

Appeal Decision

Site visit made on 11 April 2017

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 17 May 2017

Appeal Ref: APP/B4215/W/16/3165982

Unit 6 Monsall Mill, Monsall Road, Manchester, M40 8NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant temporary planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Revegate Ltd. against the decision of Manchester City Council.
 - The application Ref 113347/JO/2016, dated 16 July 2016, was refused by notice dated 18 November 2016.
 - The application sought temporary planning permission for conversion of vacant unit to place of worship without complying with a condition attached to planning permission Ref. 107779/FO/2015/N1 (Appeal Ref. APP/B4215/W/15/3010077), dated 27 August 2015.
 - The condition in dispute is no. 1 which states that: this is a temporary permission and the use hereby permitted shall cease on or before the expiry of one year from the date of this decision.
 - The reason given for the condition is: so that it can be monitored with regard to its impact, with particular reference to assessing whether the parking and noise strategy were successful, to ensure that the use does not cause unacceptable harm to the living conditions of local residents.
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Decision

1. The appeal is allowed and temporary planning permission is granted for conversion of vacant unit to place of worship at Unit 6 Monsall Mill, Monsall Road, Manchester, M40 8NQ in accordance with the application Ref. 113347/JO/2016, dated 16 July 2016, subject to the following conditions:
 - 1) This is a temporary planning permission and the use hereby permitted shall cease on or before the 27 August 2017.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved details: Drawings 1092/12/2014 Rev A sheet 1; 1092/12/2014 Rev A sheet 2; Site Plan edged in red.
 - 3) The premises shall be used as a place of worship and for no other purpose (including any other purpose in Class D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
 - 4) Within one month of the date of this decision the noise leakage mitigation measures set out in paragraph 3.8 of the Blue Tree Acoustics *Noise Assessment Report Doc. Ref. 02831-250200* shall be implemented in full
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and thereafter maintained in working order in accordance with the manufacturer's instructions.

- 5) Within one month of the date of this decision a Noise Assessment Report (NRA) shall be submitted to the local planning authority for approval in writing. The NRA shall, with reference to noise studies of the premises, identify a strategy for mitigating noise arising from the use of the building up to the capacity level set out in condition no. 8). The strategy shall include an implementation programme and, as necessary, a scheme of acoustic treatment, ventilation measures and restrictions on the hours of particular noise generating activities. The approved strategy shall be implemented in accordance with the approved details.
- 6) Within one month of the date of this decision the approved vehicle parking strategy referred to in paragraph 2 of appeal decision Ref. APP/B4125/W/16/3142244 shall be implemented in full and thereafter shall be maintained in operation.
- 7) The premises shall not be occupied outside the following times: Mondays to Saturdays 0900 hours to 2200 hours; and Sundays 1000 hours to 1400 hours.
- 8) At no time shall the premises be occupied by more than 60 persons.
- 9) No activity associated with the approved use, other than car parking, shall take place outside the building at any time.

Application for costs

2. An application for costs was made by Revegate Ltd. against Manchester City Council. This application is the subject of a separate Decision.

Main Issue

3. I consider that the main issue in this case is the effect of the proposed extension of the temporary period of use of unit 6 as a place of worship on the living conditions of neighbouring residents, with particular reference to noise and disturbance.

Reasons

4. The planning application the subject of this appeal sought planning permission for the conversion of a vacant unit to a place of worship without complying with condition no. 1) attached to planning permission Ref. 107779/FO/2015/N1 (Appeal Ref. APP/B4215/W/15/3010077, dated 27 August 2015). That condition required the use to cease on or before the expiry of one year from 27 August 2015. The application, dated 16 July 2016, the subject of the appeal before me sought the variation of the restriction imposed by condition no. 1), such that the use would cease on or before the 27 August 2017.
5. The national *Planning Practice Guidance* (PPG) indicates that '*it will rarely be justifiable to grant a second temporary permission-further permissions should normally be granted permanently or refused if there is clear justification for doing so.*' In its appeal submissions the appellant has requested that consideration also be given to a permanent grant of planning permission in this case.

