
Appeal Decision

Site visit made on 23 May 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 23rd June 2017

Appeal Ref: APP/P4605/W/17/3170149
206 Windsor Street, Birmingham B7 4NE

- 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 Saleem Ditta against the decision of Birmingham City Council.
 - The application Ref 2016/02336/PA, dated 18 March 2016, was refused by notice dated 25 August 2016.
 - The development proposed is a first floor conversion to form 4 No one-bedroom flats. (Re-submission of Planning Application No 2015/02143/PA).
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Decision

1. The appeal is dismissed.

Preliminary matters

2. Since the application was refused planning permission, the Council has adopted the Birmingham Development Plan (BDP). The Unitary Development Plan policies referred to within the Council's reasons for refusal no longer form part of the development plan. This is explained in the Council's submission and the appellant has opportunity to comment. No party has therefore been prejudiced by this change. Therefore, as planning appeals must be determined on the basis of the development plan that exists at the time of the Inspector's decision, I have not considered the UDP policies further.

Main Issues

3. The main issues are:
 - whether the proposed development would provide acceptable living conditions for future occupants, with particular regard to noise and disturbance; and
 - the effect of the proposed development on existing industrial uses.

Reasons

4. The appeal site encompasses the two buildings at 206 – 220 Windsor Road. Both are two storey with open car storage to the rear. The appeal proposal in the main only affects the red brick building at No 206 – 212 Windsor Road, which is currently occupied by a stage equipment business at ground floor. The first floor is currently vacant, having previously been used as offices.
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Living conditions

5. Although situated opposite existing residential properties, the appeal site is located on the western side of Windsor Road which is made up of business premises in various uses, including Class B2, general industry. Indeed the site is sandwiched between two industrial premises occupied by engineering business MTI. At the time of my site visit, both of these buildings had their main large doors open thereby allowing me to observe and hear the noisy industrial type activities being carried out.
6. In response to this, the appeal proposal is supported by a Noise Assessment (NA), which includes a BS 4142¹ assessment of the impact of industrial and commercial noise onto the proposed development site from MTI. BS 4142 explains that the significance of sound of an industrial nature depends upon both the margin by which the rating level of the specific sound source exceeds the background sound level and the context in which the sound occurs. Typically, the greater this difference, the greater the magnitude of the impact. It states that a difference of around +10 dB or more is likely to be an indication of a significant adverse impact, depending on the context.
7. In this case, the assessment concluded a daytime rating level of 66.2dB, 17.1dB over the daytime background noise level of 49.1dB. Thus highlighting the impact of industrial and commercial processes undertaken during the day at MTI, which would result in unacceptable harm to the health and quality of life of future occupants. The level of disturbance would be exacerbated by the impulsive nature of the noise arising from the work processes at MTI.
8. The rating level at night was calculated at 34.7dB, -6.2dB below the night-time background noise level of 40.9dB, thereby indicating no adverse impacts on future occupants. Whilst the Council say that with appropriate correction this should be 2.5db above the background level, the effect would not be significant, having regard to the advice contained in BS 4142. However, it is material that I have no evidence of any extant planning mechanisms which would prevent MTI, or any future occupier, from operating into the evening or during the night time. In such circumstances the effects would again likely to be significant adverse.
9. The NA makes reference to BS 8233², which recommends that internal ambient noise levels should achieve 30dB LAeq in bedrooms for sleeping and 35dB LAeq in living rooms for resting and 40dB LAeq within dining rooms. I accept that it would be possible to achieve such levels through various means of mitigation, including the installation of acoustic glazing. However, in order to provide airflow the windows would need to be opened and to do so would further increase the internal ambient noise level with pedestrians and traffic as well as noise from commercial and industrial premises.
10. To address this concern the proposed development would include acoustic rated Mechanical Ventilation with Heat Recovery (MVHR) systems to all rooms. However, I share the Council's concerns regarding the effect of such mitigation on the living conditions of future occupiers. In this regard I agree that it is not unreasonable for future occupiers to expect to be able to open windows to naturally ventilate their properties rather than rely on a mechanical system in

¹ BSI Standards Publication BS 1442:2014 - Methods for rating and assessing industrial and commercial sound

² BSI Standards Publication BS 8233:2014 - Guidance on sound insulation and noise reduction for buildings

order to maintain a reasonable noise environment. I note the appellant's view that this amounts to a further reason for refusal on the part of the Council, nevertheless it is a matter which is before me as part of the proposed mitigation. Whilst the appellant states that this method of acoustic treatment is widely used, I have not been made aware of the circumstances of those schemes, thereby reducing the weight I am able to afford this assertion.

