



Appeal Decisions

Site visit made on 3 May 2022

by A Tucker BA (Hons) IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 May 2022

Appeal A Ref: APP/Z0116/W/22/3291729

45 High Street, BRISTOL, BS1 2AZ

- 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 Worrall Road Estates Ltd against the decision of Bristol City Council.
 - The application Ref 21/01021/F, dated 25 February 2021, was refused by notice dated 26 October 2021.
 - The development proposed is change of use of upper floors from a retail use (Class E) to a House in Multiple Occupation (HMO) (Class C4). External alterations at roof level.
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Appeal B Ref: APP/Z0116/Y/22/3291728

45 High Street, BRISTOL, BS1 2AZ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Worrall Road Estates Ltd against the decision of Bristol City Council.
 - The application Ref 21/01022/LA, dated 25 February 2021, was refused by notice dated 26 October 2021.
 - The works proposed are the alterations associated with the change of use of the upper floors from a retail use (Class E) to a House in Multiple Occupation (HMO) (Class C4).
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Decision – Appeal A

1. The appeal is dismissed.

Decision – Appeal B

2. The appeal is dismissed.

Preliminary Matters

3. The appeals relate to the same scheme under different legislation. I have considered each on its own merits. However, to avoid duplication, I have dealt with both appeals together.
4. Drawing B12144 02 F is referred to by the Council and included in the appeal submissions. At my visit I was given a copy of Rev G of this plan, however it was not formally submitted with the appeal documents. As a consequence, the Council has not had an opportunity to comment on this plan and it would not be appropriate to take it into account in my consideration of the appeals.
5. Drawing B12144 02 F includes a written reference to Drawing B12114/06A. I do not have a copy of revision A of this drawing before me. The Council has confirmed that this was not submitted with the applications. Accordingly, I will determine the appeals with reference to Drawing B12114/06.

6. Drawings B12144 09 and B12144 10 are referred to in the Heritage Appeal Statement (HAS) where it is suggested that they are additional plans submitted at the appeal stage. Copies of these drawings only appear to have been provided in extract form within the HAS. Full copies of these plans were given to me at the site visit, but there is no evidence before me to confirm that the Council has had opportunity to review these.
7. However, the Council has had opportunity to review the additional floor section details included within the HAS. These details do not seek to alter or vary the scheme. I am satisfied that neither main party would be prejudiced if I take the additional details included within the HAS into account in my determination of the appeals.
8. Notwithstanding the description of the proposal set out above, which is taken from the application form, the change of use also relates to the rear ground floor room. The Council dealt with the proposal on this basis and so shall I.

Main Issues

9. The main issue for both appeals is the effect of the proposal on the special interest of the grade II listed building, 45 High Street, and whether the proposal preserves or enhances the character and appearance of the City and Queen Square Conservation Area.
10. Additional main issues for Appeal A only are:
 - a) whether the proposal would secure adequate living conditions for future occupiers,
 - b) whether the proposed arrangements for the collection of refuse and recycling would be adequate,
 - c) whether the proposed cycle parking would be adequate,
 - d) the viability of the retained commercial unit, and
 - e) whether the proposed use would be appropriate taking into account the number of existing houses in multiple occupation in the area.

Reasons Appeals A and B

11. Section 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires the decision maker to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses. Additionally, Section 72 of the LBCA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
12. Behind its well composed 1908 front with its broad decorative bays and projecting gable is a much older building that dates from the 15th century. It is referred to as a rare survival of a timber frame building in the city centre, retaining extensive historic fittings and fabric internally including a 17th century winder stair, panelling, fire surrounds and structural timbers. At the core of the building is a small retained medieval courtyard which, although internalised is open from the first floor through to the top of the building. The front elevation has a very different appearance to the narrow 17th century rear elevation that faces onto All Saints Court.

