



Appeal Decision

Site visit made on 9 April 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2024

Appeal Ref: APP/D0121/W/23/3330821

22 West Street, Weston-Super-Mare, North Somerset BS23 1JU

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Stuart Cox of Ivyrose Property Ltd against the decision of North Somerset Council.
 - The application Ref is 23/P/1422/FUL.
 - The development proposed is change of use from a café (Class E) with ancillary residential accommodation at first and second floors, to a large house in multiple occupation for up to 7 people (*sui generis*).
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Decision

1. The appeal is allowed and planning permission is granted for change of use from a café (Class E) with ancillary residential accommodation at first and second floors, to a large house in multiple occupation for up to 7 people (*sui generis*) at 22 West Street, Weston-Super-Mare, North Somerset, BS23 1JU in accordance with the terms of the application, Ref 23/P/1422/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. Land Registry searches suggest that the appeal site is unregistered as it does not have a title. However, the appellant has submitted a Certificate B land ownership certificate that confirms that the owners of the site have been notified. I understand that Certificate A was submitted with the planning application, but this error has been corrected by submitting Certificate B instead. As the entire site has been included within the red line and notice has been served on the landowner, I am happy that the correct approach has been followed and the appeal can proceed accordingly.
3. The Council determined the planning application on the basis of a kitchen and utility room being at the rear of the ground floor and a dining area and lounge being located at the front of the building. The appellant has submitted revised plans with the appeal that show a courtyard being formed at the rear of the ground floor with a lounge directly off that outside area. A kitchen and dining area are shown at the front of the building, and an entrance hallway would be formed between the front door and the internal staircase. The installation of secondary glazing is also indicated on the revised plans. These revisions were submitted after the Council's refusal of the scheme, and there are differences between the appeal scheme and that considered by the Council as the revised drawings depict a significant change to the layout of the ground floor. The Council has had an opportunity to comment, but other potentially interested parties have not. In the interests of openness and fairness the revised plans

have not been accepted as part of the appeal as the plans result in a fundamental change to the proposal.

Main Issues

4. The main issues are:

- the effect of the proposal on the vitality and viability of Weston-Super-Mare town centre; and
- whether the development proposed would provide satisfactory living conditions for future occupants having regard to noise and anti-social behaviour.

Reasons

Vitality and viability

5. The appeal site is a former café located in Weston-Super-Mare town centre with residential accommodation occupying the first and second floors. Given that the site has a 'town centre use' and it has been confirmed as being situated in the Town Centre Area, Policy CS21 of the North Somerset Council Core Strategy (2017) (CS) applies.
6. Policy CS21 seeks, in part, to maintain and enhance the vitality and viability of the town centre and, as part of this, there is a requirement to demonstrate that the loss of a town centre use would not adversely affect the vitality and viability of the centre and that adequate retail provision would remain for local residents.
7. The Annual Monitoring Report (2022) indicates that approximately a third of the retail units (Use Class E(a)¹) in Weston-Super-Mare town centre are vacant. The Council do not dispute this figure but states that the vacancy rate for West Street is lower, but no evidence has been provided to support this assertion. Given that the existing use of the site is not a Class E(a) retail use, the proposal will have a neutral effect on the number of retail units in the town centre and an adequate Class E(a) retail provision would be retained for local residents.
8. The appellant acknowledges that there is the potential for the commercial area of the site to be used for other commercial purposes within Use Class E. As mentioned above, the upper floors are currently in some form of residential use and this leaves a small and narrow commercial area on the ground floor. The confined and awkward floorspace of the ground floor and its lack of separation from the upper floors means that the premises does not easily lend itself to a variety of other commercial uses, including retail.
9. Whilst the site is not in a predominantly residential area and is surrounded by other ground floor commercial premises, I am satisfied that the evidence before me demonstrates that the loss of this single commercial unit would not materially harm the vitality and viability of the town centre use. Expanding the existing residential use on site into the ground floor would find a new long-term use for the ground floor area, thereby retaining the vibrancy of the local area.

¹ Town and Country Planning (Use Classes) Order 1987 (as amended)

10. For these reasons, it has been demonstrated that the proposed development would not have a negative effect on the vitality and viability of Weston-Super-Mare town centre. Consequently, the proposal would comply with Policy CS21 of the CS for the reasons given above. Furthermore, the proposal would comply with Policy DM60 of the North Somerset Council Development Management Policies Sites and Policies Plan Part 1 (2016) (DMPSP), which seeks, amongst other things, to maintain and enhance the vibrancy and vitality of town centres.

