
Appeal Decision

Site visit made on 16 September 2019

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2019

Appeal Ref: APP/Z1775/W/19/3230623

Ship and Castle Public House, 1-2 The Hard, Portsea, Portsmouth, Hampshire PO1 3PU

- 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, Paragraph O.2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
 - The appeal is made by Mr Chris Hunt of City Estates (London) Limited against the decision of Portsmouth City Council.
 - The application Ref 19/00001/PACOU, dated 28 January 2019, was refused by notice dated 20 March 2019.
 - The development proposed is change of use on first floor from 155sqm of office (Class B1a) to 5 no. (Class C3) dwellings plus residents' amenity lounge.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Article 3 and Schedule 2, Part 3, Class O of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO) grant planning permission for development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) of the Schedule to the Use Classes Order, to a use falling within Class C3(dwellings) of the same order.
3. Permission is conditional upon the developer first applying to the local planning authority for a determination as to whether its prior approval will be required as to the transport and highways impacts of the development; contamination risks on the site; flooding risks on the site; and the impacts of noise from commercial premises on the intended occupiers of the development. The application was made on this basis.
4. The interpretation to Class O defines commercial premises to include any premises licensed under the Licensing Act 2003 or any other place of public entertainment.
5. Paragraph W(10)(b) of Schedule 2, Part 3 of the GPDO requires the decision-maker to have regard to the National Planning Policy Framework (the Framework), so far as relevant to the subject matter of the prior approval, as if the application were a planning application. The Planning Practice Guidance (PPG) can be used to assist in fulfilling the 'prior approval' requirements with regard to noise management¹.

¹ Reference ID: 30-016-20190722

Main Issues

6. The main issues are:

- a) whether the proposed development would provide acceptable living conditions for future occupiers, with regard to noise; and
- b) whether the transport and highways impacts of the development would be acceptable, with particular reference to car parking and cycle storage.

Reasons

Noise

7. The appeal building is in mixed use with a public house at ground floor and offices above. The offices are served by a stairwell which has its own entrance onto the street. The proposal is to convert the vacant first floor offices to create 5 units of residential accommodation.
8. The new dwellings would be directly above the trading area of the licensed premises located on the ground floor. These premises are authorised under The Licensing Act 2003 to play recorded music until midnight seven days a week as well as performances of live music between 0800 and 2300 hrs seven days a week as a right under Section 2 of The Live Music Act 2012.
9. A noise impact assessment was submitted with the application, with acoustic readings being taken over a 48 hour period between Friday and Sunday. The assessment demonstrates that the Council's minimum 'NC25' standard is achieved for the majority of the duration of testing. The author of the report concludes that the noise heard within the building is related to road traffic and other external sounds which are not material considerations for permitted development. However, this can only be an assumption as the measurement exercise was unattended; specific noise sources have not been positively identified. I note that the Council's environmental health officer has put forward an alternative interpretation of the survey results which would attribute the noise exceedances to the licensed premises below.
10. Even if the appellant's acoustic consultant is correct, no allowance has been made for activities that the public house could lawfully carry out under its licence, such as the playing of live and recorded music. I accept that the public house is currently a food oriented venue which does not play amplified music. However, the nature of the operation could change at any time without recourse to the planning or licensing authority.
11. Paragraph 182 of the Framework states that planning decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (this includes pubs). These uses should not have unreasonable restrictions placed on them as a result of development permitted after they were established. The PPG further advises that account will need to be taken not only of the current activities that may cause a nuisance, but also those activities that businesses or other facilities are permitted to carry out, even if they are not occurring at the time of the application being made.
12. My attention is drawn to the Good Practice Guide on the Control of Noise from Pubs and Clubs (2003) published by The Institute of Acoustics. This is a professional body and I attach its good practice guide significant weight. The

Council cites paragraph 7.2 of the guidance which advises extreme caution in permitting developments that result in pubs being structurally attached to noise sensitive properties. It states that: 'Such development should not be permitted without it being clearly demonstrated that acceptable noise levels can be achieved and maintained at and in the noise sensitive properties. When demonstrating acceptability a conservative approach should be adopted in the calculations, which, in turn, must be based on realistic source noise levels'.