13. The building's cellular plan form, its historic fabric, and the architectural interest of its front and rear facades are significant contributors to its special interest.
14. The building stands within the City and Queen Square Conservation Area (CA). The CA focuses on the historic heart of the city which includes its medieval core and Queen Square. The appeal building sits within the Old Medieval Core character area, which is a densely packed area of intimate character which generally follows its medieval street layout. Streets are mostly narrow with very narrow back alleys and courts. The appeal building is a significant positive contributor to the character and appearance of the CA, and defines one side of one of the very narrow courts at the rear.
15. The submissions demonstrate a detailed understanding of the development and significance of the building. In most parts the proposal would respect and retain historic fabric and fittings by working with the retained historic plan form where it is evident and removing some elements that have caused harm.
16. The rear ground floor room contains fine areas of 17th century panelling and a contemporary fireplace. These give the room a high status and make it the most architecturally significant internal space. The proposal would see an intervening partition removed to restore the form of the room and the view of the panelling at both sides. However, its high status would be significantly downgraded by the introduction of a low ranking bike storage use. A vertical bike rack would be fixed in place that would face this area of panelling side on. This would, particularly when full of bikes, significantly obscure the view of the panelling and dominate the room.
17. In addition, to take into account the likely damage to the fireplace wall from the repeated moving of bikes into and out of the rack, a Perspex screen would be fitted over this area. The plans only show that it would be fitted over one wall, when it is quite possible that a similar level of damage could occur to the opposite wall, particularly as this is close to the door.
18. In any case, this is a significant retrograde step to attempt to resolve the introduction of an inappropriate use into a room with high historic significance. Not only would this have a harmful visual impact it is also highly likely that it would alter the environment by trapping moisture or stale air close to the panelling, thus accelerating decay. It would also be likely to hold dirt and debris against the fabric, which would be difficult to address once the Perspex is in place. I consider the introduction of the bike store use into this room and the associated impact on historic fabric to cause significant harm to the special interest of the building.
19. It is suggested that this is an approach that has been taken in other buildings. Whilst I do not dispute this, it is not a common solution, but is instead the sort of approach taken when all other options have been exhausted. I note that the example at 1 Golden Cross relates to a room that is in an important use, which is not the case with the proposal before me. This point does not therefore alter my finding on this matter.
20. The existing spaces at the front of the building over the first, second and third floor have a degree of formality, derived from the fine arrangement of the front facing bay windows which is the primary focus of the internal space at each level. They are also generously proportioned. The scale of the room at third

floor level would be retained. At second floor level the existing space has been divided in a poor manner. These partitions would be removed, which is a positive intervention, however they would be replaced with an arrangement of partitions that would leave a small front facing room with a staggered rear wall.

21. A similar impact would occur at first floor level, where the well-proportioned space would be truncated, resulting in a modestly sized room with a staggered partition. At both levels the staggered internal face of the rooms would not relate well to the formal front facing bay. This would harm the significance of the building's plan form and would erode the architectural form and scale of these internal spaces, which would appear rather mean and ill-conceived in relation to the formal and generous form of the front facing bay.
22. Fundamental to the acceptability of the proposal is the ability of the building's fabric to provide for a safe living environment for its future occupants. The HAS includes some section details that suggest a method for providing acoustic and fire separation between the floors. These details are however basic and are based on various assumptions. Given the history of the building and manner by which it has been altered it is highly likely that the floor structure and the significance of historic fabric varies greatly across the building.
23. Furthermore, there is no evidence before me to show that these details have been prepared or reviewed by a suitably qualified professional who has a thorough understanding of both the Building Regulations and the conservation of historic assets. In this context the limited details provided do not give me the details I need to make a full assessment of the proposal's impact.
24. The Council has also expressed concern about the relationship between new partitions and existing beams. The Appellant has provided additional information relating to this with the appeal by confirming that where new partitions follow existing beams they would sit directly beneath the beam so that it is visible, and where they would be perpendicular they would be scribed to avoid damage to fabric. I am not satisfied that any of the existing beams are so visually significant that either of these approaches would be unacceptable.
25. The proposal includes the provision of PV panels on the building's southeast facing roof slope. The roof of the building is high up above ground level and is difficult to view from the ground. A small part of the existing slate surface can be viewed behind the raised coping at the edge of the gable, from a limited area of High Street. A small part of the outer two panels would be visible from High Street. I accept that they would not be prominent to view as they would sit behind the raised form of the front gable, however they would still cause a modest level of harm as they would be seen in the context of the formal front elevation. This would be exacerbated if the existing slate finish was replaced with clay tiles, as noted on the submitted drawings.
26. There would also be a low level of harm to the character and appearance of the CA and the setting of nearby listed buildings, as the appearance of a modern PV panel would appear out of place in the context of the traditional appearance of nearby buildings.
27. With reference to this matter my attention has been drawn to the approval at the site opposite for a substantial building. Whilst this would alter the wider setting of the appeal building it would not change the well-established historic relationship that it currently holds with the attached buildings or other nearby

