

Decision Notice and Statement of Reasons

Site visit made on 10 September 2024

By Hannah Ellison BSc (Hons) MSc MRTPI

A person appointed by the Secretary of State

Decision date: 24 September 2024

Application Reference: S62A/2024/0053

Site address: Building 11, Explore Lane, Bristol BS1 5TY

- The application is made under section 62A of the Town and Country Planning Act 1990.
 - The site is located within the administrative area of Bristol City Council.
 - The application dated 3 July 2024 is made by Canada Life Asset Management and was validated on 1 August 2024.
 - The development proposed is the use of part of the roof area as an outdoor terrace, comprising the provision of a metal canopy frame with retractable sunshade, glass balustrade and acoustic screen and provision of biodiverse green roof to part of roof top plant room.
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Decision

1. Planning permission is granted for the use of part of the roof area as an outdoor terrace, comprising the provision of a metal canopy frame with retractable sunshade, glass balustrade and acoustic screen and provision of biodiverse green roof to part of roof top plant room in accordance with the terms of the application dated 3 July 2024, subject to the conditions set out in the attached schedule.

Statement of Reasons

Procedural Matters

2. The application was made under Section 62A of the Town and Country Planning Act 1990, which allows for applications to be made directly to the Planning Inspectorate where a Council has been designated by the Secretary of State. Bristol City Council (BCC) has been designated for non-major applications since 6 March 2024.
3. Publicity of the application has been carried out in the Bristol Evening Post and by way of a site notice. Consultation was also undertaken which allowed for responses by 6 September 2024. Responses were received from interested parties and a local resident and I have taken into account all written comments in reaching my decision.

4. BCC submitted a completed questionnaire with relevant information as well as a statement and list of suggested planning conditions. BCC's response indicates that it does not object to the planning application, subject to the attachment of a number of conditions.
5. I carried out a site visit on 10 September 2024, which enabled me to view the site internally and externally, as well as the surrounding area.

Background

Relevant Planning History

6. This application concerns part of a unit within building 11 on Explore Lane which is currently occupied by a casino. Planning permission was granted in February 2024 for the change of use of part of the internal floorspace and part of the roof area of the application unit from use as a casino to use as a restaurant/drinking establishment with expanded food provision; the provision of a mezzanine floor to serve the new restaurant/drinking establishment; external alterations to part of the roof area and other external alterations¹.
7. It should be noted that, following concerns from BCC, the outdoor roof terrace element was omitted from the proposed development which then led to the approval of the planning application.
8. A subsequent planning application was submitted to BCC which expands upon the above permission by providing a more flexible unit through the inclusion of additional uses namely Use Class E(d) and a comedy club². At the time of this decision I have not been made aware that BCC has made a decision on that application.

The Proposal

9. Planning permission is sought for the conversion and use of part of the roof area of Building 11 as an outdoor terrace associated with the previously permitted change of use as referred to above. Permission is also sought for a metal canopy frame with retractable sunshade which would cover the entire length of the terrace, along with glass balustrades around the perimeter. A biodiverse green roof would also be provided to part of the rooftop plant room.

Main Issues

10. Having regard to the application, the consultation responses, comments from interested parties and the information from BCC, together with what I saw on site, the main issues for this application are:
 - whether the proposal would preserve or enhance the character or appearance of the City Docks Conservation Area, and its effect on the setting of nearby listed buildings;

¹ Council ref: 23/00975/F

² Council ref: 24/02543/F

- the effect of the proposal on the living conditions of neighbouring residential occupiers with particular regard to noise and disturbance; and
- the effect of the proposal in respect of biodiversity.

Reasons

Character and Appearance and Heritage Assets

11. The application site is located within Bristol city centre within the Harbourside mixed use area which comprises offices, residential, commercial and cultural uses. The site is located in part of the mixed commercial Building 11 on Explore Lane, which fronts Millenium Square.
12. The site is located within the City Docks Conservation Area (the CA). The significance of the CA, as noted in the City Docks Character Appraisal and Management Proposals (December 2011) (the CA Appraisal), is derived from the maritime history of the former port/docks, the intimate relationship of the Floating Harbour to the city and the physical proximity of the docks to the public realm.
13. The area has undergone urban renewal and has evolved into a district of the city which provides a range of land uses, building types, attractions and facilities, along with features of historical, architectural and industrial archaeological interest. Notably, it is the retention and balance of domestic, commercial or industrial accommodation adjoining the harbour that has given the CA its interesting character. The character of the CA also lies in the quality and diversity of its local details such as street furniture, dock fittings, surfaces, the remains of railway lines, and the buildings.
14. There are also a number of listed buildings and assets in the area around the application site. This includes the grade I Bristol Cathedral, whose significance lies in its age, materials, plan form, prominent towers and the richly decorated architectural detailing and features both inside and out.
15. The Council has raised no concerns with the impact of the proposal on the setting of the cathedral. Given its positioning on higher ground to the north, the distance between it and the application site and the numerous intervening buildings many of which are of a considerable size, I also find that the proposal would have a neutral effect on its setting and features of special interest.
16. Of the various nearby listed assets, the proposal does however have the potential to affect the setting of the grade II listed Canon's House which is located immediately to the south of the application site. This heritage asset is the former offices for Lloyds Bank and is a building of three distinct entities: one office range in the form of an arc which reflects the curve of the harbour wall and creates the semi-circular amphitheatre, a rotunda with landscaped internal courtyard and the main entrance to the north which links both office ranges.

17. The significance of Canon's House lies in its architectural and historic interest, along with its group value with the listed crane base which forms the centrepiece of the amphitheatre. It is a monumental and distinctive harbourside landmark of accomplished post-modern design and an inventive interpretation of the classical idiom to create a building with strong civic presence, dignity and playfulness, and a beacon in the post-industrial redevelopment of Bristol's docks and the regeneration of the derelict harbourside.
18. The host building within which the application site is located is a large, modern building within a wider contemporary mixed-use development. The building has a good degree of symmetry, which is most readily experienced when viewed from Millenium Square, Cannons Way and Millenium Promenade. Longer range views of the entire building are interrupted by intervening built form.
19. The building is identified within the CA Appraisal as a character building which makes a positive contribution to the overall character and sense of place of the CA and whose value is in its overall scale, form, materials or date, which helps form the built backcloth for the area.
20. When viewing from close-range, the proposed terrace would not be overly prominent due to its generous set-back from the edge of the building. Activity at this high level would therefore be barely perceptible from public vantage points, thus there would be an insignificant effect to the symmetry of the building.
21. Some views of the proposed sunshade and its frame may be achieved however the choice of materials, proportions and overall modern design would reflect the existing features and distinctiveness of the host building. As such, these elements of the proposal would be inconspicuous and would comfortably integrate with the surroundings.
22. With regards to the potential for the placing of various features such as lighting structures, heat lamps and planters, this paraphernalia would be typical of the proposed use. Moreover, I consider that due to the restricted size of the proposed terrace along with the limited views which could be obtained from public vantage points, the proposal would not result in substantial or harmful visual clutter.
23. Overall, the proposal is of a scale and design which would complement the thriving leisure and cultural destination of this part of Bristol. It would not visually compete with or distract from the special interest of the aforementioned heritage assets, nor affect important views of them.
24. Taking all the above into consideration, the proposal would preserve the significance of Canon's House and would have a neutral effect on both the character and appearance of the CA, thus also preserving its significance. As such, the proposal accords with the aims of policies BCS21 and BCS22 of the Bristol Development Framework Core Strategy (June 2011) (the CS) and policies DM26, DM30 and DM31 of the Bristol Local Plan – Site Allocations and Development Management Policies (July 2014) (the LP).

25. Together, they policies seek to ensure that development respects the character and appearance of the area and conserves and/or enhances heritage assets and their settings. It would also accord with the similar aims set out in section 16 of the National Planning Policy Framework (the Framework).

Living Conditions

26. The proposed terrace would be positioned along part of the southern side of the host building, close to leisure use frontages. The nearest residential properties are located in the adjacent building, Waverley House. Given the location of these residential properties within this vibrant locality resulting from the diversity of uses and attractions, residents would expect a level of activity and a degree of noise.
27. Regardless, the proposed terrace would not be of a significant size and would be a considerable distance from the nearest properties. The proposed hours of operation, which the Council are satisfied with, and the submission of details of an acoustic barrier which are to be submitted and approved prior to first use of the terrace, would mitigate against harmful levels of noise and disturbance, including in the evening when residents may be sleeping and have windows open.
28. Furthermore, even with the proposed sunshade and likely features such as heaters, the area is unlikely to be used on a daily basis throughout the year, but rather on days of fair and good weather.
29. Given the good distance between the proposal and nearest residential properties, along with the design of the proposal and boundary treatments, the proposed use would not be a harmful visual distraction nor would any privacy concerns arise.
30. Accordingly, the proposed development would not cause harm to the living conditions of neighbouring residential occupiers and thus it accords with Policy BCS23 of the CS and Policy DM33 of the LP. Together, whilst varying slightly in their wording, these policies seek to ensure that developments avoid adversely impacting upon amenity.

Biodiversity

31. A Biodiversity Net Gain Assessment (the BNGA) has been submitted to support the planning application. The BNGA sets out that the biodiversity value attributable to the development exceeds the pre-development biodiversity value of the onsite habitat by at least the relevant percentage of 10%. The actual value which this proposal aims to achieve is 31.12% and this would be through the provision of the biodiverse green roof to the roof top plant room of the application site. The BNGA has been informed by the statutory biodiversity metric.
32. The Planning Practice Guidance (PPG) advises that the statutory framework for biodiversity net gain has been designed as a post-permission matter to ensure that the biodiversity gain objective of achieving at least a 10% gain in biodiversity value will be met for development granted planning

permission. Therefore, a subsequent Biodiversity Gain Plan must be submitted and approved prior to the commencement of development.

33. Notwithstanding this matter, due to the findings of the initial BNGA I consider it likely that the biodiversity gain objective can be met and thus the biodiversity gain condition is likely to be capable of being discharged successfully. Accordingly, the proposal would likely have a positive effect on biodiversity.

Conditions

34. I have considered the planning conditions suggested by BCC and I have imposed those that meet the tests for conditions as set out in the Framework at paragraph 56. I have amended the wording where appropriate in the interests of clarity and to prevent the use of unnecessary pre-commencement conditions. The reasons for imposing undisputed conditions are clearly and precisely set out under each condition imposed in the decision notice thus I shall not repeat them here.
35. I have amended the condition which restricts the hours of use of the terrace as the hours suggested by BCC would have prevented its use throughout the day.
36. Conditions requiring the submission of a management plan for the placing of structures on the terrace and the submission of details of the retractable sunshade are not necessary given my findings above regarding their effect on the character of the area and heritage assets. I have however attached a condition which requires the sunshade to be finished in a grey colour.
37. The suggested condition which prevents the use of a smoking area is not necessary as this does not form part of the proposed development.
38. The biodiversity gain condition is deemed to apply to every planning permission granted for the development of land in England unless exemptions on transitional provisions apply. There are separate provisions governing the biodiversity gain plan. Due to this separate statutory basis the PPG makes it clear that it is not necessary to include the biodiversity gain condition in the list of conditions imposed in the written notice when granting planning permission. A paragraph on biodiversity gain is included within the list of informatives.
39. The onsite habitat enhancement resulting from the proposal will be required to be maintained for at least 30 years after the development is completed. The applicant has suggested a condition to this effect thus indicating their agreement to the use of pre-commencement conditions where these meet the tests of Paragraph 56 of the Framework in accordance with Section 100ZA of the TCPA. I have attached this condition in the interests of securing habitat benefits.

Conclusion

40. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance

with the development plan unless material considerations indicate otherwise. I find the proposed development would comply with the aforementioned policies of the CS and the LP and so it would accord with the development plan when read as a whole. There are no considerations that justify making a decision contrary to the development plan.

41. I therefore conclude that planning permission should be granted subject to conditions.

H Ellison

Inspector and Appointed Person

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.

Reason: In accordance with Section 92 of the Town and Country Planning Act 1990 as amended by section 51 of the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 3716-HAR-SRA-XX-XX-DR-A-PL-200 – Location Plan
 - 3716-HAR-SRA-XX-XX-DR-A-PL-201 – Block Plan
 - 3716-HAR-SRA-XX-XX-DR-A-PL-202 – Site Plan
 - 3716-HAR-SRA-XX-XX-DR-A-PL-225 - Level 1 Proposed
 - 3716-HAR-SRA-XX-XX-DR-A-PL-227 - Level 2 Proposed
 - 3716-HAR-SRA-XX-XX-DR-A-PL-230 – Level 3 Mezzanine Proposed
 - 3716-HAR-SRA-XX-XX-DR-A-PL-231 – Level 4 Proposed
 - 3716-HAR-SRA-XX-XX-DR-A-PL-232 – Roof Plan Proposed
 - 3716-HAR-SRA-XX-XX-DR-A-PL-235 – East and South Elevations Proposed
 - 3716-HAR-SRA-XX-XX-DR-A-PL-236 – East and South Elevation
 - 3716-HAR-SRA-XX-XX-DR-A-PL-237 - West and North Elevations Proposed
 - 3716-HAR-SRA-XX-XX-DR-A-PL-238 - West Elevation
 - 3716-HAR-SRA-XX-XX-DR-A-PL-240 – Section AA Proposed

Reason: To ensure the development is built in accordance with the approved plans and in the interests of the character and appearance of the area in accordance with policies BCS21 and BCS22 of the Bristol Development Framework Core Strategy (June 2011) and policies DM26, DM30 and DM31 of the Bristol Local Plan – Site Allocations and Development Management Policies (July 2014).

3. The development shall not commence until a 30 year Habitat Monitoring and Management Plan (HMMP), prepared in accordance with an approved Biodiversity Gain Plan, has been submitted to and approved in writing by the local planning authority. The approved HMMP shall be strictly adhered to and implemented in full for its duration and shall contain the following:
 - a) Description and evaluation of the features to be managed;
 - b) Ecological trends and constraints on site that may influence management;
 - c) Aims, objectives and targets for management - links with local and national species and habitat action plans;
 - d) Description of the management operations necessary to achieving aims and objectives;
 - e) Prescriptions for management actions;
 - f) Preparation of a works schedule, including annual works schedule;
 - g) Details of the monitoring needed to measure the effectiveness of management;
 - h) Details of the timetable for each element of the monitoring programme;
 - i) Details of the persons responsible for the implementation and monitoring;
 - j) mechanisms of adaptive management to account for necessary changes in work schedule to achieve the required targets; and

k) Reporting on year 1, 2, 5, 10, 20 and 30, with biodiversity reconciliation calculations at each stage.

Reason: To enhance biodiversity in accordance with the National Planning Policy Framework.

4. Prior to the first use of the terrace hereby approved, details of the acoustic screen shall have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to first use and retained thereafter.

Reason: To protect the amenity of neighbours in accordance with Policy BCS23 of the Bristol Development Framework Core Strategy (June 2011) and Policy DM33 of the Bristol Local Plan – Site Allocations and Development Management Policies (July 2014).

5. Prior to the first use of the terrace hereby approved, the upgraded green roof, which shall be carried out and maintained in accordance with an approved Biodiversity Gain Plan and Habitat Monitoring and Management Plan, shall be implemented in full and retained thereafter.

Reason: To enhance biodiversity in accordance with The National Planning Policy Framework

6. The retractable sunshade shall be finished in a grey colour and retained thereafter as such.

Reason: In the interests of the character and appearance of the area in accordance with policies BCS21 and BCS22 of the Bristol Development Framework Core Strategy (June 2011) and policies DM26, DM30 and DM31 of the Bristol Local Plan – Site Allocations and Development Management Policies (July 2014).

7. The terrace hereby approved shall not be open to customers for the consumption of food or beverages between 23.00 and 08.00 daily.

Reason: To protect the amenity of neighbours in accordance with Policy BCS23 of the Bristol Development Framework Core Strategy (June 2011) and Policy DM33 of the Bristol Local Plan – Site Allocations and Development Management Policies (July 2014).

END OF CONDITIONS

Informatives

- i. In determining this application no substantial problems arose which required the Planning Inspectorate, on behalf of the Secretary of State, to work with the applicant to seek any solutions.
- ii. The decision of the appointed person (acting on behalf of the Secretary of State) on an application under section 62A of the Town and Country Planning Act 1990 is final, which means there is no right to appeal. An application to the High Court under s288(1) of the Town and Country Planning Act 1990 is the only way in which the decision made on an application under Section 62A can be challenged. An application must be made within 6 weeks of the date of the decision
- iii. These notes are provided for guidance only. A person who thinks they may have grounds for challenging this decision is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655) or follow this link: <https://www.gov.uk/courts-tribunals/planning-court>
- iv. The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition ("the biodiversity gain condition") that development may not begin unless:
 - (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
 - (b) the planning authority has approved the plan.The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan if one is required in respect of this permission would be Bristol City Council.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are listed in paragraph 17 of Schedule 7A of the Town and Country Planning Act 1990 and the Biodiversity Gain Requirements (Exemptions) Regulations 2024. Based on the information available this permission is considered to be one which will require the approval of a biodiversity gain plan before development is begun because none of the statutory exemptions or transitional arrangements listed are considered to apply.
- v. Responsibility for ensuring compliance with this Decision Notice rests with Bristol City Council, and any applications related to the compliance with the conditions must be submitted to Bristol City Council.

END OF INFORMATIVES