11. Moreover, I note that proposed plans show a garden area at the rear which would not be protected by such measures. The benefits from this provision would therefore be significantly reduced by the level of noise exposure.
12. I appreciate that an acoustic fence would further mitigate the harm internally and externally. However the 6m height and extent shown on drawing number P-002 Rev B would in itself amount to a substantial structure, which could have significant effects on neighbouring properties. It would also create an oppressive and fortress type feel to future occupants, particularly from the rear garden area. It also appears from the appellant's list of documents that this plan was not submitted with the planning application and therefore was not that which was considered by the Council and on which interested people's views were sought. As such neighbouring occupiers would be prejudiced by my acceptance of this plan and therefore, in applying the 'Wheatcroft Principles', I am unable to consider the stated benefits of the acoustic fencing as indicated.
13. The appellant contends that the planning permission granted at 52 Windsor Street highlights an inconsistent approach by the Council. However, the Council has explained that that application was accompanied by a noise assessment which indicated that the significant noise source was road traffic and that the work shop noise below was not shown to be significant. It is not therefore directly comparable to the appeal proposal. Neither is the permission granted on land between a church, surgery and residential properties on Windsor Street.
14. I have noted that the upper part of No 218 - 220 has permission for residential use. However, it is for an ancillary caretaker's flat in association with the other commercial uses within the building. The expectation of future occupants would not therefore be comparable to that for independent residential units as currently proposed.
15. The fact that future occupiers may be aware of the environment that they are going into does not justify allowing development which would be harmful to their living conditions. Even if they are single occupants, such as professionals or students, they may not work a conventional working week, or they may work shifts or may wish to study at home during the day. I do not therefore agree that any noise impact during this time would be irrelevant. In any case, the Council advice that MTI operate on Saturdays and no evidence has been provided to dispute this.
16. I therefore conclude, in the particular circumstances of this case, that the proposal would not provide acceptable living conditions for future occupants and as such would be contrary to BDP Policy TP37 and paragraph 17 of the National Planning Policy Framework (the Framework). These seek, amongst other matters, to improve quality of life and to secure a good standard of amenity for all existing and future occupants of land and buildings.

Existing industrial uses

17. I accept that the appeal site is situated within a mixed use area which includes residential properties on the opposite side of the road. However, as noted, the site is flanked by existing noise generating engineering operations.
18. I accept that the noise exposure is capable of being mitigated to acceptable levels, however, as explained this would be to the cost of the living conditions of future occupants. Therefore without mitigation or with mitigation but with the ability to open windows to receive natural ventilation, future occupants would be exposed to significant noise pollution.
19. Although existing businesses have not objected to the appeal proposal, given their proximity to the residential units, I do share the Council's concerns that the proposal would potentially result in conflict and noise nuisance complaints being made by future occupants against the legitimate activities of those existing businesses. This in turn could lead to the imposition of restrictions that would not otherwise be required, thereby placing unreasonable costs and burdens on those businesses.
20. Even if the appellant has lived in the adjoining building without cause for complaint, it does not necessarily follow that future occupants of the appeal scheme would have the same tolerances and expectations and would not complain. Similarly existing residents across the street may not have complained about the existing business but it is unlikely that they or future occupants of the student block would be exposed to a comparable level of noise. There also appears to be a greater separation between the residential uses and the industrial uses for the scheme at Millward Street/Green Lane. I am also unaware of the precise commercial activity taking place in that location. In any case, as above, I have treated the appeal proposal on its own merits.
21. Accordingly the proposed development would risk compromising the legitimate activities of existing industrial businesses. This would be contrary to BDP Policy TP20 and the Loss of industrial land to alternative uses Supplementary Planning Document, which seek, amongst other matters, to protect employment land. The proposal would also be contrary to paragraph 123 of the Framework which states that existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.

Other matters

22. The appellant states that the premises have been vacant since 2010 and despite marketing the only interest has been for residential use. However, I have no evidence to support this position, thereby minimising the weight I am able to afford to it.
23. I acknowledge that the Council do not raise concern on matters relating to design and highways or to the direct loss of employment land. I find no reason to take a contrary position. However these are neutral matters in the planning balance which cannot weigh in favour of the appeal proposal. The proposal would though make a modest contribution to the economic dimension of sustainable development during the conversion works, which would result in physical improvements to the building.

24. The proposal would also increase housing supply in a sustainable location in accordance with the Framework. This benefit would however be limited due to the relatively small number of units proposed and in any event I am not persuaded that the units would provide acceptable living conditions for future occupants. The proposal would therefore fail to meet the social dimension of sustainable development. Accordingly, the proposal would not amount to sustainable development, having regard to the advice at paragraphs 7 of the Framework. Not being sustainable development, it follows that no such presumption, as anticipated by paragraph 14 of the Framework, applies.

Conclusion

25. For the reasons explained, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR