



Appeal Decision

Site visit made on 28 March 2023

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

an Inspector appointed by the Secretary of State

Decision date: 03 May 2023

Appeal Ref: APP/Z0116/W/22/3311149

65 Henleaze Road, Henleaze, Bristol City, Bristol BS9 4JT

- 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 Tim Drohan (Trading Investments Ltd) against the decision of Bristol City Council.
 - The application Ref 22/01072/F, dated 23 February 2022, was refused by notice dated 29 September 2022.
 - The development proposed is for the change of use of existing ground floor rear storage area to shop unit into 2 bedroomed House of Multiple Occupation (HMO). Addition of first floor over rear storage area to form 1 bedroomed flat.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's fourth reason for refusal was the failure of the scheme to provide covered and adequate bin and cycle storage. The appellant has submitted an amended drawing reference '266/03A' indicating covered cycle storage and bin storage to address the Council's concerns in respect of this matter.
3. I have considered the amended drawing under the principles established by the Courts in *Wheatcroft*.¹ The amendments are minor changes and would not substantially alter the nature of the development. In my judgement, it would not be necessary to reconsult on the changes. I am, therefore, satisfied that no party, including the Council who have viewed the additional information, would be prejudiced by my assessing the scheme with regard to it.

Main Issues

4. The main issues in this appeal are: -
 - the effect of the proposed development on the character and appearance of the area, including the preservation or enhancement of the Downs Conservation Area (Conservation Area).
 - Whether the proposed development would provide adequate accommodation for future occupants, with regard to a suitable access, light and outlook.

¹ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]

- the effect of the proposed development on the living conditions of the neighbouring occupants, with regard to the outlook from 67 Henleaze Road and privacy to 6 Radnor Road.
- Whether the proposed would be a suitable development, with regard to energy efficiency and the Council's climate change and sustainability strategy.
- the effect of the proposed development on the vitality and viability of the retail unit, with specific regard to the loss of storage space.
- the effect of the proposed development on parking, road, and highway safety.

Reasons

Character and appearance

5. The appeal site is situated at a mid-point in a terraced block, between Cardigan Road and Cavendish Road. Henleaze Road, including the site and immediate neighbours, is a town centre location with retail uses at ground floor and residential above. The rear yard of the appeal site is accessed via a rear vehicle lane and includes a flat roof ground floor extension that extends a good proportion of the curtilage. The application site and surrounding residential areas are within the Downs Conservation Area (Conservation Area). Based on my observations and the Downs Conservation Area Statement, the Conservation Area covers an extensive area, including the terraces and villas edging Clifton, which form an essential component to the setting of this part of the Downs.
6. The significance of the Conservation Area at Henleaze Road and the fringe residential areas appears to be largely defined by the materials and architectural quality of the buildings together with the collective consistency of shared features. Furthermore, the plots sizes, spacing and the areas of green spaces produces a sense of space, which is important to the Conservation Area. The appeal site retains a gap at first floor between Henleaze Road and Radnor Road, which is visible from Cardigan Road. The gap adds to the sense of space between the terrace-built form, which is valuable to the Conservation Area.
7. The proposed development would form a first floor above the existing rear flat roof extension. The design and size of the extension means it would overhang the ground floor to the front and side, resulting in an awkward and top-heavy addition. Furthermore, as the existing building already covers a large proportion of the rear yard, the larger first floor addition would not only appear as an awkward addition, but it would also result in a less spacious and overdeveloped plot. The two-storey height of the proposed extension and its length means it would be visible from Cardigan Road and the vehicle lane, diminishing the space at first floor that adds value to the significance of the Conservation Area.
8. I recognise that the rear of the terrace has been subject to some change, including two storey rear extensions that have already impacted to some degree upon the spacing between the two terraces. However, the two storey rear extensions that I saw to the back of the terrace only served to confirm that such additions impact upon the spacing to the detriment of the character and appearance of the Conservation Area. The harm to the Conservation Area from the proposed development is, therefore, less than substantial.

