
Appeal Decision

Site visit made on 19 November 2019

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 27th November 2019

Appeal Ref: APP/B0230/W/19/3236124

Tiber House and Tivoli House, Wigmore Centre, Wigmore Park, Luton LU2 9XG

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 GPDO).

- The appeal is made by Mr Paul Richards of Tiber Properties Ltd against the decision of Luton Council.
 - The application Ref 19/00658/COM, dated 18 June 2019, was refused by notice dated 13 August 2019.
 - The development proposed is described as Change of use from B1 Office Use to 22 residential apartments.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development on the original application form is very detailed. I have, in the interests of clarity used in my header above the first part of the description given on the appeal form which adequately describes the proposal.
3. Schedule 2, Part 3, Class O of the GPDO states that 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 (dwelling houses) of that Schedule is permitted development, provided that the certain criteria are met.
4. Paragraph O.1(b) confirms that development is not permitted by Class O if the building was not used for a use falling within Class B1(a) (offices) either (i) on 29 May 2013 or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use. There is no available planning history for the first floor of the appeal building to which this proposal relates though the Council report that Council tax records show occupation of the property for B1 purposes in May 2013. This fact is not disputed, and I have no evidence before me which would lead me to a different conclusion.
5. The provisions of the GPDO require a local planning authority, upon finding a proposal to be permitted development under Schedule 2, Class O, Paragraph O.1 of the GPDO, to then assess the proposed development solely on the basis

of those matters listed in Paragraph O.2¹. In this case transport and highway issues and the impacts of noise from commercial premises on the intended occupiers of the development. It is to these particular provisions to which the Councils' refusal reasons relate.

Main Issues

6. Having regard to the evidence before me, which indicates that there are no ground contamination or flooding risks associated with the site, the main issues in the appeal are:
 - a) the transport and highway impacts of the developments;
 - b) the impacts of noise from commercial premises on the intended occupiers of the development; and
 - c) whether on the basis of a) or b) prior approval should not be given under paragraphs O.2 (1) (d) and W (3) of the GPDO such that an application to the Council would be required.

Reasons

7. The appeal site currently comprises the first floor of a mixed-use complex. It is formed of retail and commercial premises on the ground floor including a public house, a retail shop selling consumable freezer goods, restaurant, takeaway, betting shop and NHS offices. Opposite lies a large retail supermarket and to the rear further office buildings are located. A large car park is provided though most spaces are restricted to permit holders; the remaining are time limited parking spaces for general use.
8. The proposal would include the change of use of vacant space on the first floor within two separate sections of the building to form 22 apartments. Commercial uses on the ground floor would remain. I have no information on the detailed relationship between the proposed properties and the functioning services of the building such as refrigeration units serving the freezer centre, extraction equipment from the restaurants and public house. I have no assessment before me in respect of the noise impacts from the commercial premises on the proposed residential use.
9. The Procedural section W of Schedule 2, Part 3 of the Order sets out that, the local planning authority may refuse an application where, in its opinion, the proposed development does not comply with any relevant condition, limitation or restriction, or that insufficient information has been provided to enable the authority to establish whether this is so. It is therefore appropriate first to consider whether there is sufficient information to establish that the proposed development complies with these conditions, limitations and restrictions.
10. The site has an existing vehicular access and I have no reason to believe that this would not continue whatever the use of the first floor. However, I have no information relating to intended parking provision and thus, in relation to the transport aspects of the development, I am unable to be satisfied that adequate provision can be made for the residential use. The application is silent on whether any spaces were previously allocated to the offices or whether, and through what mechanism, appropriate provision could be made to serve the 22

¹ Transport and highway impacts, contamination risks on the site, flooding risks on the site and, from the 6th April 2016, the impacts of noise from commercial premises on the intended occupiers of the development.

units in the future. As such I conclude that insufficient information has been provided in relation to the transport aspects of the scheme.

11. Class O of the GPDO includes the consideration of noise from commercial premises. In the context of this site there are a number of potential noise generating operations; not least the public house, restaurants and the refrigeration equipment serving the freezer food outlet. These all have the propensity to significantly impact on residential premises should flats be created on the first floor. This would be an essential aspect of assessing the suitability of the conversion of the proposed space to residential flats.
12. Planning Practice Guidance recognises that the subjective nature of noise means that there is not a simple relationship between noise levels and the impact on those affected. Therefore, it is also important to consider the effect of the characteristics of the noise. As I have no evidence on this matter it is not possible to conclude that there would be an acceptable relationship between existing uses and the proposed residential use in this particular environment.
13. I am not satisfied that any mitigation measures, could be a matter left to a planning condition as this issue must be robustly addressed in this instance before a permission is granted given the potential risks. This is because to deal with it at a later stage could result in any condition being unreasonable if its requirements could subsequently not be met.
14. Whilst I note the appellants state that the Council could have asked for this information it is still incumbent on the appellants to demonstrate that the impact would be acceptable, and I note no attempt has been made to provide any further detail. Given the context of the site it is essential that a precautionary approach is taken. The commercial uses are integral parts of the same building and I am particularly mindful that retro-fitting to improve sound insulation can be difficult to achieve.
15. In these circumstances there is a significant risk that future occupants could be subjected to unacceptable levels of noise from surrounding commercial premises, which would adversely affect their living conditions resulting in significant adverse impacts.
16. To conclude, I am not satisfied that the development would provide acceptable living conditions for occupiers, as a result of the impacts of noise from the range of commercial premises. There is also a realistic prospect that the proposal would disadvantage existing businesses as it could lead to restrictions being placed upon one or more adjoining premises arising from complaints of 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

17. For the reasons given above, and having regard to all other matters raised, I conclude the prior approval should not be given under paragraphs O.2 (1) (d) and W (3) of the GPDO such that an application to the Council would be required and the appeal is dismissed.

Janet Wilson

INSPECTOR