



Appeal Decision

Site visit made on 27 August 2024

by U P Han BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 November 2024

Appeal Ref: APP/Z0116/W/24/3344465

138 East Street, Bedminster, Bristol BS3 4ET

- 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. Sukhi Singh against the decision of Bristol City Council.
 - The application Ref is 23/03527/F.
 - The development proposed is change of use of first floor offices, associated with amusement arcade (use Class Sui Generis) to 1 No self-contained flat together with the construction of a second self-contained flat over the first floor (all Use Class C3).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of first floor offices, associated with amusement arcade (use Class Sui Generis) to 1 No self-contained flat together with the construction of a second self-contained flat over the first floor (all Use Class C3) at 138 East Street, Bedminster, Bristol BS3 4ET in accordance with the terms of the application, Ref 23/03527/F, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appellant has submitted amended plans as part of their appeal. The procedural guide for planning appeals advises that the appeal process should not be used to evolve a scheme as it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the local planning authority and by interested parties at the application stage.
3. Established case law states that, in considering whether, or not, to accept amendments to a proposal during the appeal process, it must be considered whether the proposed change involves a "substantial difference" or a "fundamental change" to the application and whether the proposed amendments would cause unlawful procedural unfairness to anyone involved in the appeal.
4. The amendments relate to a minor reconfiguration of the bin and cycle store, the addition of solar photovoltaic panels to the roof and minor re-positioning of the rooflights further down the roof slope. These amendments would not substantially alter the appeal scheme compared to that upon which the Council made its decision. It is not necessary for interested parties to be reconsulted and the Council has had the opportunity to comment on the amended plans. On that basis, I find that both parts of the necessary test set out in the relevant case law has been satisfied and I will accept the amendments. Accordingly, I have determined the appeal having regard to the amended plans.

5. The appeal site is within Bedminster Conservation Area (the CA) wherein I have a statutory duty under Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.
6. While the Council has not referred to harm to the character and appearance of the CA as a reason for refusal, it identified harm to the CA in the Officer Report, and a heritage balance was undertaken. Given my statutory duty, I have elevated this matter to a main issue.

Main Issues

7. The main issues are whether the proposed development would:
 - preserve or enhance the character or appearance of the CA;
 - provide acceptable living conditions for future occupiers with regard to outlook and daylight;
 - provide adequate access to the cycle storage facilities; and
 - utilise solar photovoltaic panels for power generation.

Reasons

The significance of the CA

8. The significance of the CA derives from its surviving historic route structure and rich architectural qualities, including fine examples of industrial, commercial and civic buildings. The Bedminster Conservation Area Character Appraisal (December 2013) recognises East Street as having suffered from post-war decline and destruction of much of its character. However, it suggests that its character and appearance could be greatly improved with the protection of the surviving historic townscape and route structure, and with development that responds to the positive local context. It also highlights the area's positive features which includes the quality of pre-1950s townscape and buildings, and a strong building line and rhythm contributed by a broadly consistent height and roofscape.

The effect of the proposal on the significance of the CA

9. The appeal site relates to a two-storey terraced property with an amusement arcade on the ground floor and offices above. This reflects the general nature of uses in the local shopping area within which it is situated, but there are also residential uses at first floor. East Street contains a significant amount of post war buildings many of which are two or three storeys high, flat roofed and of little architectural or historical merit. There, are however, clusters of pre-1950s building along East Street which contribute positively to the character of the CA.
10. The appeal site is not listed and appears to have benefited from significant rear extensions. The shopfront is typical of others in the vicinity with a large fascia and a modern fully glazed ground floor frontage. The building has attractive fenestration detailing to the first floor. To the east, it adjoins a terrace of three storey brick-built properties with pitched roofs and gable fronts to the east, and to the west it adjoins post war flat roofed properties.

