

Appeal Decision

Site visit made on 18 May 2017

by Andrew Owen BA(Hons) MA MRTPI

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

Decision date: 16 June 2017

Appeal Ref: APP/T2405/W/17/3169081

Unit 10, Forge Corner, Leicester Road, Blaby, Leicestershire LE8 4FZ

- 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 N Ladefoged against the decision of Blaby District Council.
 - The application Ref 16/0097/FUL, dated 21 January 2016, was refused by notice dated 14 November 2016.
 - The development proposed is change of use from a citizen's advice bureau (Class A2) to a hot food takeaway (Class A5) and installation of extraction/ventilation equipment.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of the occupiers of the neighbouring properties with respect to noise and disturbance.

Reasons

3. The site is located within Blaby town centre and is the end unit in a parade of shops. There are residential units above this parade. To the rear there is a small private car park serving the shops and flats, and behind that a larger public car park. Pedestrian access is possible from Leicester Road through to the car parks by a passageway that passes alongside the appeal site and under the flats.
 4. The proposed use would open until 23:00 each day. The Council do not object to the proposal opening until 22:00 each day but for deliveries to cease at 21:00 each day.
 5. The appellant's Environmental Noise Assessment contains an assessment of the likely noise from plant, to be located at the rear of the site, based on the results of an unattended noise survey. This assessment found that with specific attenuation, the noise from plant would be at least 5dB below background noise levels at the rear façade of the flat above the site. The Council do not dispute that noise from plant could be suitably controlled.
 6. Subsequent to the unattended noise survey, an attended survey was carried out to assess the noise resulting from anticipated delivery and collection vehicles. The data collected from this survey informed noise assessments
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using BS4142:2014¹ (BS) methodology and using methodology in DMRB². Comparing the two methods in terms of the anticipated noise at the rear façade of the flat above the site from 18:00 to 23:00, the BS methodology calculates the predicted noise would be between 8 and 13dB above background noise levels. An increase of 10dB or more is likely to be an indication of a significant adverse impact, depending on the context. Using the DMRB methodology the anticipated noise would be between 1.2 and 2.5 dB above background noise levels. The assessment suggests that such an increase would have only a minor impact on the residents of the flats.

7. It appears that the main reason for this disparity stems from the differing calculations of the background noise levels with the BS methodology using dB L_{A90} 15min, i.e. the noise level exceeded for 90% of the time period, and the DMRB methodology using dB L_{Aeq} 15 mins, i.e. the noise level equalised out over the specified period.
8. Despite the appellant's reservations, I consider using BS4142:2014 is not an unreasonable approach given that it is designed to assess noise from, among other things, loading and unloading of goods at industrial or commercial premises such as dedicated service yards. Although this is not directly comparable with the proposal, the regular dispatching of vehicles for deliveries from the small private car park at the rear would be similar in its nature to a service yard. The DMRB approach generally relates to the noise from road traffic and so would be less applicable to the stopping, starting and manoeuvring of vehicles, and the opening and shutting of car doors, which would take place in the car park.
9. BS4142:2014 states that the impact is dependent on the context. As the land to the rear is already a car park, I accept local residents would expect to hear some vehicle movements in the evening. However the private car park is small and I do not expect it generates a large number of vehicle movements in the evening. The public car park largely serves the other shops in this part of the town centre and so when these close in the early evening I expect the public car park does not generate many vehicle movements. Accordingly, whilst the noise from the delivery vehicles would be similar in nature to existing noise, the increase in vehicle movements and the noise generated by them in the evening periods as a result of the development would be in stark contrast to the existing quieter noise environment.
10. In addition, of the nearby businesses that are open into the evening, the Double Dragon restaurant is at the far side of the public car park and the Fox and Tiger public house, further to south, is served by a closer car park. As such I consider the noise environment around the site would largely be unaffected by the noise resulting from these other businesses, and the noise assessment does not suggest otherwise.
11. The appellant makes a passing reference to the development's compliance with the WHO guidelines, but without further details I am unable to give much weight to this.
12. I recognise the unit could be used for any Class A1 purpose without any restrictions on its opening hours. However I have no evidence that such an

¹ BS4142:2014 – Methods for rating and assessing industrial and commercial sound.

² Design Manual for Roads and Bridges, Vol 11 Section 3, 2011.

alternative use is likely. Notwithstanding this, in this event, customer parking would most likely be focussed to the public car park and so the noise from these associated vehicle movements would be further from the flats than that generated by this proposal. As such I am not persuaded that this fall back position would give rise to greater harm than the proposal.

13. I do not consider it would be reasonable to impose a condition to restrict deliveries to only be dispatched from the front, as parking in front of the site is limited and may be insufficient for the required number of delivery vehicles. Furthermore the noise assessments assume that the dispatch of delivery cars would be split equally between the front and rear of the site. If all deliveries were made from the front, the increase in noise at the front façade of the flats would be greater than that assessed and therefore I am unable to conclude that the noise generated in this scenario would not have an unacceptable impact on the nearby residents.
14. In summary, I consider the proposal would be likely to cause an unacceptable increase in noise and disturbance to the occupiers of the nearby flats which would be to the detriment of their living conditions. Therefore the development would fail to accord with Policy S5 of the Blaby District Local Plan which seeks to protect the amenities of nearby properties in relation to food and drink uses.

Other matters

15. It is not disputed by the parties that the proposal would have a positive impact on the viability and vitality of the town centre, and I note the unit has been vacant for around a year. However I could see no other vacant units at the time of my site visit and hence it appears as only a minor detraction from an otherwise already vibrant local centre.
16. I also acknowledge the jobs that would be created by the proposal. However this does not outweigh the harm that would be caused to the living conditions of the neighbouring residents.

Conclusion

17. Consequently, for the reasons given above, and taking account of all other considerations, I conclude that the appeal should be dismissed.

Andrew Owen

INSPECTOR