



Appeal Decision

Site visit made on 9 October 2023

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2023

Appeal Ref: APP/Z0116/W/23/3321383

163 Gloucester Road, Bishopston, Bristol BS7 8BE

- 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 Sandro Salva against the decision of Bristol City Council.
- The application Ref 22/03827/F, dated 4 August 2022, was refused by notice dated 25 April 2023.
- The development is described as 'Construction of decking and seating, and canopies over part of the rear garden.'

Decision

1. The appeal is dismissed.

Procedural Matters

2. At the time of the site visit there was a decking area at the rear of the premises. This was surrounded by a high, wood panelled fence. A narrow section of the decking was also covered by a canopy structure, and the remaining decking area was uncovered.
3. The appellant, through this appeal process, has offered to reduce the decking area by 50%, indicating that this could be secured by condition. While having regard to this suggestion, this would amount to a substantive change to the development that forms the basis of this appeal and that was considered by the Council. Moreover, even though under the revised scheme, the decking would cover a smaller area than originally stated, if I was to consider the revised scheme, this would deprive those that should be consulted on this significant change an opportunity to comment on this matter. For these reasons this appeal is limited to the development detailed in the original application.

Main Issue

4. The appeal property is within the Gloucester Road Conservation Area (CA). This is a narrowly drawn designated heritage asset comprising a major shopping area surrounded by residential suburbs. The CA is positively defined by the quality of traditional active commercial frontages and vistas along Gloucester Road which include listed buildings and the quality of undesignated distinct frontages.¹ These positive features contribute to the character and historic interest and the significance of the heritage asset. The CA is also distinct through the legibility between the main route that is Gloucester Road and the residential areas to the rear.

¹ Ref: Gloucester Road Conservation Area Character Appraisal.

5. This development is limited to the rear of the commercial property and does not encroach into the residential areas that provide the setting of the CA, or the frontages of commercial properties that are important to the character of the heritage asset. In this regard the development preserves the character or appearance of this part of the CA.
6. Therefore, the main issue is the effect of the development on the living conditions of the occupants of neighbouring residential properties, having regard to noise.

Reasons

7. The appeal property is currently a food and drink outlet on Gloucester Road. Gloucester Road is a busy main route through Bristol that comprises a vibrant mix of cafés, takeaways, restaurants, bars and small retail units. There are some outside seating areas, but these appear, near the appeal property, to be largely at the front of premises. Where there are exceptions to this, the premises with some outside seating at the rear, appear to be operating as cafés or bakeries which are closed by early evening.
8. The property is mid terrace and has a single storey extension to the rear, beyond which is the outside decking area. Many neighbouring commercial premises have also been extended such that the rear yard space of these premises is limited.
9. There are residential units above commercial premises on this part of Gloucester Road, and this includes at the appeal property. Gloucester Court apartment block is also built at the rear of this part of Gloucester Road, and what appears to be a turning area for these apartments bounds the decking area at the rear of the appeal property. This decking area is also bounded at the rear by scrub land, which in turn abuts the boundary of the sizeable rear gardens of residential properties on North Road.
10. Gloucester Road is a heavily trafficked route and as a substantial local commercial centre it has a somewhat noisy and bustling character. That said, the rear of the commercial units, near the appeal property, is a noticeably quieter environment than that at the front of Gloucester Road. This is so even taking account of the day-to-day activities that are carried out at the rear of the commercial units in the immediate vicinity of the appeal property and in the other existing outdoor seating areas in the wider area.
11. Also, although there are public houses and bars in the area, these are limited in number. Moreover, the activities associated with those premises and restaurants near the appeal property are largely contained to the front of Gloucester Road. As such, although residents above the commercial premises experience street noise during the night, they are likely to enjoy a quieter period during this time when a significant number of nearby commercial premises are closed.
12. The plans of the decking area, at the appeal property, show that this area can comfortably accommodate six tables, a similar number of large planters and an ornamental fountain, and still have plenty of space for standing and circulation. As such this decking area has sufficient space to cater for in the region of thirty customers at any one time. A significant section of the decking area is open aired such that noise generated by customers and staff could be noticeable to

