



Appeal Decision

Site visit made on 21 November 2023

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2023

Appeal Ref: APP/C1055/W/23/3323243

152-156 Abbey Street, Derby DE22 3SS

- 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 Bloom Property Investments (Mr Daniel Law) against the decision of Derby City Council.
 - The application Ref 22/01794/FUL, dated 22 November 2022, was refused by notice dated 24 January 2023.
 - The development proposed is change of use of office building to form two flats in multiple occupation (flat 1 – maximum of seven occupants and flat 2 – maximum of eight occupants) – sui generis use.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of office building to form two flats in multiple occupation (flat 1 – maximum of seven occupants and flat 2 – maximum of eight occupants) – sui generis use at 152 – 156 Abbey Street, Derby DE22 3SS in accordance with the terms of the application Ref 22/01794/FUL dated 22 November 2022 subject to the conditions in the attached schedule.

Main Issue

2. The main issue in this appeal is the effect of the development on the living conditions of the residents of the proposal, given the proximity of the building to existing commercial uses.

Reasons

3. The appeal site is an existing building, previously used as offices, located within an area allocated as an Existing Employment Area. The building is brick built, and the site is shared with an adjacent commercial premises and access from Abbey Street is taken from a shared gated entrance. There is no means of delineation between the buildings, other than a very low brick wall that marks the change in levels in the site.
4. The Council are satisfied that the necessary marketing has taken place in order to establish whether a business use could be found for the building, which has not been successful.
5. The proposal would see the building effectively converted to two flats, for use as flats in multiple occupation, for a maximum of seven and eight occupants respectively.

6. The appellant has produced a suite of supporting documents for the application, including contaminated land, air quality and noise surveys in relation to the concerns of the Council with the proposal. Consultees have generally accepted these findings, subject to the imposition of conditions.
7. Whilst the site is adjacent to commercial uses, there are existing residential properties located across Abbey Street, so it can be considered to be at the very edge of the Employment Area, when residential properties are in close proximity to the commercial uses, which appears to have been the situation for many years.
8. It would appear from the submissions for the appeal that the Council cannot demonstrate a five-year housing supply, and this is not disputed by the Council. In this instance the adverse impacts must significantly and demonstrably outweigh the benefits for a refusal of permission to be justified.
9. Whilst a previous application was rejected, it appears that the scheme has been modified and reduced since that refusal, and additional details have been submitted to address issues. Planning permission should not be refused where any issues could be addressed satisfactorily by conditions.
10. With regard to the external works and the internal layout, I see no reason why this scheme cannot be approved with the imposition of conditions to make it acceptable.
11. As such, I find that the proposal is consistent with policies CP3, CP4 of the Derby City Local Plan Part 1 Core Strategy (2017) and saved policies GD5 and H13 of the City of Derby Local Plan Review (2006), which, when taken as a whole, amongst other matters, expect development to provide a satisfactory level of amenity and create a satisfactory relationship to nearby properties.

Other Matters

12. I note the submissions of third parties in respect of the relationship between residential and commercial premises. I understand the concerns of the owner of the adjacent premises, but I am satisfied that the conditions to be imposed will address concerns with respect of amenities. The issue of security to both buildings via the gated access can be addressed on a private level between the relevant parties.

Conditions

13. I have taken into consideration the list of proposed conditions from the Council and consider them to be appropriate in terms of making the development acceptable.

Conclusion

14. Subject to the imposition of conditions, there are no material considerations that indicate that the application should be determined other than in accordance with the development plan, of which the relevant policies attract full weight. For the reasons given above, I therefore conclude that the appeal should be allowed.

Paul Cooper INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not 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 and documents:

Location Plan	22.030-P-001
Proposed Site Layout	22.030-P101B
Existing Floor Plans	22.030-P002
Existing Elevations and Sections	22.030-P003
Proposed Floor Plans	22.030-P102D
Proposed Elevations	22.030-P103B
Air Quality Assessment	18 November 2022
Geo-Environmental Risk Assessment	15 November 2022
Noise Assessment	16 November 2022
3. No part of the development hereby permitted shall be brought into use until the parking and turning area is provided, with the parking bays clearly delineated in accordance with the approved plans. The parking and turning areas shall not thereafter be used for any purpose other than parking and turning of vehicles.
4. All glazing included within the development hereby approved irrespective of elevation shall be as per the specification for the Eastern Façade Overlooking Abbey Street in Table 9.1 on page 21 of the Noise Assessment dated 16 November 2022, and shall be permanently retained to that specification.
5. Before the completion of the development hereby approved, all habitable rooms shall be installed with mechanical ventilation, to a minimum of four air changes per hour.
6. Notwithstanding any information submitted with the application, prior to any external works taking place, a Phase I ground contamination study shall be completed for the site, documenting the site's previous history and identifying all potential sources of contamination and all plausible pollutant linkages with respect to future site users and controlled waters. That Phase I Desktop Study Report will be required for submission to the Local Planning Authority for written approval prior to any external works taking place.
 - i) Where the Phase I Assessment has identified potential contamination, a Phase II Site Investigation shall be carried out to determine the levels of contaminants on site that could pose a risk to the development. A risk assessment will then be required to determine the level of potential risk to end users of the development. A detailed report of the investigation will be required for submission to the Local Planning Authority prior to any external works taking place.

- ii) In those cases where the agreed Phase II Investigation Report has detailed significant contamination risks exist on site, a Remediation Strategy will be required in order to identify measures needed to mitigate the identified risks. The Remediation Strategy shall be submitted for written approval by the Local Planning Authority prior to any external works taking place.
 - iii) The risk reduction measures detailed within the agreed Remediation Strategy shall be implemented in full. A Validation Report shall subsequently be produced which adequately demonstrates that the measures have been implemented in full and that all significant risks to users of the development have been removed. The Validation Report shall be submitted to and approved in writing by the Local Planning Authority prior to the development being occupied.
- 7. Prior to first occupation of the development hereby approved, a landscaping scheme for both hard and soft landscaping within the site shall be submitted to and approved in writing by the Local Planning Authority. This approved plan shall be implemented in full in the first planting season following the approval.
 - 8. Prior to first occupation of the development hereby approved, details of both refuse facilities and cycle storage shall be submitted to and approved in writing by the Local Planning Authority. This shall be implemented within 14 days of approval.

END OF SCHEDULE