



Appeal Decision

Site visit made on 12 March 2019

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2019

Appeal Ref: APP/X1545/W/18/3200614

Baltic House, Station Road, Maldon, Essex CM9 4LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Rollings Commercial Ltd against the decision of Maldon District Council.
 - The application Ref COUPA/MAL/17/01032, dated 6 September 2017, was refused by notice dated 2 November 2017.
 - The development proposed was described as Prior approval of proposed change of use of the first floor from Office (Class B1a) to 3No. Dwellinghouse (Class C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the description of development in the heading above from the Council's decision notice which describes the development more precisely and comprehensively than the application form.
3. Since the appeal was lodged the National Planning Policy Framework (the Framework) has been revised. Both main parties have had an opportunity to comment on any relevant implications for the appeal and any comments received have been taken into account in my reasoning.

Main Issue

4. The provisions of Class O of the above Order require the local planning authority to assess the proposed development solely on the basis of its transport and highways impacts, contamination risks, flooding risks, and impacts of noise from commercial premises on the intended occupiers of the development.
5. The Council does not dispute that the proposal is a form of permitted development for which prior approval may be granted and I have no reason to disagree. Accordingly, the main issue is the effect of noise from existing neighbouring commercial premises on intended occupiers of the development.

Reasons

6. Baltic House is a detached two storey building in use as offices, fronting Station Road. This is a cul-de-sac situated in a mainly commercial and industrial area. A retail park and car parking areas are situated to the rear of the appeal site.
7. The main parties agree the main noise source lies to the front of the property in the form of a Jewson's tool hire yard on the opposite side of the road from the appeal site. This is open 0730h to 1700h weekdays and 0800h to 1200h on Saturdays. The evidence indicates noise from this property includes the sound of forklift trucks moving stock around the yard, loading/unloading deliveries, related reversing alarms, the testing of hire equipment and deliveries/collections themselves.
8. National Planning Policy Guidance¹ advises that the potential effect of a new residential development being located close to an existing business that gives rise to noise should be carefully considered. The evidence indicates the existing glazing in Baltic House is unlikely to provide the required level of sound insulation from noise for a residential development.
9. Based on the information provided in this case, I am satisfied that suitable replacement glazing may be required by a planning condition but this would only address noise experienced when windows are closed or only partially open. But it is not indicated what partially open means in this context. I am not satisfied it is reasonable to expect occupants of dwellings to not be able to open windows more than partially to maintain acceptable living conditions or to be limited to opening windows only on one side of their dwelling.
10. My attention has been drawn to Professional Practice Guidance on Planning and Noise². However, this concerns new residential development exposed predominantly to airborne noise from transport sources and is not designed to deal with the types of industrial noises noted above when they are the dominant noise source as is the case here.
11. Whilst noise from the tool hire yard may occur predominantly during business hours, it is an assumption that this is when occupiers of the dwellings would be awake or at work. Occupants may keep other hours or work from home so I am not satisfied that the noise which may be experienced is made acceptable as a result of the time of day it occurs, particularly as the evidence indicates it would be random and intermittent, making it particularly annoying for some residents.
12. I accept other dwellings already exist nearby but the evidence indicates these pre-date the planning system. Therefore I am not satisfied this is evidence the noise environment in the vicinity of the appeal site is acceptable. Whilst one of these dwellings has been observed with windows open, this could have been for any number of reasons and is not evidence of an acceptable noise environment.
13. I appreciate the noise environment in the proposed dwellings may be more peaceful than a great number of other existing dwellings in the UK but this does not make the appeal development acceptable in the light of the evidence available in this case. The appeal development would likely result in complaints

¹ National Planning Policy Guidance: Noise, paragraph 006 Reference ID: 30-006-20141224

² Professional Practice Guidance on Planning & Noise – New Residential Development (May 2017)

being made about noise from existing business premises, particularly the tool hire yard opposite. This may result in unreasonable restrictions being placed on the existing business and this would not comply with paragraph 182 of the Framework.

14. I conclude occupiers of the proposed development would be significantly adversely affected by noise from neighbouring commercial development. This would affect occupants' quality of life and would not comply with paragraphs 170 and 180 of the Framework. These seek to prevent development from being adversely affected by unacceptable levels of noise pollution and significant adverse impacts on quality of life.

Conclusion

15. For the reasons given above the appeal is dismissed.

L Perkins

INSPECTOR