



Appeal Decisions

Site visit made on 9 September 2024

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2024

Appeal A Ref: APP/Z0116/W/24/3345087

6 St Michael's Hill, Kingsdown, Bristol BS2 8DT

- 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 George Ioannou against the decision of Bristol City Council.
 - The application Ref is 23/03179/F.
 - The development proposed is: Change from a commercial property (restaurant/take away) to a 5 bed residential property. Rooms to be all self-contained with their own bathrooms and mini kitchenettes, also a communal space for all. Bike storage and bin storage facilities.
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Appeal B Ref: APP/Z0116/Y/24/3344836

6 St Michael's Hill, Kingsdown, Bristol BS2 8DT

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
 - The appeal is made by Mr George Ioannou against the decision of Bristol City Council.
 - The application Ref is 23/03691/LA.
 - The works proposed are: Change from a commercial property (restaurant/take away) to a 5 bed residential property (use class c4). Rooms to be all self-contained with their own bathrooms and mini Kitchenettes. Also a communal space for all.
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Decision – Appeal A

1. The appeal is dismissed.

Decision – Appeal B

2. The appeal is dismissed.

Preliminary Matters

Existing Use

3. The planning application subject of Appeal A refers to a 'change from a commercial property (restaurant/takeaway)' suggesting that the existing use of the property is as a restaurant and takeaway. However, both parties have referred to planning permission, Council reference 17/04142/F, having been granted in December 2017 for the use of the property as a 4 bedroom dwellinghouse, falling within use class C3 of Part C, Schedule 1 of the 1987 Order. They also refer to the associated listed building consent, Council reference 17/04769/LA.
4. Although the planning application form indicates that the appeal site is not in use at present, it refers to the commercial property having closed in April 2020. In addition to this, the appellant says that the 'commencement of development to implement these consents took place in the Summer of 2020'. The

'consents' referred to here are the decisions of the Council mentioned above. The indication is that the permitted material change of use to a class C3 dwellinghouse has occurred. Indeed, the appellant suggests as a fall back that the property could be used as a 4 bedroom family home. None of this is disputed by the Council.

5. The property did not appear to be occupied at the time of my site visit. Nevertheless, in view of the above, my determination of the appeals will, where necessary, be based on an existing use of the property as a dwellinghouse, falling within use class C3 of Part C, Schedule 1 of the 1987 Order, rather than on a previous use as a restaurant and takeaway.

Amended Scheme

6. Both of the applications subject of these appeals proposed the material change of use of the appeal site to a residential property with 5 separate rooms each providing a degree of self-contained facilities. The Council's decisions were made on this basis.
7. The appeals were submitted with an amended layout plan, which proposes the use of one of the two ground floor rooms, the first as a shared living room and kitchen, and the second as a shared lounge and bathroom. The plan also proposed the use of the first floor rear room as an en-suite room, rather than a communal laundry room.
8. Despite the self-contained facilities proposed in the 5 separate rooms that are the subject of the original scheme, I can see that the Council determined the Appeal A planning application on the basis of a proposed small house in multiple occupation (HMO) falling within use class C4 of Part C, Schedule 1 of The Town and Country Planning (Use Classes) Order 1987 as amended (the 1987 Order). The use considered by the Council was, therefore, no different to the use proposed in the amended scheme, which is also as a small HMO.
9. Nevertheless, the amended scheme proposes a substantial change to the layout of the property when compared to the scheme as originally submitted. The amended scheme also omits the self-contained facilities in each room, and there is a change to the number of rooms of accommodation. These amount to a substantial difference between the two schemes. The amended scheme is a fundamental change to what was originally proposed, such that the amended scheme of development is, in substance, different to that subject of the original application on Appeal A.
10. In finding as I have above, I have had regard to paragraph 16.1 of the Procedural Guide: Planning appeals – England, which informs that the appeal process should not be used to evolve a scheme, and that it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Council and by interested parties at the application stage.
11. In view of the above, whilst the Council has had the opportunity to comment on the amendments, I have not had regard to the amended scheme in the determination of Appeal A. Furthermore, in the interests of consistency I have also determined Appeal B on the basis of the original scheme.

Flue

12. In its response to the appeals the Council has referred to works to install a flue opening on the front façade of the property. This does not form part of the scheme of development and works that is before me. I cannot, therefore, consider this matter in my determination of the appeals.

The Conservation Area

13. There is reference in the reason for refusal of both applications to section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the 1990 Act), which is the general duty as respects conservation areas in the exercise of planning functions. However, neither the decisions, nor the corresponding officer's reports allege harm to the character or appearance of the St Michael's Hill and Christmas Steps Conservation Area (CA). The only harm referred to is that posed to the listed building.
14. The Council has suggested harm with reference to the CA in its statement submitted in response to the appeals. This is, however, with regard to a new flue opening, which I have confirmed does not form part of the scheme that is before me.
15. Given the above, there does not appear to be an objection from the Council to the proposed scheme, having regard to the duty imposed by section 72 of the 1990 Act. Nevertheless, I must also have regard to this duty and have done so, identifying this as a main issue in this appeal. As the appellant has addressed this matter in their evidence, no prejudice would arise from me taking this approach.

Main Issues

16. The two appeals concern the same scheme under different, complementary legislation. Having regard to the duties imposed by the legislation and the provisions of the National Planning Policy Framework (the Framework), I have considered both schemes together. I have, however, identified some main issues as only relevant to Appeal A.
17. The main issues for Appeal A are as follows:
- Whether or not the use of the property as a small HMO is acceptable, having regard to the policies and guidance relevant to such development;
 - The effect of the development on the living conditions of neighbouring occupiers; and
 - The effect of the development on the living conditions of its occupiers.
18. The main issues for both Appeal A and Appeal B are as follows:
- Whether or not the proposal would preserve the Grade II listed building, 6-16 St Michael's Hill, or any features of special architectural or historic interest which it possesses; and
 - Whether or not the proposal would preserve or enhance the character or appearance of the CA.

Reasons

HMO Use and Living Conditions of Neighbouring Occupiers

19. The first two main issues come from the first reason for refusal of the application subject of Appeal A. Having regard to the policy and guidance relevant to the provision of shared housing, I have considered these two main issues together.
20. Policy BCS18 (Housing Type) of the Bristol City Council Core Strategy, adopted June 2011 (CS) informs that all new residential development should maintain, provide or contribute to a mix of housing tenures, types and sizes to help support the creation of mixed, balanced and inclusive communities. Policy DM2 (Residential Sub-divisions, Shared and Specialist Housing) of the Bristol City Council Site Allocations and Development Management Policies Local Plan, Adopted July 2014 (LP), is relevant to proposals that would create shared housing, such as HMOs, and advises that development would not be permitted if it harms the residential amenity or character of the locality, or would create or contribute to a harmful concentration of such uses.
21. The Council's supplementary planning document on Managing the development of houses in multiple occupation, adopted 3 November 2020 (SPD), provides further guidance on the implementation of LP Policy DM2. Paragraph 1.1 of the SPD states that the guidance identifies situations where harmful HMO concentrations are likely to arise. It goes on to say that these situations include the sandwiching of residential properties by HMOs, as well as areas where more than 10% of dwellings are occupied as HMOs.
22. On this latter point, the SPD states that proposals for the introduction of new HMOs which would result in more than 10% of the total dwelling stock being occupied as HMOs within a 100 metre radius of the application property or site are unlikely to be consistent with Local Plan policy. The Council say that its data on housing types within the area indicates that around 25% of properties within 100 metres of the site are HMOs. The Council suggest that, as this figure far exceeds the 10% threshold, the use of the property as a HMO is unacceptable.
23. I have noted the other appeal decisions that have been drawn to my attention¹. Like the appeal before me, in both those cases the development would have resulted in the 10% threshold having been exceeded. One Inspector rightly points to this weighing against the grant of planning permission. I can agree with them, that this suggests that there may be an existing harmful concentration of HMOs within the area and that the proposal would exacerbate this harmful impact.
24. The appellant suggests that, unlike other streets within the 100m radius, there is not a concentration of HMOs on St Michael's Hill. I can appreciate that the negative effects of a concentration of HMOs could be more localised, and experienced more acutely within particular streets within an area. This does not, however, undermine the application and usefulness of the SPD guidance in identifying whether or not a particular property is within a neighbourhood that has a concentration of HMO properties. To establish this, the SPD identifies the

¹ Appeals reference APP/Z0116/W/22/3312416, APP/Z0116/W/22/3312417 and APP/Z0116/C/22/3312418; and APP/Z0116/W/20/3260047, APP/Z0116/Y/20/3260048. Although copies of these were not submitted with the appeals before me, I have been able to find these appeal decisions within the Planning Inspectorate's records.

100 metres radius as being the immediate neighbourhood of a particular site. I can see no reason to look behind the guidance.

25. In the two appeal cases referred to, the 10% threshold had already been breached in the neighbourhood of those sites by up to 18% in one case and over 13% in the other. In the case before me, the existing HMO concentration is in the region of 25%, which far exceeds the concentration in the other cases. Not only would the concentration increase further if permission were granted, the development would also result in the loss of a 4 bedroom home, assuming that the appellant is right and that the property could be occupied as a 4 bedroom dwellinghouse.
26. The appellant suggests that the inner-city location of the appeal site is ideal for HMO housing. I acknowledge that such a location might well be less suitable than other areas of the city for family housing, for example. Nevertheless, I have no reason to doubt the Council's claim that there is a low supply of single dwellinghouses in this area and that there is a demand for such housing across the city.
27. Having regard to all of the above, I can only conclude that the development would cause harm by reducing the choice of homes in the area and changing the housing mix, in conflict with criterion ii. of Policy DM2.
28. Notwithstanding the above, I must also consider if any other harm would result from the development, as the other Inspectors have done. Notwithstanding my findings below with regard to the physical alterations to the building, the Council do not suggest that the development is unacceptable by reason of the demand for on-street parking or the storage of recycling/refuse and cycles. The Council's objections to the proposal are with regard to noise and disturbance and the 'sandwiching' effect of the proposal.
29. In the row of properties in this part of St Michael's Hill, numbers 4 and 10 are recorded as HMOs on the Council's records. There is no dispute that No 8 is used as a single dwellinghouse. If the appeal were allowed, this adjoining property would be 'sandwiched' between HMO properties at Nos 4, 6 and 10, which is a situation the SPD advises is unlikely to be consistent with LP Policy DM2.
30. I cannot agree that the comings and goings of a single household are comparable with those of a HMO, such that the proposed use would not cause additional harm when compared to the existing. As the occupiers of a HMO are more likely to live independently of each other, the character of the use of the property is likely to be different. In such properties the SPD points to noise and disturbance resulting from the intensification of the residential use and/or the lifestyle of occupants. As the development would result in a HMO either side of No 8, it is more likely that these adverse effects would be experienced more acutely by the occupiers of the household at No 8.
31. The inner city location of the appeal site and the other HMOs in the immediate vicinity might well mean that noise and disturbance experienced in No 8 is greater than it would be in other areas of the city. However, I cannot be satisfied that any additional noise and disturbance resulting from the development would not have an adverse effect on existing residents. If indeed the existing levels of noise and disturbance are considered to be harmful, Policy

DM2 advises that permission should not be granted for development that would exacerbate this.

