



Appeal Decision

Site visit made on 28 January 2025

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 April 2025

Appeal Ref: APP/Z0116/W/24/3349319

22 Kellaway Avenue, Henleaze, Bristol BS6 7XR

- 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 Cardyl Properties Ltd against the decision of Bristol City Council.
 - The application Ref is 23/04748/F.
 - The development proposed is described as “application to convert the existing ground floor health and fitness facility (Use Class E) and combine with existing 1st and 2nd floor small 4-person house in multiple occupation (HMO) to create a single large 8 person HMO (sui generis). External works include replacing the existing shopfront by windows to the communal living space and hall; removing the section of roof which currently covers the path joining the two parts of the building (and a gym room) and inserting roof lights to the rear of the property (above the kitchen and corridor).”
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Cardyl Properties Ltd against Bristol City Council. This application will be the subject of a separate Decision.

Preliminary Matters

3. The appellant has submitted an amended plan detailing bin storage and cycle parking. The amendments seek to address concerns raised by the Council in their reasons for refusal. The amendments are minor and the Council and interested parties have had the opportunity to view the plans and comment. I therefore do not consider that any party has been prejudiced by my accepting the amended plan.

Main Issues

4. The main issues are;
 - Whether the proposal would provide acceptable living conditions for future residents, with particular reference to privacy, outlook, light and external amenity space
 - Whether the proposed development constitutes a loss of an employment use associated, and if so, whether the proposal would meet the requirements of development plan policy; and
 - Whether the proposal would lead to a harmful concentration of houses in multiple occupation in the local area, having regards to local planning policy.

Reasons

Living Conditions

5. There would be no additions to the building to facilitate the proposed development. A covered walkway would be removed to create an open courtyard for communal use by residents of the HMO, and it would provide access to the cycle parking and bin store to the rear of the building.
6. Two of the new bedrooms, detailed as Bedrooms 2 and Bedroom 3 on the submitted drawings, would only have windows facing into the courtyard and associated boundary treatments. Opposite the openings for Bedroom 2, would be a 2.5 metre blank wall, and opposite the windows for Bedroom 3 would be a 2-metre timber fence. The height of the wall and fence combined with their close proximity to the openings would create dominant features that would have an overbearing effect on the outlook from the proposed development and restrict levels of light, harming the living conditions of future occupiers.
7. Furthermore, it is reasonable to expect that occupiers of a HMO, living independently from one another, may choose to spend more time in their private space rather than in the communal areas. As such, occupants of any of the bedrooms would expect a level of privacy. As the only windows serving Bedrooms 2 and 3 face on to the communal courtyard, which is small in scale, any residents using the courtyard would have direct views into these rooms. This would lead to a lack of privacy and would result in significant harm to the living conditions of the future occupiers of Bedrooms 2 and 3.
8. Accordingly, the development would have an unacceptable effect upon the living conditions of future occupiers contrary to CS Policy BCS21 and SADMP Policies DM14, DM27 and DM29. Together these seek to ensure that developments provide healthy living environments and create a high-quality environment for future occupiers.

Employment Use

9. The submissions from both main parties detail the existing use of the appeal site as a gym, which falls under Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO). Class E is a relatively new use class and relates to commercial, business and service uses, and includes uses under the previous use classes A1, A2, A3 and B1.
10. Policies BCS7 and BCS8 of the Bristol Development Framework Core Strategy (2011) (CS) and Policy DM12 of the Bristol Local Plan – Site Allocations and Development Management Policies (2014) (SADMP) seek to protect employment uses. These policies indicate that proposals to change use to any non-employment-generating purpose will need to demonstrate, amongst other criterion, that there is no demand for employment use and that continued employment use would have an unacceptable impact on the environmental quality of the surrounding area.
11. Paragraph 4.8.10 of the CS states that employment uses are generally those activities falling within use classes B1-B8 of the UCO. It is the appellants contentions that, as a gym, the use of the site does not fall under these identified

uses and is therefore not protected by CS Policies BCS7 and BCS8 or SADMP Policy DM12.

12. As noted above, Class E covers a number of commercial, business and service uses. Whilst the appeal building currently hosts a gym, it could change to a variety of uses, including retail, financial services, and those previously covered under use class B1. Due to the inclusion of the previous B1 uses, uses now falling under Class E could be considered as employment uses. As such, in order to demonstrate that there is no demand for an employment use in this location Policy DM12 would need to be satisfied and the building should be marketed. Apart from detailing other similar gym uses nearby no evidence regarding the continued use or marketing of the building has been submitted.
13. There is no substantive evidence here to indicate that either the market conditions or the individual characteristics of the site mean that that an employment use could not resume. Whilst the site is currently in use as a gym, the effect of the proposal would still be the permanent loss of a potential employment site.
14. As such, I find on the first main issue that the proposed development would not be acceptable bearing in mind policies related to retention of employment uses. It would conflict with CS Policies BCS7 and BCS8 and SADMP Policy DM12 which seek, amongst other things, to safeguard existing employment uses. It would also be contrary to paragraph 85 of the National Planning Policy Framework (the Framework) which states that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development.

Mix and Balance of Housing

15. The appeal site is a mid-terrace, two-storey property located in an area predominantly characterised by ground floor commercial units with residential uses above. The appeal building has a gym to the ground floor and an HMO to the first. It is served by a paved area to the front, used as off-street parking and cycle parking. To the rear is a lane which is accessed from Bishop Road, where the rear of the building can be accessed. During my site visit an area immediately adjoining the rear of the appeal building was being used to store refuse bins.
16. SADMP Policy DM2 sets out the circumstances where the intensification of an HMO will not be permitted. These include where the development would result in a harmful concentration of such uses, resulting from: i) levels of activity that cause excessive noise and disturbance to residents, or ii) levels of on-street parking that cannot be reasonably accommodated or regulated through parking control measures, or iii) cumulative detrimental impact of physical alterations to buildings and structures, or iv) inadequate storage for recycling/refuse and cycles.
17. The Council's supplementary planning document Managing the Development of Houses in Multiple Occupation (2020) (SPD) advises that more than 10% HMOs in any neighbourhood is considered a likely tipping point, beyond which negative impacts to residential amenity and character are likely to be experienced and housing choice and community cohesion start to weaken.
18. The Council have undertaken an assessment of the numbers of HMOs in the area, detailing 7 within 100 metres of the appeal site, which would equate to 9.1% of properties being HMO's. Whilst the Council raise concerns that this is close to the

threshold, the numbers would remain below the 10%. Whilst the Council's figure is only marginally below the 10% threshold, it would, according to the Council's own SPD, not reduce the choice of family homes in the area or undermine the objectives of SADMP Policy DM2 and the SPD.

19. The SPD goes on to state that proposals for additional bed spaces within existing HMOs sandwiching residential property are unlikely to be consistent with policy. The SPD provides examples of sandwiching scenarios, with one example being up to three single residential properties in a street located between two single HMO properties. No 14 Kellaway Avenue is an existing HMO property and the addition of HMO bedrooms at No 22 would sandwich No's 16, 18 and 20 between them. However, the SPD further states that such proposals are unlikely to be consistent with Local Plan policy, not that they are automatically contrary to it. Accordingly, an assessment of each scheme is required, considering those specific matters listed in policy DM2.
20. In respect to noise and disturbance to residents the first floor is already in use as an HMO and the ground floor as a gym, which is likely to have associated comings and goings and noises, such as music. Given the existing gym use, the proposed layout together with the first floor HMO use, the addition of four bedrooms would not result in an increase in noise and disturbance that would harmfully affect nearby residents. I have had regard to the Council's delegated report that concludes that the alterations, being internal, would not harm neighbours and no concerns were raised by the Council's Pollution Control team.
21. In respect to cycle parking, refuse space and on-street parking, the Council have raised concerns that inadequate levels of cycle parking could lead to the use of private vehicles and cause an on-street parking problem. Cycle parking is available to the front of the site; however, the Council consider that this could be removed as it is not within the ownership of the appellant. The submitted plans details an area to the rear of the building, and within the red outline, where 2 bike hangers would be located (accommodating 8 bikes). This would be adjacent to a bin store.
22. The provision of 8 spaces would ensure that each resident would have access to secure cycle parking. The Council's concerns regarding on-street parking only relate to the lack of cycle parking. Furthermore, the plans detail the provision of 180 litres of refuse space, 100 litres of recycling space and 23 litres of food waste space, with additional space for further bins if necessary. This would adequately accommodate the proposed development. There is no substantive evidence that would lead me to conclude that harm results in respect of these issues.
23. In relation to the impact of physical alterations, the Council's concerns relate to the loss of the shop front. The appeal site is located in an area predominantly characterised by ground floor commercial uses with residential uses located to the first floor and rear. Whilst most buildings along the street scene have a commercial use to the ground floor, this is broken by a residential use at No 6.
24. The proposed development would result in the removal of a shop front and replacement with a window and door, giving it the appearance of a residential dwelling. It would be similar in appearance to the other residential building at No 6. Whilst the proposed development would result in a break in the commercial

frontages, it would only be a loss of one unit out of a terrace of some 14 units. The predominant character of the street scene would remain commercial.

25. The appellant has sought to demonstrate that there is no shortage of family housing in the area by providing details of properties for sale and rent near the appeal site. Whilst this demonstrates that family housing exists in the area, it does not demonstrate that sufficient levels of such housing has been provided.
26. Therefore, despite the existing concentration of HMOs in the area, I conclude on this main issue that the proposed development would not lead to increased harm in terms of local amenity, neighbours' living conditions or social cohesion and regarding these matters it would accord with the relevant criteria of SADMP Policies DM2, DM23 and DM32, CS Policy BCS10 and the guidance contained within the SPD.

Other Matters

27. The appellant has drawn my attention to a prior approval that has been granted at the appeal site since the Council determined the appeal scheme for the conversion of the ground floor commercial use to a single flat.
28. In this case I find that there is a real possibility that the extant permissions would be implemented should the appeal fail. Consequently, although the prior approval process is separate to that of a full planning application, and while it should not automatically guarantee permission for residential development, the fallback position is an important material consideration in the determination of this appeal.
29. The implementation of the extant permission would see the change of use of the ground floor gym to a residential flat. The effect of the conflict of the proposal with the development plan in respect of the loss of employment land and uses would therefore be similar to that from the implementation of the extant permission. Albeit the appeal proposal would result in additional HMO bedrooms compared with the flat allowed under the extant scheme.
30. I do not have full details of the prior approval scheme before me, nevertheless the effect of the scheme would be the loss of the employment use. In this case, having regard to the fallback position, I find that conflict with the development plan in respect of the loss of employment land or use, is outweighed.
31. Whilst I have found the fallback position to overcome concerns relating to the loss of employment land, it does not overcome the harm I have identified in respect to the living conditions of future occupiers. The extant permission is for a single flat and not for a HMO, in this respect the schemes and their impacts are not directly comparable.

Conclusion

32. For the reasons given above the appeal should be dismissed.

Tamsin Law

INSPECTOR