- the occupants of neighbouring residential units and from the rear garden of properties on North Road, even with the high fencing in place.
13. The noise generated in the decking area may not appear intrusive during the daytime when a noisier environment would be expected. However, the noise from around thirty customers in this significantly open space could be considerable in this immediate area where commercial activities during the evening is largely limited to street frontages and not at the rear of these properties.
 14. I observe that the extension to No 163, the scrub land and the sizeable rear gardens of North Road provide a degree of separation between the decking area and residential units. However, even with this separation, the fencing and careful arrangement of seats, at night in this already comparatively quieter area, the noise level from even half the number of customers that could be accommodated in the decking area is likely to harmfully disturb residents.
 15. Given the factors described above, customers and staff using the decking area during the late evening and in night-time hours have the potential to generate an unacceptable amount of noise at a time when occupants of the neighbouring residential units would reasonably expect a greater degree of peace and quiet at the rear of the property. In turn this disturbance could harmfully impact on the living conditions of those occupying dwellings in this part of Gloucester Road.
 16. While noting significant local support for the appellant's business and the nature of the current food outlet, I must consider the lifetime of the development and that the operations at the premises may change. Also, I find nothing confirming that opening hours at the premises would be limited to daytime or early evening. Moreover, although the appellant indicates a willingness to reduce opening hours, which could be achieved by condition, they have not confirmed the opening hours that would be acceptable for this business in this appeal process.
 17. The appellant has drawn my attention to noise from the student accommodation at Gloucester Court. However, I did not observe any sizeable outside seating area at that property. Moreover, the noise of students' toing and froing, or even having an occasional party is distinctly different from the potentially persistent noise of sizeable groups of people eating and drinking in this decking area for sustained periods, which could occur each day of the week and late at night. In any event antisocial behaviour elsewhere should not be a justification for potentially harmful development at the appeal property. I attach limited weight to this matter for this reason.
 18. The Council has suggested a condition requiring a noise assessment, to which the appellant has not objected. However, this approach does not provide certainty, if I allowed this appeal, that any noise mitigation measures identified would be reasonable in the context of the permitted operations at the premises, or that necessary mitigation would not result in substantial changes to the permitted scheme. As such, I am not convinced that this condition would satisfy the test for conditions set out in the National Planning Policy Framework (the Framework) and Planning Practice Guidance in this case.
 19. The appellant states a hedge will be planted, and this is a matter which could be conditioned. However, considering the above factors there is insufficient

information to confirm whether such a measure would make this development acceptable in respect of noise impacts.

20. Some existing residents are unconcerned about potential noise. However, I must consider the quality of life for existing and future residents. It is asserted that this is not new development, but limited information is provided to allow consideration of this matter. Despite the appellant's assertion otherwise, the Core Strategy Policies that seek to safeguard amenity do not state this is only in respect of residential development. In any event the Framework requires a high standard of amenity for existing and future users. These matters have not altered my findings for these reasons.
21. In light of the above, I find that the information presented fails to provide certainty that the development would not have a significant harmful effect on the living conditions of the occupants of neighbouring residential properties, having regard to noise. In this respect, the development does not accord with Policies BCS21 and BCS23 of the Bristol Development Framework Core Strategy (Core Strategy) and Policies DM30 and DM33 of the Bristol Local Plan Site Allocations and Development Management Policies (Local Plan). These Policies collectively state development will be expected, amongst other matters, to safeguard the amenity of existing development and create a high-quality environment for future occupiers. Also, that development should be sited and designed in a way as to avoid adversely impacting upon, amongst other things, environmental amenity by reason of noise.
22. The proposal would also be inconsistent with the provisions of the Framework in respect of this matter.

Other Matters

23. The Council did not find harm in respect of protected species and highways. Even if I agreed with this conclusion, development should not result in such harms and therefore these are neutral factors in this case.
24. The decking area would contribute to a local business and may increase employment opportunities, and this would be a benefit to this commercial area. This aside, I find no compelling evidence that the business would be untenable if this appeal is dismissed. In any event, the economic benefit would be small given the scale of the development.
25. It is asserted that the development has improved the appearance of this area. While there is benefit in reclaiming poorly managed vacant land, any benefits, including to the local economy, are countered by the potential harm to the living conditions of neighbouring residents that has been identified in this case.
26. Inconsistency in the Council's decision making on similar proposals in this area has also been highlighted. However, limited details about those decisions have been provided, such that it has not been possible to consider this matter in this appeal. The appellant has raised concerns about the Council's engagement during the application stage. However, a complaint made against the Council is a matter outside the scope of this appeal. My findings are not altered by these matters for these reasons.
27. Attention is drawn to other matters of compliance with development plan policies. However, this development has the potential to result in significant harm to residents' living conditions, and fails, in this regard, to accord with

Core Strategy and Local Plan Policies, and therefore conflicts with the development plan when read as a whole.

Conclusion

28. For the reasons stated above and having regard to the development plan, and other material considerations, the appeal should be dismissed.

A J Sutton

INSPECTOR