32. The above matter was not considered by the other Inspectors in the appeal decisions referred to by the appellant. The immediate effect on neighbouring occupiers was not a matter in dispute between the parties. However, in the case before me my findings on this matter weigh against the grant of planning permission.
33. I acknowledge that other legislation may well be a means of controlling the adverse effects of the development. This does not, however, justify development that is likely to cause harm. Furthermore, this legislation would not overcome the issues regarding the resultant change to the housing mix in the area, as identified above.
34. On a final matter, from the evidence before me I cannot be satisfied that the likely unacceptable effect of noise generated by the development could be appropriately mitigated, in accordance with Policy DM35 (Noise Mitigation) of the LP.
35. All things considered, I conclude that the use of the property as a small HMO is not acceptable, having regard to the policies and guidance relevant to such development. I also conclude that the development would have an unacceptable effect on the living conditions of neighbouring occupiers. For these reasons, I find the development would be in conflict with Policies DM2 and DM35 of the LP, Policy BCS18 of the CS and the SPD.

Living Conditions – Future Occupiers

36. The Council's concerns relevant to this main issue appear only to relate to room 2, which would be at ground floor to the rear of the property. Due to the topography of the appeal site, this room would not benefit from any external windows, save for two roof lights within the flat roof of this rear annexe. These would only provide a limited degree of natural light and ventilation. Furthermore, the occupiers of the room would not have any outlook from the room, other than upwards. The living conditions within the room would, therefore, be oppressive and the room would only cause detriment to the health and wellbeing of its occupiers.
37. The appellant has acknowledged these shortcomings of the scheme, and I note the revised scheme seeks to mitigate this. However, for the reasons already given, I have not considered the revised scheme as part of this appeal. Accordingly, and for the reasons set out above, the development would have an adverse effect on the living conditions of its occupiers. It would, therefore, conflict with LP Policy DM30 (Alterations to Existing Buildings) which requires alterations to existing buildings to safeguard the amenity of the host premises. It would also conflict with CS Policy BCS21 (Quality Urban Design), which requires new development in Bristol to deliver high quality urban design by delivering, amongst other matters, a healthy built environment.
38. In addition, the proposal would also fail to accord with the paragraphs of the Framework on achieving well-designed and beautiful places. These require development to, amongst other matters, promote health and well-being and be of a high standard of amenity for existing and future users.

39. There is reference in the third reason for refusal of the planning application to Policies BCS15 (Sustainable Design and Construction) and BCS18 of the CS. The Council has not, however, explained how these policies are relevant to the particular objection it has to the development, as set out above. Neither is their relevance obvious to me. I do not, therefore, find the proposal to be in conflict with these policies.

Heritage

Special Interest and Significance:

40. The listing description (list entry 1025032) gives the name of the listed building as 'Numbers 6 to 16 (even) and two attached lanterns'. From here on in, I will refer to the listed building as '6-16 St Michael's Hill'.
41. The Grade II listed building, of which the appeal property forms part, is a terrace of 6 properties dating from around 1835. The appeal has been submitted with a Statement of Significance and Heritage Impact Assessment (HIA), which highlights that the special interest and significance of the heritage asset is mainly derived from its architectural and historic interest. The HIA notes that, whilst there have been unsympathetic alterations to the rear of the appeal property, the principal elevation still reflects the classical style, character and proportions of the heritage asset. This elevation of the property and its contribution to the group value of the listed building is, therefore, of great importance to the architectural interest and significance of the heritage asset.
42. The HIA notes that much of the historic internal fixtures and fittings in the appeal property have been previously lost, including some chimney breasts. Whilst the floor plan at ground floor is unlikely to be historic, it is suggested that the historic footprint of the building can still be appreciated. It is also noted that the cellular layout has been largely retained at first and second floor, particularly in rooms to the front and rear. These elements also contribute to the listed building's special interest and significance.
43. The St Michael's Hill and Christmas Steps Character Appraisal (CACA) highlights the special interest and significance of the CA, which largely stems from its architectural and historic interest, including the maritime influence and how the area demonstrates the historic growth of Bristol. The listed building is a collection of properties that demonstrate the narrow plot widths and strong building line that characterises this part of the CA. For this reason, and notwithstanding the historic alterations, the listed building and the appeal site makes a positive contribution to the character and appearance and, thus, the special interest and significance of the CA as a whole.

