

Appeal Decisions

Site visit made on 3 September 2024

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2024

Appeal B Ref: APP/D0121/W/24/3344697

2 North Lane, Weston-super-Mare, North Somerset BS23 1QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Mr M Gauntlett against the decision of North Somerset Council.
- The application Ref 24/P/0126/FUL was approved on 20 March 2024 and planning permission was granted subject to conditions.
- The development permitted is Installation of 2no. ground floor windows on south elevation, a rooflight on rear (East) roof sloping roof plane and a flat rooflight on the flat roof to the East. Retrospective application for the rebuild of property comprising the removal of 2no. existing fire damaged pitched roofs, erection of 1no. replacement pitched roof including an increase in ridge height and 1no. flat roof. Replacement wall on 1st floor rear elevation. Replacement windows and alterations to window sizes on south (side) elevation (4 in total), re-instatement of 1no. door opening and reduction of barge board depth on south (side) elevation. Replacement window on first floor front elevation. Installation of 1no. window on first floor north (side) elevation and 1no. replacement window and alteration to window size of 1no. first floor window on North (side) elevation. Re-rendering of external walls. 2no. rooflights.
- The conditions in dispute are Nos 3, 4, 5, 6 and 7 which state that:
Condition No.3: *'The building shall not be occupied and no further development shall take place until an assessment to determine the nature and extent of contamination on site that may be present has been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a competent person, and shall assess any contamination on the site, whether or not it originates on the site. Moreover, it must include:*
 - (i) a survey of the extent, scale and nature of contamination;*
 - (ii) an assessment of the potential risks to:*
 - o human health,*
 - o property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,*
 - o adjoining land,*
 - o groundwaters and surface waters,*
 - o ecological systems, and*

o archaeological sites and ancient monuments

(iii) Asbestos report/ survey.'

Condition No.4: *'Unless the Local Planning Authority confirms in writing that a remediation scheme is not required, no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.'*

Condition No.5: *'The remediation scheme, if required, shall be implemented in accordance with the approved timetable of works. Within 3 months of the completion of measures identified in the approved remediation scheme, a validation report (that demonstrates the effectiveness of the remediation carried out) shall be submitted to the Local Planning Authority.'*

Condition No.6: *'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any Orders revoking and re-enacting those Orders, with or without modification), the premises shall be used for office use only falling within use Class E (g)(i) and for no other purpose including other uses within Class E.'*

Condition No.7: *'The development hereby approved shall not be brought into use until the 2no. windows on the first floor north elevation and the 3no. windows on the first floor south elevation have been fitted with obscure glazing. The obscure glazing used shall provide a degree of obscurity no less obscure than that which is provided by privacy level 3 of the Pilkington Group Limited textured glass range as defined in publication "Pilkington Decorative Glass Range" (published November 2017). These windows shall be non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and reenacting that Order, with or without modification), neither the obscure glazing nor the method of opening shall be subsequently altered without the prior written permission of the Local Planning Authority.'*

- The reasons given for the conditions are:

Condition No.3: *'In order to ensure that land is suitable for the intended uses and in accordance with policy CS3 of the North Somerset Core Strategy.*

Condition No.4: *'In order to ensure that land is suitable for the intended uses and in accordance with policy CS3 of the North Somerset Core Strategy.'*

Condition No.5: *'In order to ensure that land is suitable for the intended uses and in accordance with policy CS3 of the North Somerset Core Strategy.'*

Condition No.6: *'The Local Planning Authority wishes to retain control over the use of the premises in the interests of the living conditions of neighbouring properties and highway safety and in accordance with policy DM32 and DM47 of the North Somerset Sites and Policies Plan (Part 1).'*

Condition No.7: 'To protect the living conditions of occupiers of adjoining properties and in accordance with policy DM32 of the North Somerset Sites and Policies Plan (Part 1) and the North Somerset Residential Design Guide SPD (Section 1: Protecting living conditions of neighbours).'

Decision

1. The appeal is allowed and the planning permission Ref 24/P/0126/FUL for Installation of 2no. ground floor windows on south elevation, a rooflight on rear (East) roof sloping roof plane and a flat rooflight on the flat roof to the East. Retrospective application for the rebuild of property comprising the removal of 2no. existing fire damaged pitched roofs, erection of 1no. replacement pitched roof including an increase in ridge height and 1no. flat roof. Replacement wall on 1st floor rear elevation. Replacement windows and alterations to window sizes on south (side) elevation (4 in total), re-instatement of 1no. door opening and reduction of barge board depth on south (side) elevation. Replacement window on first floor front elevation. Installation of 1no. window on first floor north (side) elevation and 1no. replacement window and alteration to window size of 1no. first floor window on North (side) elevation. Re-rendering of external walls. 2no. rooflights. at 2 North Lane, Weston-super-Mare, North Somerset BS23 1QR granted on 20 March 2024 by North Somerset Council, is varied by deleting condition 6.