listed buildings. I am thus not satisfied that the development of the site opposite should alter my findings on this matter.

28. It is unlikely that the edge of the two panels at the other end of the roof slope would be visible from All Saint's Court, given the height of the building and the manner by which the adjacent building steps forward and limits the view of the edge of the southeast roof slope. However, even if part of the edge of the upper panel could be viewed from this position, as long as the panel had a dark edge, and was positioned directly onto the roof surface I am of the view that it would not be harmful.
29. In summary, I find that the proposal would fail to meet the requirements of the LBCA as it would not preserve the special interest of the listed building or the character or appearance of the CA. It would be contrary to Policies DM26, DM30 and DM31 of the Site Allocations and Development Management Policies 2014 (SADMP), and Policies BCS21 and BCS22 of the Core Strategy 2011 (CS), insofar as they seek to ensure that development proposals are high quality, contribute to local character, respect the character of the host building, and conserve heritage assets.

Reasons Appeal A only

Living conditions

30. Daylight to bedroom four would only be achieved through a window that would face into the small, enclosed courtyard that would be covered by glazing a storey above. This would provide a basic level of daylight to the room. With some difficulty it may be possible to view the sky from the room, but it would certainly provide no meaningful outlook from this room and would not provide its occupants with access to fresh outside air. In addition, the room would be reasonably deep with a small shower room at the far end that would be without natural light. These characteristics would exacerbate the poor level of daylight and lack of outlook, resulting in a room that would be dark within the core of the building with no proper connection to the outside environment.
31. These significant deficiencies would create a very poor living environment. It is likely that the wellbeing of a future occupant who spends significant portions of time in this room would be harmed. I note that the room that would be used as a communal living room at the top of the building is well lit and enjoys a pleasant outlook. However, by its nature it is quite possible that a HMO resident may consider it necessary to spend significant time in bedroom 4, as it would be the only fully private space within the building. I am therefore not satisfied that the provision of the living room would offset the significant deficiencies I have identified relating to bedroom four.
32. The communal living space would be on the third floor, which would be remote from bedrooms one and two, and even further from the ground level entrances. In this position it is likely to be of limited use to the occupants of the lower bedrooms, and its position at the top of the building would make it awkward for carrying shopping such as groceries up from ground level.
33. I accept that a scheme that re-uses an existing building will often require compromises in some areas as a result of the constraints that derive from its existing layout. However, in this case the appeal building is large, and there is nothing before me to explain why the proposed layout has been chosen in

favour of other alternatives that might for example place the communal living space elsewhere or avoid the substandard arrangement for bedroom four.

34. The Council also refers to the lack of external space. The appeal building is very close to Castle Park, which is a pleasant and expansive area of public open space. Given the constraints of the building and the lack of any private external land, I am satisfied that the lack of provision of private external space for future occupants is offset by the proximity of the building to Castle Park.
35. In summary, the significant issues that I have identified relating to bedroom four and the proposed communal living space mean that the proposal would not secure adequate living conditions for future occupiers. It would be contrary to Policies DM2 and DM14 of the SADMP, Policies BCS20 and BCS21 of the CS, insofar as they seek to ensure that development proposals achieve high quality and well-designed environments for future occupiers; and avoid proposals that will have an unacceptable impact on health and wellbeing. It would also be contrary to advice within the Council's Supplementary Planning Document Managing the Development of Houses in Multiple Occupation 2020 (HMO SPD), which states that HMOs should provide a good standard of accommodation.

Refuse and recycling

36. The Council's HMO SPD recognises that HMOs can damage the residential amenity and character of surrounding areas. Such harm to visual amenity can result from poor waste management. The building is without any external space, and there is no other land nearby that would be appropriate for the storage of waste receptacles prior to collection without harming the character or appearance of the area.
37. For these reasons it is difficult to see how a regular fortnightly collection of waste by the Council from an accessible external location can be achieved. As a consequence, the appellant suggests that a private contractor would be employed for such purposes and refers to other similar developments in the area where such arrangements are in place.
38. This includes 9a Union Street, which was allowed on appeal¹. In this case, someone would be employed to transfer waste from a first-floor store to the building's basement, and the matter is secured by a condition which requires the submission of a scheme for waste management to be submitted to the Council. Given the constraints of the building at Union Street I find no reason to disagree with the findings of the Inspector who determined this appeal, and am also satisfied that the condition used is sufficiently precise, practicable and enforceable.
39. The appeal building includes a large basement area that would be suitable for the storage of waste prior to collection. Waste could also be stored in other areas of the building such as the third-floor storage area and the first-floor study. A private contractor would need to be able to enter the building to collect waste from one or more specific locations to take it out of the building for disposal. Given the scale of the building, its tight relationship with other buildings and the lack of external space, it is likely that any future user of the building would need to secure a similar private arrangement.

¹ Appeal Ref: APP/Z0116/W/20/3254102

40. In the event that the appeal is allowed a similar condition to that used at 9a Union Street could be imposed. This would give the opportunity for the Council to agree appropriate arrangements, which could include a location for the collecting vehicle to park that would not disrupt traffic flow, mindful of the status that The City Centre Framework 2020 gives to High Street as a mass transit corridor. If the agreed arrangement fails it would enable the Council to take enforcement action.
41. In summary, the proposed arrangements for the collection of refuse and recycling would be adequate. This would accord with Policy BCS21 of the CS and Policies DM2, DM23 and DM32 of the SADMP insofar as they seek to deliver a usable and well-managed built environment, provide appropriate servicing, and avoid proposals with inadequate storage for recycling and refuse.

Cycle parking

42. The rear ground floor room would accommodate a freestanding vertical cycle rack for six bikes. The Council is concerned that a vertical storage system would not be practical and that manoeuvring a bike through the narrow rear door and side passage could be difficult. Storing bikes in this manner can be difficult if the bike is fitted with mudguards or panniers.
43. However, I am mindful of the significant limitations of the layout of the existing building, and in particular the lack of space at ground floor level. Whilst the storage solution proposed may not be ideal, it would provide space to store a bike for each of the six occupants and would appear to be the best that can be achieved. The appeal site is highly accessible. It would be possible for future tenants to access a wide range of local services and facilities easily on foot, so owning a bike may not be essential. Furthermore, I note that the basement would be accessible to residents, providing a large alternative storage area to the rear ground floor room.
44. In summary, the proposed cycle storage would be adequate. It would accord with Policy DM23 of the SADMP and Policies BCS10 and BCS13 of the CS, which together seek to ensure that development proposals provide for cyclists by prioritising them over other transport methods.