11. The proposal would not alter the overall height of the property and would respect the building line along East Street. The only change to the frontage of the building would be the addition of rooflights to the front roof slope. However, the pitched roof to the rear of the property would be altered to a flat roof, thus deviating from the predominant character of neighbouring properties to the east of the site and eroding the existing consistency of the roofscape within this cluster of properties. However, there would be limited visibility of the extension within its surroundings so would have a limited prominence within the CA. Overall, the effect of the proposal would be to cause harm to the character and appearance of the CA, as a whole, which would detract from its significance as a designated heritage asset, albeit this would equate to a limited amount of harm due to its degree of prominence within the CA. In the terms of the Framework, the harm to the CA would be less than substantial.
12. For the reasons above, I conclude that the proposal would fail to preserve or enhance the character and appearance of the CA. Consequently, this would conflict with Policy BCS21 of the Bristol Development Framework Core Strategy (June 2011) (BCS) and Policies DM26, DM27 and DM31 of the Bristol Local Plan - Site Allocations and Development Management Policies (July 2014) (SADMP). Together, these policies require development to deliver high quality design, contribute positively to an areas' character and identity and conserve, and where appropriate, enhance heritage assets and their settings. The proposal would not comply with the Framework which seeks to conserve and enhance the historic environment.

Living conditions of the future occupiers

13. The Decision Notice refers to only one roof window to the bedrooms of the second floor flat when in fact two windows are proposed within each bedroom. Given the size and number of the windows in relation to the size of the rooms, it is reasonable to assume that they would receive sufficient daylight. Furthermore, the amended plans show that the roof windows would be positioned further down the roof slope than on the original plans, this would allow an improved and adequate outlook.
14. For these reasons, I conclude that the proposed development would provide acceptable living conditions for future occupiers with regard to outlook and daylight. Hence, it would comply with policy BCS21 of the BCS and Policies DM27 and DM29 of the SADMP. Together these policies, amongst other matters, seek to ensure development delivers high quality urban design, creates a high quality environment for future occupiers, and achieves appropriate levels of privacy, outlook and daylight.

Access to the cycle storage facilities

15. The proposal includes the provision of a cycle storage area for three cycles. This exceeds the minimum standards for cycle parking provision as set out in Appendix 2 of the SADMP. The amended plans show a reconfiguration of the bin and cycle storage areas to provide a wider opening to the cycle store. The cycle store would be accessed directly from the access lane rather than through the entrance hall to the flats, which would allow cycles to be manoeuvred more easily into the store. The width of the access lane widens within a short distance from its initial opening on East Street. Therefore, I am satisfied that the proposal would broadly comply with the Bristol Transport

Development Management Guidance (March 2023). The reconfigured bin store would also provide sufficient space for the storage of individual recycling and refuse containers.

16. For these reasons, I conclude that the proposed development would provide adequate access to the cycle storage facilities. Consequently, this would comply with Policies DM23 and DM32 of the SADMP. These policies, amongst other things, require development to provide safe, secure accessible and usable cycle parking provision and sufficient quantity and quality of recycling and refuse facilities.

Solar photovoltaic panels

17. Policy BCS14 of the BCS requires development to provide sufficient renewable energy generation to reduce carbon dioxide emissions from residual energy use by at least 20%. It does not specify the type of renewable energy technology that should be utilised, or specifically require solar photovoltaic panels to be used.
18. The Sustainability Statement submitted with the planning application demonstrates that the development would provide sufficient energy generation via an air source heat pump to reduce carbon dioxide emissions beyond the minimum 20% required by Policy BCS14 of the BCS. Notwithstanding this, the appellant has submitted amended plans showing the inclusion and positioning of solar photovoltaic panels on the flat roof over the second floor. In addition to the air source heat pump, the solar panels would further help to reduce the site's carbon dioxide emissions.
19. For these reasons, I conclude that the proposed development would utilise solar photovoltaic panels for power generation, although this is not a specific policy requirement. The utilisation of solar panels and the air source heat pump would comply with Policy BCS14 of the BCS which requires development to provide sufficient renewable energy generation to reduce carbon dioxide emissions from residual energy use by at least 20%.

Heritage and Planning Balance

Heritage Balance

20. The harm to the CA as a whole would be less than substantial within the meaning of paragraph 208 of the Framework. Given the limited visibility of the proposed extension from the street and the minor change to the appearance of the frontage, the level of harm would be at the low end of less than substantial.
21. The Framework establishes that where a proposal would lead to less than substantial harm to the significance of a designated heritage asset (in this case the CA), this harm should be weighed against the public benefits of the proposal. It also advises that any harm to the significance of a designated heritage asset should require clear and convincing justification and that great weight should be given to the asset's conservation, irrespective of the level of potential harm.
22. In terms of the benefits, the scheme would provide a boost to housing supply, in an area where the Council is unable to demonstrate a Framework compliant supply of housing land and delivery. The Council has indicated that its housing

supply is less than 4 years. While proposal of two additional dwelling units is small in scale, it would nonetheless make a useful contribution to the housing supply as indicated by paragraph 70 of the Framework. The scheme could be delivered relatively quickly and would provide social and economic benefits during construction and in subsequent occupation.

