



Appeal Decision

Site visit made on 13 November 2017

by V Lucas LLB MCD MRTPI

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

Decision date: 22nd November 2017

Appeal Ref: APP/P4605/W/17/3178964

50 Regent House, Frederick Street, The Jewellery Quarter, Birmingham, B1 3HR

- 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 4G Properties against the decision of Birmingham City Council.
 - The application Ref 2017/02536/PA, dated 16 March 2017, was refused by notice dated 4 May 2017.
 - The development proposed is change of use of upper floor office floorspace to residential units.
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Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the change of use of upper floor office floorspace to residential units at 50 Regent House, Frederick Street, The Jewellery Quarter, Birmingham, BH1 3HR in accordance with the terms of the application Ref 2017/02536/PA, dated 16 March 2017, and the plans submitted with it, subject to the following conditions:
 - 1) The existing sealed windows to all of the upper floors shall be retained thereafter.
 - 2) Secondary glazing shall be installed in accordance with Section 10 of submitted Blue Acoustic Noise Survey (Ref. NS151 dated 02.03.2017) prior to first occupation and retained thereafter.
 - 3) Noise insulation between ground and first floors shall be implemented in accordance with Section 10 of Blue Acoustic Noise Survey (Ref. NS151 dated 02.03.2017) prior to first occupation of the first floor and retained thereafter.
 - 4) Mechanical ventilation shall be implemented in accordance with the recommendations and Appendices of the Ventilation Strategy Report (Briar Associates, Document ref. BD 923_REVA dated March 2017) prior to the first use of any of the apartments hereby approved and retained thereafter.

Preliminary Matters

2. Schedule 2, Part 3, Class O of the GPDO 2015 sets out that development is classed as permitted development if it consists of a change of use of a building

and any land within its curtilage from a use falling within Class B1(a)(offices) to a use falling within Class C3(dwellinghouses). This is subject to a number of circumstances where such development is not permitted, listed under paragraph O.1, and to conditions in paragraph O.2 setting out the circumstances when an application to the local planning authority for a determination as to whether the prior approval of the authority will be required.

3. The GPDO requires the local planning authority to assess the proposed development against the criteria set out in Class O, taking into account any representations received. My determination of this appeal has been made in the same manner.
4. The development proposed seeks approval for the change of use of the upper floors of the appeal building from B1 offices to form 11 residential units. During the Council's determination of the application, they concluded that the proposal would meet the requirements of paragraph O.1 and would therefore amount to permitted development in this regard. Based on the information before me, I see no reason to take a different view.
5. The Council then went on to consider whether prior approval would be required in relation to the issues raised under paragraph O.2. The Council concluded that prior approval was required and refused the proposal under part (d) which refers to impacts of noise from commercial premises on the intended occupiers of the development.
6. The Council have not raised concerns regarding any of the other matters identified at paragraph O.2, in terms of issues that could require the Council's prior approval. I have therefore taken this to mean that the Council concluded that prior approval would not be required for those matters and I shall consider the appeal on that basis.

Main Issue

7. Taking account of the above, I therefore consider the main issues to be:
 - Whether the impact of noise from commercial premises on the intended occupiers of the development would be acceptable.

Reasons

8. The appeal building is a 5 storey property situated at the junction of Frederick Street with Albion Street and is within the Jewellery Quarter Conservation Area. The upper 4 floors of the building were previously used as an office and have since been vacated. The ground floor of the building is in use as 'Frederick's Bar' which is a coffee lounge and bar. The area within which the appeal building is situated, particularly along Frederick Street, is a vibrant part of the city with several bars and restaurants in close proximity.
9. The impact of noise from commercial premises on the intended occupiers of the development proposed formed part of the reasons for refusal of a prior approval application determined in February 2017. A noise survey was submitted by the appellant with the application to which this appeal relates. In relation to commercial premises, the survey found that potential noise from patron activities outside of Fredrick's Bar would have a significant adverse effect depending upon the context. However, it concluded that this could be all

but eliminated through the use of secondary glazing and mechanical ventilation and extra insulation would also be required between the ground and first floors. Mechanical ventilation would also be necessary because the glazed windows would need to be fixed shut in order to meet acceptable noise parameters. Noise insulation of the ventilation system would also be necessary. It was found that patron noise from The Button Factory/Vertu Bar and Portofino on Frederick Street would have a very low impact on future occupiers of the building.

