
Appeal Decision

Site visit made on 4 April 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 28 April 2017

Appeal Ref: APP/P4605/W/17/3166901

32-35 Water Street, Jewellery Quarter, Birmingham B3 1HL

- 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 Heath against the decision of Birmingham City Council.
 - The application Ref 2016/08575/PA, dated 12 October 2016, was refused by notice dated 22 December 2016.
 - The development proposed is change of use to allow for Cafe (A3), Bar (A4) and Barbers (A1), plus installation of acoustic louvres.
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Decision

1. The appeal is dismissed.

Procedural matter

2. Since the application was determined by the Council, the Birmingham Development Plan (BDP) has been adopted. The BDP has replaced most of the saved policies of the Birmingham Unitary Development Plan 2005, including policies 3.8, 3.10 and 5.20 cited in the reason for refusal of the application. These policies have been replaced by policy PG3 of the BDP. I have accordingly dealt with the appeal on this basis.

Main Issue

3. The main issue in this appeal is whether the proposed development would provide acceptable living conditions for nearby residents, including future residents opposite the premises, with regard to noise and disturbance.

Reasons

4. Water Street is enclosed by two to four storey buildings set on the back edge of the pavement. The appeal property is a Victorian works building that has been converted into residential apartments from the first floor upwards. Next to the premises is the Derwent Foundry building which has also been converted into apartments. On the opposite side of the street, on the corner of Livery Street and Water Street, there are also residential apartments. Facing the appeal site are offices and an area of open car parking land that has received planning permission for partial demolition, extension and conversion to ten residential apartments (ref 2015/10410/PA).
 5. The proposed development relates to use of the basement of the building. During the daytime it would be mainly used as café space in relation to 'Upstairs Coffee' on the ground floor, with a small area used as a barbers. In the evening, it would operate as a bar with closing hours proposed by the appellant in his final comments of 22.30 hours Sunday to Thursday and 23.00
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hours Friday and Saturday. An acoustic and noise control report has been submitted. The Council and appellant agree that, subject to a device limiting amplified sound, existing noise insulation within the building would mitigate noise from within the basement itself. I agree with that assessment. The question which therefore remains is what would the effect of the development be in terms of noise and disturbance outside the premises? It is to that matter that I now turn.

6. The wider area contains a mixture of uses including offices, restaurants, bars, residential apartments and shops. Indeed, the appendix to the appellant's planning application cover letter details fourteen premises in Class A3 and A4 use within walking distance of the appeal property. However, unlike for example Ludgate Hill, Water Street is a narrow side street that has a quieter character owing to the preponderance of residential apartments that I have described and offices.
7. In the evenings, on road parking restrictions do not apply and the street provides parking for visitors to the area. There is also a short taxi rank by the junction with Livery Street. However, it is located away from the appeal property and is only large enough to provide space for approximately three vehicles. A bar on the corner of Ludgate Hill has outdoor seating, but it is sufficiently far away the appeal premises not to materially affect the quieter character of Water Street in the vicinity of the appeal property. Reference has been made to 'The Tunnel Club' which is located on Livery Street. Although it is open until the early hours of the morning, there are a variety of routes to the club and the route along Water Street past the appeal property does not appear to me to be an important approach to the club. As a result, whilst in the evening there is activity along the street it would still retain the character of a quieter side street, rather than a busy thoroughfare as is the case with Ludgate Hill and its bars and restaurants.
8. On the basis that in the evening pedestrians use Water Street, the conclusion of the appellant's acoustic and noise control report was that people outside the entrance to the proposed bar would not result in a significant change in noise levels. However, I agree with the Council that, unlike at present, the proposal would provide a reason for people to congregate outside the premises, directly below the flats above and in close proximity to nearby apartments.
9. Whilst the proposed cocktail bar would be small, even if tables have to be pre booked, should the business be successful it is likely that there would be a queue of people waiting for admission and a regular flow of customers entering and leaving the bar. Moreover, patrons who smoke would also congregate on the pavement outside the premises. Such activity often involves raised voices, laughter and the arrival and departure of patrons dropped off by car outside the premises would result in noise associated with the opening and closing of car doors. Activity associated with up to 60 patrons would occur throughout the evening when nearby residents would reasonably expect to enjoy their homes and not be disturbed. Such activity would be directly below the apartments on the first floor of the appeal building and outdoor terrace above. It would also be in close vicinity to the existing apartments next door and on the other side of the road, as well as the proposed apartments on the opposite side of the road for which an extant permission exists.
10. It seems to me, on the basis of what I have read of the experiences of local residents when the bar has been operated under Temporary Event Notices

