



Appeal Decision

Site visit made on 30 July 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2019

Appeal Ref: APP/N4205/C/18/3218611

Land at 43-45 Bradshawgate, Bolton BL1 1DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Ghanshyam Properties Limited against an enforcement notice issued by Bolton Metropolitan Borough Council.
- The enforcement notice was issued on 15 November 2018.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the first and second floors of the property from offices to two self-contained flats with six bedsits in each.
- The requirements of the notice are:
 - i) Permanently cease the use of the first and second floors of the property as self-contained flats with six bedsits in each.
 - ii) Permanently remove from the first and second floors of the property all manifestations of residential use to include fitted kitchen, beds and fitted bathrooms.
- The period for compliance with the requirements is 180 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of the Decision: The appeal is allowed, the notice is corrected and quashed and planning permission is granted in the terms set out below in the Formal Decision.

Procedural Matter

1. I have dealt with another appeal (Ref: APP/N4205/C/18/3218612) on this site. That appeal is the subject of a separate decision.

The Enforcement Notice

2. The breach of planning control alleged in paragraph 3 of the enforcement notice is, without planning permission the material change of use of the first and second floors of the property from offices to two self-contained flats with six bedsits in each. The Council has subsequently suggested that the alleged breach may have been better described as: "Without planning permission, the material change of use of the first and second floors of the property from offices to two self-contained flats each containing a six-bedroom house in multiple occupancy (Class C4). The appellant has also confirmed that each of the self-contained units are registered as a House in Multiple Occupation (HMO) for six persons.
3. Class C4 of the Town and Country Planning (Use Classes) Order 1987 (as amended) is for small shared houses occupied by between three and six

unrelated individuals as their only or main residence, who share basic amenities such as a kitchen or bathroom. It does not relate to the number of bedrooms within the house. Consequently, it seems to me that the description of the alleged breach of planning control would be more accurate if it was corrected by deleting the wording "two self-contained flats with six bedsits in each" and substituting with, "two separate houses in multiple occupation (Class C4)." I am satisfied from the evidence before me that the correction does not alter nature of the breach and would not result in any injustice to the appellant or the local planning authority. For the avoidance of doubt, the development for consideration under the deemed application is derived from the description of the breach, as corrected.

Appeal on ground (a), deemed planning application

Main Issue

4. The main issue in this case is the effect on the living conditions of future occupiers, with particular regard to noise and disturbance.

Reasons

5. The appeal premises are situated at the edge of Bolton's town centre in a location which is predominantly characterised by uses associated with evening entertainment, for example bars, nightclubs and take-aways. The appeal premises comprise the upper two floors of part of a three-storey building with the ground floor units operating as a bar and a take-away. The bar is open five days a week with licencing hours until 4am. The building fronts directly onto Bradshawgate, a main thoroughfare and bus route. To the rear of the premises there is a courtyard which includes space for car parking, servicing and a partially covered smoking/drinking shelter associated with the ground floor bar. Access to the HMOs is from the rear courtyard adjacent to the shelter.
6. The Council are concerned that in this location the occupiers of the HMOs are subject to noise and disturbance generated from the use of the ground floor bar and its smoking shelter as well as from the general background noise levels associated with the evening economy on Bradshawgate, including road traffic and a taxi drop off area.
7. As part of the appeal submission a Noise Impact Assessment¹ (NIA) has been prepared which concludes that there is a good standard of noise control from the ground floor premises to the living accommodation above. However, it also recognises that the HMOs are exposed to moderate to high levels of noise from road traffic and from the busy weekend late night noise climate on Bradshawgate. In addition, there are also periods when noise from the use of smoking/drinking shelter is significant. Consequently, there is no dispute between the main parties that occupiers of the HMOs have been and are exposed to unacceptable noise levels even with the windows closed, when taking into consideration recommended night-time noise levels.²
8. Paragraph 185 of the National Planning Policy Framework (the Framework) makes it clear that planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (including pubs and music venues). In particular, existing

¹ Noise Impact Assessment, prepared by Hepworth Acoustics Ltd, Report No: P18-638-R01v1, July 2019.

² BS8233:2014, Guidance on sound insulation and noise reduction for buildings.

businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business could have a significant adverse effect on new development in its vicinity, the applicant should be required to provide suitable mitigation before the development has been completed. Furthermore, paragraph 180 of the Framework advises that planning policies and decisions should ensure that new development is appropriate for its location, taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment.