10. The Council do not specifically dispute the technical findings of the appellant's noise survey. Rather it is the Council's case that by virtue of the mitigation measures necessary, the proposal would result in poor living conditions that would not be acceptable for future occupants of the proposed apartments. Clearly, if it were not for noise emanating from the commercial premises close to the appeal property, the mitigation measures identified would not be necessary.
11. I note the appeal decision¹ to which the appellant has referred which states that the granting of prior approval for the change of use of B1 office to C3 residential does not explicitly require the decision maker to consider the effect of the development on the living conditions of future occupants. However, in listing the relevant matters under Class O, Schedule 2, Part 3 of the GPDO, the Inspector omitted reference to part (d) because the decision was issued prior to it being added to the GPDO as a relevant consideration. Whilst part (d) may not specifically use the term 'living conditions' it is necessarily an implicit part of assessing a proposal against the condition as set out in the relevant part of the GPDO. I therefore consider it is reasonable to assess whether the mitigation measures would provide acceptable living conditions for future occupants of the proposal as part of my determination of this appeal.
12. Information submitted with the appeal indicates that the Council has accepted developments elsewhere in the city where the windows have been fixed shut. I understand that only one of those schemes was due to noise impacts and that the others were due to air quality reasons. Despite the different reasons, the practical implications for future occupants would remain the same. It would seem that there is therefore a precedent for this type of scheme being developed in the area. I appreciate that future occupiers may expect to be able to open windows in order to benefit from fresh air and natural ventilation and I note the observations made by Inspectors in this regard in the appeal decision² that the Council have referred to and also comments made in the Professional Practise Guidance on Planning and Noise.
13. Clearly the external noise environment in cities is normally greater than that of a countryside location for example. However, people often choose to live in city centre locations precisely due to the proximity to places of work, public transport links, and opportunities for leisure and entertainment such as bars and restaurants. The convenience that city centre locations afford often means that future occupants are prepared to compromise on certain factors such as not having windows that open as the advantages that city centre living brings is perceived to outweigh these other considerations. Although I accept that this is a matter of individual choice and preference.

¹ APP/T5150/W/16/3159892 Decision date: 26 May 2017

² APP/J3720/W/16/3160816 Decision date: 16 March 2017 / APP/C3105/W/17/3167938 Decision date: 27 June 2017 / APP/N1730/W/16/3157855 Decision date: 19 December 2016

14. In the case of the Perry Barr appeal, that scheme related to an application for planning permission and not prior approval and the noise impacts in consideration emanated from a railway line not commercial premises. In the Windsor Street appeal³, the Inspector also took into account a proposed external garden area where mitigation measures in relation to noise impacts could not be implemented. Therefore, in both cases, different considerations will have applied to the appeal proposal before me.
15. The Council have also referred to other premises in the area including one on which a noise abatement order has been served that the appellant's noise survey has not specifically referred to. However, those premises are further away from the appeal building and it is therefore reasonable that the survey considered the impact of activity associated with the closest commercial premises as these are likely to have the greatest impact on future occupants. I also note that the noise survey assessed the noise impacts on a 'worse case' scenario basis and measurements were carried out at the weekend when the noise associated with neighbouring commercial uses would be likely to be greatest. I appreciate the concerns of the owners of Frederick's Bar regarding potential impacts on their business due to the proposed change of use. However, based on the evidence before me, I am satisfied that the mitigation measures once implemented should reduce the impact of noise on the living conditions of future occupants.
16. Drawing matters together, the information submitted with the appeal demonstrates that the recommended mitigation measures could be put in place to ensure that the internal noise environment was made acceptable for future occupants and that adequate mechanical ventilation could be provided. I am also mindful of the advice in the Planning Practice Guidance (PPG) which states that consideration should be given to whether adverse internal effects can be completely removed by closing windows and, in the case of new residential development, if the proposed mitigation relies on windows being kept closed most of the time. In both cases a suitable alternative means of ventilation is likely to be necessary.
17. Accordingly, I conclude that the impact of noise from commercial premises on the intended occupiers of the development would be acceptable. The proposal would therefore not conflict with policy GA1.1 of the Birmingham Development Plan (2017), paragraphs 17, 109 and 123 of the National Planning Policy Framework (Framework) or the PPG which, together, seek to ensure that new residential development provides well designed, high-quality living environments; secures a good standard of amenity for future occupants of buildings and avoids noise from giving rise to significant adverse impacts.

Conclusion and Conditions

18. For the reasons given above, I conclude that the appeal should be allowed and approval granted. In granting approval the Appellant should note that the GPDO requires at Paragraph O.2. (2) within a period of three years starting with the prior approval date and that the developer shall notify the local planning authority in writing of the completion of the development as soon as reasonably practicable after completion. Such notification shall include the name of the developer; the address or location of the development, and the date of completion.

³ APP/P4605/W/17/3170149 Decision date: 23 June 2017

19. The GPDO imposes standard conditions for each class of permitted development. This includes those relating to commencement and that the development should be carried out in accordance with the submitted details. The condition suggested by the Council in this regard is not therefore necessary.
20. The GDPO sets out at paragraph W (13) that prior approval may be granted subject to conditions reasonably related to the subject matter of the prior approval. I have therefore attached conditions requiring the necessary mitigation measures to be implemented in order to ensure that any noise impacts from neighbouring commercial premises will be acceptable on the living conditions of future occupants.

V Lucas

Inspector