



Appeal Decision

Site visit made on 14 October 2022

by M. P. Howell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2022

Appeal Ref: APP/Z0116/W/22/3300899

Land Adjacent to Teddies Nursey, Clanage Road, Ashton, Bristol BS3 2JX

- 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 James Sweetnam (Entace Limited) against the decision of Bristol City Council.
 - The application Ref 21/05474/F, dated 29 July 2021, was refused by notice dated 13 December 2021.
 - The development proposed is Proposed demolition of existing buildings and erection of replacement building for indoor recreation use Class E(d), with associated car parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the Council's Notice of Decision as it provides a more precise description than that outlined on the original planning application form. As the amended description is consistent with that outlined on the Appeal Form, I am satisfied that there would be no prejudice in this respect.

Background and Main Issues

3. A previously approved application¹ granted consent for a building on the same site, but in a different location. As part of the approved application the appellant proposed the demolition of the same existing buildings on the site, as proposed in the development subject of this appeal.
4. I have had regard to the Council's position and the previously approved application. There were sound planning objections (loss of openness to the green belt) to both the existing and proposed buildings remaining, and the approved building could be erected without demolishing the existing buildings. As such, in my judgement, it would have been necessary to impose a condition requiring the existing buildings to be demolished.
5. Based on the evidence before me, there is no condition attached to the 2020 permission requiring the specific removal of the existing buildings, and no plan that clearly identifies those buildings that need to be demolished. Furthermore, I have no information before me to indicate that the retention of the existing buildings is a breach of planning control and there are any ongoing enforcement issues being investigated. In this scenario, the buildings on site remain lawful,

¹ Planning Application reference 20/01909/F

and there is no mechanism in place to enforce their removal. As such, it is necessary for me to consider the acceptability of the proposed development as a replacement building to the existing buildings on site.

6. The Council's Decision Notice does not refer to flooding. Nevertheless, the site is within Flood Zone 3, and representations from third parties highlight that the appellant did not carry out a sequential test, in line with proposed development for new buildings exceeding 250m² in Flood Zone 3a. This matter has been raised with both main parties and they had an opportunity to provide their views in respect of the matter.
7. In view of the above, the main issues in this appeal are: -
 - whether or not the proposal would provide a suitable site for development, having regard to its location within Flood Zone 3a; and
 - whether the proposal is inappropriate development in the Green Belt.

Reasons

Flooding

8. The site is within Flood Zone 3, and the proposed commercial use would be judged as 'less vulnerable' development.
9. Paragraph 101 of the National Planning Policy Framework (the Framework) requires the application of a Sequential Test in decision taking in order to steer new development to areas with the lowest probability of flooding. It states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. Paragraph 102 goes on to say that if, following application of the Sequential Test, it is not possible for the development to be located in zones with a lower probability of flooding, the Exception Test can be applied if appropriate.
10. It is for local planning authorities, taking advice from the Environment Agency, to consider the extent to which Sequential Test considerations have been satisfied, taking into account the particular circumstances in any given case. The developer should justify with evidence to the local planning authority what area of search has been used when making the application. Ultimately the local planning authority needs to be satisfied in all cases that the proposed development would be safe and not lead to increased flood risk elsewhere².
11. A Flood Risk Assessment dated June 2017 was included with the appeal. It indicates in paragraph 5.2 that although the Environment Agency has indicated a sequential test is required, the Council considered it exempt from the Sequential Test because no change of use is proposed, and the operational development is a minor-extension under 250m². However, the proposed development does not consist of an extension to a building, but a replacement building that exceeds 250m². As such, based on the nature of the proposed development, in my judgement a Sequential Test is required.
12. There is no evidence before me that a Sequential Test has been undertaken. An appeal is not the appropriate forum to request and have the parties undertake a sequential test, this should be done at the application stage. The appeal process should not be used to evolve a scheme and it is important that what is

² Planning Practice Guidance, Paragraph: 034 Reference ID: 7-034-20140306

considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. There are some exceptions where late submissions would be accepted, but the proposed development and in this context a new Sequential Test would not fall within these exceptions.

13. Accordingly, there is insufficient evidence before me to demonstrate that there are no alternative sites at lower risk of flooding. I find, therefore, that it has not been satisfactorily demonstrated that the proposed development would not represent an unacceptable risk to flooding, failing to accord with the Framework's aim of directing development away from areas of highest flood risk.

Inappropriate development in the Green Belt

14. Paragraph 149 of the Framework sets out the categories of development which may be regarded as not inappropriate in the Green Belt. New buildings within the Green Belt are inappropriate unless, amongst other things, they are;

d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.

15. The site contains a single storey pavilion building, two storage containers, a dilapidated toilet building, and garage storage buildings located to the east. The recently built building along with a nursery building also exist on site but do not form part of the buildings to be removed. The buildings are used in association with a commercial escape room business, which would fall within Class E (d) of the Use Classes Order 1987 (as amended).
16. In this case two of the smaller buildings in question are positioned away from the pavilion, storage containers and toilets. As such, not all are positioned close to the main pavilion building, or clearly visible as a group. That said, I have no reason to believe that the smaller buildings serve uses other than ones which are ancillary or incidental to that of the existing commercial use, or that their collective replacement would be inconsistent in principle with the objectives of Green Belt policy. I therefore accept that the buildings put forward can be considered alongside the existing pavilion in the context of the proposed 'replacement' building.
17. Furthermore, there is no definition within the Framework for what constitutes 'materially larger', and as such, I have determined the use of the word materially in ordinary English. The Collins Dictionary defines 'materially' as 'to a significant way; considerably'. I have assessed the replacement building in this regard.
18. The replacement building is proposed to be used for same purpose. The replacement building would larger than the buildings to be demolished. The appellant has indicated that the increase would result in the replacement building having a footprint 12 sqm greater (a 3.5% increase). However, the replacement building would not be as long as the combined pavilion and storage containers, as well as being lower in overall height. With this in mind, I consider that although the building would be larger in footprint, it would not be considerably larger, or to a significant extent. Furthermore, to reduce the visual impact and prominence, the replacement building would be orientated to sit further back in the site, with the emphasis on its width, rather than projecting into the cricket field in the same manner as the original pavilion building. For these reasons I am

satisfied that the replacement building would not be materially larger than the buildings it is proposed to replace.

19. Consequently, the exception set out in paragraph 145(d) of the Framework would apply in this case. Accordingly, the development would be appropriate development in the Green Belt based on the policies in the Framework and complies with Policy BCS6 of the Bristol Core Strategy 2011. This policy seeks to allow development in line with the policies set out in the Framework.

Conclusion

20. Whilst I find no harm to the Green Belt, this is a neutral effect as it has not been satisfactorily demonstrated that the proposed development would be acceptable in terms of a risk to flooding. Accordingly, the proposed development is contrary to the aims of the policies set out above in the Framework.
21. For the above reasons, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

M. P. Howell

INSPECTOR