9. Paragraph 202 of the National Planning Policy Framework (the Framework) is applicable in these instances and indicates that less than substantial harm should be weighed against the public benefits of the proposal.
10. The proposed development would be considered a windfall site that would retain a smaller retail space but contributes a flat and House of Multiple Occupation (HMO) to the area. There would also be social and economic benefits from the construction of the extensions and the use of the retail and residential units by future occupants. However, the scale of the proposal is small, and therefore the benefits are limited. I consider that the public benefits would not be sufficient to outweigh the less than substantial harm that I have identified, giving considerable weight and importance to paying special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
11. I, therefore, conclude that the proposed development would detrimentally impact upon the character and appearance of the area, as well as failing to preserve or enhance the Conservation Area.
12. As such, the scheme is contrary to Policies BCS21 and BCS22 of the Bristol Development Framework Core Strategy 2011 (Core Strategy) as well as Policies DM2, DM26, DM27, DM29, DM30 and DM31 of the Bristol City Council Site Allocations and Development Management Policies 2014 (Allocations Plan) Bristol's Planning Advice Note 2: Conservation Area Enhancement Statements (adopted November 1993). These policies and guidance, in general, require new development to be high quality, respect the overall design and character of an area and contribute positively to an area's local character as well as safeguarding local distinctiveness and important heritage assets. It would also fail to accord with the objectives of Section 12 and 16 of the Framework.

living conditions for future occupants

13. The ground floor residential unit would be served by windows in the end and side elevations. Apart from the windows in the second bedroom, the window and door openings to the ground floor flat would face a wall and fence boundary enclosure within 1 to 2m. The first floor flat would be served by a large window for the living space, a smaller bedroom window facing the host property and rooflights.
14. Having regard to the plot layout and internal arrangement, the outlook from bedroom 1 as well as the kitchen and lounge at ground floor would be dominated by the boundary wall at close range. This outlook would be oppressive and receive poor levels of light. The windows that would look towards the parking area would be more open, but the light and outlook would be adversely affected by the overhang of the first-floor addition. I acknowledge that the window in the lounge would provide a better level of outlook and light to the first floor flat than in other parts of the proposed development. However, this would not be sufficient to overcome the substandard outlook and levels of light being received overall.
15. The proposed residential units would be accessed via the rear vehicle lane (Cardigan Mews) located off Cardigan Road. This would be the primary access for the proposed residential units. Although it is flat, Cardigan Mews is a narrow vehicle lane, and it does not include lighting or a separate footway for pedestrians. Furthermore, the door to the HMO would be beneath a dog legged

external staircase that provides access to the first-floor unit. The external access steps to the first-floor units would also be steep and uncovered. Having regard to the access for both units being via an unlit rear vehicle lane coupled with the poor design and position of the external staircase, I am of the view that this would not be a safe and convenient access for all future occupiers.

16. I appreciate that the mews development and several other flats are already accessed via the rear vehicle access lane. However, I do not have the full details that would have been available to the previous decision maker when determining the acceptability of the access to the mews development and neighbouring flats. As such, it is difficult to make a comparison when I am not aware of the full facts of the cases and if the same policies were applied. As such, I have considered this case on its own merits.
17. Therefore, the proposed development would provide a poor standard of accommodation for future occupants, with regard to outlook, light and a safe access. Accordingly, the proposal would be contrary to Policies BCS18 and BSC21 of the Core Strategy and Policy DM30 of the of the Allocations Plan which seek, amongst other things, to ensure development is high-quality, sustainable development for future occupiers. The proposed development would also be contrary to paragraph 130 (f) of the Framework, insofar that the development would create a place with a high standard of amenity for future users.
18. The Council refer to Section 17 of the Framework in respect of the living conditions of future occupants. However, Section 17 of the Framework is with respect to facilitating the use of minerals and their conservation. In my view, these policies are not relevant to future occupiers living conditions.

living conditions to neighbours

19. The first-floor window in the proposed development would face the back of 6 Radnor Road. The window would provide views towards the large bay windows on the back of the neighbouring property. The distance between windows would be approximately 19m. Furthermore, the window would be separated from the private garden at No 6 by the length of the proposed parking spaces, the width of the rear lane and the neighbour's detached garage. I appreciate the window would be closer than most to the back of Radnor Road. However, the level of separation and the position of the garage would ensure there would be no undue loss of privacy to the neighbour's rear windows or the private garden area.
20. The first floor side elevation would be in proximity to the rear private yard of 67 Henleaze Road. Despite the backland location, from what I saw the yard was relatively open and could be used for sitting out, drying cloths and storage. The side elevation would extend approximately 11m in depth at approximately 4.5m high to the eaves. The scale and height of the side elevation would clearly be read and understood from the adjacent private yard. In this context, the erection of first floor addition would be oppressive and overbearing to a user of the rear yard, significantly affecting their outlook.
21. Accordingly, I am satisfied that proposed development would be acceptable in respect of privacy. However, it would be harmful to the living conditions of 67 Henleaze Road by virtue of its impact on the outlook from the private yard space. The proposed scheme would fail to accord with Policy BCS21 of the Core Strategy and Policies DM27, DM29 and DM30 of the Allocations Plan. These

policies look to safeguard the amenity of existing development by promoting health and wellbeing as well as achieving appropriate levels outlook.

Furthermore, the proposal would also be contrary to the policies in section 12 of the Framework, in particular paragraph 130 (f), which requires a high standard of amenity for existing and future users.

22. Policy DM26 of the Allocations Plan is cited by the Council in their reason for refusal. This policy does refer to backland development. However, it states that the development should not prejudice the opportunity to develop the adjoining land of similar potential, nor should the proposed access arrangements cause adverse impacts to the character and appearance, safety, or amenity of the existing frontage development. In this instance, the proposal would not result in these adverse impacts, and would not be contrary to the objectives of this policy.

Energy Efficiency

23. BCS13 and BCS15 of the Core Strategy require a Sustainability Statement to demonstrate how it would contribute to mitigating and adapting to Climate Change and to meeting targets to reduce carbon dioxide emissions through measures such as passive ventilation and cooling, solar design and the efficient use of natural resources. Policy BCS14 of the Core Strategy requires the appellant to take a systematic approach to reduce carbon emissions of the development through the application of an energy hierarchy.
24. The Sustainability Statement submitted with the appeal indicates that air source heat pumps are not suitable due to issues associated with noise and its visual impact in the available location. As a result, it is proposed to use electric panel heaters to heat the building. The Council has raised concerns that the information provided is insufficient to demonstrate that alternative technologies, specifically air source heat pumps, would not be appropriate in this location.
25. It is acknowledged that the scheme proposes some energy efficiency measures through the design and construction of the building, including the use of solar panels. However, the scope of the information provided in the Sustainability Statement on the use of air source heat pumps, and what can be concluded from it, is limited. For instance, the potential location of the air source heat pump, the level of noise it would produce and its proximity to neighbouring residential properties has not been provided as information. Accordingly, it is not possible to ascertain whether the air source heat pump is viable in this instance.
26. Accordingly, based on the evidence before me, I consider the proposed scheme has failed to demonstrate that alternative technologies would not be feasible or viable and all efforts have been made to reduce the carbon dioxide emissions from the proposed development. As such, the proposal is contrary to Policy BCS14 of the Core Strategy, which amongst other things, seeks to minimise the environmental impact of development via a systematic approach to reduce carbon emissions through the application of an energy hierarchy.
27. The proposals would also be contrary to the aims and objectives set out in the policies on climate change in section 14 of the Framework.

Loss of Retail floorspace

28. 65 Henleaze Road is situated within the Henleaze Town Centre and Primary Shopping Area. Policy DM8 of the Allocations Plan states that development will be expected to maintain or provide active ground floor uses. The policy adds that in all cases, proposals which would result in the loss of retail floorspace, including storage, will be expected to demonstrate that they would not be detrimental to the continued viability of the retail unit.
29. The appeal includes a statement from a commercial property agent. It indicates that the unit has been marketed since July 2021 and included advertising signs on the unit, commercial agent websites and a 6-week paper campaign locally. There were also mailing lists to commercial agents and companies, with a competitive rental price. Despite this targeted effort over a 12-month there were limited enquiries. It was believed that the large storage area was limiting potential occupiers. As such, the storage area was reduced to 7 square metres, with a lower rent and the unit was placed 'under offer'. At the time of my visit, the unit was active and being used by a company called 'Platinum Lifts'.
30. I have had regard to the Council's position; however, the marketing exercise was carried out over an extended period with different forms of advertising locally and nationally. Although the storage space has been reduced, the retail floorspace would be maintained with active frontage along Henleaze Road. Further to this, the unit is currently being let with an active retail frontage. As such, I am satisfied that sufficient information has been provided to demonstrate that the proposed development, and the loss of the large storage area, would not be detrimental to the continued viability and viability of the retail unit or the wider town centre.
31. Accordingly, the proposed development would not detrimentally impact on the vitality and viability of the existing retail area on Henleaze Road. The proposal would comply with the aims and objectives of Policy BCS7 of the Core Strategy and Policy DM8 of the Allocations Plan, which seek to retain commercial, and retail uses on primary and secondary frontages to ensure the continued vitality and viability of the town retail centres.

