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# Appeal Decision

Site visit made on 10 August 2021

**by Diane Cragg DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 September 2021**

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**Appeal Ref: APP/W0340/W/20/3263493**

**Former Newbury Electrical Supplies Premises, 50B Bartholomew Street, Newbury RG14 5QF**

- 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 M Barnes (Bullfinch Homes Ltd) against the decision of West Berkshire Council.
  - The application Ref 20/01775/FULD, dated 30 July 2020, was refused by notice dated 18 November 2020.
  - The development proposed is conversion of former Class B unit into 1no 2 bedroom single storey unit and 3no 1 bedroom two storey town houses with associated parking and amenity spaces.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. On 20 July 2021, the Government published a revised National Planning Policy Framework (the Framework). Both main parties have had the opportunity to submit comments on the relevance of the Framework to this case. I have taken any comments received into consideration and I have assessed this appeal in light of the Framework.
3. On 1 September 2020, the Town and Country Planning (Use Classes) Order 1987 was amended and as part of this a new Class E was created which incorporates former Use Classes A1, A2, A3, B1 and some uses that were formerly in Class D1 and D2. However, as the application was made before this date, I must determine the appeal based on the Use Classes Order that existed at that time.
4. The appellant has submitted a bat survey as part of the appeal documentation. The Council has had the opportunity to comment on the survey work. I am satisfied that neither party would be prejudiced by my taking the bat survey into account and I have considered the appeal accordingly.
5. As the appeal site is within Newbury Conservation Area (NCA) and affects the setting of listed buildings, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

## **Main Issues**

6. The main issues are:

- (i) whether the proposed loss of commercial floor space is justified;
- (ii) the effect of the proposed development on the living conditions of its future occupiers and the future occupiers of Phoenix House with regard to outlook, privacy and outdoor amenity space; and
- (iii) the effect of the proposal on protected species.

## **Reasons**

- 7. The appeal site comprises a detached red brick building accessed from Bartholomew Street with a small area of land around it providing parking space for the building. The building was formally used as an electrical supplies business but is currently vacant.
- 8. The main part of the structure is said to date from the second half of the 19<sup>th</sup> century with a later addition on the western side. The appeal building is part of a group of structures associated with the former Phoenix Brewery. Some of the adjacent buildings are listed Grade II and because of the appeal building's association with the former brewery it is considered to be a non-designated heritage asset.

### *Loss of commercial floor space*

- 9. The appeal site is located within the Town Centre Commercial Area in the development plan. Policy ADPP1 of the West Berkshire Core Strategy 2006 - 2026 (Core Strategy) sets out the spatial strategy for the area. It seeks to focus the majority of development in urban areas including Newbury. Intensive employment and trip generating uses and sites are to be located in those town centre areas where the extent and capacity of supporting infrastructure and services is the greatest.
- 10. Policy ADPP2 states that Newbury will be the focus of business development over the plan period. Policy CS9 seeks to facilitate and promote the growth and forecasted change of business development in the plan period to manage class B development. This will be achieved by, among other things, the promotion of appropriate intensification and redevelopment of existing vacant sites and premises for business development.
- 11. This is consistent with the Framework where it places significant weight on the need to support economic growth and productivity taking into account local business needs and wider opportunities for development. The Framework also seeks to ensure the vitality of town centres; planning decisions should support the role that town centres play by taking a positive approach to their growth, management, and adaptation. The economic objective of the Framework is to help build a strong, responsive, and competitive economy.
- 12. The appeal property is set back from the Bartholomew Street frontage and is surrounded by residential development or buildings that have permission for residential use. Nevertheless, the appeal building is also near car parking facilities and close to other commercial uses along Bartholomew Street, so that in this mixed-use area the building's business use is compatible with the surroundings.

