



Appeal Decision

Site visit made on 28 October 2019

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2019

Appeal Ref: APP/X4725/W/19/3230311

20 King Street, Wakefield, England WF1 2SR

- 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, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.
 - The appeal is made by Mr Sahota against the decision of City of Wakefield Metropolitan District Council.
 - The application Ref 18/02510/COUO, dated 3 January 2019, was refused by notice dated 6 March 2019.
 - The development proposed is described on the application form as the division of the ground and first floor of the property into two separate units. There will be minor internal alterations in order to accommodate the new use, details of which can be seen on the accompanying plans. The ground floor of the property will remain as office space (B1) and the first floor will be used as a domestic flat (C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (GPDO) permits development consisting of a change of use of a building and any land within its curtilage from use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule.
3. Development coming within Class O is deemed to be granted planning permission by the GPDO provided that it would comply with the limitations listed in paragraph O.1 of Class O. It is a condition of Class O, among 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 its impact on: transport and highways; contamination risks on site; flooding risks on site; and the impacts of noise from commercial premises on the intended occupiers of the development.
4. On the basis of the evidence that is before me, the dispute between the main parties is solely the effect of noise at the location on the future occupiers of the development.

Main Issue

5. The main issue is whether the proposed development would provide acceptable living conditions for future occupiers, with regard to noise.

Reasons

6. The appeal site comprises of a three storey mid terraced building, which according to the plans, has office use at ground and first floor. It is attached to the Inns of Court public house, which the Council states is licensed to hold live music performances seven nights a week. The proposal is to convert the first floor into a one-bedroom apartment utilising the entrance hall and stairwell from King Street.
7. The appellant's Noise Assessment¹ (NA) indicates that noise surveys were undertaken on three separate occasions to determine external and internal noise levels at typically busy times during live band performances. The results contained in the NA indicate a marked increase in night time noise levels during live band performances, with the highest noise levels occurring between 2100 and 0100hrs. These reached LAeq(15min) 53dB and a LAFmx 64dB internally, and LAeq(19min) 70dB and a LAFmx84.7dB externally. The NA accepts that these ambient noise levels are too high and exceed the guidelines in the British Standard (BS8233:2014) and the World Health Organisation (WHO) 'Guidelines for Community Noise' (1999) of 35dBA during the day and 30dBA at night within living and bedrooms.
8. It appears that the Council also undertook its own noise recordings within each of the first floor rooms of No 20 during a live band performance. Although I have not been provided with the results, the levels referred to in the delegated report are generally consistent with those of the appellant's NA, and were described as *'it was almost like being in the same room as the live performance, the levels were so high, and the clarity of the performance was largely unhindered. The majority of the noise sources recorded were at levels of between 38 and 55 decibels, erring towards the higher end, with peaks of up to 85 decibels'*.
9. The occupants of the development could therefore be exposed to noise at the significant adverse effect level, particularly at night. Where noise impacts are likely, Government policy and guidance make clear that suitable mitigation is required. The NA suggests that the internal noise levels can be reduced to within BS8233:2014 guidelines through installation of secondary glazing; an acoustic door on the first floor landing; and an insulated cavity stud wall along the entire partition wall on both the ground and first floor separating the pub and No 20. With these measures in place the NA predicts an internal noise level of LAeq(15min) 29dB, whereby the entertainment noise would still be audible, but at a low level.
10. However, I note that the NA identifies that internal noise transmission from the area where live music is played has several paths, not just through the walls, but also including through the ceiling and through the floor. It comments that no joists or beams or construction material should run through from the apartment to the pub, but it is not clear whether any investigation has been

¹ Noise Assessment Report 20 King Street Wakefield - Noise Survey Ltd 15th April 2019

carried out in this respect to determine whether additional floor and ceiling mitigation is necessary for these reasons.

11. In my view, a precautionary approach is a necessity given that the pub is structurally attached to the proposed noise sensitive development. I am also mindful that retro-fitting to improve sound insulation can be difficult to achieve as there is a need to eliminate all gaps through which the noise can flank, such as through floor cavities between the floor joists and where partitions abut the party wall, which has not been demonstrated.
12. Moreover, crucially, the NA states that meeting the BS8233:2014 guidelines as proposed relies on closed windows and acoustic ventilation. Such a reliance introduces considerable uncertainty over whether windows will remain closed. Future occupiers of the proposed development are likely to wish to be able to open windows normally, particularly during warmer weather, to access fresh air or to purge smells or smoke. I do not consider acoustic wall ventilation on its own to be a reasonable alternative to being able to open windows when desired, and in any event, the need to keep windows closed would make for a poor quality of living for the occupants.
13. To conclude, I am not satisfied that the development would provide acceptable living conditions for its occupiers, as a result of the impacts of noise from a commercial premises. There is also a realistic prospect that the proposal would disadvantage an existing business, as it could lead to restrictions being placed upon the adjoining licensed premises due to complaints of statutory noise nuisance from residents. This would be contrary to Government policy set out in paragraphs 180 and 182 of the National Planning Policy Framework.

Conclusion

14. For the reasons given above, I conclude that the appeal should be dismissed.

Adrian Caines

INSPECTOR