



Appeal Decision

Site visit made on 21 February 2023

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th March 2023.

Appeal Ref: APP/Z0116/W/22/3308439

St Gabriel's Court, St Gabriel's Road, Easton, Bristol BS5 0RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Juniper Homes (Easton) Ltd against Bristol City Council.
 - The application Ref 22/02466/F, is dated 16 May 2022.
 - The development proposed is change of use of existing commercial building to create 8 no. residential flats (Use Class C3) with parking and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for proposed change of use of existing commercial building to create 8 no. residential flats (Use Class C3) with parking and associated works, at St Gabriel's Court, St Gabriel's Road, Easton, Bristol BS5 0RT in accordance with the terms of the application, Ref 22/02466/F, dated 16 May 2022, subject to the conditions in the Schedule to this decision below.

Preliminary Matters

2. The appeal results from the failure of the Council to determine the application within the prescribed period. Therefore, there is no decision notice. However, the Council has given some indication of the reasons why it would have refused permission, had it been empowered to do so.
3. As part of the appeal, the appellant has provided amended plans showing the inclusion of car parking signage; an Electric Vehicle charging point; and alterations to refuse and recycling provision. Given the small nature of the changes, I do not consider that the interests of any party would be prejudiced if I take these amended plans into account. I shall therefore determine the appeal and application for planning permission based on the amended plans.

Main Issues

4. The main issues are:
 - whether the change of use would be appropriate having regard to development plan policies that seek to retain employment floorspace in the area, and
 - the effect of the proposal on the industrial heritage of the area, including on the adjacent locally listed building.

Reasons

Employment Use

5. The site lies within the former Easton colliery, later used as business units. Many of these were small-scale businesses within a local BAME community. Planning permission¹ was granted in 2018 (the 2018 permission) to redevelop the site for a flexible mixed-use development of commercial uses (former Use Classes A1, A2 and/or B1) within what is now the appeal building, together with ten dwellinghouses on a different part of the site.
6. The rest of the site has now been developed into dwellinghouses. The appeal building, intended for commercial use, has been substantially completed but remains vacant. The Council say that it is unfinished, with unplastered internal walls and visible blockwork, and that the building is surrounded by security fencing. The appellant's intention has been to complete it to a 'shell and core' condition, to allow for maximum flexibility for occupiers.
7. The proposal seeks to use the appeal building as eight residential flats instead of the commercial uses. Policy BCS3 of the Bristol Development Framework Core Strategy, adopted June 2011 (the Core Strategy) places an emphasis on retaining employment sites, encouraging a mix of uses and also ensuring a mix of new housing to meet local needs. Core Strategy Policy BCS8 seeks to provide a sufficient and flexible supply of employment land.
8. Similarly, Policy DM12 of the Bristol Local Plan Site Allocations and Development Management Policies (SADM), adopted July 2014, makes clear that employment sites should be retained for employment uses unless (amongst other things) it can be demonstrated that there is no demand for such uses. This is particularly the case if the site has remained empty for a period of time, even though it has been marketed.
9. The appellants have actively marketed the building for flexible uses under Use Class E. The marketing took place from September 2020 until May 2022. Although construction of the building to first floor level did not take place until March 2021, this would not necessarily prevent commercial interest in the building and enquiries for potential use of the space were received.
10. Some of these enquiries were for residential use, which would defeat the purpose of the exercise, or for commercial uses that were not pursued by those initially expressing an interest. However, one enquiry was from a local occupier seeking an office for training and employment advice. Protracted discussions and negotiations took place with this party but, despite extended timescales being given to them, no exchange of contracts took place. Whilst the appeal planning application was made shortly after negotiations collapsed, the marketing had continued throughout the period, with no further interest being received.
11. The appellant's marketing exercise advertised the property on a flexible basis, including as six individual units of varying sizes. The appeal building has therefore been marketed for smaller or subdivided units. However, the property was only advertised as being for sale, whereas the Council's

¹ LPA reference 18/04108/F

Committee Report at the time of the 2018 permission, and representations made now, envisaged rental use, to cater for the lower end of the market.

12. Details of the marketing of the units were approved by the Council in discharging condition 17 of the 2018 permission. Even so, by not including those seeking to rent the building, or parts thereof, the marketing exercise has not fully captured all potential demand for employment use of the building.
13. For these reasons, I consider that the appellant has not provided sufficient evidence to demonstrate a lack of demand for employment uses of the building. Therefore, the proposal would not accord with development plan policies that seek to retain employment floorspace in the area. As such, it would fail to comply with SADM Policy DM12 and Core Strategy policies BCS3 and BCS8.

