



Appeal Decision

Site visit made on 18 July 2019

by Gareth W Thomas BSc(Hons) MSc(Dist) PgDip MRTPI

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

Decision date: 30 July 2019

Appeal Ref: APP/Z0116/W/19/3220741

Units 3 to 4, Charnwood House, Marsh Road, Bristol BS3 2 NA

- 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 Visual Impact (Bristol) Ltd against the decision of Bristol City Council.
 - The application Ref 18/05253/COU, dated 2 October 2018, was refused by notice dated 29 November 2018.
 - The development proposed is notification for prior approval for the conversion of 2-storey office building (Class B1a) to 8 No. SC flats (Class C3).
-

Decision

1. The appeal is allowed and approval 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 from B1a) Offices to 8 No. self catering flats (Class C3) at Units 3 to 4, Charnwood House, Marsh Road, Bristol BS3 2 NA in accordance with the details submitted pursuant to Schedule 2, Part 3 Paragraph O.2.1 and to the conditions in the Schedule below.

Application for costs

2. An application for costs was made by Visual Impact (Bristol) Ltd against Bristol City Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is the effects of noise from commercial premises on the living conditions of intended occupiers of the development.

Reasons

Background

4. The appeal scheme falls for determination under The Town & Country Planning (General Permitted Development) (England) (Amendment) Order 2016 - an amendment to the 2015 GPDO that came into effect on 6 April 2016. This amendment affects the rights arising from Class O to which this appeal relates. Of most relevance to this appeal is the requirement that the developer must apply to the local planning authority for a determination as to whether prior approval of the authority is required regarding "impacts of noise from commercial premises on the intended occupiers of the development".

5. In addition to noise impacts from commercial premises on the intended occupiers of the development, the provisions of the GPDO require the local planning authority to assess the proposed development on the basis of its transport and highways effects; whether or not there are any contamination risks on the site; and flooding risks. The Council only expressed concerns with the potential noise impacts. I would agree with that assessment and my determination of the appeal has been made on this basis.
6. The appeal premises comprise part of a former 2-storey office building, half of which has already been converted to studio flats with the appeal element presently largely vacant. The building occupies a corner plot at the junction of Marsh Road and Winterstoke Road. Immediately to the rear lies the bulky building associated with a lifting machinery and plant hire business; directly opposite is a large self-storage B8 building and associated forecourt/parking. Also within the immediate locality is the Ashton Gate sports stadium, home of Bristol City AFC but which also hosts the Premiership status Bristol Bears Rugby Club. The area is defined in the Bristol Local Plan: Site Allocations and Development Management Policies (2014) as a 'Principal Industrial and Warehousing Area' (PIWA).
7. The appeal site is situated in a highly sustainable and accessible location close to the A370 Brunel Way, a major arterial road between Bristol City centre and the south of the city and some 200m from the major junction of the A370 and the A369, a principal route into the city from M5 motorway. Despite having an air of commerciality, there are a number of facilities of public utility within the immediate locality, including both retail and commercial, schools, the Greville Smyth Park and the Long Ashton Park + Ride facility. I also noted that there are cycle lanes heading towards the City Centre, which is within reasonable walking distance.

Impact of commercial noise on future occupiers

8. The Council refused the application for prior approval on the basis that the proposed development is in close proximity to commercial premises that have unrestricted hours of operation and which immediately adjoin the application proposal. In addition, the site is also located approximately 100m from the large sports stadium which plays matches during the day and evening during the week and weekends although clearly on an intermittent basis.
9. The appellant points out that the land comprising part of the adjoining commercial premises is earmarked as a sports and convention centre and will be redeveloped at some future date as part of a mixed use development that will also include residential development. Although the project has been the subject of some public consultation and demonstrates a direction of travel in terms of what might occur, as no application for planning permission has been lodged with the Council, this can only be given limited weight at this time.
10. A noise report accompanies the current appeal proposal and concludes that the highest measured noise levels emanates from the activities at the yard of the adjoining lifting machinery and plant hire business although similar noise levels to that of the yard was also experienced when a well-attended event took place at the sports stadium. Whilst my visit coincided with a seemingly quiet period of the day and outside the football and rugby season, I was able to observe the comings and goings of HGV traffic and some moving of equipment within the yard, which according to the appellant operates during daytime hours. I was

able to observe that some of the windows to the adjoining flats were open. Despite the snap-shot nature of my observations, I did not feel that the environment was particularly noisy during the day but rather moderate for what is a mixed-use area of the City with the sound of vehicular traffic on nearby arterial roads being quite dominant.

