



Appeal Decision

Site visit made on 16 October 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th November 2019

Appeal Ref: APP/M4510/W/19/3233989

41 Groat Market, NE1 1UG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) 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 Mr Michael Rye against the decision of Newcastle-upon-Tyne City Council.
 - The application Ref 19/00176/NRE, dated 23 April 2019, was refused by notice dated 14 June 2019.
 - The development proposed is change of use of existing office accommodation situated above an existing shop unit. The new proposed use for the first, second and attic floor levels is for conversion to 4no. residential apartments, 3no. 1 bedroom apartments and 1no. 2 bedroom apartment.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Paragraph W (10) of the GPDO states that the local planning authority must, when determining an application 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. Therefore, despite reference to Policy CS14 of Planning for the Future Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030 (Adopted March 2015) and Policies H2, EN1.1 and POL8 of the Newcastle upon Tyne Unitary Development Plan, I have determined the appeal having regard to the provisions within the Framework.
3. Class O of the GPDO permits a change of use of a building and any land within its curtilage from a use falling within Class B1(a)(offices) to a use falling within Class C3 (dwellinghouses) subject to a number of criteria. It is a condition of Class O, amongst other things, that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to the transport and highways impacts of the development, contamination and flooding risks on the site and the impacts of noise from commercial premises on the intended occupiers of the development.
4. The dispute between the main parties is solely based around paragraph O.2 (1) (d) of the GPDO. The Council have raised no objection in respect of the transport and highways impacts of the development or contamination and

flooding risks. On the basis of what I have read and seen of the site, I find no reason to conclude otherwise.

Main Issue

5. On the basis of the above, the main issue is whether the proposed development would provide acceptable living conditions for future occupiers having regard to the impact of noise from commercial premises.

Reasons

6. The appeal property is located within the city centre, surrounded by commercial premises consisting of retail uses, restaurants, drinking establishments and hot food takeaways – a number of which are located in close proximity to the appeal property. The proposal relates to the upper floors with the ground floor being vacant – previously in use as a betting office (sui generis use).
7. The Council stated that the area is a primary night time economy destination on a daily basis, with a number of late-night vertical drinking establishments and high numbers of hot food takeaways all of who have late night refreshment licenses, with noise levels in the Groat Market substantially rising at night time and tailing off at around 4 – 5am.
8. As part of the prior approval application the appellant submitted an Acoustics assessment which was undertaken during a 2-week period at the end of February, into the beginning of March.
9. As the appellant pointed out the Council do not set specific design criteria or an indication of acceptability for ambient noise levels within dwellings and the pre-application response does not set out what is likely to be acceptable regarding external noise affecting the proposed apartments. The appellant therefore referred to British Standard 8233 'Guidance on sound insulation and noise reduction for buildings' which sets out recommended indoor ambient noise levels for dwellings, for steady external noise sources which are based on guidelines issued by the World Health Organisation (WHO). The appellant pointed out that BS 8233 also states 'Where development is considered necessary or desirable, despite external noise levels above WHO guidelines, the internal target levels may be relaxed by up to 5dB and reasonable internal conditions still achieved.'
10. The Acoustics assessment indicated that the highest noise levels were recorded at the front elevation of the building, overlooking the Groat Market. It recognised that this part of the city can attract high levels of noise but identified that with mitigation, the internal noise levels at the front during the daytime would not exceed 35db and at night would be between 32db and 45db (no more than 15 times a night). At the rear, daytime noise levels would be 20db and 23db at night. In summary, the mitigation proposed consists of high-performance double-glazed units, or a secondary pane set back from the existing glazing by 200mm, with standard thermal double glazing for the rear elevation. A mechanical ventilation system capable of providing the minimum requirements of Part F and also cooling would be required which would negate the requirement for opening windows for ventilation or the control of overheating. Internally party floor and wall constructions would be included and