6. When granting planning permission Ref. 107779/FO/2015/N1, the Inspector confirmed that, subject to conditions limiting opening hours and implementation of an approved parking strategy, noise associated with the congregation coming and going would be unlikely to result in unacceptable harm to the living conditions of nearby residents. I have not been provided with any compelling evidence to the contrary and I am conscious that such a strategy was approved by appeal decision Ref. APP/B4215/W/16/3142244. However, the Inspector (Ref. 107779/FO/2015/N1) had reservations concerning the likely impact of noise arising from within the unit. Against this background, he indicated that, with reference to noise, the purpose of granting temporary planning permission for a limited period was: so that a noise mitigation strategy, informed by a noise study, could be implemented; and, the use could be monitored with regard to its impact and a review undertaken.
7. Condition no. 4), attached to planning permission Ref. 107779/FO/2015/N1, required: a noise study to be undertaken; a strategy for preventing noise breakout to be submitted to the Council for approval; and, following approval, implementation of the strategy. An application for approval of the details required by condition no. 4) was submitted on 21 September 2015 and then on 12 January 2016 an appeal was made against the Council's failure to give notice within the prescribed period of its decision concerning those details. That appeal, Ref. APP/B4215/W/16/3142244, was dismissed on the 16 August 2016 insofar as it related to condition no. 4). In his reasoning, the Inspector in that case made particular reference to the inadequacy of the noise study, which contained only limited detail about the physical fabric of the building and no measurements of existing and predicted noise levels. Furthermore, the Inspector observed that, whilst there was little evidence before him of noise and disturbance, those circumstances may have been due to the average number of worshippers being around 15 and the amount of noise associated with the higher number of 60 allowed by the planning permission could be quite different.
8. The appellant has indicated that the application before me sought the variation of the restriction imposed by condition no. 1) in order that the results of appeal decision Ref. APP/B4215/W/16/3142244 could be taken into account and acted upon.
9. The appellant's appeal submissions include 2 Noise Assessment Reports by Blue Tree Acoustics based on noise surveys: report reference 02831-250100 relates to a survey undertaken on Sunday 17 July 2016 (NR1); and, report reference 02831-250200 refers to a survey undertaken on Thursday 12 January 2017 (NR2). In both cases noise measurements were recorded during a church service from a location inside the appeal premises and another outside the nearest neighbouring dwelling, No. 183 on the opposite side of Monsall Road.
10. NR2 indicates that whilst part of unit 6 is contained within the brick built former mill buildings, the chapel itself is contained within a single-storey extension, which has a lightweight corrugated roof. I saw that there are a number of gaps at eaves level between the walls and roof of the chapel and a large opening above the roller shutter door within the northwestern elevation of the extension. Under these circumstances, I consider that there is a significant risk of noise leakage from the chapel in particular.

11. The noise reports indicate that during the surveys, noise from the chapel was, at worst, barely audible outside the nearest neighbouring dwelling, such that the living conditions of neighbouring residents would be unlikely to be adversely affected. Furthermore, measures included in the proposed noise mitigation strategy include the installation of a sound limiting device to ensure that, in the future, amplified speech and music would not exceed the levels detected during the surveys.
12. However, the proposed noise limiting device, whilst controlling amplified sound, would not limit the noise generated by the congregation itself. Whilst the appellant has indicated that normal attendance numbers are around 15, the limit of 60 set by condition no. 7 attached to planning permission Ref. 107779/FO/2015/N1 is far higher. Furthermore, there is no guarantee that the attendance numbers would not routinely reach levels approaching 60 in the future. Neither NR1 nor NR2 identifies the size of the congregation in attendance during the surveys. The absence of that information casts significant doubt over whether the noise levels recorded are likely to be representative of the use of the premises by up to 60 people. This was a concern raised by my colleague who determined the previous appeal and, in my judgement, has not been satisfactorily addressed by the appellant, notwithstanding that it has had the opportunity to do so in its appeal submissions. Under these circumstances, I consider that little weight can be afforded to the conclusions of NR1 and NR2 that the noise impact would be acceptable.
13. I have not been provided with any records from the Council to show that noise complaints have been received, investigated and blame found to be attributable to the appeal use. However, over a period when the appellant has indicated that normal attendance numbers have been around 15, there is some evidence, albeit limited, that noise and disturbance arising from the place of worship has had an adverse effect on the living conditions of local residents. The Council's Committee Report makes reference to evidence from a local elected member indicating that 'significant dis-amenity' has been suffered by local residents as a direct result of the activity at the site, with particular reference to loud music and raised voices. Some references have also been made in correspondence from objectors to noise and disturbance arising from the appeal use.
14. Based on what I saw on site, I consider it unlikely that the structural works proposed in the submitted Noise Assessment Reports would be likely to prevent noise leakage altogether, as they do not address a number of the gaps in the buildings fabric. However, I acknowledge that the proposed mitigation measures would reduce the potential for noise leakage from unit 6 to some extent. Under these circumstances, I consider that the existing limited record of noise and disturbance relied on by the Council would not be sufficient on its own to justify withholding planning permission. However, in the absence of any evidence concerning the numbers in attendance during the surveys, which may well have been around 15, and an assessment of the likely impact if the number routinely approaches 60 in the future, which cannot be discounted, it cannot be concluded with any confidence that the use would not have a significant detrimental impact on the living conditions of local residents in the future.

