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## Appeal Decision

Site visit made on 27 August 2019

**by Tim Crouch DipUD MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: Wednesday, 25 September 2019**

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**Appeal Ref: APP/C3810/W/19/3230687**

**4 Hawthorn Road, Littlehampton BN17 7LA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required a development order.
  - The appeal is made by Mr Shujat Khan of Envision Contracting Ltd against the decision of Arun District Council.
  - The application Ref LU/7/19/PD, dated 14 January 2019, was refused by notice dated 18 March 2019.
  - The development proposed is prior approval for the change of use from offices (Use Class B1(a)) to dwellinghouses (Use Class C3) to provide 30 self-contained flats (14 studios and 16 one-bed flats).
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### 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 offices (Use Class B1(a)) to dwellinghouses (Use Class C3) to provide 30 self-contained flats (14 studios and 16 one-bed flats) at 4 Hawthorn Road, Littlehampton BN17 7LA in accordance with the details submitted pursuant to Schedule 2, Part 3 Paragraph O.2.1 and to the condition below.
  - 1) 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 7 of the submitted Acoustic Assessment by ACA Acoustics (Report Ref 180801-R001E, dated January 2019) and the provisions of BS 8233:2014 Guidance on sound insulation and noise reduction in buildings shall be submitted to and 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.

### Procedural Matter

2. As part of the appeal the appellant has submitted a roof plan which did not form part of the original application. This shows roof lights serving the internally positioned proposed dwellings, thereby confirming how these will be provided with light. Whilst not forming a main issue in the appeal, it was an issue of living conditions raised by the Council. I do not consider any views prejudiced by including this plan in my consideration of the appeal.

## **Background**

3. The proposal seeks the change of use from offices to residential. The location of the building is set between two commercial operations and a supermarket service yard. The commercial units are B2 (General Industrial Use) use class and have no restrictions on the hours of operation.
4. Prior approval was refused by the Council on the basis that although acceptable noise standards can be met through the proposed mitigation measures (mechanical ventilation and insulation) this is likely to require windows to be closed and is concerned with resultant living conditions. The appellant contends that the windows will not be fixed shut and that living conditions are not one of the prior approval conditions within Class O (transport and highways, contamination, flood risk and impact of noise from commercial premises).
5. There is no dispute over the other conditions within Class O and I have no reason to disagree.

## **Main Issue**

6. Therefore, having regard to the above, the main issue is the effect of the proposal on the living conditions of future occupiers with particular regard to noise.

## **Reasons**

7. The appellant and the Council agree that the mitigation would enable noise to be at an acceptable level within the units and I have no evidence to conclude differently. The Council considers that this would require windows to be sealed closed or shut more often than not. This, in its view, would lead to a negative impact on living conditions and quality of life.
8. The proposed conversion is a single storey vacant office building within a commercial area. The dwellings would be on the ground floor and served by adequate ventilation by mechanical means without relying on opening windows. I have not been provided with any substantive evidence why reliance on mechanical ventilation would be directly harmful to the living conditions of future occupiers in this case.
9. Whilst windows may have to be closed for a significant proportion of the time, much of this would be during specific events, such as use of the compacting unit to the west and deliveries to the supermarket to the east. The fact that sufficient ventilation would be maintained mechanically, but that windows could be opened to allow future occupiers to respond to the environment, would allow residents choice. From the evidence provided, these events are likely to be at regular times and for finite periods, so in such circumstances some flexibility for the residentials would be to their benefit.
10. I also consider that given the ground floor nature of the units, large windows and being set amongst 30 separate dwellings, future residents may be more inclined to have windows closed as part of everyday living.
11. Notwithstanding that the windows may be opened, the Council has referenced appeal decisions where it has been considered that sealing windows has been harmful to future occupiers. However, I do not have all the information available to that led to these decisions, including importantly, the level and

form of noise and layout, but in any event it appears from the first decision letter<sup>1</sup> that the only form of ventilation proposed 'may' have been provided through trickle vents. This is materially different to the proposal before me. The second example<sup>2</sup> relates to the consideration that the sealing of windows would be oppressive in a rural location. I do not have all the information to make a comparison but the settings appear materially different to draw direct comparisons.

12. Additionally, the Council has referenced an appeal decision<sup>3</sup> which considers that residential occupiers at first and second floors would reasonably expect to open their windows during fine weather. Whilst the Council recognises that the proposal is for a ground use it considers this does identify a concern. However, I do consider this is a materially different relationship and for the reasons set out, consider that it is acceptable in this case.
13. I recognise that allowing the windows to open may increase the likelihood of complaints from future occupiers due to noise, as it can then be heard within the dwellings. However, having the opportunity to open the windows does give the occupiers more flexibility and ability to close to reduce the noise to appropriate levels.
14. Therefore, I do not consider that the proposal would have a harmful impact on future occupiers with particular regard to noise. The proposal would thus meet criterion (d) of the prior approval conditions.

### **Conditions**

15. The ability to impose conditions is confined to conditions reasonably related to the subject matter of the prior approval. The Council has not suggested any conditions should the appeal be granted.
16. 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.
17. 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.

### **Conclusion**

18. For the reasons given above, I conclude that the appeal is allowed subject to conditions.

*Tim Crouch*

INSPECTOR

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<sup>1</sup> Appeal Ref APP/D0121/A/14/2221207

<sup>2</sup> Appeal Ref APP/J3720/W/16/3160816

<sup>3</sup> Appeal Ref APP/Z0116/W/18/319399