- a commercial fit-out of the future ground floor, with any additional sound insulation works, if necessary, restricted to the ground floor tenancy.
11. The Council raised concerns about the proposed mitigation in respect of the ability to require residents to keep windows closed and the lack of details of the proposed mechanical ventilation system. I agree that it would be necessary to establish the details of the ventilation system to ensure that it would perform to the requisite standard. It would also be necessary to ensure that all of the mitigation measures would remain in place and continue to perform to the required standard. However, I can see no reason why these matters could not be secured and controlled via a suitably worded condition or suite of conditions in the event that prior approval were to be granted. Nevertheless, I share the Council's concerns about the reliability of the Acoustics assessment results, specifically in respect of when the survey was carried out.
 12. The Council's Environmental Health Team stated that the noise climate is well known to them from working in the locale at night and from other noise surveys undertaken in the vicinity. Further, that January and February are renowned for being the quietest times of the year for the night time economy and therefore February is one of the least representative months in the year. Whilst I understand that there are many students in the city and the Council have not provided evidence to support their assertion, I consider they are well placed to know when the area is at its busiest. It also seems likely to me that during the summer months people are more likely to congregate outside premises. As such, I see no reason to question the Council's view in this regard.
 13. The proposed mitigation to the front elevation is considered to be the maximum practically achievable by a high-performance double-glazed system and would achieve a minimum of 32db at night time, 2db higher than WHO and BS 8233 guidance, albeit within the 5db tolerance in respect of necessary or desirable development. However, on the basis of the above, I am not certain that the Acoustics assessment provides representative results and consider that there is an unacceptable risk that the proposed development would result in unacceptable living conditions for future occupiers as a result of noise from commercial premises.
 14. The Council also pointed out that the appeal property, at the rear, juxtaposes with a number of currently inoperative food businesses with redundant flues, but which have extant planning permissions to operate as food businesses and the Acoustics assessment provides no assessment of potential noise from such flues. The appellant did not dispute this but contended that any new occupiers of such businesses are likely to upgrade the extraction equipment as it is not fit for purpose. Whilst I have had regard to the application which includes replacement extraction equipment at 35 – 37 Groat Market and the intentions of the owners of 39 – 40 Groat Market and, note that there has been no record of any noise complaints from existing residents, which is not disputed by the Council, I cannot be certain that all extraction equipment would be replaced.
 15. It is reasonable to assume, that over time the premises may become occupied and there may be a change in terms of the intensity of use and given the location of the site relative to these neighbouring commercial premises, it is likely that occupiers of the proposed development would be affected by any such change. Consequently, in the absence of assessment of the likely noise effects, I cannot be certain that the living conditions of future occupiers would

not be harmed as a result of noise from such equipment. However, I agree with the appellant that odour is not a matter for consideration under this prior approval procedure.

16. The appellant stated that the Acoustics assessment undertaken includes noise from pedestrians, traffic and sirens from emergency vehicles and therefore, the results submitted are higher than they would be if only considering noise from commercial sources. Consequently, the recommended mitigation therefore goes above and beyond what is required to be assessed for prior approval. However, I consider that noise associated with customers visiting commercial premises on foot and by car/taxi cannot be separated from that of the commercial premises themselves. Whilst sirens and pedestrians passing through to get to work, as suggested by the appellant, may contribute some way to the noise levels, there is no evidence that if such noise sources were not included, it would have any material affect on the recorded noise levels.
17. The appellant provided decision notices relating to permissions for a residential and a hotel development, along with sales particulars for a neighbouring apartment which show opening windows to the front and rear elevations. However, I do not know the circumstances of those developments being permitted, as such these are matters of limited weight in my assessment. I have reached my own conclusions on the appeal proposal on the basis of the evidence before me. That there are other residential properties in the city centre does not justify the harm I have identified.
18. Notwithstanding the potential mitigation, for the reasons given above, I conclude that there is an unacceptable risk that occupiers of the proposed development would experience unacceptable living conditions due to noise resulting from nearby commercial uses.
19. Whilst the starting point in determining proposals for such prior approvals is that the permitted development right grants planning permission, that is subject to specific criteria and is not an unqualified right. It seems to me that the need to boost the supply of homes should not be at the expense of achieving development that provides acceptable living conditions. The Framework seeks to ensure that development provides a high standard of amenity for existing and future users and that development is appropriate for its location taking into account the likely effects on living conditions by avoiding noise giving rise to significant adverse impacts on health and the quality of life. The proposed change of use would be contrary to the Framework approach in this respect.

Conclusion

20. For the reasons given above and having regard to all other matters raised, the appeal is dismissed.

Felicity Thompson

INSPECTOR