
Appeal Decision

Site visit made on 23 January 2017

by Rachel Walmsley BSc MSc MRTPI

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

Decision date: 17 March 2017

Appeal Ref: APP/P4605/W/16/3161080

44 Howard Street, Birmingham B19 3HH

- 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 Gurveer Atwal against the decision of Birmingham City Council.
 - The application Ref 2016/06252/PA, dated 22 July 2016, was refused by notice dated 22 September 2016.
 - The development proposed is conversion of first floor offices into self-contained residential flat.
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Decision

1. The appeal is dismissed.

Procedural matters

2. At the time of my site visit, the first floor offices had been converted into living accommodation, although the premises were vacant. I have based my decision on what I saw on site, together with the submitted plans and details.
3. Since the planning application was decided, the Council have adopted the Birmingham Development Plan (BDP)¹. Both the appellant and the local planning authority have had an opportunity to comment on the implications of this for the appeal and I have taken the comments received into account in determining the appeal.

Main Issue

4. These are:
 - (i) whether the proposal is in an appropriate location having regard to local policy; and,
 - (ii) the effect of the proposal on the living conditions of future occupiers, with particular regard to noise and disturbance.

Reasons

Location of development

5. The appeal site is located within the Gun Quarter of the city centre. Policy GA1.3 of the BDP seeks development that supports and strengthens the

¹ Birmingham Development Plan (Adopted January 2017)

distinctive character of the Gun Quarter, that of employment and industrial uses and a mix of uses around the canal.

6. The appeal site is a distance from the canal and therefore the residential unit does not contribute to the mix of uses encouraged here. I share the concern expressed by the local planning authority that the residential unit, being a noise sensitive use, will stifle employment and industrial activity within the area, placing noise and disturbance restrictions on local businesses and in turn undermining the objectives of policy GA1.3 to support and strengthen the Gun Quarter's important employment and industrial role. There is nothing within the evidence before me to explain why the residential use is compatible with the uses in the area to counteract this concern.
7. The appellant suggests that the appeal site is within an area of mixed use, including residential and shops. However there is nothing within the evidence before me to support this claim. It was apparent from my observations on site that the uses surrounding the appeal site are mostly employment and light industrial and therefore I find little to indicate that the residential use complements the uses within the area or the objectives of policy GA1.3.
8. In all, therefore, I find that the residential unit is not within an appropriate location with particular regard to policy GA1.3 of the BDP and as a result would not support or strengthen the character of the Gun Quarter. The change of use is therefore contrary to policy GA1.3 of the BDP.

Living conditions

9. The residential unit is surrounded by commercial and light industrial uses including a car wash and tyre fitting unit opposite, and a clothes warehouse/storage business below.
10. Whilst light industrial and office uses may emit less noise than heavier industrial uses, noise would still ensue from the comings and goings of vehicles making deliveries. The washing and repairing of vehicles opposite the appeal site would result in some noise and disturbance. Furthermore, whilst the operations below the first floor unit concerned may be such that noise and disturbance would be minimal, disturbances from the loading bay would impact on the living conditions of the bedroom spaces above. In all, therefore I find that the residential flat would be subject to levels of noise and disturbance which would be harmful to the living conditions of the future occupants of the flat.
11. The appellant is willing to accept a planning condition on any planning consent that requires a noise assessment to be undertaken and related noise mitigation measures to be implemented. A condition to this effect would be reasonable and would overcome concerns for noise and disturbance.
12. The local planning authority states that the proposal would be contrary to Saved policies 3.8, 3.10 and 5.20 of the Birmingham Unitary Development Plan². Since the planning application was decided the policies within the Unitary Development Plan have been replaced by policies in the BDP. The Council have not identified any policies within the latter which the proposal would be contrary to. In the absence of relevant planning policies and in light

² The Birmingham Plan, Birmingham Unitary Development Plan (Incorporating Alterations approved by Birmingham City Council for adoption 11 October 2005).

of the planning condition discussed, I find that the change of use would not be harmful to the living conditions of future occupiers, with particular regard to noise and disturbance.

Other matters

13. The lack of demand for office space has not been demonstrated, nor do I have any evidence before me to show that the first floor unit has been marketed to no avail. Whilst I appreciate the appellant's concerns that the unit could lie empty if not in use as residential, this has not been demonstrated for me to give weight to this consideration in deciding the appeal.
14. The National Planning Policy Framework is predicated on the presumption in favour of sustainable development which at paragraph 14 of the Framework, means approving development proposals that accord with the development plan without delay. Paragraph 12 of the Framework states that development that conflicts with the local plan should be refused, unless material considerations indicate otherwise. I have found that the development conflicts with the local plan and in the absence of material considerations, I find little evidence to consider allowing development.

Conclusion

15. Although I have found that the development would not have a harmful effect on the living conditions of future occupiers, the harm identified as a result of the location of the residential unit is decisive. For this reason the development is contrary to the development plan and therefore the appeal is dismissed.

R Walmsley

Inspector