

Appeal Decision

Site visit made on 20 February 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 27th February 2017

Appeal Ref: APP/M4510/W/16/3164189

128 Shields Road, Newcastle upon Tyne, NE6 1DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Ahmed against the decision of Newcastle-upon-Tyne City Council.
 - The application Ref 2016/1210/01/DET, dated 7 March 2016, was refused by notice dated 26 September 2016.
 - The development proposed is described as 'change first floor and loft space to residential and build first floor kitchen extension to the rear.'
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issue in this case is:
 - The effect of the proposal on the living conditions of future occupiers with specific reference to noise and disturbance, light and outlook.

Reasons

3. The appeal property is situated on the south side of Shields Road and consists of a café and takeaway on the ground and first floor and associated office on the second floor in the roof space. The unit was occupied by a restaurant and takeaway (A3 Use Class) at the time of my site visit. Adjacent to the east is a public house and to the west is a sandwich shop.
 4. It is proposed to change the use of the first floor restaurant (A3) and second floor office (A2) to residential (Class C3) and to erect a first floor extension to the rear. The Council do not raise concerns regarding the ground floor alterations or the first floor extension in terms of character and appearance and from everything which I have seen in submissions and on my site visit I have no reason to disagree.
 5. The proposed residential unit would be situated above the existing restaurant/takeaway. Restaurants and hot food takeaways have the potential to adversely affect the living conditions of nearby residents by virtue of noise caused by cooking inside the premises and noise and general disturbance caused by customers and delivery vehicles coming and going outside the premises.
 6. Noise would arise from the chatting of customers in the restaurant and customers of a hot food takeaway would have to wait whilst their food was being prepared resulting in customers congregating in the waiting area or even outside. Any noise generated in the property itself is likely to be experienced by the proposed flat as it would be situated immediately above. Such effects can be particularly intrusive
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when they take place late into the evening when other background noise levels generally diminish.

7. The proposed residential unit is also likely to be subject to noise from the adjacent public house which is open until 2300. Noise is likely to arise from customers chatting, music, the arrival and departure of customers and customers congregating outside at a time when occupiers could reasonably expect to relax in the property.
8. In addition, Shields Road is a busy road and a main bus route. The appeal property is situated close to a junction with traffic lights. Cars, buses and lorries will stop at the traffic lights and pull away in low gear with the resultant engine noise. Indeed, I noticed on my site visit that traffic was a significant source of noise. Furthermore, lorries use the lane to the rear to make deliveries to the commercial units which would result in additional traffic noise to the rear of the property. Moreover, a flue is situated on the rear of the property serving the existing restaurant which could also be a potential source of noise. Taking these factors in combination, I consider the proposed residential unit would be subject to significant noise and disturbance arising from a number of sources to the detriment of future occupiers.
9. The World Health Organisation (WHO) Guidelines for Community Noise 1999 gives guidance on suitable internal and external noise levels, for steady sound in an around residential properties which recommends 39 dB L_{Aeq} in bedrooms with <45 dB L_{Amax} over 8 hours at night; 35 dB L_{Aeq} in living rooms over 16 hours in the day; and 45 dB L_{Aeq} outside bedrooms with an open window over 8 hours at night. In general, background sound levels exceeded by more than 5dB may cause disturbance at noise sensitive receptors.
10. An Acoustic Report (the Report) was submitted with the application which estimates the potential noise levels arising from the public house, the restaurant/café and the road. It then assesses the potential noise level transfer through party walls, the floor and the first floor window in order to determine the potential noise which would be experienced in the proposed unit.
11. The Report acknowledges that improvements would be required including additional dot and dab plasterboard finish to walls, acoustic boarding against the ceiling in the restaurant and secondary glazing to the windows. The effectiveness of these measures is assessed and the Report concludes that with those improvements the noise levels experienced in the proposed flat shall not exceed 30dB.
12. The Council has raised concerns regarding the Report and having reviewed the Report, I share those concerns. Before a judgement can be made on the likely impact of a development, it is necessary to have a full understanding of the existing noise climate in the vicinity of the receptor which would be achieved by carrying out a survey of background and ambient noise levels which are representative of the times and days when the noise source will be operational. The appellant has not carried out a survey of background and ambient noise in order to provide a baseline for the assessment of predicted noise levels which would be experienced within the proposed unit.
13. Furthermore, a number of assumptions have been applied in the Report without the evidence to support them. For example, the Report estimates the predicted noise levels (paragraphs 2.1.2 and 2.13); however, no actual measurements have been undertaken to support those figures. Assumptions have also been made regarding the thickness of the existing walls, party walls and 1st floor ceiling thickness without a survey having been undertaken to support those assumptions. The predicted noise level transfer is then assessed on the basis of those assumptions. The Report

has, therefore, been undertaken without any detailed noise measurements and on the basis of a series of assumptions and is, therefore, fundamentally flawed.

14. Consequently, on the basis of this evidence, I cannot be certain that even with the suggested improvements that the noise and disturbance arising from surrounding uses would be attenuated. Furthermore, given the close proximity of commercial uses it would not be reasonable to leave the acceptability of any such noise measures to be approved by way of planning condition.
15. In addition, two of the internal bedrooms would have no windows. Those bedrooms would not receive any natural light and the occupiers would have no outlook which would result in unacceptable living conditions for future occupiers. The appellant has suggested a condition requiring that bedroom windows have external windows; however, as bedroom 2 adjoins a party wall and as bedroom 3 is entirely internal to the property, a condition could not possibly achieve the desired outcome.
16. Attention is drawn to the adjacent Heaton House Public House which the appellant considers has planning permission to be converted into residential units on the upper floors. Attention is also drawn to the former Lloyds Bank which the appellant considers has been converted into residential units. However, no details are provided of those cases and I am not aware of the evidence which was before the Council when it determined those applications. I cannot, therefore, be certain that the cases are directly comparable to the appeal proposal which limits the weight which I can attach to them in my Decision.
17. For the reasons stated above, I conclude that the proposal would be harmful to the living conditions of future occupiers with specific reference to noise and disturbance, light and outlook. The proposal would, therefore, be contrary to Policy POL8 of the Newcastle upon Tyne Unitary Development Plan (UDP) 1998 which states that noise sensitive development exposed to unacceptable levels of noise from roads, industrial areas or other noise generating uses will only be allowed if it complies with the development control policy statement 22-Noise and Vibration and incorporates satisfactory attenuation measures.
18. The proposal would also be contrary to criterion E of Policy H2 of the UDP which seeks to ensure that non-residential development and/or associated operations will not harm residential amenity through an increase in noise, disturbance, smells, fumes or other harmful effects. Furthermore, conflict arises with criterion B of Policy H4 of the UDP which requires good standards of outlook, natural light and privacy in all housing developments. Finally, conflict arises with paragraph 123 of the National Planning Policy Framework which states that decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life as a result of new development.

Other Matters

19. The proposal may bring some benefits in terms of a contribution, albeit limited, to housing supply. However, the benefits would be significantly outweighed by the harm which I have identified.

Conclusion

20. For the reasons stated and taking all other matters into consideration, the appeal should be dismissed.

Caroline Mulloy

Inspector