



Appeal Decision

Site visit made on 18 July 2017

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

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

Decision date: 22nd August 2017.

Appeal Ref: APP/Y3425/W/17/3172392

Second Floor, 1A Stafford Street, Stafford, Staffordshire ST16 2BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Nicholas Gallagher-Hughes against the decision of Stafford Borough Council.
 - The application Ref 16/24503/COU, dated 11 July 2016, was approved on 27 September 2016 and planning permission was granted subject to conditions.
 - The development permitted is "Change of use of second floor B1 office space to D2 use class, trading as a Dance Studio and Arts venue".
 - The conditions in dispute are Nos 3, 4 and 5 which state that:
 - No 3: "Prior to the development hereby approved first being brought into use, a noise management plan to include noise insulation, vibration and isolation measures, alongside equipment to be used within the dance studio and operating standards, shall be submitted and approved in writing to the Local Planning Authority. The development shall proceed in accordance with the approved details, unless otherwise agreed in writing".
 - No 4: "The use hereby approved shall not operate before 0830 nor after 2130 Monday to Saturday nor before 0900 nor after 1800 on Sundays and Bank Holidays".
 - No 5: "Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 or as may be subsequently amended, the use hereby permitted is that of a dance studio only as described in the application documents and the premises shall not be used for any other purpose, including any other purpose within class D2 of the Order.
 - The reasons given for the conditions are:
 - Nos 3 and 4: "To safeguard the occupiers of nearby residential properties from undue noise and general disturbance (Policy N1e of The Plan for Stafford Borough).
 - No 5: "An unrestricted permission could result in the premises being used in a manner which would cause nuisance through undue noise and general disturbance to the occupiers of nearby residential properties (Policy N1e of The Plan for Stafford Borough).
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Decision

1. The appeal is allowed and the planning permission Ref 16/24503/COU for "Change of use of second floor B1 office space to D2 use class, trading as a Dance Studio and Arts venue" at Second Floor, 1A Stafford Street, Stafford, Staffordshire ST16 2BG granted on 27 September 2016 by Stafford Borough Council, is varied by deleting condition Nos 3, 4 and 5 substituting the following conditions:
 - 1) Prior to the development hereby permitted first being brought into use, a noise management plan to include noise insulation, vibration and isolation measures, alongside equipment to be used within the dance

studio and operating standards, shall be implemented in accordance with a scheme that shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be retained thereafter.

- 2) The use hereby permitted shall only take place between the following hours:
07:30 – 22:30 Mondays - Fridays
08:00 – 22:30 Saturdays; and
09:00 – 20:00 Sundays.

Background and Main Issue

2. Planning permission has been granted for a change of use of the premises. The appeal seeks permission to carry out the development without complying with conditions 3, 4, and 5. These have been imposed to require the implementation of a noise management plan, restrict the hours of operation and restrict the permitted use.
3. The main issue is the effect that removing or varying the conditions would have on the living conditions of nearby residents.

Reasons

4. The appeal site comprises the second floor of a three-storey building located within Stafford Town Centre. The premises were last used as offices but the second floor is now vacant. The surrounding area is predominantly commercial in character, consistent with the town centre location. The site is within the Stafford Town Centre Conservation Area.
5. The Council states that there have been a number of residential conversions of upper floor premises within the town centre, but there are none within the proximity of the application site. The closest residential use is situated on the upper floors of No 38 Gaolgate Street, which accommodates 14 flats. This is on the opposite side of the street, and the parties agree that it is approximately 52 metres from the appeal site. The upper floor of the adjoining property appears to be vacant and the appellant states that the first floor of the appeal building, directly below the appeal premises, is in use as a rest room for bus drivers.
6. The original application sought permission for a dance and arts related venue. The proposed opening hours were between 07:30 to 22:30 Monday to Friday, 08:00 to 22:30 on Saturdays and 09:00 to 20:00 on Sundays. Early morning and evening opening hours were sought for customers who work during the daytime.
7. There are three conditions in dispute, and I shall deal firstly with No 5, which restricts the use of the premises to a dance studio. The appellant explains that the business would focus on the development of a centre for excellence in dance, with the possibility that the venue would be used for other purposes, if feasible. Concern is expressed that limiting the use of the premises to a dance studio would compromise the viability of the venture.
8. Use Class D2 'Assembly and Leisure' of the Town and County Planning (Use Classes) Order 1987 includes uses such as a gymnasium or area for other indoor sports or recreation. Such uses could be implemented if the planning