13. In the absence of any substantive analysis of the impacts of live and recorded music it is not known whether the operation of the public house could have a harmful effect on the occupiers of the proposed development. Where impacts are likely Government policy and guidance make clear that suitable mitigation should be required. The noise impact assessment moots the possibility of improvements to the separating floor but it has not been demonstrated that this would be effective in moderating the adverse impacts of music being played in the commercial premises below. Consequently, it would not be appropriate to rely upon a condition to secure a scheme of mitigation.
14. To conclude, I am not satisfied that the development would provide acceptable living conditions for the occupiers of the new residential units. Adopting a precautionary approach, it seems to me that some noise disturbance is likely, if not now then in the future. As a result, there is a risk that the proposal would disadvantage an existing business, as it could lead to restrictions being placed upon the licensed premises due to complaints of statutory noise nuisance from residents or representations being made to review the licence. This would be contrary to Government policy set out in the Framework.

Transport and highways

15. Rather than stipulate a minimum or maximum standard, the Parking Standards and Transport Assessments Supplementary Planning Document (2014) (SPD) sets out an expected parking standard. It explains that the Council will consider deviations from the standard, taking into account how readily residents will have access to shops, services, workplaces and public transport, and the current parking situation in the area and the impact the development would have on parking. The SPD expressly encourages developers to consider lower levels of parking in the defined city centre, within which the appeal site lies.
16. The appeal building is located within an area identified in the SPD as having high accessibility. It is a short walk from shops, services and workplaces within the city centre, in addition to being less than a hundred metres from a key public transport interchange. Occupiers of the appeal scheme would not be compelled to rely upon the private car for everyday trips. I note in this regard that nearly two thirds of the households in the Charles Dickens Ward survive without having regular access to a car or van.
17. The Council is nonetheless concerned that future occupiers of the appeal scheme would own cars. It argues that there is insufficient on-street parking capacity in the immediate vicinity of the site to accommodate the increased parking demands safely. This would make it more inconvenient for local residents to find a place to park and result in indiscriminate parking and residents driving around the area hunting for a parking space with the consequent implications for air quality.

18. I cannot rule out the possibility that residents will own a car. However, with extensive parking controls on local streets the opportunities to park would be limited. Given the relatively high costs involved, it is unlikely that residents would wish to pay for meter parking or for a space in a multi-storey car park. The lack of convenient and affordable parking, together with the highly accessible location, would be a strong disincentive to owning a car.
19. Of course, it may be that residents seek to park further afield. I do not know whether they would qualify for a permit in the Portsea controlled parking zone. However, no parking stress surveys have been carried out and no other evidence has been presented to suggest that the vehicles generated by the development cannot be accommodated within marked bays. The Council has civil enforcement powers over parking contraventions on double yellow lines and this would be sufficient to prevent indiscriminate parking.
20. The Council is requiring a notional 3 parking spaces for the development and therefore the worst case scenario would be an extra 3 vehicles on the local roads. I have seen no evidence to convince me that this small number of vehicles would have a significant effect on traffic in the vicinity of the site or the safe and efficient operation of the highway network.
21. The scheme does not make specific provision for secure cycle storage. The steep staircase and limited space within individual residential units makes it unlikely that residents would take an ordinary bicycle within the building. For dwellings of the size proposed the SPD sets out a requirement for one long stay cycle space per unit. The scheme would conflict with this guidance. However, I must look at the scheme in the round. Occupiers would be able to walk to most destinations, plus they would have excellent access to bus and rail services. Whilst not necessarily ideal, they would also have the option to use a folding bike which is easier to manhandle and store. These factors would offset the harm arising from the lack of cycle storage.
22. Paragraph 109 of the Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. As this has not been proven within the Council's evidence, I find the transport and highways impacts to be acceptable.

Other Matters

23. The Council has raised concerns regarding the effect of the proposal on the integrity of the Solent Special Protection Areas. Habitats Regulations Assessment would be required prior to any deemed grant of planning permission. However, since I am dismissing the appeal I do not need to address this matter further.

Conclusion

24. I have found the transport and highways impacts to be acceptable. However, this does not outweigh the harm identified in relation to noise impacts. For the reasons given above I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR