



Appeal Decision

Site visit made on 13 May 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 May 2024

Appeal Ref: APP/Z0116/W/23/3325156

39 High Street, Bristol, BS1 2AT

- 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 Mr Adam Bryan against Bristol City Council.
- The application Ref 23/00054/F is dated 1 January 2023.
- The development proposed is the change of use from public house to a nine bedroom boutique hotel. Erection of part fourth floor to create a further bedroom and outside space.

Decision

1. The appeal is dismissed and planning permission for the change of use from public house to a nine bedroom boutique hotel and erection of part fourth floor to create a further bedroom and outside space is refused.

Applications for costs

2. An application for costs was made by Mr Adam Bryan against Bristol City Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal is made owing to the failure by the Council to determine the planning application within the requisite period. The Council has provided a Delegated Report and refusal reasons indicating that had it been able to make the determination, then it would have refused the application. The Council's conclusion in that report has informed my framing of the main issues in this appeal.
4. The appellant does not consider the appeal site to comprise a listed building¹ notwithstanding that the listed building entry for 'The Rummer' public house refers to incorporating the western ends of earlier dwellings at 39 and 40 High Street. The Council does not dispute this approach but stated when specifically asked that they are not clear whether the appeal is made on any part of a listed building. On the balance of evidence before me, I have determined the proposal on the basis that the appeal site does not form part of the listed building known as The Rummer.

Main Issues

5. The main issues are:

¹ Page 7, Appellant's Heritage Statement

- Whether the proposal would result in the unnecessary loss of a public house with reference to local and national planning policies.
- The effect of the proposal on the character and appearance of the area having particular regard to whether it would preserve or enhance the City and Queen Square Conservation Area (CA) and nearby listed buildings.
- Whether suitable provision would be made for refuse storage.
- Whether adequate renewable energy generation would be provided having regard to local planning policies.

Reasons

Loss of public house

6. Policy DM6 of the Bristol Local Plan, Site Allocations and Development Management Policies, July 2014 (SADMP) stipulates that proposals involving the loss of established public houses will not be permitted save for two exceptions. These are that the public house is no longer economically viable or that a diverse range of public house provision exists within the locality.
7. The specific protection for public houses resonates with policies BCS12 of the Bristol Development Framework, Core Strategy, June 2011 (CS) and DM5 of the SADMP which set out a more generic approach to protecting community facilities, but which could include public houses. In this respect, the development plan policies mentioned align with paragraph 97 of the National Planning Policy Framework (the Framework) which states that planning policies and decisions should guard against the unnecessary loss of valued facilities and services.
8. There is no dispute that the appeal building was last used as a public house, which closed around 2012. Hence, the building has been vacant for a considerable time with the condition of the building having deteriorated in the intervening period. The appellant further reports that it has been occupied by squatters and drug users during that time.
9. Nevertheless, the evidence points to the established lawful use of the appeal building as a public house. The proposal would change from that use to a hotel, thereby effectively losing the public house use. Therefore, on the face of it, the requirements of policy DM6 of the SADMP are engaged, and I have not seen evidence to show otherwise. This is the case even though there is a separate development plan policy (BCAP10 of the Bristol Local Plan, Bristol Central Area Plan, March 2015) which ostensibly encourages small scale boutique hotels. There is nothing in the wording of either policy DM6 or BCAP10 to suggest that BCAP10 has paramountcy.
10. Moreover, for the presumption to safeguard public houses to be set aside, policy DM6 requires one of the exceptions to be demonstrated. The Council has produced a practice note to explain the level and type of information necessary to fulfil that demonstration. The DM6: Public Houses Practice Note, October 2022 clearly specifies how viability information should be provided, or alternatively, the catchment area and details to assess provision of other public houses nearby.

11. There is very little information provided in either respect by the appellant in this case, other than reference to the longstanding vacancy and stating that the area needs investment. There is nothing to explain why the public house closed nor what efforts there have been to reopen it since. As neither of the exceptions in policy DM6 are clearly demonstrated it follows that the presumption to protect against the loss of the public house use applies.
12. Accordingly, on the available evidence, the proposal would result in the unnecessary loss of a public house and as such, would conflict with provisions in policies DM5 and DM6 of the SADMP, and BCS12 of the CS that seek to prevent such an occurrence.

Character and appearance, CA and listed buildings

13. The CA comprises broadly of two distinct areas within central Bristol, formed from the densely packed Old City and more formal regularity of Queen Square. Its significance is in part derived from the contrasting nature and underlying evolution of those areas. The appeal site lies towards the northern end of the Old City, identified as Character Area 1, Old Medieval Core in the City and Queen Square Character Appraisal, March 2009.
14. Although few medieval buildings remain intact, they underpin the grain and layout of the historic core, which is discernible from the tightly packed built form and often narrow interconnecting streets. The subsequent evolution of a rich mix of architectural styles and traditional buildings that is grafted onto the medieval foundation forms an important part of the special interest of this part of the CA.
15. The area to the west of High Street has a particularly heavy concentration of listed buildings. These include landmark religious, civic and commercial buildings that reflect how the city's wealth and population expanded from medieval origins, in part due to mercantile activity. The following are some of the listed buildings proximate to the appeal site. To the north lies the Church of All Saints (Grade II*), of medieval origin but later remodelled, including an early 18th century tower.
16. To the south is the Church of St Nicholas (Grade II*), of mid-14th century origin but completely rebuilt above the crypt in the 18th century. The church has a distinctive tall and slender octagonal spire.
17. To the west of the appeal site lies the Grade I listed Exchange on Corn Street. This focus of commercial activity is a fine stone Palladian style building built in 1741-3 by John Wood the Elder. To the rear of the appeal site is The Rummer (Grade II), a public house and hotel built in 1740-1741, also designed by John Wood the Elder. This building incorporates the western ends of earlier dwellings at 39 and 40 High Street.
18. Directly adjacent to the appeal site stands the entrance to The Market (Grade II*). The symmetrical stone frontage of mid Georgian style has a semicircular arched carriageway that allows glimpses into the market.
19. Between The Market entrance and the Church of All Saints, and in addition to the appeal building, are a series of Grade II listed buildings, namely 41, 42 & 43, 44, 45, 46A, 47 & 48 and 49 High Street. These properties, often formerly houses, reflect a variety of architectural styles commensurate with their

- differing ages. Some have been remodelled and most now have shopfronts at ground floor level.
20. Given the number and diversity of listed buildings surrounding, or close to the appeal site, full details of the significance of each have not been described in this decision. Instead, focus is given to those elements that have most relevance to my determination. This principally relates to their individual architectural and aesthetic qualities and historic fabric. Further value is derived from their tight configuration and obvious hierarchy in the street scene.
21. Insofar as this appeal is concerned, that is manifestly the case for those listed buildings directly addressing High Street and contained between the tower of the Church of All Saints and the spire of the Church of St Nicholas. Between those obvious landmarks there is otherwise a broad consistency in the height and rhythm in the series of intervening listed buildings. This is apparent as one turns the corner from Wine Street along High Street towards Bristol Bridge, with the spire of the Church of St Nicholas forming part of the backdrop. Within those broadly similar parameters, the differences in architectural style and materials of the series of listed buildings make for an interesting and rich street scene, and one that embodies the evolution of the city over time.
22. The surroundings described contribute to how those listed buildings are experienced, and so their interrelationship and setting contributes positively to their significance as designated heritage assets. In turn, their configuration is intrinsic to the special qualities of the CA at this point.
23. Although the ground floor of the appeal building was boarded up at the time of my visit, it is fundamentally a handsome 1930s building with an Art Deco style façade. The addition of this architectural style complements and further enriches the context. Whilst slightly taller than flanking listed buildings, its parapet roof is broadly equivalent in height to other listed buildings in the series further northwest. As such, the appeal building assists in maintaining a consistent height of roofscape with the listed buildings lining the western side of High Street. Taking these factors together, the appeal building contributes positively to the significance and quality of the CA, and the settings of The Market, 41-49 High Street, the Church of All Saints and the Church of St Nicholas.
24. I have statutory duties² to have special regard to the desirability of preserving listed buildings and their setting, and to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
25. The appeal building would introduce a roof extension to create the ninth room of the hotel. The boxy structure would have a prefabricated flat roof that would add notable volume at an elevated level. Its functional form and fenestration, described as a shepherd's hut style room³, would have little in common with the architectural detailing or symmetry of the main elevation and would read as an incongruous and somewhat crude addition. The provision of an associated balustrade above the parapet wall, terrace and hot tub would exacerbate the unsympathetic effect.
26. Despite being set back from the front parapet, it is likely that some views of the roof extension would be seen from street level. To a degree this is

² Sections 66 & 72 Planning (Listed Buildings and Conservation Areas) Act 1990

³ Drawing number J1140/106/P3

illustrated in a photograph provided by the Council whereby the existing smaller lift machine room is visible as part of the roofscape in the view from Wine Street. By comparison when internally lit, the larger roof extension would be particularly conspicuous. Moreover, the balustrading and probable human activity on the terrace would draw the eye.

27. My concerns regarding the effect on the roofscape are compounded by the proposal to provide a photovoltaic panel array system orientated south⁴. As this is not depicted on the drawings provided, it is not clear how it would be accommodated. However, given the limited available opportunities, it would probably need to involve the roof. Hence, this could add further height and/or complexity to the roof profile of the building that would contrast unfavourably with the architectural qualities of the historic townscape.
28. Consequently, the proposed roof extension would be unsympathetic to the character and appearance of the appeal building. Moreover, the additional volume and activity would be harmful to the roofscape, giving unwarranted prominence to the building within the grouping of The Market and 41-49 High Street. To a minor degree, it would deflect attention from the backdrop of the spire of the Church of St Nicholas in views from Wine Street. Accordingly, the proposal would harmfully encroach into the settings of those listed buildings, adversely affecting the way that they are experienced. In turn, it would fail to preserve the character and appearance of the CA as a whole. Conflict would therefore arise with sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
29. In terms of the Framework, given its relatively modest scale, the proposals would result in less than substantial harm to the significance of the CA and the settings of the listed buildings identified. Paragraph 208 indicates that in these circumstances the harm should be weighed against the public benefits of the proposal.
30. The proposals would bring the appeal building back into use, thereby making more efficient use of the land. Moreover, it would likely bring investment that would improve the condition of the building and add to the vitality of the area by reinstating an active ground floor. These factors would be beneficial to the CA and setting of nearby listed buildings. The development would also have economic benefits arising from construction, as well as the operation of the hotel. A new boutique hotel would provide a greater choice of accommodation in an accessible location for people seeking to visit the city. This may also have knock-on economic benefits for other businesses nearby. These are all important public benefits.
31. Nevertheless, paragraph 205 of the Framework states that when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It further explains that the more important the asset, the greater the weight should be. In this case, a considerable number of designated heritage assets would be affected, several of which are Grade II* listed buildings.
32. Based on the evidence before me, I am not persuaded that similar benefits could not be achieved whilst avoiding the identified harm to designated heritage assets. This tempers the positive weight attributed to them. Overall,

⁴ Paragraph 5.4, Energy and Sustainability Statement prepared by Cook Brown Energy

the sum of public benefits would not outweigh the harm. Consequently, the proposal would conflict with national policy that seeks to protect the historic environment.

33. Accordingly, I find that the proposal would be detrimental to the character and appearance of the area and would result in unjustified harm to the significance of the CA and nearby listed buildings. Therefore, it would be contrary to policies BCS21 and BCS22 of the CS, and policies DM26, DM30 and DM31 of the SADMP. Amongst other matters, these policies expect proposals to contribute positively to the local character and distinctiveness of the area, respect the host building and street scene, and conserve or enhance the historic environment.

Refuse storage

34. Policy BCS15 of the CS requires, amongst other things, new development to provide satisfactory arrangements for the storage of refuse as an integral part of its design. Policy DM32 of the SADMP has similar provisions and sets out five considerations relating to the level of provision, location, visual amenity, impact on neighbouring development and security.
35. A bin store is proposed in the basement of the hotel which would be accessible by lift. Refuse would be brought to the ground floor and exit via a door in the frontage for street collection. The Council is concerned that the lift doors, lobby and adjacent corridors would be insufficiently wide to cater for refuse receptacles, which it considers could lead to them being left on the footway thereby causing a physical obstacle and visual harm.
36. In reaching that conclusion, the Council cites specific advice in the Bristol City Council Waste and Recycling Storage and Collection Facilities Guidance, adopted December 2010 and updated March 2022 (the guidance). However, the reference⁵ to 1.5m width for lift doors, lobby and corridors relates to blocks of flats in circumstances where bin stores cannot be provided at ground level. It is not shown that this equates to a wider mandatory requirement for commercial waste from a hotel.
37. Rather, Section 8 of the guidance pertains to commercial developments. It confirms that sufficient storage capacity should be provided but goes on to explain that the standard approach is that commercial waste producers are responsible for procuring their own waste collection service.
38. On the evidence before me, it is not shown that the proposed bin store arrangement would be deficient in capacity for a nine bed hotel, nor that procuring commercial waste collection services would be difficult or impractical owing to the width of the doors and corridors. It is probable that a degree of flexibility exists within the market led approach for commercial waste as to the dimensions of the waste receptacles utilised. As such, I do not find a conflict with the relevant development plan policies in this respect.

Renewable energy

39. Policy BCS14 of the CS requires development to include measures to reduce carbon dioxide emissions from energy use and sets out an energy hierarchy by which to do so. Stage two seeks the incorporation of renewable energy

⁵ Page 28

sources, and the policy expects development to provide sufficient renewable energy generation to reduce carbon dioxide emissions from residual energy use in the building by at least 20%.

40. The Energy and Sustainability Statement identifies that the proposal would achieve a 21% reduction in carbon dioxide emissions by using a photovoltaic panel array system. Hence, on the face of it the policy requirements would be met. However, it is not shown on the drawings how or where the photovoltaic panels would be accommodated. In the absence of this, and given the sensitive historic context already outlined, it is uncertain whether such on-site provision could be practically or suitably achieved.
41. Therefore, on the evidence provided I am not satisfied that the proposal would meet the required reduction from on-site renewable energy generation, and it is not otherwise shown that there is an alternative solution or exception to policy BCS14. It follows that the proposal would likely conflict with policy BCS14 of the CS in this respect.

Planning balance and conclusion

42. Planning law requires applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Whilst there would be benefits arising from the development, particularly by bringing an unused building back into productive use and reinstating an active ground floor frontage, I am not convinced that the appeal scheme would be the only means of doing so. As such, the possibility of securing similar benefits whilst avoiding the development plan policy conflicts identified cannot be ruled out.
43. Consequently, I do not find that there are material considerations that would justify determining the proposal other than in accordance with the development plan. Therefore, for the reasons given above I conclude that the appeal should be dismissed, and planning permission refused.

Helen O'Connor

INSPECTOR