permission was an unrestricted D2 use. Other uses, for example a gymnasium or cycling studio, would have potential to lead to significantly more noise from sound systems than that envisaged by the appellant in relation to the dance studio. However, the part of the property that would be used as the main studio is located on Stafford Street, and there would be additional rooms between the main studio and Gaolgate, which is the elevation closest to the nearby residential use. Also, it is necessary to consider whether conditions could be imposed that would make the D2 use acceptable.

9. Condition No 3 requires a noise management plan. The appellant states that the sound system would have the equivalent output to a domestic sound system, and it is intended to install sound proofing. This would consist of a wall of mirrors to the party wall, which would have sound insulation boards installed behind. The floor would be overlaid with sound-proofing insulation pads/sound proof foam and a wooden dance floor. The existing carpet would be retained. No details of the specification of the sound proofing and the attenuation that would be afforded have been submitted and, therefore, the Council has imposed a condition. Whilst the nearest residences are some distance away, it is important to ensure the development would be properly sound proofed, as a dance studio will inevitably generate a level of noise associated with music and movement. This may impact the users of the floor below, and/or compromise any future use of the upper floor of the adjoining building.
10. Consequently, I consider the condition to be necessary because, otherwise, there would be no mechanism by which the Council could ensure that the sound proofing described by the appellant would be implemented. Also, more information is required to demonstrate that the proposed sound proofing would be effective.
11. I have found that condition No 3 should be retained and, therefore, an approved noise management plan would be implemented. In view of this, I am satisfied that condition No 5, which restricts the use of the premises, is not necessary as noise and disturbance resulting from the D2 use of the premises would be minimised.
12. Condition No 4 relates to the opening hours. The closest residential accommodation is some distance from the premises. Also, the flats are within the town centre where the ambient levels of noise are higher than residential areas. Moreover, residents of town centre locations generally accept a higher level of disturbance in return for a central location. Furthermore, I have concluded that a condition requiring an approved noise management plan to be implemented should be retained. This would ensure noise from the venue is minimised. Consequently, I do not consider that the condition imposing more restrictive opening hours is necessary. The condition should be deleted and replaced to reflect the opening hours sought by the appellant.

Other Matters

13. The site is within the Conservation Area. There are no external alterations proposed and, therefore, the development would preserve the character and appearance of the Conservation Area.

Conclusion

14. I conclude that the use of the premises for D2 purposes would be acceptable providing condition No 3 is retained to ensure a noise management plan is approved and implemented. I have made minor amendments to the wording of the Council's condition to ensure it complies with the tests of the National Planning Policy Framework. This includes removing the words "unless otherwise agreed in writing" as this makes it uncertain what is permitted. I have also clarified the implementation, timing and retention clauses of the condition.
15. I have deleted and replaced condition No 4, which relates to opening hours as I have found the more restrictive hours would not be necessary, given the site's town centre location and the noise mitigation measures that would be required by condition No 3.
16. I have deleted condition No 5 in view of the retention of condition No 3, as I do not consider it necessary to restrict the use to a dance studio because noise mitigation measures would be implemented to minimise any adverse effects.
17. Overall, I am satisfied that varying and/or removing the disputed conditions would not lead to an adverse effect on the living conditions of nearby residents, in accordance with Policy N1 of The Plan for Stafford Borough 2011-2031 (June 2014) which seeks, amongst other things, to protect the amenity of adjacent residential areas.
18. For the reasons given above, the appeal is allowed.

Debbie Moore

Inspector