15. Under these circumstances, I consider that it would not be appropriate to grant a permanent planning permission. Nor would it be appropriate, as it would amount to a substantial change from the proposed temporary use for which planning permission was sought in this case upon which those with an interest could reasonably expect to be consulted. However, the temporary planning permission sought by the appellant would provide an opportunity for it to address the shortcomings of the Noise Assessment Reports, as regards evidence concerning the levels of attendance during the surveys and an assessment of the likely impact if numbers routinely approach 60 in the future. It would also allow implementation of the proposed mitigation measures and a period of monitoring by the Council. In my judgement, these circumstances provide a compelling argument to exceptionally justify the grant of a second temporary planning permission for the use.
16. I give no weight to the concerns raised that the place of worship has operated outside of the constraints imposed by conditions attached to planning permission Ref. 107779/FO/2015/N1, with particular reference to congregation numbers and opening hours, as such matters could be addressed by the Council through enforcement action.
17. I understand that unit 6 was formerly used as a car spraying/garage facility. However, there is no evidence before me to support the contention in the noise assessments that, if the garage use or similar commercial use were reinstated in the building, there may well be an adverse impact on residents. I give it little weight.
18. I conclude on balance that, subject to conditions, the proposed temporary use would be unlikely to cause unacceptable harm to the living conditions of local residents. In relation to this matter, it would not conflict with the aims of Policies SP1 and DM1 of *Manchester's Local Development Framework Core Strategy, 2012* or Policy DC26 of *The Manchester Plan, 1995*, which insofar as they seek to ensure a good level of amenity for all existing and future occupants of land and buildings they are consistent with the aims of the *National Planning Policy Framework* (the Framework).

Other matters

19. Whilst I understand that the Council has issued an enforcement notice in relation to use of the premises and that discussions are continuing between the Council and the appellant as regards that matter, it is the subject of a separate appeal which has yet to be determined. Therefore, I give that matter little weight.
20. Insofar as it involves the re-use of previously-developed land, the appeal scheme gains some support from CS Policy SP1 and the Framework, which weighs in its favour.

Conditions

21. In the interests of clarity a condition would be necessary to ensure that the development would be carried out in accordance with the approved drawings.
22. The following conditions would be necessary in the interests of safeguarding the living conditions of local residents, with particular reference to noise and

disturbance. Conditions would be required to ensure that the premises is only used as a place of worship during the period of the temporary permission and that that use would cease on or before 27 August 2017. Condition nos. 3) and 7) attached to the previous planning permission would need to be re-stated. My colleague explained the need for restrictions on the opening times of the premises. Furthermore, I have had regard to the concerns raised that it may have been occupied overnight from time to time. In the interests of precision and enforceability, I consider that 'occupation' of the premises should be restricted rather than the 'opening times for visitors' referred to in condition no. 6) of the previous planning permission. As regards previous condition no. 8), it would be necessary to make clear that, 'other than parking', no activity associated with the approved use should take place outside the building.

23. A condition would be required to ensure that the noise mitigation measures set out in *Noise Assessment Report Doc. Ref. 02831-250200* would be implemented within a month, in order that their effectiveness can be judged during the trial period. Furthermore, a condition would be necessary to ensure that, within a month, the appellant addresses the shortcomings of past Noise Assessment Reports, with particular reference to the potential for noise and disturbance when the premises is used at the full capacity set out above.
24. A condition would be necessary to ensure that the car parking strategy approved by appeal decision Ref. APP/B4215/W/16/3142244 is implemented within a month, in order that its effectiveness can be judged during the trial period.

Conclusions

25. I conclude on balance that, subject to conditions, the proposed extension of the temporary period of use of unit 6 as a place of worship would amount to sustainable development under the terms of the Framework and would accord with the Development Plan. I conclude, for the reasons given above, that the appeal should be allowed.

I Jenkins

INSPECTOR