Viability of retained commercial unit

45. The proposal would see a commercial unit retained at ground floor level, served by the existing shopfront facing High Street. The unit would be well proportioned and would be served by a small staff area at the rear. Evidence before me suggests that the proposed unit would be viable as a large number of similarly sized units have been recently let and there has been specific interest in the proposed area by a large number of parties including some discussions that are ongoing.
46. In summary, the evidence before me is sufficient to demonstrate that the retained retail unit would be viable. It would thus accord with Policies BCAP 2 and BCAP17 of the Bristol Central Area Plan 2015 (BCAP), which together seek to ensure that development proposals contribute to the mix of uses in the wider area, and where floor space would be lost it would not be detrimental to the continued viability of the unit.

Whether the proposed use would be appropriate

47. Policy DM2 of the SADMP establishes that HMOs will not be permitted where, amongst other things, they would create or contribute to a harmful concentration of such uses within a locality. The HMO SPD advises that more than 10% HMOs in any neighbourhood is considered a likely tipping point, beyond which negative impacts to residential amenity and character are likely to be experienced and housing choice and community cohesion start to weaken.
48. The Council has provided evidence to show that 26.92% of dwellings within 100m of the site are HMOs. This is a significant proportion and is far in excess of the 10% figure suggested by the HMO SPD. The provision of a further HMO would add to this overconcentration. I accept that there would be no 'sandwiching effect'. However, it is likely that adding to this existing overconcentration would further erode community cohesion and housing choice in the area.
49. The appellant suggests that the proposal would deliver a six-bedroom dwelling for which there is an under provision in the area. However, I give this matter little weight as the dwelling would be more akin to six one-bedroom households.
50. References are before me to other recently permitted HMOs in the area. These are not immediately adjacent to the appeal site and thus a different 100m radius would have been relevant. In any case, existing HMOs in the area, particularly those that have been recently permitted and thereby resulted in a recent change to local housing choice, are matters that weigh against the proposal.
51. In summary, the proposed use would not be appropriate taking into account the existing overconcentration of HMOs in the area. It would be contrary to Policy DM2 of the SADMP and Policy BCS18 of the CS, which together seek to ensure that HMOs will not be permitted where they will create or contribute to a harmful concentration of such uses, and fail to support the creation of mixed, balanced and inclusive communities.

Planning and Heritage Balance

52. I have found that the proposal would fail to preserve the special interest of the listed building and would not preserve the character or appearance of the CA. I have also found that it would not secure adequate living conditions for future occupiers and that the use would not be appropriate taking into account the existing overconcentration of HMOs.
53. Although significant, the heritage harm I have identified would be less than substantial in terms of the National Planning Policy Framework (the Framework). Paragraph 202 of the Framework establishes that any harm should be weighed against the public benefits of the proposal.
54. The proposal would reinstate window openings that face out onto the inner medieval courtyard, and the solid roof over this area would be replaced with fixed glazing. It would also secure the removal of the corrugated metal roof over the rear part of the building, and the removal of the partition in the ground floor room at the rear to reinstate the historic scale of this important room with associated repair of the 17th century panelling. These interventions

would better reveal the building's significance and are heritage related public benefits that should attract significant weight.

