
Appeal Decision

Site visit made on 13 June 2017

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 27th June 2017

Appeal Ref: APP/C3105/W/17/3167938

25 Bankside, Kidlington, Oxfordshire OX5 1JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
 - The appeal is made by Mrs Tara Sheehan against the decision of Cherwell District Council.
 - The application Ref 16/01407/O56, dated 13 July 2016, was refused by notice dated 8 September 2016.
 - The development proposed is conversion of existing office (Class B1) to residential use (Class C3) comprising 6 apartments.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The proposal relates to an application for prior approval for the development described above. Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(GPDO) permits development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) of the Schedule to the Use Classes Order, to a use falling within Class C3(dwellinghouses) of that Schedule.
3. The provisions of the GPDO require the local planning authority to assess the proposal in terms of (a) the transport and highway impacts of the development; (b) contamination; (c) flooding risks on site; and (d) impacts of noise from commercial premises on the intended occupiers of the development; and the provisions of paragraph W of the Order.
4. The Council raises no objections in respect of the transport and highway impacts, contamination or flooding risks and I see no reason to disagree. It is however concerned about noise from nearby commercial premises. Accordingly the main issue is whether noise from commercial premises would provide acceptable living conditions to the intended future occupiers of the scheme.

Reasons

5. The appeal site is part of a two storey 'L' shaped building upon an established industrial estate. There appears to be buildings in office use at Nos 27-30 Bankside; a garden machinery repair unit and a vehicle hire premises on the
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- opposite side of Bankside, and an accident repair centre and tyre premises to the rear of the appeal premises.
6. The appellant submitted a noise assessment report (the report) by Enzygo with the application. The survey criteria and methods were agreed with the Council prior to the undertaking of the survey. The report identified that noise sources affecting the building were largely commercial noise at the western façade and vehicle noise at the eastern façade. To ensure that levels of internal noise for the new dwellings would be acceptable, the report recommended that windows should be acoustically glazed, but kept shut, and that a mechanical ventilation system should be used to ensure suitable ventilation of the units.
 7. The Council state that the report cannot be relied upon to demonstrate that internal noise levels for the new dwellings would be acceptable. However it fails to substantiate its concerns. In the absence of convincing evidence to the contrary, I find that the appellant's report demonstrates that noise from nearby commercial and industrial sources could be suitably mitigated, such that an acceptable internal acoustic environment to the residential units could be provided.
 8. However, such mitigation includes the windows of the new residential units being kept closed at all times. Whilst this would not conflict with the Building Regulations, I consider having to keep windows closed to prevent nuisance and disturbance from neighbouring commercial activities would result in a poor quality living environment. If the intended future occupiers wanted to allow fresh air into their property, it is likely that they would be disturbed from outside noise sources, in close proximity. Such noise sources would be likely to include those that I noted on my site visit including lawn mower testing; delivery vehicles; vehicle noise; tyre guns and the sorting belt to the rear of the premises beyond the vehicle repair centre.
 9. The proposal includes an area to the side of the new residential units which is annotated as amenity area on the submitted drawings. Whilst the appellant's report did not include an assessment of nearby activities on this area, I consider that noise generating activities, including those detailed above would be clearly audible and intrusive in this space. Although new screen walling is indicated, no details have been produced in respect of its height or acoustic properties. In any event, I am not convinced that walling or other forms of boundary treatment in this area would mitigate the effects of noise from nearby uses to such a degree so as to make this area a pleasant space for the intended future occupiers of the new units to use.
 10. In light of the above, I find that the reliance on the closure of the windows to the residential units to provide an acceptable acoustic internal living environment demonstrates that the residential use of this building in close proximity to a range of noise generating activities would make for an unsatisfactory development which would not provide acceptable living conditions to the intended future occupiers of the scheme. Furthermore, the acoustic environment of the outdoor amenity area would be poor and would therefore be unlikely to be enjoyed as intended by the intended future occupiers of the scheme. A good standard of amenity would not be provided.
 11. My attention has been drawn to a residential scheme, accessed off Lakesmere Close which was previously office development. Although close to the appeal site, the locational characteristics of this scheme and relationship to nearby

commercial uses are different to that before me. Furthermore, the appellant indicates that at the time that this proposal was considered, the impacts of noise were not a matter for which prior approval was sought. I therefore find that this scheme is not directly comparable to that before me and I attach limited weight to this example in my overall Decision.

12. I note the appellant's submissions that the Council is unable to demonstrate a 5 year supply of housing land. This matter has had no bearing on my decision as I am only considering the matters for which prior approval is sought.

Conclusion

13. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

R C Kirby

INSPECTOR