



Appeal Decision

Site visit made on 7 January 2020

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th January 2020

Appeal Ref: APP/W1850/W/19/3240272

The Gatehouse, Foley Trading Estate, Hereford, HR1 2SF

- 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 Mrs Ruta Kuzmiene against the decision of Herefordshire Council.
 - The application Ref 191997, dated 14 January 2019, was refused by notice dated 10 October 2019.
 - The development proposed is change of use from commercial property to residential.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the development on the living conditions of future occupiers, and on the operations of existing businesses, with regard to noise and disturbance.

Reasons

3. The appeal site consists of a single storey flat roof building at the entrance to the Foley Trading Estate. It is in close proximity to a number of industrial buildings, including a precision engineering works and several vehicle repair / mechanics businesses. The area immediately in front of the appeal building is also used as a vehicle turning area.
4. A Noise Assessment¹ has been submitted in support of the development. This identifies various sources of commercial and industrial noise in the vicinity including hammering, revving of car engines, noise from commercial vehicles, the clanging of metal, and the use of compressed air drills and air compressors. This is consistent with what I observed during my site visit and reflects the industrial nature of the area. Moreover, industrial noise was measured as being 17 dB above the prevailing background level, before any character correction is applied, which is an indication of a significant adverse impact. The Noise Assessment also acknowledges that *"the specific noise from the trading estate could not be determined because the occupiers did not generate their maximum noise levels"*.
5. The Council state that many of the surrounding businesses are unrestricted in terms of their operations. In this regard, I note that the Noise Assessment

¹ Ref 229HEREFORD (Noise Survey Ltd, 4 June 2019)

recorded a LAFmax of 73 dB during the night. Furthermore, the Noise Assessment states that *"the WHO (2009) recommendation for LAFmax of 60dB and an LAeq (8 hour) night of 45dB outside bedrooms may not be achievable"*.

6. A series of mitigation measures are identified that could achieve recommended internal noise levels. These include the use of suitable glazing, ventilation and acoustic doors. However, windows would need to be kept closed in order to achieve acceptable internal noise levels and to avoid a risk of an adverse noise impact. Future occupiers would therefore need to keep their windows shut for large parts of both the day and night in order to prevent annoyance and sleep disturbance. However, even with the proposed mitigation measures in place this is still likely to occur, particularly during warmer weather. In this regard, it is reasonable for future occupiers to expect to be able to open their windows without being subjected to significant levels of noise. Accordingly, I consider that a reliance on closed windows and artificial ventilation systems is not a practical or realistic solution in this case.
7. Given the commercial and industrial noise in the vicinity, the proposed residential use could give rise to a statutory nuisance being found. This would place unreasonable restrictions on existing nearby businesses and could undermine their ability to operate. Whilst a number of existing houses on Foley Street and Eign Mill Road are close to the industrial estate, that is a historic arrangement. Moreover, the appeal building is within the industrial estate itself and a number of its main windows face towards existing businesses. In addition, the appeal building has no defensible space around it, and commercial vehicles are able to park directly in front of it. This could result in larger vehicles parking across its main entrance and windows, which would result in further harm to the living conditions of future occupants.
8. For the above reasons, I conclude that the development would provide inadequate living conditions for future occupiers with regard to noise and disturbance and would prejudice the operations of existing businesses. It would therefore be contrary to Policy SD1 of the Herefordshire Local Plan Core Strategy (2015), which seeks to ensure that new development does not contribute to, or suffer from, adverse impacts arising from noise.

Other Matter

9. Any concerns regarding the Council's conduct during the processing of the planning application fall outside of the remit of this decision.

Conclusion

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

Thomas Hatfield

INSPECTOR