13. I saw at my site visit that the appeal building is currently advertised for sale, but I have little information about the outcome of such advertisement and whether this has resulted in any interest in the occupation of the site for a business use. Consequently, I have limited evidence that the building could not contribute to the Town Centre Commercial Area through appropriate upgrading for continued business use.
14. Further, although I appreciate that the application was submitted before the new commercial, business and service use class was introduced, the introduction of Class E is a material planning consideration. The new Class E provides the opportunity for the appeal site to adapt and diversify to meet changing demands within the Town Centre Commercial Area, whilst not decisive to my consideration of this appeal the greater possibilities for the use of the building add to my concern that it has not been adequately demonstrated that the business use of the site could not be sustained.
15. I appreciate that there is restricted parking for customers around the appeal site but there are car parks close by and the central location of the appeal site means that the building is accessible by foot, by bicycle and by public transport.
16. The appellant states that the Council did not indicate at pre-application enquiry stage that change of use was a concern. I have been provided with a copy of these enquiries and I note that in both instances the Council identified the need to provide marketing information to support the residential use of the building in the Town Centre Commercial Area. I am satisfied that the appellant was aware of the need to appropriately market the site.
17. Overall, I conclude that the proposed loss of commercial floor space has not been satisfactorily justified and the proposal would conflict with Policies ADPP1, ADPP2 and CS9 of the Core Strategy. It would also conflict with the Framework.

#### *Living conditions*

18. The north elevation of the appeal building faces towards Phoenix House, a former office building that has prior approval to be converted into residential accommodation. When converted, bedroom and living room windows of Phoenix House would be approximately 4.8 metres from the north elevation of the appeal building.
19. New ground and first floor windows in the northern elevation of three of the proposed dwellings at the appeal site would serve the main living areas and bedrooms of the properties, with two of the properties having living and bedroom windows only on this northern elevation. Because of the limited other window openings, restricted aspect of the proposed dwellings and the proximity of the habitable room windows of the two buildings there would be inadequate outlook and privacy for future occupiers of the proposed dwellings and those occupying Phoenix House.
20. It is proposed to fence the area outside the front doors of each new dwelling to provide outdoor amenity space, bin storage and one bicycle space. The Council indicates that the amenity spaces would be approximately 17 square metres for the two storey properties and 9 square metres for the single storey unit. This would be significantly below the expected standard in the Council's Quality

Design Supplementary Planning Document (SPD). However, the SPD refers to infill development responding to context in terms of garden size and the need to be flexible in order to accommodate density requirements.

21. I accept that the coronavirus pandemic has highlighted the benefits of outside amenity space. Even so, given the size of the proposed dwellings, the general character of the surrounding buildings and the proximity of the site to the amenities of the town centre, I am satisfied that the proposed amenity space would be appropriate and sufficient to serve the development.
22. Overall, whilst the outdoor amenity spaces are adequate in the appeal site's context, I conclude that the proposed development would not provide adequate living conditions for its future occupiers and the future occupiers of Phoenix House with regard to outlook and privacy and the development would conflict with Policy CS14 of the Core Strategy where it requires development to make a positive contribution to the quality of life in West Berkshire. It would also conflict with the Framework where it seeks to ensure a high standard of amenity for existing and future users.
23. Given my conclusion in relation to outdoor amenity space, there would be no conflict with the SPD in this respect.

#### *Protected species*

24. As part of the appeal documentation a bat survey was submitted which concludes that there is no evidence of bats roosting at the site. The Council confirms that it is satisfied with the details of the bat survey.
25. However, a third party raised concerns that there are nesting swifts present at the appeal site and the lack of survey work in relation to swifts was part of the Council's reason for refusal.
26. It is important that developments likely to affect biodiversity contain adequate, up-to-date information to effectively evaluate the impacts of development. This should include relevant site surveys and desk-based studies to inform the baseline position. In the absence of any evidence in relation to nesting swifts I cannot evaluate the impact of the development in this regard.
27. Therefore, there is insufficient information to assess the effect of the proposal on protected species. Consequently, the proposal would conflict with Policy CS17 of the Core Strategy which seeks to ensure biodiversity assets will be conserved and enhanced. It would also conflict with the Framework where it seeks to protect and enhance biodiversity.
28. In addition, the proposal would conflict with ODPM Circular 06/2005 which, although it states that surveys should only be required where there is a reasonable likelihood of species being present, it advises that surveys should be carried out before planning permission is granted.

#### **Other Matters**

29. The Council considers that the building makes a positive contribution to the character and appearance of the NCA due to a combination of the age of the building, its architectural form and appearance and its contribution to the group of former brewery complex buildings. The parties agree that the proposed development would be a minor enhancement to the character and appearance

of the NCA and the setting of listed buildings. Following my site visit I see no reason to disagree, and I conclude that the character of the NCA and the setting of the adjacent listed buildings would be preserved.

**Conclusion**

30. Overall, for the reasons given above, the proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict. Therefore, the appeal is dismissed.

*Diane Cragg*

INSPECTOR