Living conditions

11. There are premises near to the site, including on the opposite side of the road, that have licenses to stay open until past midnight. Vinnies is located three doors down from the site and has outside seating on the pavement that is permitted to be there until 11pm. Sass Bar, which is on the opposite side of the road, has outside seating that the Council confirms is not restricted by a premises licence.
12. The congregation of groups of people in the street near the site is a likely event due to the proximity of the nearby premises with late licences to serve alcohol. The presence of groups of people in street would result in noise that would be particularly noticeable during anti-social hours.
13. It has to be borne in mind that the bedrooms on the first and second floor are already present and used in conjunction with the commercial use at ground floor. These would remain as bedrooms in the proposed development. There would therefore be no material change to the potential for noise disturbance to occupiers of the first and second floors from the existing use to the proposed House in Multiple Occupation (HMO), despite the bedrooms being used as their private living spaces.
14. The existing commercial element at ground floor would become the communal area for the HMO. A kitchen and utility area would be formed at the rear and a dining room and lounge at the front of the building. The latter would be served by the existing large windows that would be retained as part of the proposal.
15. Members of the public standing outside the large windows of the building would be particularly perceptible during anti-social hours. However, anti-social hours are during hours of darkness and the option to close blinds or curtains in the street facing windows would therefore be an option open to the future occupiers that would not impact on the level of light entering the ground floor of the building through said windows.
16. The Council has suggested a condition that requires the agreement and implementation of measures to reduce noise impacts on the future occupiers of the proposed HMO. This condition would help to ensure that the level of impact associated with noise disturbance would not be materially harmful. With the attachment of the condition, and having regard to the above factors, the presence of people outside the building would not result in a level of noise disturbance that would be materially harmful.
17. I also have limited evidence before me that suggests that anti-social behaviour is prevalent in this area of the town centre. In particular, I am mindful that there are other residential properties above commercial units nearby and I

have not been referred to evidence of such problems for occupiers of those properties that has affected their living conditions.

18. I have been referred to a dismissed appeal for two dwellings that would have been situated close to the beer garden and smoking area of a Working Men's Club in Portishead². This had a license to open until late in the evening and the Inspector considered this would result in a noise nuisance that would be materially harmful to the future occupiers of the proposed dwellings. That appeal did not involve the change of use of an existing building with a partial residential use. Therefore, it is not directly comparable to the appeal before me.
19. For these reasons, the development proposed would provide satisfactory living conditions for future occupants having regard to noise and anti-social behaviour. Consequently, the proposal would comply with Policies CS3 and CS12 of the CS and Policies DM32 and DM39 of the DMPSP, which collectively seek, in part, that satisfactory standards of accommodation and living conditions are provided.

Other Matters

20. An interested party has raised concerns that the proposal would result in a proliferation of HMOs in the local area. I do not have evidence before me that demonstrates that there are a significant number of HMOs concentrated in the local area around the appeal site. It is therefore not evident that the proposal would result in a material rise in noise disturbance and nuisance.
21. The interested party also comments that the proposal would cause harm to the character and appearance of the area. The external public frontage of the building would remain in its current form. This includes the retention of the large windows on the ground floor. As such, there would not be a noticeable change to the external appearance of the building as a result of the proposed development. It therefore follows that the development would preserve the character and appearance of the Greater Weston Conservation Area.

Conditions

22. The Council has suggested various conditions in the event that I am minded to allow the appeal. I have considered these against the six tests set out in the Framework and Planning Practice Guidance and made changes to the wording to add clarity and preciseness as appropriate.
23. The standard time limit condition and a condition listing the approved plans are necessary for planning certainty. A condition requiring the agreement of details for mitigation measures to reduce noise impacts on the future occupiers of the proposed HMO is reasonable and necessary to secure the attenuation of noise levels to below the current level of impact on the existing partial residential use on site.
24. The provision of storage for bicycles is reasonable and necessary to ensure that the occupiers have the option to use sustainable means of transport to access the services and facilities in the town.

² Appeal reference APP/D0121/W/22/3308912

25. The requirement to approve and implement details of the storage and collection facilities for waste and recycling materials is also reasonable and necessary to ensure that there is suitable waste management on site to prevent harm to the character and appearance of the area and promote recycling by the occupiers of the proposed HMO.

Conclusion

26. For the reasons given above the appeal should be allowed.

K Reeves

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing numbers PL03, PL04, PL05 and PL06.
- 3) Prior to the commencement of the approved use of the building, a noise insulation scheme to protect occupants from noise from the neighbouring commercial uses shall be submitted to, and approved in writing by, the Local Planning Authority. The noise insulation works shall be completed in accordance with the approved scheme before the approved use of the building begins and shall be retained as such thereafter.
- 4) Prior to the commencement of the approved use of the building, details of a scheme to provide secure parking facilities for 7no. bicycles shall be submitted to, and approved in writing by, the Local Planning Authority. The facilities shall be completed in accordance with the approved details before the approved use of the building begins and shall be retained as such thereafter.
- 5) Prior to the commencement of the approved use of the building, details of separate storage and collection areas for waste and recycling shall be submitted to, and approved in writing by, the Local Planning Authority. The storage and collection areas shall be completed in accordance with the approved details before the approved use of the building begins and shall be retained as such thereafter.

End of Schedule