Application for costs

2. An application for costs was made by North Somerset Council against Mr M Gauntlett. This application is the subject of a separate Decision.

Preliminary Matter

3. I have also dealt with another appeal (Ref: APP/D0121/W/24/3343906) on this site. That appeal is the subject of a separate decision.

Background and Main Issues

4. The Council has granted planning permission for the partial rebuild and alterations at the appeal property including replacement roof and windows. The application followed the building being damaged by a fire. The planning permission was granted subject to a number of conditions. These included conditions requiring the investigation of any land contamination and, if contamination is found, the implementation of an appropriate remediation strategy, restriction of the premises to office use under Class E (g)(i), and the obscure glazing of windows to the first floor north and south elevations.
5. The appellant has confirmed that they dispute the imposition of conditions 3, 4, and 5 due to the submission of a contamination report and the Health and Safety Executive agreeing to the removal of an asbestos pipe. The appellant has confirmed that they dispute conditions 6 and 7 on the basis that the building has been re-built as previously constructed and as a result the conditions are not appropriate.
6. In light of the above, the main issue is whether or not the disputed conditions are necessary and reasonable having regard to the previous use and condition of the appeal building.

Reasons

Conditions 3, 4 and 5

7. The appeal statements from both parties confirm that the appeal building was damaged by fire. Although the roof has subsequently been re-constructed, the building requires further works to make it usable.
8. The National Planning Policy Framework (the Framework) states that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. In this instance it is not known what contamination, if any, may have resulted from the fire.
9. I acknowledge that an asbestos survey confirms that an asbestos pipe in the building needs removing, and that the Health and Safety Executive have confirmed that they are satisfied with the report. However, and while I also acknowledge that the application is accompanied by a 'Landmark Report', none of the reports contain detailed information regarding any possible contamination or environmental risks as a result of the fire at the property.
10. The health and safety of people using the building is important. Consequently, given the fire damage, based on the evidence before me, the risks need to be investigated and evaluated by a standard methodology such as a desk top study and site investigation to clarify what the risk may be and if it is acceptable or any remediation measures that may be required. Paragraph 189c of the Framework states that adequate site investigation, prepared by a competent person should be available to inform assessments.
11. For the reasons above, I conclude that without knowing the extent of any contamination from the fire damage or clear mitigation proposals to overcome it, the residential use of the site could be harmful to the prospective users of the building. I therefore find that the disputed condition Nos 3, 4 and 5 are necessary and reasonable having regard to the previous use and condition of the appeal building in order to ensure the safety of the end user.

Condition 6

12. Prior to the fire damage to the building, it had been in use as an office. This has been confirmed by the grant of a subsequent Certificate of lawfulness application in 2023¹ affirming a lawful office use under Class E(g)(i). In light of this and given that the planning application the subject of this appeal was not seeking a change of use of the building, a condition limiting the use of the building as imposed by the Council is not required.
13. For these reasons, condition 6 is not reasonable or necessary having regard to the previous use of the appeal building.

Condition 7

14. I have not been provided with agreed plans or details of the building prior to the fire damage to be able to confirm the position and size of first floor windows previously within the building. Furthermore, I note that the

¹ 23/P/0045/LDE

description of development includes alterations to window sizes and installation of a new window at first floor level. I cannot therefore be sure that the first floor windows to the south and north elevations are like for like replacements for those previously present within the building.

15. In light of this and given the very close relationship between the first floor windows and windows to neighbouring properties affording direct overlooking, I find condition number 7 both reasonable and necessary in order to protect the living conditions of occupiers of neighbouring properties having regard to the previous use and condition of the appeal building.

Other Matters

16. The appellant has submitted a copy of an appeal decision in Redhill² in support of their appeal. However, as I have limited information in relation to this appeal and it relates to a condition removing permitted development rights, I cannot be sure it is directly related to the current appeal. Furthermore, I am required to consider the appeal on its merits.

Conclusion

17. For the reasons set out above conditions 3, 4, 5 and 7 are reasonable and necessary and should therefore remain. However, condition 6 is not necessary to make the development acceptable and therefore does not meet the tests as set out in paragraph 56 of the Framework. Therefore, the appeal is allowed by deleting condition 6 as set out in the decision paragraph above.

C Rose

INSPECTOR

² APP/DO121/W/23/3332793