disturbance and noise are to be expected, I do not consider that there would be significant harm to the amenities of the occupiers.

Living conditions of future occupants - overlooking

12. The louvres on the windows would prevent overlooking of occupants of the proposed house. However, the outdoor amenity area is potentially overlooked by the occupants of 134 and 135 High Street, including from a roof terrace, and the upper windows along Trafalgar Road.
13. It is proposed to install a 0.7 metre trellis above a 1.8 metre high wall around the amenity area, which would undoubtedly reduce the degree of overlooking.

¹ Acoustics Report A1707 R01, Ion Acoustics, 18 February 2021

Although I do not have evidence that this would entirely remove the potential to be overlooked, given that at least some private space would be created and that a degree of overlooking is to be expected in a tightly grained urban area, I do not find that significant harm to the living standards of occupants would be caused in conflict with the requirements of Policy D6.

Living conditions of neighbours

14. I appreciate that the proposed house would be in use in the evenings and weekends, which may be different to a 'typical' office, potentially leading to disturbance beyond that previously experienced. However, the proposed house would have one bedroom, so the number of users would be low, including in the outdoor amenity space. The entrance doors would be reduced in number and the main access would be via the French doors to the side of the building, which is further away from the rear of the closest houses along Trafalgar Road than the existing configuration. I am also mindful that the commercial activity associated with the takeaway finishes late into the evening, including on a Saturday.
15. I conclude that the disturbance from the residents of a one-bedroom property is likely to be low, and insignificant in the context of the commercial and urban surroundings. For this reason, I am satisfied that any disturbance caused by the new residents would not cause significant harm to existing occupiers and in this respect the proposal does not conflict with Policy D6.

Other matters

16. The site is within the curtilage of Grade II listed 135 High Street. It is also adjacent to 1-4 Trafalgar Road and 134 High Street, which are all Grade II listed. The site is also in the Bath Conservation Area (the 'CA'). The courtyard contributes to the significance of the CA and the setting of the listed buildings in presenting an open, utilitarian space behind the shops and houses, accessed through a distinctive and original arch.
17. The appeal building would retain a design akin to that of an ancillary building and would not detract from appreciation of the courtyard. The proposed amendments to finishing materials and landscaping would potentially improve the appearance of the area. External changes are limited and, overall, I consider that the development would have a neutral effect on the CA and setting of the listed buildings, and that the heritage assets would be preserved.

Conclusion

18. Although I have not identified harm from the proposal to the living conditions of neighbours, nor harm to the future occupants of the development from noise, disturbance or overlooking, I have found that there would be a lack of daylight to some rooms and negligible outlook. I conclude that this would be to a degree that would cause harm to the living conditions of future occupants and that the proposal would conflict with the local development plan when read as a whole. For these reasons, the appeal is dismissed.

B Davies

INSPECTOR