
Appeal Decisions

Site visit made on 28 November 2016

by Tim Wood BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 December 2016

Appeal Ref: APP/N1730/W/16/3157855

Vantage House, Meridian Office Park, Osborn Way, Hook RG27 9HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mountgreen Ltd against the decision of Hart District Council.
 - The application Ref 16/01681/PRIOR, dated 24 June 2016, was refused by notice dated 19 August 2016.
 - The development proposed is change of use of offices (Class B1a) (first and second floors only) to form 9 apartments.
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Appeal Ref: APP/N1730/W/16/3157868

Vantage House, Meridian Office Park, Osborn Way, Hook RG27 9HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mountgreen Ltd against the decision of Hart District Council.
 - The application Ref 16/01683/PRIOR, dated 24 June 2016, was refused by notice dated 19 August 2016.
 - The development proposed is change of use of office to form 15 apartments.
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Decisions

1. Both appeals are dismissed.

Preliminary Matters

2. The Town and Country Planning (General Permitted Development) (England) Order, as amended (GPDO), at Part 3, Class O requires consideration as to whether the prior approval of a local planning authority will be required in relation to the impacts of noise from commercial premises on the intended occupiers of the development and in relation to transport and highways impacts of the development.

Main Issues

3. The main issues in these appeals are the effects of the proposal in relation to noise and highways.

Reasons

Noise impacts on intended residents

4. The appellants submitted an assessment of the noise environment and of their view of the effects on future residents. The Council were critical of the

- submitted assessment due to the alleged limited extent of time over which the assessment was carried out and the alleged failure to include an assessment of peaks in noise created by sudden and short lived events. The Council also consider that if a suitable residential environment can only be created inside the buildings by ensuring that windows are kept closed, this is not reasonable.
5. The appellants have undertaken a 3 day noise survey in order to provide information for their assessment of the proposal. Initially, these figures are presented as averages over the day-time (16 hours) and night-time (8 hours) periods. The appellants have then also presented figures for internal noise levels. Comparing these with the noise levels set out in BS8233: 2014, the noise levels presented by the appellants exceed those in BS8233 being 39 dB(A) in the day-time and 32 dB(A) at night-time which exceed the desirable levels of 35 dB(A) and 30 dB(A) respectively.
 6. In relation to the peaks in noise, the appellant has responded with figures which indicate that the W.H.O Guideline is exceeded 11 times during the night-time. The appellant presents the Guideline as stating that indoor sound levels should not exceed L_{Amax} 15min 45dB more than 10-15 times per night, and the measured highest level was 53dB. However, the W.H.O. Guideline indicates that the maximum noise level should be measured as "L_{Amax} fast" wherein there is little scope to present an average over time. It would appear that the appellant has applied a 15 minute time period over which to present the maximum peak noise event and, if this is the case, it would present a rather diluted picture of the true effects of a short and loud event; in this respect the "L_{Amax} fast" refers to a time period of a fraction of a second.
 7. Given that the proposed use is one which should be afforded some sensitivity I am concerned that the rather limited time period over which the noise measurements were taken does not provide a sufficiently comprehensive picture of the noise environment. This combined with the fact that the desirable noise levels are exceeded and the night-time levels may not be presented in the most helpful form leads me to consider that the noise environment is one which would give rise to a residential environment which is not acceptable. The mitigation proposed would mean that residents would be required to have closed windows so that they were not affected unreasonably by noise (and this is based on the assumption that the figures presented can be relied upon, and for the purposes of this appeal, I have set out why I think that they cannot). I consider that this would represent an unreasonable limitation to their living conditions and one which should not be imposed upon them.
 8. Therefore, in relation to this issue, I consider that the evidence before me does not demonstrate that intended residents would not be subjected to unacceptable noise impacts.

Highways impacts

9. The Council have identified that the existing layout of the road and pavement does not provide a safe and suitable pedestrian route to the appeal site to and from Station Road. The appellants have included within the scheme provision for amendments to the highway in order to resolve this matter and suggest a Grampian type condition is used to ensure its provision. The Council have responded that the appellants do not own or control the un-adopted road here and so there is very little prospect of the works being carried out and, in such circumstances, the Council states that the granting of the appeal and the

imposition of such a condition would be contrary to the advice in the national Planning Practice Guidance (PPG).

10. In relation to this issue the Council and the appellants have offered varying legal opinions as to whether the appellants can legally undertake any such works to the road and its verge and footway. Whilst it is not for me to seek to resolve the difference in views put forward, I take note of the wording within the PPG which states that *"Conditions requiring works on land that is not controlled by the applicant, or that require consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. It may be possible to achieve a similar result using a condition worded in a negative form (a Grampian condition)- ie prohibiting development authorised by the planning permission or other aspects linked to planning permission (eg occupation of premises) until a specific action has been taken (such as the provision of supporting infrastructure). Such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission."*
11. Whilst the evidence before me suggests that some doubt may be cast on the ability of the appellants to legally undertake the works to the road/verge/footway, the PPG sets a stringent test and my view is that it could not be said that "there are no prospects at all" of the actions being performed. Therefore, I am satisfied that it is appropriate to consider the imposition of such a condition in this case, had the appeal been acceptable in all other respects. In addition, on the basis of the evidence before me, I am satisfied that a suitable gradient on the proposed footway could be achieved.
12. The appellants have submitted additional evidence late in the appeal proceedings which takes a slightly different direction. Up until this point they appeared to be satisfied that the principle of undertaking the works to the highway was relevant and acceptable. However, the latest evidence suggests that it is not within the scope of the Prior Approval procedure for this appeal to consider this matter. Most relevant, the appellants state that the provisions under Class O permit no more than a consideration of the impact of the proposed development, if any, on the existing traffic and highway conditions in the vicinity and they do not permit the planning authority to consider the effect of the existing road conditions on the merits of the proposal.
13. The conditions attached to Class O at O.2-(1) state that development under Class O is permitted subject to the condition that before beginning the development the developer must apply to the planning authority for a determination as to whether their prior approval is required as to (a) transport and highways impacts of the development, plus other matters. The appellants suggest that this wording, particularly when seen along with the wording of the other matters, restricts consideration and prevents the Council (and others) from considering how the existing highway will affect the proposed development. In short, I disagree; in my view the "traffic and highways impacts of the development" can legitimately include the consideration of the use of the highway by future residents and their safety as well as the safety of others, when doing so. If the proposal would give rise to conditions which are not safe on the highway (and it appears that the appellants agree that it would, in the absence of the suggested works), then this is covered by the "traffic and highways impacts of the development".

Even when looking at the other sections of the GPDO as suggested by the appellants, I find that their view is not supported.

Conclusions

14. For the reasons given above and having taken account of all other matters raised, I conclude that the appeals should be dismissed.

S T Wood

INSPECTOR