9. That said, I am also mindful that the Framework (paragraph 85) also recognises that residential development can often play an important role in ensuring the vitality of centres and that the government have made changes to national permitted development rights allowances in recent years to permit changes from offices and other uses to residential to support greater diversity and footfall on the high street. I am also mindful that the Council has granted planning permission for the use of the neighbouring property at 47 Bradshawgate to be used as two self-contained flats. It was clear from my site visit that a number of other properties within the vicinity of the appeal premises had residential accommodation on their upper floors. Furthermore, it can be seen from the archive photographs that the recent refurbishment has, in some respects, given a significant lift to the sense of prosperity of this part of the town.
10. In this case sound insulation works have already been undertaken which prevent internal noise transmission from the existing use of the ground floor commercial units to the living accommodation on the floors above. However, it is clear that given the location of the property on a busy street, and in an area where there is a strong evening economy, with a taxi dropping off point and outside drinking/smoking shelter adjoining the building, noise levels from those external sources remain unacceptably high within the building during the night-time. That noise would undoubtedly have a harmful effect on the living conditions of existing and future occupiers of the HMOs.
11. It is therefore necessary to consider whether or not those adverse effects could be mitigated by the use of planning conditions as suggested by the appellant. The NIA advises that the installation of secondary glazing would reduce noise levels internally to 25dB LAeq and both main parties agree this would be an acceptable internal noise level. Whilst the Council point out that the NIA does not assess low frequency noise and did not base its assessment on night-time measurements between midnight and 4am, I have not been provided with any demonstrable evidence that the NIA submitted was not robust. However, whilst the installation of secondary glazing would mitigate the adverse effects of external noise, it would only be effective with the windows shut. During the summer months occupiers would almost certainly want to open the windows to provide some ventilation.
12. The NIA therefore also recommends that a condition is imposed to require acoustically treated mechanical ventilation to the HMOs which would provide existing and future occupiers with the option of ventilating the rooms without opening a window. I appreciate the Council's concerns that to retrofit the flats with such a system is likely to be expensive and that some of the suggested systems may have an impact on the appearance of the building which is situated within a conservation area. However, the appellant is clearly aware of

those constraints and I have not been provided with any substantive evidence that would suggest that there is not a technical solution available that would secure a suitable mechanical ventilation system without causing harm to the heritage asset. Conditions to require details of the proposed secondary glazing and a mechanical ventilation scheme to be submitted to and agreed with the local planning authority and implemented within an agreed timeframe would to my mind provide suitable and necessary mitigation for the existing adverse effects of noise and disturbance. Furthermore, those conditions would not be unreasonable in these circumstances and would accord with advice set out in paragraph 55 of the Framework on the use of planning conditions.

13. I conclude that with secondary glazing and the installation of an acoustically treated mechanical ventilation system, the material change of use of the first and second floors of the property from offices to two separate houses in multiple occupation (Class C4), would provide for acceptable living conditions for existing and future occupiers, with particular regard to noise and disturbance. I find that the use would not conflict the development plan and in particular with Policy CG4 of Bolton's Core Strategy, Development Plan Document (adopted 2011) which seeks to ensure, amongst other criteria, that new development is compatible with surrounding land uses and occupiers, protecting amenity, privacy, safety and security.

Other Matters

14. It will be seen from my decision on Appeal Ref: APP/N4205/C/18/3218612 that I have granted planning permission for the uPVC windows that have been installed in the front elevation of the property. The Council's consideration that those windows are unauthorised and may have to be removed therefore no longer holds true and has no weight in my consideration of this appeal.
15. The appeal site lies in Silverwell Street and Wood Street Conservation Area (CA) the significance of which is, in my opinion, mainly drawn from its origin in the medieval period and its relatively uniform scale and grain. In addition, there are some fine examples of late Victorian and Edwardian commercial buildings along Bradshawgate which contrast with the strong Georgian character of the original town houses on Silverwell Street and Wood Street. Those buildings, including the appeal property, all contribute to the significance of the heritage asset. The breach of planning control relates to the use of the premises and no harm to the character or appearance of the CA has been identified by the Council. It was clear from my site visit and from the Council's Draft Silverwell Street and Wood Street Conservation Area Appraisal, July 2008, that the upper floors of a number of properties in the CA are under-used. In this respect, as set out above, the re-use of those upper floors brings a lift to the character and appearance of the area. I therefore concur with the Council that the use preserves the character and appearance of the CA.

Conclusions

16. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the material change of use of the first and second floors of the property from offices to two houses in multiple occupancy (Class C4) as described in the notice (as corrected).
17. The purpose of conditions 1 and 2 below is to require the appellant to comply with a strict timetable for dealing with the exposure to external noise and

disturbance which needs to be addressed in order to make the development acceptable. The conditions are drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The conditions therefore provide for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the conditions not be met in line with the strict timetable, then the use would have to cease.

Decision

18. It is directed that the enforcement notice is corrected in paragraph 3 by deleting the wording "with six bedsits in each" and substituting with, "two separate houses in multiple occupation (Class C4)."
19. Subject to the correction above, the appeal is allowed, the enforcement notice is quashed and the application deemed to have been under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the first and second floors of the property from offices to two separate houses in multiple occupation (Class C4) at Land at 43-45 Bradshawgate, Bolton BL1 1DR as shown on the plan attached to the notice and subject to the following conditions:
 - 1) The use hereby permitted shall cease and all manifestations of residential use to include fitted kitchen, beds and fitted bathrooms shall be removed from the first and second floors of the property within 180 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision a scheme for secondary glazing for all living spaces (kitchen/dining areas and bedrooms) shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 4 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the

time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The use hereby permitted shall cease and all manifestations of residential use to include fitted kitchen, beds and fitted bathrooms shall be removed from the first and second floors of the property within 180 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
- i) Within 2 months of the date of this decision a scheme for acoustically treated mechanical ventilation shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 4 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Elizabeth Pleasant

INSPECTOR