55. It is suggested that the proposal would secure the long-term conservation and maintenance of the building. I do accept that securing a new use, which would include works of repair, would be good for the building in broad terms. However, it is difficult to separate this from the harm that I have identified, which limits the weight I give to the manner by which the proposal would secure the building's long-term conservation.
56. The proposal would secure broader fabric improvements, including improved thermal performance and the introduction of fire compartmentalisation. Whilst this carries weight, the weight I give to this matter is limited as it is likely that any refurbishment scheme would need to secure similar improvements to satisfy the Building Regulations.
57. The proposal would secure some employment generation during the building work and future occupants would make use of local services and facilities; however, the weight I give to such matters is limited by the small scale of the proposal. The proposal would also retain a commercial element at ground floor level, however I should only give this economic benefit modest weight as the proposal would see the area significantly reduced.
58. The proposal would see an existing vacant building re-used and would include the re-use of part of a building above a shop. This would accord with paragraph 120 d) of the Framework, Policy BCS20 of the CS which establishes that new development will maximise opportunities to re-use previously developed land, and Policy BCAP2 of the BCAP encourages the use of vacant or underused upper floors of buildings for homes.
59. Paragraph 202 of the Framework also establishes that heritage harm should, where appropriate, be weighed against securing an asset's optimum viable use (OVU).
60. The building was recently vacated and suffered damage while it was occupied by squatters. At the time of my visit the building was boarded up and appeared to be secure. It is not clear what measures were put in place when the building became vacant, and empty buildings were more vulnerable to vandalism during periods of national lockdown when natural surveillance and the occupation of nearby buildings for employment was limited. Thus, although it is clear that the building needs a new use, I am not satisfied that it is particularly prone to further vandalism while vacant, and thus give this matter limited weight.
61. There is detailed evidence before me relating to the marketing of the building over a long period. I accept that the current layout of the building, its significant level changes and lack of external space do limit the options for how it could be re-used. However, to establish whether the use proposed is the OVU I need to be sure that alternatives have been thoroughly considered. I accept that there are alternative uses that could require a higher degree of intervention and may cause more harm to the asset.
62. However, the consideration of alternative uses before me is limited. There is no evidence that alternative floor plans have been prepared, which is an essential part of developing a scheme that considers how a significant historic building

can be re-used. Neither is there any evidence to show that the use of buildings with similar qualities and constraints have been considered as a comparison.

63. The Planning Practice Guidance suggests that harmful development may sometimes be justified in the interests of realising the optimum viable use of an asset, providing the harm is minimised². I have established that the proposal would harm the special interest of the building. There is no information before me to demonstrate how the scheme was developed, or whether an alternative HMO scheme based on an alternative layout, or a smaller number of larger rooms would be feasible, which may cause less harm to the special interest of the building. Neither is it demonstrated that a different ratio of commercial to residential has been considered. I cannot therefore be satisfied that the proposed use represents the building's OVU.
64. In reaching this conclusion I have had regard to the extract of the appeal decisions at Hackney Police Station. It does however appear as though this case differs from the proposal before me as it was found that the proposal would secure a suitable use and it was thus not necessary to consider the OVU.
65. I give the harm I have identified considerable importance and weight in the public benefit balance of these appeals. Indeed, paragraph 199 of the Framework establishes that great weight should be given to the conservation of a heritage asset, regardless of the level of harm identified. In combination the public benefits of the proposal that I have referred to above carry reasonable weight, however they are not sufficient to outweigh the harm identified.

Other Matters

66. The Housing Delivery Test results for 2021 show that the Council's delivery of housing over the previous three years was below 75% of its housing requirement. Footnote 8 of the National Planning Policy Framework (the Framework) indicates that paragraph 11 d) should be engaged for applications involving the provision of housing.
67. However, an exception is provided where policies in the Framework that protect assets of particular importance provide a clear reason for refusing a proposal. Footnote 7 establishes that this includes heritage assets. I have found that the proposal would harm the special interest of the listed building and the character and appearance of the CA. It would therefore not accord with the Framework, which gives great weight to the conservation of heritage assets. Consequently, the tilted balance does not apply.
68. I have found that the proposed arrangements for waste collection and cycle parking would be adequate, and that the retained commercial unit would be viable. These are however neutral matters that do not weigh in favour of the proposal.
69. In its decision the Council referred to Policy DM27 of the SADMP. This relates to the arrangement and form of buildings, structures and spaces. The appeal does not propose any extensions or new buildings. I am therefore of the view that this Policy is not relevant and has therefore not been determinative.

² Paragraph: 015: Reference ID: 18a-015-20190723

Conclusion

70. In conclusion, the proposal would conflict with the development plan and there are no other material considerations, including the Framework, that outweigh this conflict. Therefore, the appeals should be dismissed.

A Tucker

INSPECTOR