Parking, Road and Highway Safety

32. The proposed development shows two parking spaces to the rear of the site. The two parking spaces to the rear would not comply with the dimensions set out in the Council's Standing Advice for parking spaces abutting a structure (5.25m by 2.4m). However, Policy DM23 of the Allocations Plan and the parking schedule set out in Appendix 2 set out that parking standards are a maximum provision, and regard should be had to the parking provision and the level of accessibility by other means of transport.
33. The property is situated within the town centre, with good access to shops, services, and amenities. It is also within a short walking distance to bus stops with regular public transport facilities to Bristol City Centre. As such, walking, cycling, and public transport represent viable options for future occupiers. Car ownership is not a necessity and occupiers would not be overly reliant on a private car to access day to day services and facilities. Having regard to accessible location, together with the scale and type of accommodation, I am of the view that access to off road parking in line with the maximum provision would not be necessary in this instance. Furthermore, no substantive evidence

has been put forward from the Council to demonstrate that accessing the rear in a vehicle, or parking in the surrounding streets would result in an unacceptable risk to pedestrian or highway safety.

34. I acknowledge that bin storage would be around 48m from nearest part of the public highway on Cardigan Road. Although a shorter distance in line with the Council guidance would be favourable, the rear vehicle lane is a flat hard surface and the distance, over and above the 30m guide, is not excessive. As such, I am satisfied that the arrangement would not lead to bins being left on the public highway to the detriment of road and pedestrian safety. With respect to cycle storage, the amended plan shows that a covered bin and cycle storage could be provided within the curtilage of the site. This would address the Council's concerns in this respect and could be secured via an appropriately worded condition.
35. As such, the proposal would not have an unacceptable impact on parking, road, and highway safety. In this respect, the proposed development would be compliant with Policies BCS10, BCS15 and BCS21 of the Core Strategy and Policies DM2, DM23, DM27 and DM30 of the adopted Site Allocations Plan, which amongst other things, require proposals to provide safe streets and to not give rise to unacceptable traffic conditions. Also, encourage development in accessible locations and provide cycle and bin storage with safe and convenient access for occupants.
36. The proposed development would also be compliant with paragraph 111 the Framework, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

37. I acknowledge that the Council cannot demonstrate a 5-year land supply. However, in accordance with footnote 7 of the Framework, as I have found the scheme would neither preserve or enhance the character or appearance of the Conservation Area, a heritage asset, Paragraph 11d) of the Framework is not engaged.
38. I acknowledge the appellant's view in respect of design. I do not disagree that designing buildings on constrained sites can result in innovative and interesting design. However, for the reasons set out above, I consider that the development proposed would have a harmful impact upon the character and appearance of the area, as well as result in poor living conditions for neighbours and future occupiers.
39. I have also had regard to the appellant's concerns with how the Council handled the planning application and the lack of communication. Although I have sympathy, this is outside the remit of a Section 78 appeal, and separate procedures, such as a costs application would consider procedural matters relating the process. As such, this would not affect my conclusions on the main issues.

Planning Balance and Conclusion

40. The contribution that the flat and HMO in an accessible location could make to the local housing stock is a benefit, albeit limited due to the small scale of the development. I also note that there would be social and economic benefits from

the construction works, in terms of additional expenditure in the local economy and the creation of construction jobs. However, these benefits do not outweigh the harm I have identified above.

41. The appeal scheme would conflict with the development plan when considered as a whole. There are no material considerations, individually or cumulatively, worthy of sufficient weight that would indicate a decision other than in accordance with it. The appeal should therefore be dismissed.

M. P. Howell

INSPECTOR