Effect of the proposal:

44. In addition to the material change of use of the appeal site to a small HMO, the proposed scheme also includes physical alterations to the property. The extent and detail of these alterations is not, however, entirely clear. Both applications were accompanied by layout and elevation plans which are labelled 'existing'. Despite this, these appear to show the scheme of development and works for which consent is sought. Whilst the plans include some annotation that might indicate elements of the alterations proposed, the level of detail is not sufficient for me to be clear on all of the alterations comprised in the scheme submitted.

45. The design and access statement is of little assistance. Whilst this refers to alterations to the property since its use as a restaurant and takeaway ceased, it is not clear whether the alterations referred to were part of the scheme permitted in 2017 or form part of the scheme before me. The HIA provides a written description of the differences between the 2017 scheme and that proposed. It also provides some internal photographs of the property in commercial use. However, without plans and further details to accompany this assessment, I cannot be certain of the alterations that would be permitted, were I to allow the appeals.
46. I acknowledge that the HIA provides assistance in establishing the special interest and significance of both the heritage assets in this case. I also note the author's assessment of the effects of the proposal on these assets. Nevertheless, it is imperative that the details submitted are accurate and unambiguous to avoid doubt about what is proposed. This is so that I am able to undertake a meaningful assessment of the effects of the proposed scheme and fulfil my duties under sections 16(2), 66(1) and 72(1) of the 1990 Act.
47. Having regard to the level of detail before me and the uncertainty I have about what alterations comprise the proposed scheme, I cannot reasonably determine whether or not the proposal would preserve the Grade II listed building, 6-16 St Michael's Hill, or any features of special architectural or historic interest which it possesses, or whether it would preserve or enhance the character or appearance of the CA. I cannot, therefore, determine whether the proposal would meet the presumed requirements of the above mentioned sections of the 1990 Act. Nor can I draw any conclusions against chapter 16 of the Framework, the relevant policies of the CS and LP, or the CACA.

Planning Balance

48. Relevant to Appeal A, section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
49. The Council has acknowledged that it has fallen short with regard to the housing delivery requirements and housing land supply, in accordance with chapter 5 of the Framework. In these circumstances, the presumption in favour of sustainable development would be engaged. As set out in paragraph 11d) of the Framework, this means 'granting planning permission unless:
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'
50. Paragraph 205 of the Framework advises that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. I have, however, been unable to conclude on the matter of the impact of the development in this case. Notwithstanding this, as I must give great weight to a heritage asset's

conservation, it would be reasonable to take the precautionary approach in this case and find that there is a clear reason for refusing the development proposed, as advised in criterion i. of paragraph 11d).

51. Even if I found my inability to reach a conclusion on this matter weighed neutrally in the balance, I am satisfied that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole². In finding as such, I acknowledge the development would provide a unit of residential accommodation and would, therefore, contribute to the local stock of housing. The weight of this benefit is, however, limited as the development would result in the loss of a 4 bed dwellinghouse. Whilst I note the suggestion that such a use of the property is unviable, there is no evidence before me sufficient to substantiate this claim.
52. I have also concluded that the effect of the development would be to reduce the choice of homes in the area, which would conflict with paragraph 60 of the Framework and the aim of meeting as much of an area's identified housing need as possible, including with an appropriate mix of housing types for the local community. Added to this are the adverse effects of the development on the living conditions of the neighbouring occupiers and the future occupiers of the property, which conflicts with the requirement in the Framework, for development to promote health and well-being and be of a high standard of amenity for existing and future users.
53. In view of the above, despite the Council's position with regard to its housing delivery requirements and housing land supply, I am satisfied that the Framework's presumption in favour of sustainable development is not engaged in this case.
54. In view of the above, and all things considered, I have been unable to identify any material considerations of sufficient weight to indicate that my determination of Appeal A should be made otherwise than in accordance with the development plan.

Conclusion

55. For the reasons given, I conclude that the appeals should be dismissed.

J Moss

INSPECTOR

² Criterion ii. of paragraph 11d) of the Framework.