Industrial Heritage

14. Adjacent to the appeal building, and part of the complex as a whole, is a brick-built former colliery yard building. Planning permission² was granted for its conversion into three dwellings, and it is now used as such. Nevertheless, the building has significance as a surviving physical reminder of the industrial heritage of the site and the area. It is identified by the Council as a locally listed building and constitutes a non-designated heritage asset.
15. The proposal would result in the loss of non-residential uses of the site. However, the potential commercial or light industrial uses of the building would have little relevance to the historic heavy industrial use of the site. When permission was granted for the appeal building, the Council considered it to have an acceptable physical impact on the asset. The proposal would do little to change the external appearance of the appeal building. As such, it would not harm the significance of the colliery yard building or the wider area.
16. For these reasons, the proposal would have a neutral effect on the industrial heritage of the area, including on the adjacent locally listed building. As such, it would comply with Core Strategy Policy BCS22, which seeks to ensure that proposals safeguard or enhance heritage assets in the city. It would also accord with the National Planning Policy Framework (the Framework), which requires that the effect on the significance of a non-designated heritage asset should be taken into account.

Other Considerations

17. The Council does not dispute that it cannot currently demonstrate a five-year housing land supply. Furthermore, it also does not dispute that the Council's most recent Housing Delivery Test measurement found only 74% delivery. As such, the Council's housing policies are deemed out of date. It is therefore necessary for me to determine whether the adverse impacts of the development would significantly and demonstrably outweigh the benefits inherent in providing additional residential units, to assist the Council in addressing its undersupply, as set out in paragraph 11 of the Framework.
18. I have found conflict with SADM Policy DM12 and Core Strategy policies BCS3 and BCS8. At Paragraph 123, the Framework gives positive support for the use of employment land for homes in areas of high housing demand, provided that

² LPA reference 20/01652/F

this would not undermine key economic sectors or sites and would be compatible with other policies in the Framework. In light of the undisputed housing land supply position, the positive support provided by the Framework is applicable to the proposal.

19. Having regard to Framework Paragraph 219, in giving such support, there is a degree of inconsistency between the Development Plan policies I refer to above and the Framework. As the most recent expression of planning policy, I give greater weight to the Framework.
20. I recognise the benefits of the BAME small businesses that previously operated on the site, and I am mindful of my duties under the Public Sector Equality Duty arising from Section 149 of the Equalities Act 2010. However, the site is relatively small and I have little evidence before me to suggest that any future employment use would be of such importance as to be a 'key' site or sector. I therefore give the conflict to the Development Plan policies only moderate weight.
21. Against that conflict, the proposal would make a positive contribution to the supply of housing in the area, by the addition of a further eight units of residential accommodation at the site. I give this benefit significant weight. Future occupants would also contribute socially and economically to the area, to which I give limited further weight.

Other Matters

22. Residents have raised concerns that the scheme is part of a larger development which would exceed the threshold for requiring affordable housing. The proposal falls below the threshold set by SADMP Policy DM3 and Core Strategy Policy BCS17. The building was approved as a separate use from the rest of the site, and I have no reason to believe that it has been artificially sub-divided to fall below this threshold. Moreover, this is not a matter that the Council has sought to pursue.
23. Representations have also referred to the effect of additional car parking generated by the proposal. However, the area has convenient access to the district centre and primary shopping areas at Stapleton Road, and to public transport. As such, travel by private car would be minimised. The appellant has provided further details of how existing unallocated spaces at the site will be appropriately signed and marked to ensure that those without allocated parking are discouraged from using them. The proposal would therefore provide adequate parking arrangements.

Conditions

24. The Council has provided a list of conditions, which I have assessed and where necessary amended, having regard to the advice in the Planning Practice Guidance. As well as the standard time limit for commencement, a condition requiring adherence to the approved plans is necessary for certainty.
25. To ensure that the proposal reduces the impact on the environment and climate change, a condition is necessary to ensure compliance with the submitted Energy Statement. For similar reasons, a condition requiring details of the PV panels and the air source heat pumps, and of the resultant reduction in emissions, is also necessary.

26. To maintain the living conditions of nearby properties, a condition is required to prevent the further extension of the building without further planning permission. To ensure the living conditions of future occupiers, a condition is also necessary to ensure that provision for refuse and recycling is made. To safeguard the amenity of the occupiers of existing dwellings and to encourage the use of sustainable travel modes, a condition is necessary to require details of signage and road markings, to discourage improper parking in unallocated parking spaces. A condition is also necessary to ensure that the impact of noise from the proposed air source heat pumps is assessed and if necessary mitigated.
27. The residential use of the wider site has required mitigation against land contamination, specifically gas. The Council states that it has no evidence that sufficient mitigation has been provided for the appeal building. Only information in respect of other parts of the site, excluding the appeal building ('Phase II'), has been provided as part of the appeal. A condition is therefore necessary to secure a scheme for gas mitigation, remediation and protection and subsequent verification, in the interests of the health of future occupiers of the proposal.
28. A condition is necessary to ensure that high-speed broadband is installed for future occupiers of the proposal. Conditions are also required to secure cycle spaces and Electric Vehicle Charging provision, in the interests of encouraging sustainable transport.
29. The Council has also suggested that all conditions from the 2018 permission are carried over. However, the proposal before me only relates to the change of use of the building, rather than to the rest of the development approved as part of that consent. As such, because these are already dealt with by the 2018 permission, I see no requirement for conditions relating to construction management, further ground contamination investigation works, drainage, external materials or windows, highway works, provision or maintenance of the vehicular access or parking arrangements, further landscaping or the installation of balcony privacy screens.

Planning Balance and Conclusion

30. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.
31. The proposal benefits from the presumption of sustainable development as outlined in Paragraph 11(d)(ii) of the Framework. I have found that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, despite the conflict with the development plan, material considerations indicate that planning permission should be granted.
32. For the above reasons, having regard to the Development Plan as a whole, the approach in the Framework, and all other material considerations, the appeal should be allowed.

O Marigold INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3355/1, 3355/2, 3355/3, 3355/4A, 3355/5, 3355/6A, 3355/7, 3355/8, 3355/10A.
- 3) The development hereby approved shall be carried out in full accordance with the Energy Statement received on 18th May 2022.
- 4) The change of use hereby approved shall not commence until details of the PV panels and air source heat pumps (including the exact location, dimensions, design/technical specification) together with calculation of energy generation and associated CO2 emissions to achieve 20% reduction on residual emissions from renewable energy in line with the approved energy statement have been submitted to the Local Planning Authority and approved in writing. The renewable energy technology shall be installed prior to occupation of the residential units hereby approved and thereafter retained.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) no extension or enlargement (including additions to roofs or upward extensions) shall be made to the building subject to the change of use hereby permitted.
- 6) The use hereby approved shall not commence until the refuse store, and the area/facilities for the storing of recyclable materials, have been provided in accordance with the approved plans.
- 7) The use hereby approved shall not commence until details of signage and road markings to discourage improper parking in unallocated parking spaces have been submitted to and approved in writing by the Local Planning Authority and the approved signage and road markings have been carried out in accordance with that approval. The signage and road markings shall thereafter be retained for the lifetime of the development.
- 8) The use hereby approved shall not commence until an assessment of the potential effect of the proposed air source heat pumps on nearby residential properties has been submitted to and approved in writing by the Local Planning Authority. If the assessment indicates that noise from the air source heat pumps is likely to affect any residential properties, then a scheme of noise mitigation measures shall be submitted to and approved in writing by the Council and implemented prior to the commencement of the use hereby approved. The measures shall thereafter be permanently retained and maintained.
- 9) The use hereby approved shall not commence until a scheme for gas mitigation including a remediation strategy and gas protection has been submitted to and approved, in writing, by the Local Planning Authority, and the approved scheme has been carried out in accordance with its terms. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report (otherwise known as a validation report)

that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

- 10) The use hereby approved shall not take place until details of the provision of high-speed broadband connectivity has been submitted to and approved in writing by the Local Planning Authority, and such connections provided.
- 11) The use hereby approved shall not commence until the cycle parking provision shown on the approved plans has been provided. It shall thereafter be kept free of obstruction, made available for the parking of cycles only and be maintained as such.
- 12) The use hereby approved shall not take place until details of the number, type, location and means of operation of Electric Vehicle Charging Points and points of passive provision for the integration of future charging points, and a programme for the installation and maintenance of the charging points, has been submitted to and approved in writing by the Local Planning Authority. The approved points shall be installed prior to the first occupation of the building and retained in that form thereafter for the lifetime of the development.

End of Conditions