
Appeal Decision

Site visit made on 5 November 2019 by John Gunn DipTP Dip DBE MRTPI

Decision by R C Kirby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Appeal Ref: APP/V2825/W/19/3234474

The Imperial Restaurant, 20A Castilian Street, Northampton NN1 1JX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Kooner, A Z Investments against the decision of Northampton Borough Council.
 - The application Ref N/2019/0157, dated 25 January 2019, was refused by notice dated 17 May 2019.
 - The development is proposed change of use from restaurant to house in multiple occupancy.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issues

3. The main issues are whether the proposal would provide acceptable living conditions to the intended future occupiers, with particular regard to noise and vibration from the nearby nightclub, and whether the location of the appeal site and its relationship to nearby commercial uses is suitable for the proposed house in multiple occupation.

Reasons for the Recommendation

Living Conditions

4. The proposal involves the change of use of the ground floor and basement of the property to residential accommodation. The basement would provide communal accommodation including a kitchen/dining and living area and 2 shower rooms. The ground floor would provide 3 bedrooms, a communal lounge and storage areas. The first floor of the property is a night club/bar, the entrance of which would adjoin the party wall of the proposed bedroom 1.

5. The Council has indicated that the licence for the club allows it to operate from 11.00 am to 03.30 am Monday to Saturday and on Sunday from 11.00 am to 01.00 am with the playing of live and recorded music allowed until 30 minutes before the closing time on each day. The dance floor of the nightclub would be above the proposed bedrooms 1 and 2. This has been recognised as a source of noise to the appeal property in the appellant's Noise Assessment. It is also likely to be a source of vibration. The Council has indicated that both issues have been previously investigated when the appeal premises was a restaurant, which culminated in a noise abatement notice being served.
6. The appellant indicates that works to the ceiling of the residential unit and internal walls would provide mitigation from both noise and vibration, albeit that a vibration survey does not appear to have been undertaken. Notwithstanding this, and acknowledging that readings were only taken in the location of proposed bedroom 1, a more comprehensive survey could be controlled by way of planning condition in the event that planning permission was granted for the proposal, along with the necessary mitigation measures necessary to provide accommodation which would not be adversely affected by noise and vibration from the use above.
7. I acknowledge that residents living within a town centre location might reasonably expect to experience a higher level of noise and disturbance associated with the surrounding commercial uses particularly when daytime and evening activities are occurring.
8. However, in this case, the windows of two of the proposed bedrooms would be at street level, very close to the entrance into the nightclub. Given this relationship users of the nightclub would be likely to congregate outside the entrance to it, in front of the bedroom windows when queuing to get into the club, when smoking outside the premises and when leaving and waiting for a vehicle to pick them up. Noise disturbance from people talking, engine noise and vehicle doors closing in close proximity to these windows would be likely to cause disturbance to the occupiers of these bedrooms, particularly late at night when the occupiers may be sleeping.
9. Although the appellant suggests that the existing single glazed, non opening windows are suitable for the proposed use, no external noise assessment has been undertaken to support this. In the absence of evidence to demonstrate otherwise, I consider that noise generated from the comings and goings of the nightclub users would be likely to be audible from within the front bedrooms and would be likely to be a source of annoyance and nuisance to the occupiers of the new residential accommodation. The Council indicate that there is a terrace area to the rear of the nightclub where people can congregate and smoke, which is not disputed. The use of this outdoor area, in close proximity to the proposed window of bedroom 3 would also be a source of disturbance to the occupiers of this room, particularly late at night and would be likely to include cigarette odours as well as noise.
10. For the above reasons I find that there would be a high probability that the occupiers of the proposed house in multiple occupation would be exposed to external noise to a degree that would be disturbing to their sleep, when the nightclub is open to the public. The proposal would not create a place which

promotes health and well-being as required by paragraph 127 f) of the National Planning Policy Framework (Framework).

11. I conclude, therefore, that the proposal would not provide acceptable living conditions for its intended future occupiers, in conflict with Policy H1 of the West Northamptonshire Joint Core Strategy Local Plan (Part 1) (CS) and the Framework, which jointly seek to provide a high standard of amenity for existing and future users. In reaching this conclusion I am mindful that when the nightclub is not open that noise and disturbance to the occupiers would be unlikely to result, however this does not mitigate the harm that I have identified when the premises is operating.

Location

12. Paragraph 180 of the Framework makes it clear that planning policies and decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on a number of factors, including health and living conditions. Paragraph 182 requires that planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as pubs, music venues amongst other uses). It also states that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.
13. Given my findings above, I conclude that the relationship of the appeal premises to the nightclub is not a suitable location for the proposed house in multiple occupation because of the poor living conditions that would be provided to its occupiers. This use would not integrate effectively with the existing nightclub business.
14. In terms of other uses nearby, including the wine and tapas bar on the opposite side of the road, no evidence has been provided that these commercial uses are incompatible with nearby residential uses in Castilian Street or Castilian Terrace. Given the separation distance between the proposal and these commercial uses, I have no reason to find that they would not be compatible with the proposed use of the appeal site.
15. Although I note the concerns of a nearby business that the residential use of the appeal site may prevent patrons of this business smoking in the street, the relationship of the appeal premises is further away from this establishment than residential development at Castilian Court, and would be unlikely to have an impact on the operation of this business.
16. Given my findings I conclude that the proposed use is not suitable in this location because of its close relationship to the nightclub premises above. Accordingly, the proposal conflicts with CS Policy H1 and the Framework which collectively require that development is appropriate for its location.

Other Matters

17. The appeal property falls within the Derngate Conservation Area (CA). Much of the architectural attraction of this area stems from the wealth of early to mid-

nineteenth century terraces, formerly the homes of Northampton's trades and professional families, but now, being too large for present domestic purposes, are mostly in office use. Castilian Street includes 19th century terraces, and The Memorial Hall on the opposite side of the road to the appeal site is a locally listed building and was used as a military hospital.

18. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. In this respect national policy on heritage assets, which includes conservation areas and locally listed buildings, is set out in the Framework. At paragraph 192, it sets out matters which should be taken into account including sustaining and enhancing the significance of the heritage asset.
19. The only external alteration that would result from this proposal would be the insertion of a timber framed window within the existing basement coal chute/service hatch. The Council's Conservation Officer has advised that the introduction of a timber framed window within this existing opening is acceptable and would not have a detrimental impact upon the character and appearance of the Conservation Area. On the basis of the evidence before me I have no reason to disagree with the Council and conclude that the proposal would have a neutral effect on the CA. The character and appearance of the CA would be preserved by the proposal.
20. For the same reasons I find that the proposal would sustain the significance of the locally listed Memorial Hall as a heritage asset.
21. I acknowledge that the appellant has sought the advice of the Council as to what would be acceptable development, and has made amendments to the proposal, however this does not alter the conclusions that I have reached.

Conclusion and Recommendation

22. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

J Gunn

APPEAL PLANNING OFFICER

Inspector's Decision

23. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

RC Kirby

INSPECTOR