11. That said, whilst the Noise Assessment suggests that general noise levels reduced markedly during the night-time, the operations at the adjoining premises and presumably according to the data when well supported matches are being played would result in an "indication of adverse impact without mitigation". The mitigation would involve the enhancement of windows facing the yard, which would need to be sealed airtight with alternative methods of ventilation provided to achieve acceptable sound reduction.
12. Whilst the appellant suggests that assessments of impacts should recognise context and that where dwellings may be designed so as to minimise the ingress of noise and acceptable acoustic conditions thereby achieving the desired results, it appears to me that residential occupiers living in traditional two storey dwellings would reasonably expect to open their windows during good weather conditions without being subject to noise levels which are in excess of normally accepted limits. That said, with the mitigation that is proposed, residents would be able to open their windows if desired when noise is lower and still enjoy adequate ventilation by mechanical means if windows needed to be closed.
13. My attention has been drawn to an appeal¹ for a similar scheme elsewhere in Bristol where the Inspector in dismissing that appeal found that daytime and night-time noise limits being met on the basis of windows having to remain shut would not be conducive to normal living conditions where occupiers would naturally wish to open windows, particularly in warmer weather. Whilst there are some similarities between the appeal proposals, I am not aware of the full circumstances of that appeal. However, from the Inspector's decision letter, he was satisfied that having to keep windows closed throughout the 24 hour period would be testament to "the fundamentally noisy environment of an industrial estate". Moreover, the Inspector acknowledged the presence of other businesses close to the appeal site who might be subject to complaints from residents of the new properties some time in the future, including a brewery incorporating a tap room. In observing that a number of existing commercial operators on the industrial estate would potentially be affected, he was mindful that having been present before such occupiers moved in would be of no defence under nuisance proceedings. I do not consider that the two schemes can reasonably be considered identical given that the Princess Street scheme was embedded deep within a relatively intensive industrial estate. But in any event, each case needs to be considered on their individual merits.
14. I am conscious that the adjoining residential flat scheme (Unit 1 Charnwood House) has been occupied for some time following Prior Approval by the Council in 2015 under the previous provisions of the 2015 GPDO prior to its amendment to include amongst other things the consideration of noise. The Council has provided evidence of a single complaint from a resident of that scheme, who explained that the yard is subject to activity during the night. However, this would not indicate that the conversion of the appeal building

¹ APP/Z0116/W/18/3193990

would necessarily lead to oppressive and unsatisfactory living conditions for future occupiers given that the current scheme provides bespoke mitigation. There is no evidence before me to suggest that the flats within Unit 1 have been provided with enhanced window construction or mechanical ventilation. I agree with the appellant that the appeal scheme does not rely on windows being fixed shut to reduce noise but rather they would be sealed airtight and when sealed, alternative methods of ventilation would be provided under the provisions of the mitigation scheme. The appellant draws my attention to other schemes supported by the Council based on similar mitigation although in the case of the Winterstoke Road development, the requirement for non-opening windows were required for air quality reasons.

15. Part 3, Class W of the GPDO sets out the procedure for prior approval applications under Part 3. Paragraph W.10(b) requires the decision maker to have regard to the National Planning Policy Framework (the Framework) so far as relevant to prior approval proposals as if they were planning applications. Paragraph 180 of the Framework requires that decisions should ensure that development is appropriate for its location and that noise impacts should not give rise to significant adverse impacts on health and quality of life. I am satisfied that the mitigation as proposed would be sufficient to avoid significant adverse impacts.
16. The evidence regarding the surrounding land uses submitted by the appellant in regard to potential noise impacts from adjacent commercial development was in line with my observations on site regarding the mixture of uses in the immediate area and an acknowledgment of the frequency of use of the stadium. Furthermore, the acoustic evidence would mean that it would be possible to provide acceptable living standards for future occupiers. In these regards, I am persuaded that any adverse noise impacts could be controlled through a condition as suggested by the Council, and that the proposal would thus meet criterion (d) of the prior approval conditions.

Conditions

17. The Council has suggested five conditions which I have considered and where appropriate, amended to achieve clarity.
18. The ability to impose conditions is confined to conditions reasonably related to the subject matter of the prior approval. The GPDO condition is standard and requires development to be completed within a period of 3 years so does not need to be repeated in the decision.
19. A condition is necessary in the interests of efficient highways and transportation requiring on-site cycle facilities to be provided as proposed. A condition is also necessary to ensure that the acoustic insulation and mitigation measures are carried out to protect the living conditions of future occupiers. Similarly, a condition requiring provision of refuse and recycling storage facilities and prevention of such storage on the highway is necessary to safeguard living conditions and prevent obstruction to pedestrian movement. As the building exists and a car park is already set out, I do not consider a condition requiring land contamination surveys is necessary.

Conclusion

20. For the above reasons and having regard to all other matters raised, this appeal should be allowed subject to the conditions as set out in the Schedule overleaf.

Gareth W Thomas

INSPECTOR

SCHEDULE OF CONDITIONS

1. Before the development is first brought into use details of the cycle parking provision indicated on Drawing Ref B12004 04 C shall be submitted to and approved in writing by the local planning authority. The approved cycle parking shall be implemented in full prior to the first occupation of any dwelling unit and retained thereafter.
2. Before the development is first brought into use a detailed scheme of noise insulation measures including ventilation for all residential accommodation in accordance with the recommendations of Section 6.5 of the submitted Noise Impact Assessment by Acoustic Consultants Limited (dated 26 September 2018) and the provisions of BS 8233:2014 Guidance on sound insulation and noise reduction in buildings shall be submitted to an approved in writing by the local planning authority. Such measures shall be implemented in full prior to the first occupation of any dwelling unit and retained in full thereafter.
3. Before the development is first brought into use details of the design and the materials to be used in the construction of the facility to store refuse and recyclable materials as indicated on Drawing Ref B12004 04 C shall be submitted to an approved in writing by the local planning authority. The approved scheme shall be implemented in full prior to first occupation of any dwelling unit on site and retained thereafter for such purposes. No refuse or recycling material shall be stored on the public highway except on the day of collection.

End of Schedule