23. The proposal would make effective use of previously developed underutilised land. Converting space above shops is given as an example in the Framework of the Government's objective to promote and support the development of under-utilised land and buildings, especially if this would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively. The ground floor of the property is in a sui generis use located in a local shopping area. The site is also in a location that is highly accessible by public transport and within walking distance to a wide range of services and facilities.
24. Taken together, these are positive benefits to which I afford very significant weight particularly in light of the housing supply being less than 4 years. I therefore find that the public benefits of the proposal outweigh the harm to the significance of the CA, which in accordance with the Framework, is required to be attributed great weight. The heritage balance, therefore, falls in favour of the proposal in relation to its adverse impact on the CA. I note that the Council arrived at a similar conclusion in the Officer Report and did not object to the proposal with regards to its effect on character and appearance of the CA.

Planning Balance

25. The Council cannot demonstrate the required deliverable housing land. In these circumstances, the presumption in favour of sustainable development as set out in paragraph 11(d) of the Framework is engaged. Consequently, permission should be granted unless (i) policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or (ii) any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
26. For the reasons detailed earlier in this decision, I have found less than substantial harm to the CA and that this harm is outweighed by the public benefits. Therefore, there are no policies within the Framework, including those conserving and enhancing the historic environment, which would provide a clear reason for refusing the development.
27. I have found that the proposal would provide acceptable living conditions for future occupiers with regard to outlook and daylight. It would also provide adequate access to the cycle store and utilise solar panels for power generation. In these regards, the proposal does not conflict with the development plan.
28. When assessed against the policies in the Framework as a whole, I find that the proposed development would not cause any adverse impacts. Consequently, the adverse impacts would not significantly and demonstrably outweigh the benefits. The presumption in favour of sustainable development applies and this indicates that permission should be granted.

Conditions

29. The Council has provided a list of suggested planning conditions, which I have considered against the Framework and advice contained in the Planning Practice Guidance (PPG). I have amended and rationalised them where appropriate in the interests of precision and clarity.
30. Along with the standard time condition, the approved plans should also be specified to provide clarity and certainty. Due to the proximity to residential properties a pre-commencement condition requiring a construction management plan is reasonable and necessary in order to protect the living conditions of nearby occupiers during construction. A condition requiring an Overheating Risk Assessment and, if necessary, mitigation measures, has been included to ensure resilience of the development to climate change and compliance with Policy BCS13 of the BCS.
31. A condition requiring details of the renewable energy technologies to be deployed, including the air source heat pump and solar photovoltaic panels, and their timely installation is needed to ensure the development contributes to mitigating and adapting to climate change. While the Council has only suggested such a condition in relation to the heat pump, the condition should also cover the solar photovoltaic panels for the same reasons. A condition requiring the scheme to be implemented in full accordance with the submitted Sustainability Statement is necessary to ensure the energy efficiency and other specified measures are implemented in order to respond to the challenges of climate change.
32. Details of noise from plant and equipment are required in order to safeguard the amenities of adjoining residential occupiers. Reporting of unexpected contamination and submission of a remediation scheme, where necessary, is required in the interests of human health and the wider environment.
33. A condition requiring the timely provision of the refuse and recycling store and its proper usage has been included to safeguard the amenity of adjoining occupiers. The control of storage in the street is not enforceable as it falls outside of the red line and, in any event, obstruction of the public highway is covered by other legislation. A condition requiring the timely provision of the cycle store and its proper usage is necessary to ensure the provision and availability of adequate cycle parking.
34. Conditions requiring sectional details and external material details are required to ensure preservation or enhancement of the CA.
35. The Council has suggested a pre-commencement condition requiring the developer or occupier to enter an agreement with the Council to produce and implement a strategy that aims to maximise the opportunities for local residents to access employment offered by the development. It has not been demonstrated that it is necessary to make the development acceptable in planning terms. Hence, this obligation would fail to meet the tests in the Regulations. Furthermore, the PPG says that a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence is only appropriate in exceptional circumstances, where there is clear evidence that the delivery of the development would otherwise be at serious risk. I am not convinced that exceptional circumstances exist and there is no clear evidence that the

delivery of the development would be at risk if there were no such obligation. Moreover, the proposal is for the creation of additional dwelling units and would not provide long term employment opportunities.

Conclusion

36. For the above reasons, and having had regard to all other matters, I conclude the appeal should be allowed.

U P Han

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 the following approved plans: PL01: Existing GF Plan; PL02: Existing FF Plan; PL03: Existing Roof Plan; PL04A: Proposed GF Plan; PL05: Proposed FF Plan; PL06A: Proposed 2F Plan; PL07A: Proposed Roof Plan; PL08: Location Plans; PL10: Existing Elevations; PL11A: Proposed Elevations; PL12: Proposed Elevations and the Sustainability Statement dated 9 September 2023,
- 3) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The approved plan shall be adhered to throughout the demolition and construction period. The plan shall include details of:
 - a. The adoption and use of the best practicable means to reduce the effects of noise, vibration, dust (and other air borne pollutants), and site lighting;
 - b. Hours of operation;
 - c. Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - d. Routes for construction traffic;
 - e. Locations for loading/unloading and storage of plant, waste and construction materials;
 - f. Method of preventing mud being carried onto the highway;
 - g. Measures to protect vulnerable road users (cyclists and pedestrians)
 - h. Any necessary temporary traffic management measures;
 - i. Arrangements for turning vehicles;
 - j. Arrangements to receive abnormal loads or unusually large vehicles;
 - k. Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.
- 4) No development (excluding demolition) shall take place until an Overheating Risk Assessment has been submitted to and approved in writing by the local planning authority. If the Overheating Risk Assessment identifies risks of overheating for any of the approved homes, details of mitigation measures that do not increase energy use and carbon dioxide emissions of the

development shall be provided as part of the Overheating Risk Assessment. The approved measures shall then be implemented prior to the first occupation of the approved development. The Overheating Risk Assessment shall be based on a recognised methodology and criteria, such as C.I.B.S.E TM52/ TM59, or equivalent; weather files including 2020, 2050 and 2080; and medium emissions, 50th percentile scenario.

- 5) Prior to commencement of the relevant stage of the development hereby permitted, details and samples of the materials to be used for the external walls and roofs shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved sample details.
- 6) Prior to commencement of the relevant stage of the development hereby permitted, large scale drawings (1:10) of all eaves, verges new and replacement windows (including elevations and sections of the windows, head, sill and window reveal details), rooflights, new and replacement external doors shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 7) Prior to installation of the heat pump and solar photovoltaic panels, details of the exact location, dimensions, technical specification and method of fixing shall be submitted to and approved in writing by the local planning authority. The approved heat pump and solar photovoltaic panels shall be installed and operational prior to the first occupation of the development and retained as operational thereafter in perpetuity.
- 8) Prior to first occupation of the development permitted, an assessment showing that the rating level of any plant and equipment, as part of the development, will be at least 5 dB below the background level, must be submitted to and approved in writing by the Local Planning Authority. The assessment must be carried out by a suitably qualified acoustic consultant/engineer and pursuant to BS 4142:2014. The development shall be managed and maintained in accordance with this assessment in perpetuity.
- 9) Prior to the first occupation of the development hereby permitted, the refuse and recycle store shall be completed in accordance with the approved plans. Thereafter, all refuse and recyclable materials associated with the development shall either be stored within this dedicated store, as shown on the approved plans, or internally within the building(s) that form part of the application site.
- 10) Prior to the first occupation of the development hereby permitted, the cycle parking provision shown on the approved plans shall be completed in accordance with the approved plans. Thereafter, the cycle store shall be kept free of obstruction and available for the parking of cycles only.
- 11) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been

carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.

- 12) The development hereby approved shall incorporate the energy efficiency measures, renewable energy, sustainable design principles and climate change adaptation measures into the design and construction of the development in full accordance with the Sustainability Statement dated 9 September 2023 prepared by PJ Orchard prior to first occupation of the development and thereafter be maintained in perpetuity.

***** End of Conditions *****