
Appeal Decision

Site visit made on 18 January 2024

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 February 2024

Appeal Ref: APP/Z0116/W/23/3325029

2 Bishopthorpe Road, Bristol, BS10 5AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the Council's failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Joe Lovatt of Plot Investments Ltd against Bristol City Council.
 - The application Ref 23/01378/F, is dated 4 April 2023.
 - The development is a change of use from a dwelling house to a large house in multiple occupation (*sui generis*) for up to 7 people.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from a dwelling house to a large house in multiple occupation (*sui generis*) for up to 7 people at 2 Bishopthorpe Road, Bristol, BS10 5AA in accordance with the terms of the application Ref P23/01378/F, dated 4 April 2023, subject to the conditions set out in the attached Schedule to this decision.

Preliminary matters

2. Although the Council did not determine the application within the appropriate period it produced a statement for the appeal which clarifies that it opposes the development.
3. However, the Council confirms that having regard to the site's planning history, together with its development plan policies and guidance, that the principle of allowing a large House in Multiple Occupation (HMO) in this location is acceptable. The previous permission¹ for a large HMO at the site also permitted side and rear extensions to create the additional space required to facilitate the change of use. When the appeal was submitted, the appellant was in the process of converting the property from a dwellinghouse to a 6 person HMO. I was not asked to make an internal visit, and that change of use may therefore have taken place. Taking account of to all that I have read, I share the Council's view that the principle of the change of use is acceptable.
4. The appellant no longer requires the previously approved extensions, but instead relies on a hip to gable and dormer extension to create the additional space to facilitate the change of use. A roof structure matching this description has been built. The Council consider that the roof modifications that have taken place cause visual harm.

¹ Ref 21/03346/F dated 6 May 2021

5. The appellant's standpoint is that the roof structure was the subject of a Certificate of Lawfulness granted by the Council² which confirmed that the scheme comprised permitted development. But the Council contends that:

'..These works were consented under permitted development legislation and as such are only on the basis that the unit is still in lawful use as a dwellinghouse It is not accepted that the grant of an LDC sets any sort of fallback position, or reasonable justification against which conclusions made in-line with relevant policy should be watered down or eroded.'

6. Moreover, the Council points out that the works to the roof have not been carried out in accordance with the requirements of the Certificate or the Order³ in that the external cladding used on the roof extension does not match the materials used in the host property. I saw that to be the case.
7. Accordingly, the Council's objection is directed not to the principle of the change of use, but to the effects of the the roof alterations and extensions required to facilitate it.

Main issue

8. Having regard to the above, the main issue is the effect of the roof alterations on the character and appearance of the host property and its surroundings.

Reasons

9. The appeal property comprises one half of a pair of semi-detached dwellings. The pair stands at the junction of Bishopthorpe Road and Wellington Hill West in a predominantly residential and distinctly suburban part of the City. Viewed from the front the effects of the hip to gable conversion are clearest, since the pair has lost its original symmetry. Viewed from the side and rear, the large box dormer has transformed the appearance of the dwelling.
10. The Council's SPD⁴ provides detailed guidance on the design of roof extensions and alterations, and when applied to the site, the Council considers the dormer to be at odds with the guidance. However, it seems to me that some tensions are apparent between the guidance provided in the SPD, which is now almost 20 years old, and 'planning permissions' granted by central government under the provisions of permitted development. In particular, some of the examples provided in the SPD of unacceptable or inappropriate dormer development would appear to me to constitute permitted development. The overall form of the development carried out by the appellant would comprise permitted development, as the Certificate referred to earlier testifies.
11. The Council take issue with the timing of the roof alterations and whether they were carried out when the property was in use as a dwellinghouse (C3). It argues that if this was not the case, then the certificate could not be relied upon. However, in arriving at this view the Council to my mind has given insufficient weight to the implications of a fairly recent judgment⁵ which dealt

² Ref 22/02077/CP dated 8 June 2022

³ The Town and Country Planning (General Permitted Development) (England) Order 2015.

⁴ A Guide for Designing House Alterations and Extensions - Supplementary Planning Document Number 2 (2005)

⁵ *London Borough of Brent v Levelling Up, Housing and Communities* [2022] EWHC 2051 (Admin)

with permitted development rights and HMOs. In brief, it was held that householder permitted development rights apply equally to C3 uses and HMOs.

12. The Council is however correct when it says that the external cladding used in the construction does not match the materials used in the existing dwelling. I regard the materials used as striking and gaudy. However, this aspect could be remedied simply by the imposition of an appropriate condition.
13. I therefore conclude that, with appropriate mitigation, the development would appear as a form of permitted development consistent with the Certificate granted by the Council. This attracts substantial weight in my considerations, not least since government, through the permitted development system, and subject to certain safeguards and conditions, provides considerable flexibility to homeowners to alter and extend their properties.
14. I recognise however that the development may not accord entirely with some of the Council's design objectives set out in policies BCS21 of the Bristol Development Framework Core Strategy (CS), and policies DM26, DM29 & DM30 of the Site Allocations and Development Management Policies (DMP), and its SPD on house extensions. However, the material considerations indicate to me that a strict adherence to the development plan or to the Council's guidance is not necessary in this case.

Conditions

15. The appellant has had the opportunity to comment on the Council's suggested conditions. I find that the Council's suggested conditions are all necessary, albeit in a modified form.
16. It is necessary, in the interests of certainty, that the development shall be carried out in accordance with the approved plans.
17. To protect neighbouring living conditions, a condition relating to sound insulation shall be imposed. A condition requiring bike and bin storage to be provided and retained shall be imposed in the interests of maintaining residents' living conditions.
18. An additional condition, in relation to the cladding material used on the roof extension, shall be imposed in the interests of visual amenity. Should the permission not be implemented it is, of course open to the Council to instigate enforcement proceedings, as the appellant suggests.

Other matters

19. I have noted the references to other development plan policies but those to which I have referred are considered the most relevant having regard to the particular circumstances of the case. I have also taken account of the references to the *National Planning Policy Framework*.
20. All other matters raised in the representations have been considered but none outweigh those considerations that led me to my conclusions.

G Powys Jones

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: Drawing Nos 3883.PL.01; 4144.C.01 Rev B; 4144.C.02 Rev B & 4144.C.03.
- 3). Before the change of use hereby permitted takes place, the cycle parking and bin storage areas shall be provided in accordance with the details shown on the approved plans. Thereafter they shall be permanently retained.
- 4). Before the change of use hereby permitted takes place the upper and lower party walls of the appeal dwelling shall be soundproofed in accordance with details previously submitted and approved by the local planning authority. Once installed the soundproofing shall be permanently retained.
- 5). Within 6 months of the change of use hereby permitted taking place the existing cladding on the dormer roof extension shall be removed and replaced with materials matching those of the existing dwelling.