(albeit initially operated by a different party to the appellant), and what I have seen of the proximity of the bar to residential apartments, that noise and disturbance is likely to occur outside the premises that would be noticeable and intrusive within nearby apartments. This would be especially so in warmer weather when local residents may choose to keep their windows open. As a result, the enjoyment of the homes of nearby residents would be interfered with and the development would result in a poorer level of residential amenity than it is reasonable to expect.

11. In addition to limiting opening hours and the capacity of the bar to sixty, conditions have been suggested requiring a doorman, preventing external advertising and requiring the use of on-line table reservations. However, I am not persuaded that these measures would mitigate the problems with noise and disturbance outside the premises that I have described and so make the development acceptable in planning terms. A twelve month temporary permission has been suggested. However, in this case the evidence that the development is likely to result in noise and disturbance that would have a significant adverse effect on quality of life is sufficiently clear for a trial run to be unnecessary.
12. Reference has been made to a permission that was recently granted for a bar at 2-10 Constitution Hill at the far northern end of Water Street which has residential accommodation above. However, the context of that development is quite different. Constitution Hill is a busy four lane road and has restaurants. As a result, it has a quite different character to Water Street and its background noise levels are likely to be significantly higher. Furthermore, with residential accommodation located no lower than the second floor, residents are not in as close proximity to customers outside the premises as would be the case in the appeal proposal. As a consequence, reference to this permission has not altered my findings in relation to this appeal.
13. For all of these reasons, I therefore conclude that noise and disturbance resulting from the proposed development would have a significant adverse effect on the quality of life of existing and future nearby residents. As a result, living conditions would be demonstrably harmed. This would be contrary to paragraph 123 of the National Planning Policy Framework ('the Framework') and the Noise Policy Statement for England which seeks to prevent such harm from occurring. It would also be contrary to a core planning principle of the Framework which seeks a good standard of amenity for all existing and future occupants of buildings. As a result, it would also fail to reinforce the quieter sense of place that exists on Water Street, contrary to policy PG3 of the Birmingham Development Plan which seeks high quality design.

Other matters

14. The appeal site is located within the Jewellery Quarter Conservation Area. Its heritage significance derives largely from the architectural and historic significance of the built environment associated with its role as a centre of jewellery and metalware production. In the exercise of planning functions, the statutory test in relation to Conservation Areas is that special attention shall be paid to the desirability of preserving or enhancing their character or appearance. The proposed development would not change the external appearance of the building and its use as a café and barbers in the daytime and bar in the evening would be broadly in keeping with the character of the Conservation Area as a whole. As a result, the statutory test would be passed.

Conclusion

15. A presumption in favour of sustainable development is at the heart of the Framework. The proposed development would have economic and social benefits in that it would generate eight jobs and provide a facility for paying customers in an accessible location. However, the proposed bar would cause demonstrable harm to the living conditions of existing and future residents, and fail to reinforce the sense of place that exists on Water Street. This would be contrary to the development plan and a core planning principle of the Framework as described above.
16. Having regard to all of the matters raised, I conclude that the adverse impacts of the proposed development would clearly outweigh its economic and social benefits and that it would not comply with the development plan and the Framework as a whole. As a result, the proposal would not constitute a sustainable development. The appeal should therefore be dismissed. In reaching this decision, the views of those who wrote letters and signed petitions in support of the proposed development have been taken into account.

Ian Radcliffe

Inspector